



STAFF REPORT

Meeting Date: May 17, 2016

To: Honorable Mayor & City Council

From: Ryan Gohlich, AICP, Assistant Director of Community Development

Subject: Request by Vice-Mayor Krasne for City Council Review of the Planning Commission's decision conditionally approving a Conditional Use Permit, Development Plan Review, and Extended Hours Permit for restaurant, open air dining, and rooftop operations at the L'Ermitage Hotel, located at 9291 Burton Way.

Attachments:

1. Municipal Code Excerpts BHMC Section 1-4-201, et seq.
2. Planning Commission Staff Report (without attachments)
3. Planning Commission Resolution

BACKGROUND

Vice-Mayor Krasne has requested this item be placed on the City Council's agenda to determine if there is Council support to call the subject Planning Commission decision up for review. If the City Council orders the review, this matter would be scheduled for consideration at a future public hearing.

DISCUSSION

At a special meeting held on May 2, 2016 the Planning Commission conditionally approved an application for a Conditional Use Permit to allow a dining facility to be open to the public, a Development Plan Review to allow the establishment of an open air dining area that would be served by existing parking supply and valet operations, and an Extended Hours Permit to allow a nonconforming hotel restaurant, open air dining area, and rooftop use to operate during extended hours for the L'Ermitage Hotel.

The Resolution adopted by the Planning Commission is attached hereto to provide a more detailed explanation of the Commission's determination as to the Conditional Use Permit, Development Plan Review Permit, and Extended Hours Permit.

Pursuant to Beverly Hills Municipal Code Section 1-4-201, et seq., the City Council may order a review of any decision made by any commission, board, or official of the City. The process to initiate this review and set a hearing is specifically set forth in the municipal code, and those provisions are attached for reference.

Meeting Date: May 17, 2016

The City Council must order any review within 30 days of the Planning Commission's approval, which was on May 2, 2016. If a review is ordered, the Planning Commission's action will be stayed until the Council review is final.

The decision to order a review at the May 17th City Council Meeting shall be limited to the question of whether to call the item up for a hearing before the City Council at a future formal meeting, and shall not include any evaluation or assessment of the merits or circumstances of the case or the Planning Commission's action. That discussion would take place at a noticed public hearing at an upcoming Council meeting.

FISCAL IMPACT

The recommendation in this report does not have significant budget or fiscal impacts for the City. It is noted that a City Council public hearing will result in cost to the City associated with public notices. The public notice cost would total approximately \$2,500.00 and would be appropriated from the City Clerk's budget.

RECOMMENDATION

It is recommended that the City Council make a determination as to whether or not the subject Planning Commission action will be called up for review. Should the matter be called up for review, staff recommends setting a hearing date of June 6, 2016.



Susan Healy Keene, AICP

Approved By

Attachment 1

Municipal Code Excerpts BHMC
Section 1-4-201, et seq.

Article 2. Council Ordered Review of Administrative Decisions

1-4-201: RIGHT TO REVIEW:

The council may order a review of any decision made by any commission, board, or official of the city, except as otherwise provided in this code. Such review may be ordered by motion of the council duly adopted within thirty (30) calendar days after the issuance of the decision. If the council orders a review of a decision, the effectiveness of such decision shall be stayed until council review is final. (1962 Code § 1-6.201; amd. Ord. 94-O-2211, eff. 9-2-1994)

1-4-202: SETTING HEARINGS:

Upon the adoption of an order for a review of a decision, the mayor shall fix a time and place for the hearing. At least ten (10) days prior to the hearing, written notice shall be mailed to the applicant and such other persons who appeared and addressed the board, commission, or official at the previous hearing on the matter, and such other notice as required by law for the previous hearing shall also be given. (1962 Code § 1-6.202)

1-4-203: HEARINGS BY THE COUNCIL:

Unless otherwise ordered and noticed, hearings shall be held as a part of the regular meetings of the council. The hearings shall be do novo in that an independent reexamination of the matter shall be made. The council may decide the matter upon the record or may take additional evidence. Any oral or documentary evidence may be received, but the mayor shall exclude irrelevant, immaterial, or unduly repetitious evidence. It shall not be a ground for objection that the evidence is hearsay or secondary, but the council's decision shall be made upon substantial evidence. (1962 Code § 1-6.203)

1-4-204: DECISIONS AND FINDINGS:

The provisions of sections 1-4-107 and 1-4-108 of this chapter shall be applicable to the decisions of the council. (1962 Code § 1-6.204)

Attachment 2

Planning Commission
Staff Report (without attachments)



Planning Commission Report

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- Meeting Date:** May 2, 2016 (Special Meeting)
- Subject:** **9291 Burton Way (L'Ermitage Hotel)**
Conditional Use Permit, Development Plan Review, and Extended Hours Permit to allow a hotel restaurant to be open to the public; to allow an open air dining area that would be served by existing parking supply; and to allow the operation of the hotel restaurant, open air dining area, and rooftop event space during extended hours in a commercial-residential transition area.
- Project Applicant:** Mitchell J. Dawson
- Recommendation:** Staff recommends that the Planning Commission adopt a resolution conditionally approving a new Conditional Use Permit, Development Plan Review, and Extended Hours Permit.
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REPORT SUMMARY

The proposed project involves a request for a Conditional Use Permit, Development Plan Review, and Extended Hours Permit to allow the operation of the L'Ermitage Hotel's restaurant, rooftop event space, and open air dining area. The project also consists of relocating the open air dining area and establishing conditions of approval that relate to the rooftop event space, the hotel restaurant, and the open air dining area.

This report analyzes the proposed project, summarizes past violations and neighborhood concerns, evaluates the applicant's proposed operation and recommends conditions of approval. The analysis contained in this report identifies that the existing operations of the hotel restaurant, open air dining area, and rooftop event space have caused impacts to neighboring residents. However, approving the project with conditions controlling certain aspects of hotel operations and including a penalty schedule for violations would reduce the negative effect of hotel operations on adjacent residential neighbors by balancing residential quality of life with the need to support the operational aspects of the City's local businesses. In addition, it is recommended that project approval include an annual review by the Planning Commission to assess compliance with the project conditions of approval.

Attachment(s):

- A. Required Findings
- B. Public Notice
- C. Correspondence Received from the Public
- D. Correspondence from Staff
- E. Police Reports
- F. Draft Resolution
- G. Past CUP and DPR Resolutions
- H. Architectural Plans

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BACKGROUND

File Date	4/19/16
Application Complete	4/20/16
Subdivision Deadline	N/A
CEQA Recommendation	Class 1, Class 2, and/or Class 32 Categorical Exemptions
CEQA Deadline	60 days from CEQA Determination
Permit Streamlining	60 days from determination of Exemption

Applicant(s)	Mitchell Dawson / Dawson Tilem & Gole
Owner(s)	LBH Real Estate LLC
Representative(s)	Mitchell Dawson

Prior PC Action

Reso. 267 (2/25/80) – Variance from parking requirements. (Approved)
Reso. 294 (12/8/80) – Variance from parking requirements. (Approved)
Reso. 493 (11/23/87) – Front yard setback variance to allow two sculptures to encroach into front setback. (Approved)
Reso. 890 (4/27/94) – Setback and rooftop variances, and modifying parking variance. (Approved)
Reso 1094 (4/28/99) –DPR for Open Air Dining and CUP to allow hotel dining to be open to the public. (Approved)
Reso 1138 (8/23/00) – Renew DPR for Open Air Dining and CUP for Hotel Dining to continue to be open to the public. (Approved)
Reso 1191 (8/22/01) - Renewing DPR for Open Air Dining and CUP for Hotel Dining. (Approved)

Prior Council Action

Reso 75-R-5307 (9/2/75) – Allow sundeck to exceed height limit by 3' (Approved on appeal)
Reso 99-7-10211 (8/3/99) – DPR for Open Air Dining and CUP to allow hotel dining to be open to the public. (Approved on appeal)

PROPERTY AND NEIGHBORHOOD SETTING

Address	9291 Burton Way
Assessor's ID No.	4342-010-022 and 4342-010-002
Zoning District	R-4
General Plan	Multi-Family Residential (High Density)
Existing Land Use(s)	Commercial (Hotel)
Lot Dimensions & Area	240' x 130' (31,200 square feet)
Year Built	1976
Historic Resource	None



Protected Trees/Grove None

Adjacent Zoning and Land
Uses

North	C-5 – Commercial
South	R-1.8X – Single Family Residential
East	R-4 – Multi-Family Residential
West	R-4 – Multi-Family Residential

Circulation and Parking

Adjacent Street(s)	Burton Way, Between Foothill Road and Maple Drive
Traffic Volume	Average Daily Weekday Trips on Burton Way: Approx. 15,960 Eastbound; Approx. 16,410 Westbound Average Daily Weekday Trips on Maple Drive: Approx. 3,080 Southbound; Approx. 2,360 Northbound Average Daily Weekday Trips on Foothill Drive: Approx. 1,530 Southbound; Approx. 1,315 Northbound

Adjacent Alleys	20'-wide, two-way alley to the north of the subject property, parallel to Burton Way.
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Parkways & Sidewalks	Burton Way – 145' street width with 12.5' North and South parkways. Foothill Road – 35' street width with 16' East and West parkways. Maple Drive – 35' street width with 16' East and West parkways.
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Parking Restrictions	No preferential parking conditions on Burton Way, N. Foothill Rd, or N. Maple Dr.
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Nearest Intersection	Burton Way and N. Foothill Road
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Circulation Element	Burton Way is a designated truck route and carries regional traffic.
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Neighborhood Character

The project site is located along Burton Way, a major east-west thoroughfare with primarily one- and two-story residential development along the south side, and higher density multi-family residential development along the north side. The project site is abutted by a three-story multi-family residential building to the west. Immediately adjacent to the subject property to the east a new five-story condominium project is currently under construction. To the north is a commercial area consisting of former industrial sites that have over time developed into a cluster of corporate offices for media/entertainment companies. The project site is separated from this



Planning Commission Report

9291 Burton Way (L'Ermitage Hotel)

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commercial area by a two-way alley that connects Maple Drive and Foothill Road. The alley provides pedestrian and vehicle access to the rear of the buildings along Burton Way.



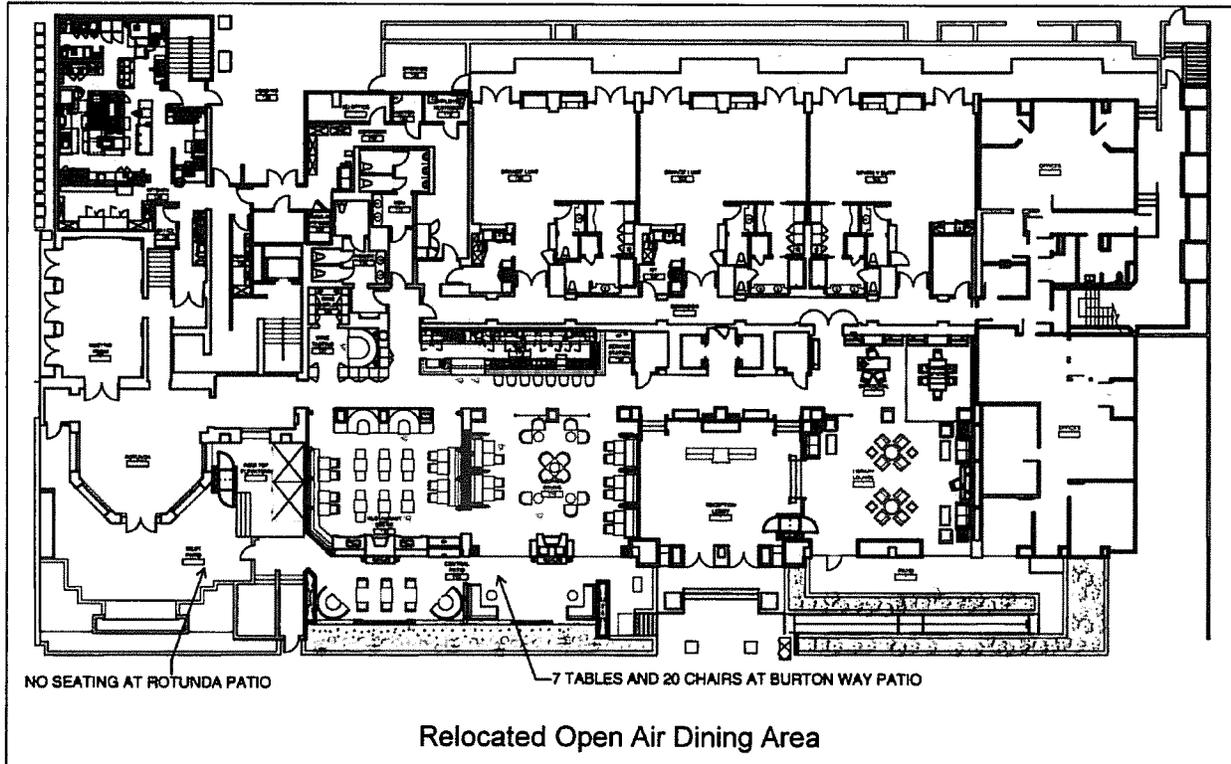
PROJECT DESCRIPTION

The proposed project includes specific operational components of a nonconforming hotel in an R-4 zone as follows:

- Allow a hotel restaurant to be open to the public, allow an open air dining area, and impose conditions on a rooftop event space;
- Relocate open air dining area from the western side of the property to the east near the main hotel entrance along Burton Way, maintaining the same number of tables and chairs authorized in previous approvals; and
- Allow a separate stairway entrance to the new outdoor dining area from Burton Way located immediately adjacent to the existing main hotel entrance.



The new configuration of the relocated open air dining area is shown in the figure below:



REQUIRED ENTITLEMENTS.

As proposed, the project requires the following entitlements in order to continue operations:

- **Conditional Use Permit.** The hotel restaurant on the ground floor requires a Conditional Use Permit (CUP) to be open to the general public, rather than just hotel guests and their guests.
- **Development Plan Review.** A Development Plan Review (DPR) is required for open air dining in nonconforming hotels in an R-4 Zone. The hotel is requesting an open air dining area adjacent to the hotel restaurant and located along Burton Way, with a separate stairway access directly from Burton Way. The applicant is also requesting that the Planning Commission determine that the parking demand for the open air dining area can be met with the existing parking supply and valet operations, and additional parking not be required for the open air dining area.



- **Extended Hours Permit.** The subject property is located in a commercial-residential transition area, and seeks to operate the hotel restaurant, open air dining area, and rooftop event space during extended hours. Extended hours are considered any time after 10 P.M. and before 7 A.M. on weekdays and after 10 P.M. and before 9 A.M. on weekends and holidays.

GENERAL PLAN POLICIES

The General Plan includes numerous goals and policies relevant to the Planning Commission's review of the project, including:

- **Policy LU 9.1 Uses for Diverse Customers.** Accommodate retail, office, entertainment, dining, hotel, and visitor-serving uses that support the needs of local residents, attract customers from the region, and provide a quality experience for national and international tourists.
- **Policy LU 12 Business Districts Adjoining Residential Neighborhoods.** Compatible relationships between commercial districts and corridors and adjoining residential neighborhoods, assuring that the integrity, character and quality of both commercial and residential areas are protected and public safety and quality of life are maintained.
- **Policy LU 12.1 Functional and Operational Compatibility.** Require that retail, office, entertainment, and other businesses abutting residential neighborhoods be managed to assure that businesses do not create an unreasonable and detrimental impact on neighborhoods with respect to safety, privacy, noise, and quality of life by regulating hours of operation, truck deliveries, internal noise, staff parking and on-site loitering, trash storage and pick-up and other similar business activities.
- **Policy LU 15.2 Priority Businesses.** Retain and build upon the key business sectors contributing to the City's identity, economy, and revenue for resident services, such as entertainment-related Class-A offices, high-end retail and fashion, restaurant, hotel, technology, and supporting uses.
- **Policy ES 1.4 Retain Existing Industries.** Consistent with future economic sustainability plans, encourage existing industries such as luxury retail, tourism, hoteling, finance, entertainment and media businesses and services to remain and expand within the City.
- **Policy N 1.3 Limit Hours of Commercial and Entertainment Operations.** Limit hours of commercial and entertainment operations adjacent to residential neighborhoods and other noise-sensitive receptors in order to minimize exposure to excessive noise.
- **Policy N 1.4 Limit Hours of Truck Deliveries.** Limit the hours of truck deliveries to commercial uses abutting residential neighborhoods and other noise-sensitive receptors in order to minimize exposure to excessive noise, unless there is no feasible alternative or there are overriding transportation benefits by scheduling deliveries at other hours.



ENVIRONMENTAL ASSESSMENT

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines¹, and the environmental regulations of the City. Staff's initial determination is that the project is eligible for a categorical exemption pursuant to Sections 15301 (Class 1), 15302 (Class 2), and 15332 (Class 32) of the Guidelines, as follows:

A Class 1 Categorical Exemption consists of permitting or minor alteration of existing structures involving negligible or no expansion of use. Examples include interior or exterior alterations and additions to existing structures provided that the additions do not result in an increase of more than 10,000 square feet. The proposed project consists of granting entitlements that would govern the operations of a commercial hotel including restaurant and rooftop area, and allowing alterations to the front patio to establish an open air dining area of the same capacity as was previously existing and approved. The use of the hotel, restaurant, open air dining area, and rooftop area would remain substantially the same as what was previously approved and has been in operation for approximately the last 16 years, although perhaps with additional conditions of approval to address compatibility with neighboring uses.

A Class 2 Categorical Exemption consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity. The proposed project includes replacement/re-approval of a previously approved open air dining area on the same site, with the same capacity and function as was previously existing and approved. The hotel restaurant and rooftop structures will remain substantially the same as what was previously approved and has existed for approximately the last 16 years, although perhaps with additional conditions of approval to address compatibility with neighboring uses.

A Class 32 Categorical Exemption consists of projects characterized as in-fill development meeting the following conditions:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.
 - The proposed project is a legally nonconforming commercial hotel use located in an R-4 multi-family residential zone. Although hotels are no longer a permitted use within an R-4 Zone if constructed new, the City's Zoning Ordinance allows for legally nonconforming uses to be continued without alteration or expansion, and includes specific provisions for the operation of nonconforming hotels in an R-4 Zone. The Zoning Ordinance also allows for restaurants to be operated within a nonconforming hotel located in an R-4 Zone, including the ability to be open to the general public provided that a Conditional Use Permit is first obtained. Additionally, the Zoning Ordinance allows outdoor dining to be

¹ The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>



established in nonconforming hotels in an R-4 Zone pursuant to the issuance of a Development Plan Review. The proposed project consists of a hotel restaurant, open air dining, and rooftop uses operated in substantially the same manner as when the hotel use was established, and as amended over time by the City Council and Planning Commission. In addition, the project complies with numerous General Plan policies, including Policies LU 9.1, LU 15.2, and ES 1.4, which relate to retaining existing industries such as luxury hotels, as well as Policies N 1.3, and N 1.4.

- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- The project site is located in the City of Beverly Hills and consists of 31,200 square feet (approximately 0.72 acres), and is surrounded by urban uses, such as multi-family residential buildings, government buildings, single-family residences, and commercial offices, all of which are typical of an urban environment.
- c) The project site has no value as habitat for endangered, rare, or threatened species.
- The project site has been developed with the current structure since 1976, and is located in a developed urban area. There are no known habitats for endangered, rare, or threatened species on the project site.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- **Restaurant / Outdoor Dining.** The project site has been operating as a commercial hotel with a restaurant open to the public and an open air dining area for approximately 16 years. The proposed project would operate in substantially the same manner as previously approved. The hotel restaurant faces Burton Way and is completely enclosed. As conditioned, banquets or similar private receptions or parties are also prohibited in the restaurant. The open air dining area has been relocated to an area that is approximately 120 feet from the neighboring residential building to the west, which is approximately 50 feet further away than the previously approved open air dining area, and as conditioned, operation of the open air dining area will cease at 10:30 p.m. The project will maintain the same number of tables and chairs in the relocated open air dining area as previously approved. Neither live entertainment nor amplified music will be allowed at any time in the open air dining area. The new stairway access to the open air dining area is located on private property directly adjacent to the main hotel entrance, and conditions have been recommended that would prohibit patrons from queuing outside.
 - **Rooftop Uses.** Proposed conditions would limit evening functions on the rooftop to twice per week unless authorized by the Director of Community Development, and such functions are limited to a total of 52 per calendar year. Proposed conditions would also require all rooftop functions to cease by 11:00 p.m. on



Sundays through Thursdays, and by 12:00 midnight on Fridays, Saturdays, and evenings preceding holidays. As conditioned, no additional events on the rooftop are allowed per calendar year beyond what was previously approved. Thus, approval of the project would not constitute any intensification of the past uses of the restaurant or rooftop. Additionally, the project is located on Burton Way, which is a major arterial street that can accommodate the traffic flow for the continued use of the hotel restaurant and rooftop area, thus the proposed project would not create any other significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.

- Hotel Restaurant. The restaurant kitchen is located inside the hotel, and cooking will not be performed outdoors. Approval of the project will not alter the current venting of the kitchen and the City has received no evidence that the restaurant or rooftop currently create any odors or noxious fumes. Continuation of the previous uses would not result in any significant change to air quality in the vicinity of the project, or the region. The proposed continuation of uses would not result in any water quality issues in that no significant changes to the overall project site would occur, and all restaurant activities would continue to comply with applicable regulations to avoid any impact to water quality.
 - For the foregoing reasons, approval of the project, with the proposed conditions of approval, will not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e) The site can be adequately served by all required utilities and public services.
- The site is currently served by all required utilities and public services, and no new utilities or public services will be necessary for the proposed project.

Based on the foregoing, staff recommends that the Planning Commission find the project exempt from further review under the California Environmental Quality Act.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	N/A	N/A	4/28/16	4 Days
Newspaper Notice	10 Days	4/22/16	4/22/16	10 Days
Mailed Notice (Owners & Residents - 500' Radius + blockface)	10 Days	4/22/16	4/22/16	10 Days
Property Posting	10 Days	4/22/16	4/22/16	10 Days
Website	N/A	N/A	4/28/16	4 Days



Public Comment

Staff has received correspondence from neighboring property owners/occupants in opposition of the project. Copies of the letters have been provided in Attachment C. Comments generally related to the following issues:

- Excessive noise from rooftop events late at night
- Excessive noise from attendees of rooftop events late at night, after events have ended
- Excessive noise from cleanup and breakdown of rooftop events late at night, after they have ended
- Deliveries being made outside of the allowed hours
- Delivery trucks blocking the alley behind the hotel, and in some cases blocking access to the parking garages of neighboring residences
- Excessive noise from open air dining area
- New stairway access to new open air dining area should not have been permitted
- Limousines parking on the south side of Burton Way

ANALYSIS

Project approval, conditional approval, or denial is based upon specific findings for each discretionary application requested by the applicant. The required findings are included with this report in Attachment A and may be used to guide the Planning Commission's deliberation on the subject project. Additionally, staff's analysis is provided below for the Commission's consideration.

Background. The building on the subject property was originally constructed as an apartment/hotel, for which Certificate of Occupancy was granted in 1976. Hotel regulations, including the requirement for hotels to obtain a CUP, were established in 1984, and operational standards for Commercial-Residential Transition Areas were established in 1996. On April 28, 1999, the Planning Commission issued a CUP to allow the hotel restaurant to be open to the public and a Development Plan Review (DPR) for the open air dining area. The Planning Commission approval was appealed to the City Council and the decision was affirmed by the City Council on August 3, 1999. On October 23, 2000, and October 22, 2001, the Planning Commission renewed the entitlements for one year increments. The October 22, 2001 renewal modified the renewal procedure to allow the Director of Community Development to grant future renewals of the entitlements. The latest renewal in City records was granted on February 25, 2009 for a period of 3 years. Since the last renewal on file the hotel was sold and new ownership was established on January 10, 2010. According to available City records, a renewal of hotel's entitlements was required by February 25, 2012. A renewal application was not filed until March 5, 2015.

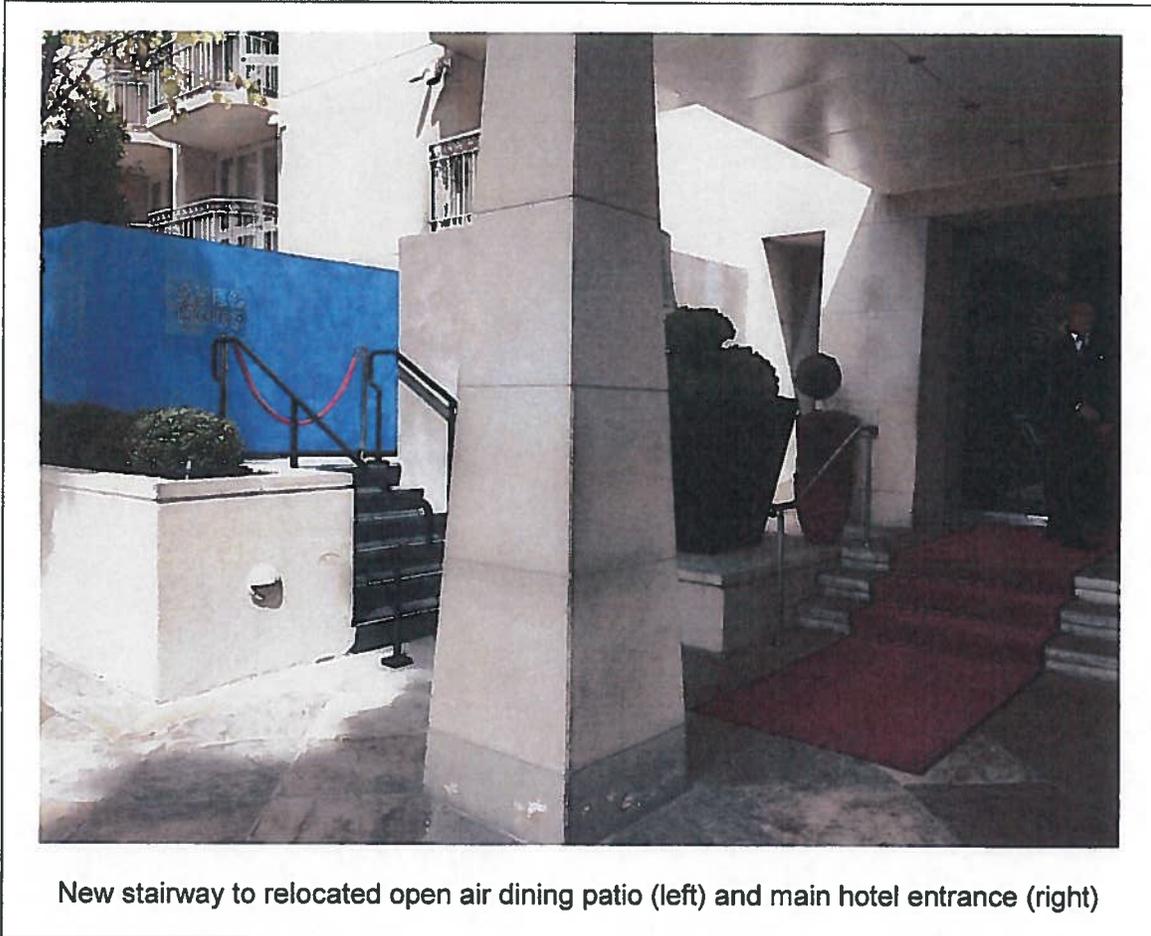
After filing of the renewal application, the item was scheduled for a hearing at the April 14, 2016 Planning Commission meeting. Just prior to the meeting, it was determined that the CUP and DPR were expired and not eligible for renewal. As a result of this determination, the CUP and DPR could not be reviewed by the Commission on April 14, 2016 because the



hearing was noticed as a renewal hearing rather than a review of a new CUP and DPR. The applicant was directed by the City to submit an application for new hotel entitlements which the applicant complied with, causing the current request to be before the Planning Commission.²

Open Air Dining Area. As part of recent renovations to the hotel lobby, the outdoor dining area was relocated from its original location on the southwestern corner of the property in the courtyard adjacent to the rotunda to a new patio adjacent to the hotel's main entrance along Burton Way. Upon issuance of building permits, it was determined that this relocation would be in substantial compliance with the hotel's existing entitlements, since the modification consisted of the same number of tables and chairs. It was further determined that the relocation of the outdoor dining was likely to cause less impacts than the original outdoor dining location because the new outdoor dining patio would be located farther away from the nearest residents to the west. The relocation was determined to be in substantial compliance with the past entitlements because the past approvals did not specify a particular area for the open air dining patio, and instead spoke to preventing neighborhood intrusion through operational restrictions. Since the relocation, nearby residents have expressed concerns about patrons using a new stairway access to the outdoor dining area that is provided from Burton Way.

² A request has also been filed by the hotel operator for the creation of a Hotel Overlay Zone for this property, which is being processed by the City as a separate and ongoing application. The proposed Hotel Overlay Zone would allow for the addition of a 15' rooftop enclosure, reconfiguration of the rooftop area, and the installation of a new exterior glass elevator on the western elevation of the building. As proposed, the Hotel Overlay Zone would require approval of a Planned Development Permit, which would set forth all the operational requirements and restrictions for the hotel use. If approved, the proposed Overlay Zone and Planned Development Permit would supersede any CUP, DPR, or Extended Hours Permit that may be granted for the hotel. Therefore, granting a new CUP, DPR, and Extended Hours Permit at this time would not preclude the City from making future changes to the operational requirements as part of the proposed Planned Development Permit. At this time, the applicant has placed this request on hold for an unspecified period of time.



New stairway to relocated open air dining patio (left) and main hotel entrance (right)

The past entitlements for the property did not have a specific condition of approval that prohibited direct stairway access to the open air dining area. However, the findings originally approving the open air dining area were based on the fact that there was no direct access from the sidewalk. The draft findings included in the attached draft resolution specifically address the additional stairway access to the revised outdoor dining location. Staff believes the findings can be made for the new stair access because 1) the new outdoor dining entrance is directly adjacent to the existing hotel entrance (approximately 120 feet away from the residential property to the west), 2) the new location of the open air dining area is approximately 50 feet farther away from the western property line than the previous outdoor dining location, and 3) it is unlikely that the new open air dining location and access will result in a greater noise impact to nearby residential uses than the previous configuration. While there is the possibility that a separate entrance to the open air dining area could potentially lead to queuing on the sidewalk, any queuing impacts resulting from the new entrance would be restricted to an area on private property directly adjacent to the existing hotel entrance which is an area that is already used by hotel and hotel restaurant patrons. A



condition of approval has also been recommended that would prohibit queueing on the sidewalk, and would require the hotel to direct patrons who can't be seated immediately to wait for their seats inside the hotel lobby to avoid potential noise impacts from queueing.

Rooftop Tent and Event Space. The building on the subject property was originally constructed as an apartment/hotel, for which a Certificate of Occupancy was granted in 1976. Hotel regulations, including the requirement for hotels to obtain a CUP, were established in 1984, and operational standards for Commercial-Residential Transition Areas were established in 1996. The hotel's rooftop area has been utilized as an event space for evening banquets prior to the establishment of regulations that would prohibit such activities, and thus the hotel rooftop event space is a legally nonconforming use. As part of the past approvals of the CUP and DPR for the hotel restaurant and open air dining areas, the Planning Commission and City Council imposed conditions on the operations of the rooftop event space in an effort to counterbalance the potential impacts of the other hotel dining uses.

In addition to some of the neighborhood concerns identified above, questions have been raised about the status of a temporary tent on the hotel rooftop. Based on past approvals, the temporary tent structure is primarily intended to be used for rooftop events during the Fall/Winter months when there is increased likelihood for inclement weather. These types of structures are typically approved through the issuance of a Temporary Tent Permit, which is issued by Building and Safety in conjunction with the Fire Department. Temporary Tent Permits are on file for the L'Ermitage Hotel rooftop since as far back as November 21, 2000, with approval generally being valid for a six-month period and requiring renewal thereafter. The hotel's current Temporary Tent Permit is valid through July 10, 2016, and may be renewed thereafter as has been done in the past unless otherwise restricted.

The conditions of approval on past hotel entitlements did not regulate the hotel's ability to obtain a Temporary Tent Permit, and concerns have been raised about the perceived permanent nature of the tent, as well as the possibility that it may serve to enable a greater frequency of rooftop events that have the potential to impact the surrounding neighborhood. While no conditions are included in the draft resolution regarding the use of the tent at this time, the Commission may wish to discuss whether it would be desirable to place restrictions on the use of rooftop tents, either through frequency restrictions or an outright prohibition.

Operational Restrictions. As part of the request for the new CUP, DPR, and Extended Hours Permit, staff recommends the following restrictions for various components of the hotel operations. Additionally, the applicant has requested changes to some of the restrictions that were required in past entitlements. A summary of the proposed and recommended operational restrictions is provided below:

Hotel Restaurant



The hotel contains a restaurant on the ground floor, adjacent to the main lobby lounge and bar. The hotel restaurant is currently accessible through the main hotel doors via the hotel's lobby. Additionally a stairway has been constructed to allow direct access from Burton Way to the recently relocated new open air dining area. If this new stairway is allowed to be used as an access point to the new open air dining area, then it would be possible for patrons to enter the hotel restaurant by using the new stairs along Burton Way and using the doors between the open air dining area and the hotel restaurant.

The R-4 zoning designation restricts the use of restaurants within nonconforming hotels to hotel guests and guests of hotel guests. However, through the issuance of a Conditional Use Permit, hotel restaurants in the R-4 zone can be open to the general public. The Planning Commission and City Council previously approved a Conditional Use Permit for this hotel restaurant, and these previously approved entitlements were renewed on multiple occasions, for several years. Past entitlements have included the following conditions for the hotel restaurant:

- Prohibition on banquets and similar private events
- No patrons seated indoors before 6:30 a.m. or after 11:00 p.m.
- Provide free valet parking for restaurant patrons, and inform patrons upon reservation of availability of free valet parking
- All exterior doors to the restaurant must only be used for emergency ingress/egress

Staff recommends maintaining all prior conditions of approval applicable to the restaurant, with the exception of the restriction on exterior doors for the hotel restaurant only being used for emergency ingress/egress, in the event that the open air dining is permitted. Based on the recent renovations, the open air dining area is now adjacent to the hotel restaurant, and there are new openings in the restaurant that allow access between the open air dining area and restaurant area. Staff recommends amending this condition to allow movement between the open air dining area and the hotel restaurant. However, as part of this condition, staff recommends that the doors leading to the open air dining area not be held open. These doors should remain closed and only opened for immediate ingress or egress to prevent noise from inside the restaurant impacting neighboring properties.

Open Air Dining Area

The Municipal Code allows nonconforming hotel restaurants to have open air dining areas pursuant to an approval of a Development Plan Review. Past entitlements approved an open air dining area on the west side of the property in the courtyard adjacent to the hotel rotunda. As part of recent renovations, the open air dining patio has been relocated further east near the hotel's Burton Way entrance. Past entitlements included the following conditions of approval for the open air dining area:

- Limit of 7 tables and 20 chairs
- Tables and Chairs to be located adjacent to the existing building
- No live entertainment or amplified sound allowed in the open air dining area



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- Open air dining operations, including accepting new patrons and moving of tables and chairs, cannot occur outside the hours of 8:00 a.m. and 9:00 p.m. daily, and all patrons must have exited the area no later than 10:30 p.m. daily.
- Fountain in the open air dining area to commence operation at 7:30 a.m., and cease when last diner exits the area (no earlier than 9:00 p.m., no later than 10:30 p.m.), seven days a week. No outdoor dining to occur when fountain is not in operation.

The conditions of approval that limit seating of patrons to no later than 9:00 p.m. are more restrictive than current Municipal Code requirements for Commercial-Residential Transition Areas. Although the Municipal Code provisions for Commercial-Residential Transition Areas do not require patrons to vacate the premises at any specific time so long as they entered the establishment prior to 10:00 p.m., based on the level of concern raised by neighbors regarding noise impacts from the open air dining area, staff recommends maintaining the requirement that patrons exit the area no later than 10:30 p.m. daily. Based on past operations, and new conditions intended to encourage compliance with conditions through more effective enforcement, staff recommends maintaining all of the conditions of approval listed above, with the exception of the description of the location of the open air dining area, which should be updated to reflect the relocated open air dining patio along Burton Way.

Hotel Rooftop

The western side of the hotel rooftop area contains a pool, cabanas, and lounge area primarily for hotel guests. The eastern side of the hotel rooftop has been utilized as an event space, including evening functions. This area is also covered by a temporary tent, which is permitted through a Temporary Tent Permit. As part of the previously approved CUP and DPR, the rooftop event space has been regulated subject to the following conditions:

- Evening functions involving more than 25 attendees (excluding hotel guests) limited to 2 per week (Monday through Sunday)
- Evening functions limited to 52 per calendar year
- Prior to any evening function, a traffic and parking plan for the function to be submitted to Director of Transportation for approval
- Applicant must file a written schedule of dates and times of each evening function on the last day of each month for events scheduled for the forthcoming month.
- Applicant must file a written amendment to the schedule of dates at least 48 hours before the evening function if a change is proposed from the submitted monthly event schedule

The applicant has requested the following changes to the past conditions of approval, and staff's analysis and recommendation is provided below each request:

- Allow the hotel to request for the Director of Community Development to authorize one additional event within a one-week period during the Awards season, which is typically from January through March. This change would not increase the total number of allowed rooftop events per year, which would remain limited to 52. The



additional event would also be subject to the same hours of operation as all other rooftop events.

- Due to the relatively limited period of time in which this type of request could be made, and the fact that such requests would be subject to review by the Director of Community Development rather than being allowed by right, staff supports this request.
- Allow the hotel to request for the Director of Community Development to allow for one rooftop event per year to operate until 1:00 a.m. This would not increase the total number of allowed rooftop events per year, which would remain limited to 52.
 - Past entitlements did not establish time restrictions on rooftop events for the hotel. Due to the nature of complaints and concerns raised by neighbors, at this time staff does not recommend allowing one event to operate until 1:00 a.m. In order to allow the hotel to host events in a manner that is competitive with similar types of hotels in the vicinity, but also be sensitive to surrounding residential uses, staff recommends that all rooftop events, including associated amplified music, be required to end by 10:00 p.m. and that all event attendees must vacate the rooftop by 11:00 p.m. Sunday through Thursday, and rooftop events, including associated amplified music, be required to end by 11:00 p.m. and all attendees vacate the rooftop by 12:00 a.m. midnight on Friday and Saturday, and evenings preceding a holiday. While these hours go later into the evening than standard Commercial-Residential Transition Area hours of operation, the recommended hours are more restrictive than what has been imposed on other hotels in the City with rooftop event areas. Additionally, the total number of these events would be limited to 52 per year, and no more than two per week unless approved by the Director of Community Development for one extra event within a week during the Awards season (if the Commission were to approve the applicant's request as discussed above).
- Allow the hotel to request for the Director of Community Development to allow for one amendment to the monthly rooftop event schedule with less than 48 hours' notice prior to an event occurring.
 - This request is intended to allow last-minute relocation for an event from another nearby hotel in the case of unforeseen situations, such as a flood or other complication. Given that these requests would be subject to review by the Director of Community Development, and recognizing the need for flexibility in order to allow the City's hotels to remain competitive, staff supports this amendment.



Parking Requirements. The hotel and existing interior bar and dining areas are considered legally nonconforming with regard to parking. The applicant has requested approval of a new open air dining area located along Burton Way, which consists of approximately 618 square feet and contains 7 tables and 20 chairs - the same amount that was previously approved. Past approvals also included a waiver of the parking required for the open air dining area and opening the restaurant to the public. Since the past entitlements that approved the open air dining have expired, the new request for open air dining is subject to the Municipal Code parking requirements, which would require 14 parking spaces (1 space per 45 square feet).

The hotel currently contains 129 parking spaces on-site. Past approvals granted a waiver of the parking requirements for the open air dining area based on the finding that the provision of valet parking at the site coupled with the conditions placed upon the conduct of rooftop functions would minimize any cumulative parking impacts that may otherwise be generated by the expanded restaurant use. Additionally, conditions are recommended to remain in place that would require the hotel to provide free parking to its employees, which would further reduce the likelihood of parking impacts to the streets in the vicinity of the hotel.

Violations and Enforcement. City staff has received a number of complaints from neighboring residents, primarily related to: noise from rooftop events and outdoor dining; limousine parking on Burton Way; and truck deliveries and the blocking of alley access. Code Enforcement staff, and in many cases the Police Department, have responded to these complaints. Over the past 18 months, two Code Enforcement cases have been opened in response to complaints received. The details of these cases are as follows:

1. On 2/3/2015 a complaint was received indicating that a new elevator was being constructed at the rear of the hotel without permits. On 2/5/2015 Code Enforcement staff investigated the complaint and determined that an elevator was not being constructed at the rear of the hotel, and that the work that was underway was being done with valid permits. Accordingly, there was no violation and the enforcement case was closed.
2. On 5/6/2015 a complaint was received that alleged the following violations:
 - Setting up the outdoor dining tables at 6:45 AM, in advance of the permitted hours stipulated in the CUP and DPR.
 - Creating a new entrance at the street for the restaurant.
 - Music in the outdoor dining area and patrons making noise until midnight.
 - Outside fountain left on past 10:30 PM.
 - Delivery trucks blocking garages.
 - Delivery trucks present and party equipment being broken down after the allowed hours for loading operations.
 - Amplified music during rooftop events and as part of outdoor dining.



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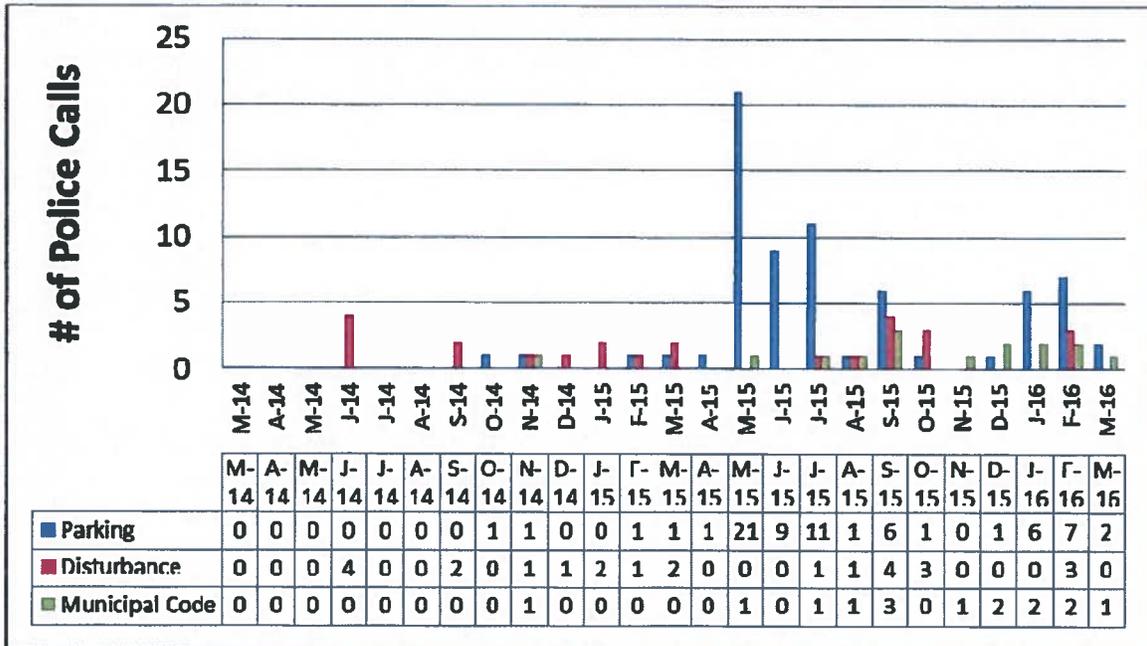
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In response to the above complaint, a code enforcement case was opened and investigation initiated on 5/18/2015. Code Enforcement staff met with the complainant, hotel staff, and also consulted with the Police Department. At that time, based on the results of the investigation, sufficient evidence was not available to verify the complaints and issue citations in accordance with Municipal Code procedures. Notwithstanding the insufficient evidence, the hotel was placed on notice about the complaint and directed to abide by the conditions of approval.

The following table provides a summary of all Police calls relating to the hotel where Police have responded within the past two years, for the period of March 12, 2014 through March 12, 2016.



The calls are categorized under Parking, Disturbing/Keeping the Peace, and Municipal Code Violation. In general, 'Parking' calls related to construction and delivery trucks blocking the alley and garages of neighboring properties; "Disturbing/Keeping the Peace" calls related to rooftop noise, music, outdoor patio furniture setup, and trucks loading after rooftop events; and 'Municipal Code' calls related to construction noise and noise from moving outdoor patio furniture. Based on the incident reports, Police responded to a total of 24 Disturbing/Keeping the Peace calls, with some as early as 6:39 a.m., and in a handful of cases, as late as 1:49 a.m. The majority of these calls were responded to between 10:00 p.m. and 11:00 p.m. Of the 24 calls, some were unrelated to the hotel's restaurant, open air dining, and rooftop operations (i.e. disputes regarding room billings). Additionally, there were some calls where it was determined that there was no violation.



Although each and every complaint and violation cannot be completely verified, this data, along with the numerous concerns from residents that have been expressed to City staff, the Planning Commission, and the City Council, suggest that there has been an increased amount of impacts resulting from the hotel's operations, and that actions should be taken to encourage better oversight of hotel functions and events and more consistent compliance with the conditions of approval. In order to increase the likelihood of compliance with conditions of approval, and to provide for a clear set of consequences for violations, staff recommends the following penalty schedule for documented violations of conditions of approval within any one calendar year:

1st Violation	2nd Violation	3rd Violation	4th Violation	5th Violation	Subsequent Violations
\$500	\$1,000	\$5,000	\$10,000	\$10,000	\$10,000 and automatically returned to Planning Commission for review and possible revocation. All application fees would be required in addition to the assessed penalty.

A specific penalty structure with escalating penalties for recurring violations of conditions of approval would make enforcement more efficient, and would encourage hotel management to ensure that violations do not occur. To administer the penalties quickly and efficiently, staff recommends that an account be established with an initial deposit of \$20,000 paid by the applicant. When violations are reported, verified, and documented, penalties will be drawn automatically from the account, and once the account is depleted by 50%, the hotel would be required to replenish the account back to \$20,000. In addition, staff proposes that a \$10,000 deposit be paid by the applicants to cover the costs of Code Enforcement responding to and documenting violations, and administering the penalties.



Summary of Project Benefits and Concerns. Based on the analysis provided above, a summary of the project's potential benefits and potential concerns is provided in the table below for the Planning Commission's consideration.

Potential Benefits	Potential Concerns
<ul style="list-style-type: none">• Relocation of the outdoor dining area will move associated noise impacts away from residences to the west.• Specific and escalating penalties for violations will make enforcement more efficient and effective, and will encourage compliance with conditions of approval.• Enabling the hotel to continue operating will provide revenue to the City and will enhance luxury tourism amenities consistent with the City's economic development goals.	<ul style="list-style-type: none">• Any hotel operations in proximity to residential uses will likely result in some impacts to neighboring residents.• Some violations of conditions of approval may be difficult to verify at the time of the violation.

NEXT STEPS

It is recommended that the Planning Commission conduct the public hearing and adopt the attached resolution conditionally approving a new Conditional Use Permit, Development Plan Review Permit, and Extended Hours Permit.

Alternatively, the Planning Commission may consider the following actions:

1. Approve the project with modified findings or conditions of approval.
2. Deny the project, or portions of the project, based on revised findings.
3. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines.

Report Reviewed By:

Ryan Gohlich, AICP, City Planner / Assistant
Director of Community Development

Attachment 3

Planning Commission
Resolution

RESOLUTION NO. 1772

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A CONDITIONAL USE PERMIT TO ALLOW A DINING FACILITY IN A NONCONFORMING HOTEL TO BE OPEN TO THE PUBLIC, A DEVELOPMENT PLAN REVIEW TO ALLOW THE ESTABLISHMENT OF AN OPEN AIR DINING AREA THAT WOULD BE SERVED BY EXISTING PARKING SUPPLY AND VALET OPERATIONS, AND AN EXTENDED HOURS PERMIT TO ALLOW A NONCONFORMING HOTEL RESTAURANT, OPEN AIR DINING AREA, AND ROOFTOP USE TO OPERATE DURING EXTENDED HOURS AT 9291 BURTON WAY (L'ERMITAGE HOTEL).

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

Section 1. LBH Real Estate LLC, owner of the L'Ermitage Hotel, through its agent Mitchell J. Dawson (collectively the "Applicant"), has submitted an application for a Conditional Use Permit (CUP) to allow a dining facility in a nonconforming hotel to be open to the public, a Development Plan Review (DPR) to establish an open air dining area on a nonconforming hotel site that would be served by existing parking supply, and an Extended Hours Permit to allow a nonconforming hotel restaurant, open air dining area, and rooftop to operate during extended hours at 9291 Burton Way for the L'Ermitage Hotel (the "Project").

Section 2. The hotel use was originally constructed in 1976, prior to the requirement for a CUP for hotel uses. Subsequently, the hotel was granted a DPR to allow open air dining and a CUP for rooftop uses and to allow the hotel restaurant to be open to the public pursuant to Planning Commission Resolution No. 1094. Upon appeal, the approval of the DPR

and CUP was upheld by the City Council pursuant to City Council Resolution 99-R-10211, and the entitlements were subsequently renewed by the Planning Commission pursuant to Planning Commission Resolutions 1138 and 1191. These entitlements established the operational standards for the hotel restaurant, open air dining area, and rooftop event space, including the size, hours, and manner of operation of the open air dining area; the number and frequency of events allowed on the rooftop; access and use restrictions to the hotel restaurant; the manner in which deliveries could be made to the hotel; employee and visitor parking; and the process for renewal of the entitlements. Condition 2 of Resolution No. 1911 states that:

“This CUP and DPR (collectively the “Permits”) shall expire one year after the date of adoption of this resolution and all rights granted by these Permits shall terminate at that time. Unless the Permits are renewed as provided hereafter, or a new CUP and DPR are granted, the Applicant shall immediately cease operation of the public restaurant and the outdoor dining area, and the Applicant shall have no further right to renewal of the Permits. Upon application by the Applicant, the Director of Planning and Community Development (the “Director”) may extend the Permits if the Director determines that the public restaurant and outdoor dining area are operating in a manner substantially the same as described to and approved by the Planning Commission, are abiding by the conditions imposed by the Planning Commission, and are not creating any adverse impact on the surrounding area. Any application for a renewal of the Permits shall be filed at least sixty days prior to the expiration of these renewals. ”

The most recent extension of the DPR and CUP was granted in 2009, for three additional years, until February 25, 2012. On March 2, 2015, the Applicant submitted an application for renewal of the DPR and CUP. Just prior to the Planning Commission meeting on April 14, 2016, it was

determined that the DPR and CUP were not eligible for renewal and the Applicant was directed to submit applications for new entitlements for the Project. Said new entitlements are addressed herein.

Section 3. The subject site area consists of 31,200 square feet, and is currently developed with an eight-story hotel with 119 guestrooms, a lounge and restaurant in the lobby, an open air dining area, and a rooftop pool and event space. The subject site is located along Burton Way, a major east-west thoroughfare with primarily one- and two-story residential development along the south side, and higher density multi-family residential development along the north side. The project site is abutted by a three-story multi-family residential building to the west. Immediately adjacent to the subject property to the east a new five-story condominium project is currently under construction. To the north is a commercial area consisting of former industrial sites that have over time developed into a cluster of corporate offices for media/entertainment companies. The project site is separated from this commercial area by a two-way alley that connects Maple Drive and Foothill Road. The alley provides pedestrian and vehicular access to the rear of the buildings along Burton Way.

Section 4. The Project includes a request for a Conditional Use Permit to allow the hotel restaurant to be open to the public, a Development Plan Review to allow the establishment of an open air dining area that would be served by existing parking supply, and an Extended Hours Permit to allow the hotel restaurant, open air dining area, and rooftop event space to operate during extended hours in a Commercial-Residential Transition Area. These entitlements were previously granted pursuant to City Council Resolution No. 99-R-10211, and renewed by Planning Commission Resolution Nos. 1138 and 1191 in 2000 and 2001,

respectively, with conditions of approval being carried through each subsequent resolution. These entitlements have expired because timely renewal did not occur, and this Project is a request for new entitlements for the hotel restaurant and open air dining area, as well as the ability to impose conditions on rooftop events. In addition to the request to allow the hotel restaurant to be open to the public, this Project includes an open air dining area located along Burton Way, with a direct stairway entrance located immediately adjacent to the existing hotel entrance. The open air dining area would contain a maximum of 7 tables and 20 chairs, which is the same amount as was previously approved prior to expiration of the entitlements. There is also a request to allow the open air dining area to utilize existing parking supply on site, and waive the requirement for 14 additional parking spaces that would otherwise be required for 618 square feet of open air dining on private property.

Section 5. The request to continue the open air dining area, hotel restaurant, and rooftop operations as outlined above result in the need for specific entitlements as follows:

1. Conditional Use Permit: A Conditional Use Permit was previously granted by the City Council pursuant to Resolution No. 99-R-10211 to allow the hotel restaurant to be open to the public, and was subsequently renewed by the Planning Commission pursuant to Resolution Nos. 1138 and 1191. In addition, the Conditional Use Permit has been used as a means to impose conditions on rooftop operations. These approvals have expired due to non-renewal. Therefore, a new Conditional Use Permit is required to allow the hotel restaurant to be open to the public.

2. Development Plan Review: A Development Plan Review was granted by the City Council pursuant to Resolution No. 99-R-10211 to allow an open air dining area

containing 7 tables and 20 chairs on private property, and was subsequently renewed by the Planning Commission pursuant to Resolution Nos. 1138 and 1191. These approvals have expired due to non-renewal. Therefore, a new Development Plan Review Permit is required to re-establish the open air dining area in a new location near the hotel's Burton Way entrance and to waive the requirement for additional parking for the outdoor dining area.

3. Extended Hours Permit: The subject site is located in a Commercial-Residential Transition Area, and is therefore subject to the operational restrictions for these areas identified in BHMC Article 19.5. In order for the hotel restaurant, open air dining area, and rooftop to operate before 7:00 a.m. and after 10:00 p.m., an Extended Hours Permit is required.

Section 6. The Project has been environmentally reviewed pursuant to the provisions of 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 Local CEQA Guidelines (hereafter the "Guidelines"). The Project is found to be exempt from further review on the separate and independent bases of Sections 15301 (Class 1), 15302 (Class 2), and 15332 (Class 32) of the Guidelines, as follows:

A Class 1 Categorical Exemption consists of permitting or minor alteration of existing structures involving negligible or no expansion of use. Examples include interior or exterior alterations and additions to existing structures provided that the additions do not result in an increase of more than 10,000 square feet. The proposed project consists of granting entitlements that would govern the operations of a commercial hotel including restaurant and rooftop area, and allowing alterations to the front patio to establish an open air dining area of the same capacity as was previously existing and approved. The use of the hotel, restaurant, open air

dining area, and rooftop area would remain substantially the same as what was previously approved and has been in operation for approximately the last 16 years, although perhaps with additional conditions of approval to address compatibility with neighboring uses.

A Class 2 Categorical Exemption consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity. The proposed project includes replacement/re-approval of a previously approved open air dining area on the same site, with the same capacity and function as was previously existing and approved. The hotel restaurant and rooftop structures will remain substantially the same as what was previously approved and has existed for approximately the last 16 years, although perhaps with additional conditions of approval to address compatibility with neighboring uses.

A Class 32 Categorical Exemption consists of projects characterized as in-fill development meeting the following conditions:

1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.

- The proposed project is a legally nonconforming commercial hotel use located in an R-4 multi-family residential zone. Although hotels are no longer a permitted use within an R-4 Zone if constructed new, the City's Zoning Ordinance allows for legally nonconforming uses to be continued without alteration or expansion, and includes specific provisions for the

operation of nonconforming hotels in an R-4 Zone. The Zoning Ordinance also allows for restaurants to be operated within a nonconforming hotel located in an R-4 Zone, including the ability to be open to the general public provided that a Conditional Use Permit is first obtained. Additionally, the Zoning Ordinance allows outdoor dining to be established in nonconforming hotels in an R-4 Zone pursuant to the issuance of a Development Plan Review. The proposed project consists of a hotel restaurant, open air dining, and rooftop uses operated in substantially the same manner as when the hotel use was established, and as amended over time by the City Council and Planning Commission. In addition, the project complies with numerous General Plan policies, including Policies LU 9.1, LU 15.2, and ES 1.4, which relate to retaining existing industries such as luxury hotels, as well as Policies N 1.3, and N 1.4.

2. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

- The project site is located in the City of Beverly Hills and consists of 31,200 square feet (approximately 0.72 acres), and is surrounded by urban uses, such as multi-family residential buildings, government buildings, single-family residences, and commercial offices, all of which are typical of an urban environment.

3. The project site has no value as habitat for endangered, rare, or threatened species.

- The project site has been developed with the current structure since 1976, and is located in a developed urban area. There are no known habitats for endangered, rare, or threatened species on the project site.

4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

- Restaurant / Outdoor Dining. The project site has been operating as a commercial hotel with a restaurant open to the public and an open air dining area for approximately 16 years. The proposed project would operate in substantially the same manner as previously approved. The hotel restaurant faces Burton Way and is completely enclosed. As conditioned, banquets or similar private receptions or parties are also prohibited in the restaurant. The open air dining area has been relocated to an area that is approximately 120 feet from the neighboring residential building to the west, which is approximately 50 feet further away than the previously approved open air dining area, and as conditioned, operation of the open air dining area will cease at 10:30 p.m. The project will maintain the same number of tables and chairs in the relocated open air dining area as previously approved. Neither live entertainment nor amplified music will be allowed at any time in the open air dining area. The new stairway access to the open air dining area is located on private property directly adjacent to the main hotel entrance, and conditions have been recommended that would prohibit patrons from queuing outside.

- Rooftop Uses. Proposed conditions would limit evening functions on the rooftop to twice per week unless authorized by the Director of Community Development, and such functions are limited to a total of 52 per calendar year. Proposed conditions would also require all rooftop functions to cease by 11:00 p.m. on Sundays through Thursdays, and by 12:00 midnight on Fridays, Saturdays, and evenings preceding holidays. As conditioned, no additional events on the rooftop are allowed per calendar year beyond what was previously approved. Thus, approval of the project would not constitute any intensification of the past uses of the restaurant or rooftop. Additionally, the project is located on Burton Way, which is a major arterial street that can accommodate the traffic flow for the continued use of the hotel restaurant and rooftop area, thus the proposed project would not create any other significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.

- Hotel Restaurant. The restaurant kitchen is located inside the hotel, and cooking will not be performed outdoors. Approval of the project will not alter the current venting of the kitchen and the City has received no evidence that the restaurant or rooftop currently create any odors or noxious fumes. Continuation of the previous uses would not result in any significant change to air quality in the vicinity of the project, or the region. The proposed continuation of uses would not result in any water quality issues in that no significant changes to the overall project site would

occur, and all restaurant activities would continue to comply with applicable regulations to avoid any impact to water quality.

- For the foregoing reasons, approval of the project, with the proposed conditions of approval, will not result in any significant effects relating to traffic, noise, air quality, or water quality.

5. The site can be adequately served by all required utilities and public services.

- The site is currently served by all required utilities and public services, and no new utilities or public services will be necessary for the proposed project.

Section 7. Notice of the Project and public hearing was published in two newspapers of local circulation, and was mailed on April 22, 2016 to all property owners and residential occupants within a 500-foot radius of the property plus block face. Notice of the Project and public hearing was also posted on the property on April 22, 2016.

Section 8. In considering the request for a Conditional Use Permit, the Planning Commission considered whether it could make the following findings in support of the Project:

1. The proposed location of any such use will not be detrimental to adjacent property or to the public welfare;

2. The restaurant will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to the accumulation of garbage, trash, or other waste;

3. The restaurant will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to noise created by the operation of the restaurant or by employees or visitors entering or exiting the restaurant;

4. The restaurant will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to light and glare;

5. The restaurant will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to odors or noxious fumes;

6. The restaurant will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to parking demand created by the restaurant, including parking demand created by employees; and

7. The restaurant will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to traffic.

Section 9. Based on the foregoing, the Planning Commission hereby finds and determines as follows regarding the Conditional Use Permit:

1. Granting the Conditional Use Permit and establishing the conditions of approval to allow for the restaurant and rooftop to be open to the public will result in hotel operations that are substantially similar to previously approved hotel operations, but with more clear and enforceable conditions and penalties for violations. The project will not result in any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts or

pedestrian safety hazards. Nor will the project, as conditioned, have a significant parking impact. The open air dining area will maintain the previously approved maximum of 7 tables and 20 chairs, and does not encroach into the public right of way. Conditions of approval intended to prevent any impacts related to noise are included. The hotel has sufficient parking available within the hotel's on-site parking garage, and valet operations as well as entry to the hotel are provided from Burton Way. Conditions of approval relating to the frequency and hours of rooftop activities have been included to prevent impacts from evening functions. As conditioned, granting the Conditional Use Permit will not be detrimental to adjacent property or the public welfare.

2. As conditioned, the applicant is required to maintain the subject area in a clean and sanitary condition. There is an on-site trash compactor and trash storage areas, completely enclosed in the subterranean garage. For these reasons, as conditioned, the restaurant and rooftop will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to the accumulation of garbage, trash, or other waste.

3. The hotel restaurant faces Burton way and is completely enclosed. As conditioned, banquets or similar private receptions or parties are also prohibited in the restaurant. The open air dining area has been relocated to an area that is approximately 50 feet further east of the neighboring residential building to the west, and as conditioned, operation of the open air dining area will cease at 10:30 p.m. Neither live entertainment nor amplified music will be allowed at any time in the open air dining area. The new stairway access to the open air dining area is located on private property directly adjacent to the main hotel entrance, and conditions have been imposed to prohibit patrons from queuing outside. As conditioned, evening functions on the rooftop are limited to twice per week unless authorized by the Director of Community

Development, and such functions are limited to a total of 52 per calendar year. As conditioned, all rooftop functions will cease by 10:00 p.m., with guests vacating the rooftop by 11:00 p.m., seven days per week. For these reasons, as conditioned, the restaurant and rooftop area will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to noise created by the operation of the restaurant or by employees or visitors entering or exiting the restaurant.

4. The restaurant is located on the ground floor, is fully enclosed, and is separated from neighboring residential properties by walls and a courtyard. The rooftop event area is located on the east side of the hotel building, and no lighting will be directed toward the residential property to the east. For these reasons, as conditioned, the restaurant and rooftop area will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to light and glare.

5. The restaurant kitchen is located inside the hotel, and cooking will not be performed outdoors. Approval of the project will not alter the current venting of the kitchen and the City has received no evidence that the restaurant or rooftop currently create any odors or noxious fumes. For these reasons, the restaurant and rooftop area will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to odors or noxious fumes.

6. Past parking analyses have determined that the hotel has adequate parking for the proposed uses, and can accommodate the required parking demand through the use of valet parking. Conditions have been imposed that require provision of free parking for employees of the hotel to avoid the potential for employee parking to impact on-street parking in the vicinity of the project. In order to further reduce the potential for parking impacts, conditions

have been imposed requiring the hotel to provide free valet parking for restaurant patrons. However, because it is impossible to require patrons of the restaurant to use valet parking, and because such patrons may impact the adjacent residential neighborhoods by using available street parking in the area, the project has been further conditioned to prohibit the use of the hotel rooftop for more than two evening functions per week that involve more than 25 attendees other than hotel guests. Additionally, no more than 52 such functions are permitted during any calendar year. This condition will ensure that the potential increase in parking impacts to the neighboring residential streets generated by opening the restaurant to the public is counterbalanced with limitations placed upon other potential parking impacts from the hotel's existing operation. A traffic and parking plan is also required to be submitted in connection with any rooftop function involving more than 25 attendees who are not hotel guests. This condition will further ensure that the project will not have a substantial and adverse impact on neighboring properties due to the occurrence of other events at the hotel that might place a strain on available parking and valet resources to be used by the project. For these reasons, as conditioned, the restaurant and rooftop area will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to parking demand created by the restaurant, including parking demand created by employees.

7. The project will maintain the same number of tables and chairs in the relocated open air dining area as previously approved. As conditioned, no additional events on the rooftop are allowed per calendar year beyond what was previously approved. Thus, approval of the project does not constitute any intensification of the past uses of the restaurant and rooftop. Additionally, the project is located on Burton Way, which is a major arterial street that can accommodate any potential increases in traffic flow for the continued use of the hotel

restaurant and rooftop area. For these reasons, as conditioned, the restaurant and rooftop area will not have a substantial adverse impact on the use and enjoyment of surrounding residential properties due to traffic.

Section 10. In considering the request for a Development Plan Review, the Planning Commission considered whether it could make the following findings in support of the Project:

1. The proposed plan is consistent with the general plan and any specific plans adopted for the area;

2. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;

3. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;

4. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards; and

5. The proposed plan will not be detrimental to the public health, safety or general welfare.

Section 11. Based on the foregoing, the Planning Commission hereby finds and determines as follows regarding the Development Plan Review:

1. The General Plan encourages accommodation of hotel uses that attract customers from the region and provide a quality experience for national and international uses. (Policy LU 9.1) The General Plan also encourages retention and improvement of priority businesses, including high-end hotels. (Policy LU 15.2; Policy ES 1.4) Other policies in the General Plan call for maintaining compatible relationships between commercial uses and adjoining residential neighborhoods, limiting hours of commercial and entertainment operations adjacent to residential neighborhoods, and limiting hours of truck deliveries to commercial uses abutting residential neighborhoods. (Policies LU 12, LU 12.1, N 1.3, and N 1.4) Recognizing the need to balance retention of high-end hotels with the desire to maintain compatibility of uses and minimize noise impacts to residential uses, conditions have been imposed that limit the operations of the open air dining area, and mechanisms have been developed to enable efficient enforcement of all conditions of approval. For these reasons, as conditioned, granting the Development Plan Review to allow operation of the relocated open air dining area is consistent with the General Plan. Further, the subject property is not located within any specific plans.

2. Granting the Development Plan Review to allow operation of the relocated open air dining area will not result in an increase in traffic or parking demand beyond what has occurred for approximately the past 16 years. The number of tables and chairs will not increase beyond what has been previously approved, and the relocated open air dining area is approximately 50 feet further away from the neighboring residential property to the west. Conditions have been imposed that limit the operations of the open air dining area. For these reasons, as conditioned, granting the Development Plan Review to allow operation of the relocated open air dining area will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

3. Granting the Development Plan Review to allow operation of the relocated open air dining area will not materially alter the nature, density, or height of the project. The relocation and reconfiguration will result in the open air dining area being located approximately 50 feet further away from the neighboring residential building to the west, and will reduce the likelihood of noise impacts. Conditions have been imposed in order to mitigate any other potential impacts to neighboring residential properties, including but not limited to restrictions on the hours of operation of the open air dining area, prohibiting live entertainment and amplified music, and prohibiting queuing of patrons outside. The Project will also not result in any increase in height, or any increase in hotel rooms or hotel capacity. For these reasons, as conditioned, the nature, configuration, location, density, height and manner of operation of the relocated open air dining area will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.

4. Past parking analyses have determined that the hotel has adequate parking for the proposed uses, and can accommodate the required parking demand through the use of valet parking. Conditions have been imposed that require provision of free parking for employees of the hotel to avoid the potential for employee parking to impact on-street parking in the vicinity of the project. In order to further reduce the potential for parking impacts, conditions have been imposed requiring the hotel to provide free valet parking for restaurant patrons. However, because it is impossible to require patrons of the restaurant to use valet parking, and because such patrons may impact the adjacent residential neighborhoods by using available street parking in the area, the Project has been further conditioned to prohibit the use of the hotel rooftop for more than two evening functions per week that involve more than twenty-five attendees other than hotel guests. Additionally, no more than fifty-two such functions are

permitted during any calendar year. This condition will ensure that the potential increase in parking impacts to the neighboring residential streets generated by opening the restaurant to the public is counterbalanced with limitations placed upon other potential parking impacts from the hotel's existing operation. A traffic and parking plan is also required to be submitted in connection with any rooftop function involving more than 25 attendees who are not hotel guests. This condition will further ensure that the Project will not have a substantial and adverse impact on neighboring properties due to the occurrence of other events at the hotel that might place a strain on available parking and valet resources to be used by the Project. The project will maintain the same number of tables and chairs in the relocated open air dining area as was previously approved and existed for approximately the past 16 years. As conditioned, no additional events on the rooftop are allowed per calendar year beyond what was previously approved. Thus, approval of the project does not constitute any intensification of the past uses of the restaurant and rooftop. Additionally, the project is located on Burton Way, which is a major arterial street that can accommodate any potential increases in traffic flow for the continued use of the hotel restaurant and rooftop area. For these reasons, as conditioned, granting the Development Plan Review permit to allow operation of the relocated open air dining area will not result in significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.

5. Granting the Development Plan Review to allow operation of the relocated open air dining area will result in hotel operations that are substantially similar to previously approved hotel operations that existed for approximately the past 16 years, but with more clear and enforceable conditions and penalties for violations. The Project will not result in any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts or

pedestrian safety hazards because the project does not constitute any intensification of the past uses of the restaurant and rooftop. Additionally, the project is located on Burton Way, which is a major arterial street that can accommodate any potential increases in traffic flow for the continued use of the hotel restaurant and rooftop area. Nor will the project, as conditioned, have a significant parking impact. The open air dining area will maintain the previously approved maximum of 7 tables and 20 chairs, and does not encroach into the public right of way. Conditions of approval intended to prevent any impacts related to noise are also included. The hotel has sufficient parking available within the hotel's on-site parking garage, and valet operations as well as entry to the hotel are provided from Burton Way. Conditions of approval relating to the frequency and hours of rooftop activities have been included to prevent impacts from evening functions. For these reasons, as conditioned, granting the Development Plan Review to allow operation of the relocated open air dining area is not anticipated to be detrimental to public health, safety, or general welfare.

Section 12. In considering the request to waive the required parking for the open air dining area, the Planning Commission considered whether it could make the following finding in support of the project:

1. The parking demand will be met by means other than those means specified in Section 10-3-2730 B(8) of the Beverly Hills Municipal Code.

Section 13. Based on the foregoing, the Planning Commission hereby finds and determines as follows regarding the request to find that the required parking for the open air dining area can be met by existing on-site parking supply and valet operations:

1. Section 10-3-2730 B(8) of the Beverly Hills Municipal Code establishes that parking for open air dining on private property shall be provided as required for indoor dining areas. For this project site, there is a total of approximately 2,481 square feet of bar and dining area, including the proposed outdoor dining area. Thus, the project is subject to a parking requirement of one space per 45 square feet of bar and dining area. The interior bar and dining areas of the hotel are considered legally nonconforming with regard to parking, and there has not been an intensification of those uses that would require any additional parking. Of the total bar and dining area, the open air dining area that is the subject of these entitlements represents approximately 618 square feet, resulting in a parking requirement of 14 spaces. These 14 spaces are subject to the request to determine that parking can be met by on-site supply and valet operations. Past parking analyses have determined that the hotel has adequate parking for the proposed uses, and can accommodate the required parking demand through the use of valet parking. Conditions have been imposed that require provision of free parking for employees of the hotel to avoid the potential for employee parking to impact on-street parking in the vicinity of the project. In order to further reduce the potential for parking impacts, conditions have been imposed requiring the hotel to provide free valet parking for restaurant patrons. However, because it is impossible to require patrons of the restaurant to use valet parking, and because such patrons may impact the adjacent residential neighborhoods by using available street parking in the area, the Project has been further conditioned to prohibit the use of the hotel rooftop for more than two evening functions per week that involve more than 25 attendees other than hotel guests. Additionally, no more than 52 such functions are permitted during any calendar year. This condition will ensure that the potential increase in parking impacts to the neighboring residential streets generated by opening the restaurant to the public is counterbalanced with

limitations placed upon other potential parking impacts from the hotel's existing operation. A traffic and parking plan is also required to be submitted in connection with any rooftop function involving more than 25 attendees who are not hotel guests. This condition will further ensure that the Project will not have a substantial adverse impact on neighboring properties due to the occurrence of other events at the hotel that might place a strain on available parking and valet resources to be used by the project. For these reasons, as conditioned, the parking demand for the open air dining area can be met by the existing parking supply on-site and through the use of valet parking, and no additional parking is required.

Section 14. In considering the request for an Extended Hours Permit, the Planning Commission considered whether it could make the following findings in support of the Project:

1. The extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of the accumulation of garbage, litter, or other waste, both on and off the subject site;

2. The extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of noise created by the extended hours operation or by employees or visitors entering or existing the extended hours operation;

3. The extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of light and glare;

4. The extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of odors and noxious fumes;

5. The extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of pedestrian queuing;

6. The extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of crime or peril to personal safety and security;

7. The extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of 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;

8. The extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of effects on traffic volumes and congestion on local residential streets; and

9. The extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of cumulative impacts relating to the existing concentration of extended hours operations in the vicinity of the proposed extended hours operation.

Section 15. Based on the foregoing, the Planning Commission hereby finds and determines as follows regarding the Extended Hours Permit:

1. As conditioned, the applicant is required to maintain the subject area in a clean and sanitary condition. There is an on-site trash compactor and trash storage areas, completely enclosed in the subterranean garage. For these reasons, as conditioned, operation of the hotel during extended hours will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of the accumulation of garbage, trash, or other waste, on or off the Project site.

2. The hotel restaurant faces Burton way and is completely enclosed. As conditioned, banquets or similar private receptions or parties are also prohibited in the restaurant. The open air dining area has been relocated to an area that is approximately 50 feet further east of the neighboring residential building to the west, and as conditioned, operation of the open air dining area will cease at 10:30 p.m. Both live entertainment and amplified music will be prohibited at all times in the open air dining area. The new stairway access to the open air dining area is located on private property directly adjacent to the main hotel entrance, and conditions have been imposed to prohibit patrons from queuing outside. As conditioned, evening functions on the rooftop are limited to twice per week unless authorized by the Director of Community Development, and such functions are limited to a total of 52 per calendar year. As conditioned, all rooftop functions will cease by 10:00 p.m., with all guests vacating the rooftop by 11:00 p.m., seven days per week. For these reasons, as conditioned, operation of the hotel during extended hours will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of noise created by the extended hours operation or by employees or visitors entering or existing the hotel.

3. The restaurant is located on the ground floor, is fully enclosed, and is separated from neighboring residential properties by walls and a courtyard. The rooftop event space is located on the east side of the hotel building, and is screened from the properties to the west by the elevator shaft, mechanical enclosures, and pool cabanas. No lighting will be directed toward the neighboring properties. The hotel restaurant, open air dining area, and rooftop event space do not include the use of reflective surfaces that could potentially cause glare. For these reasons, as conditioned, operation of the hotel during extended hours will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of light and glare.

4. The restaurant kitchen is located inside the hotel, and cooking will not be performed outdoors. Approval of the Project will not alter the current venting of the kitchen and the City has received no evidence that the restaurant or rooftop currently create any odors or noxious fumes. For these reasons, hotel operations during extended hours will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of odors and noxious fumes.

5. The hotel restaurant faces Burton Way and is completely enclosed. As conditioned, banquets or similar private receptions or parties are also prohibited in the restaurant. The open air dining area has been relocated to an area that is approximately 50 feet further east of the neighboring residential building to the west, and as conditioned, operation of the open air dining area will cease at 10:30 p.m. Neither live entertainment nor amplified music is permitted at any time in the open air dining area. The new stairway access to the open air dining area is located on private property directly adjacent to the main hotel entrance, and conditions have been imposed to prohibit patrons from queuing outside. As conditioned, evening functions on the rooftop are limited to twice per week unless authorized by the Director of Community Development, and such functions are limited to a total of 52 per calendar year. As conditioned, all rooftop functions will cease by 10:00 p.m., with all guests vacating the rooftop by 11:00 p.m., seven days per week. These conditions will limit the number of events at the hotel, and would ensure that any potential queuing would be limited to earlier evening hours to minimize potential noise or other impacts. For these reasons, as conditioned, the extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of pedestrian queuing.

6. The project will operate in a manner that is substantially the same as was approved previously, and has existed for approximately the past 16 years. Based on a review of

police activity at the project site over the past two years, there have been numerous calls for service relating to excessive noise and parking violations. The police activity does not, however, seem to indicate significant evidence of crimes related to personal safety and security. Conditions have been included that establish a clear and escalating penalty structure in order to encourage compliance with conditions intended to reduce noise and parking violations. For these reasons, as conditioned, the extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of crime or peril to personal safety and security.

7. The project will maintain the same maximum number of tables and chairs in the relocated open air dining area as previously approved. As conditioned, no additional events on the rooftop are allowed per calendar year beyond what was previously approved. Thus, approval of the project does not constitute any intensification of the past uses of the restaurant and rooftop. Additionally, the project is located on Burton Way, which is a major arterial street that can accommodate any incremental increases in traffic flow for the continued use of the hotel restaurant and rooftop area. For these reasons, as conditioned the extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of 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.

8. Past parking analyses have determined that the hotel has adequate parking for the proposed uses, and can accommodate the required parking demand through the use of valet parking. Conditions have been imposed that require provision of free parking for employees of the hotel to avoid the potential for employee parking to impact on-street parking in the vicinity of the project. In order to further reduce the potential for parking impacts, conditions have been imposed requiring the hotel to provide free valet parking for restaurant patrons.

However, because it is impossible to require patrons of the restaurant to use valet parking, and because such patrons may impact the adjacent residential neighborhoods by using available street parking in the area, the project has been further conditioned to prohibit the use of the hotel rooftop for more than two evening functions per week that involve more than twenty-five attendees other than hotel guests. Additionally, no more than fifty-two such functions are permitted during any calendar year. This condition will ensure that the potential increase in parking impacts to the neighboring residential streets generated by opening the restaurant to the public is counterbalanced with limitations placed upon other potential parking impacts from the hotel's existing operation. A traffic and parking plan is also required to be submitted in connection with any rooftop function involving more than 25 attendees who are not hotel guests. This condition will further ensure that the project will not have a substantial and adverse impact on neighboring properties due to the occurrence of other events at the hotel that might place a strain on available parking and valet resources to be used by the project. For these reasons, as conditioned, the extended hours operation will not substantially disrupt the peace and quiet of the adjacent neighborhood as a result of effects on traffic volumes and congestion on local residential streets.

9. The subject site is a nonconforming hotel in an R-4 Multi-Family zone. There are no other extended hours permits issued for any other commercial buildings in the adjacent neighborhood, which makes the hotel the only extended hours operation within the adjacent neighborhood. Additionally, conditions have been imposed that restrict the hours of operation of the hotel restaurant, open air dining area, and rooftop event space. Restrictions have also been imposed prohibiting pedestrian queuing on the Burton Way sidewalk. For these reasons, as conditioned, the extended hours operation will not substantially disrupt the peace and

quiet of the adjacent neighborhood as a result of cumulative impacts relating to the existing concentration of extended hours operations in the vicinity of the proposed extended hours operation.

Section 16. Based on the foregoing, the Planning Commission hereby approves the requested entitlements. The following conditions include all relevant conditions of approval previously imposed on the subject site in past entitlements. The Project is subject to the following conditions:

Hotel Restaurant and Open Air Dining Area

1. The open air dining area shall be limited to a maximum of seven (7) tables and twenty (20) chairs.
2. The tables and chairs in the open air dining area shall be located in the patio area adjacent to the hotel entrance along Burton Way, as shown on the plans submitted to the Planning Commission, and shall not at any time be permitted to encroach into the public right-of-way.
3. No live entertainment or amplified sound shall be allowed in the open air dining area at any time.
4. No banquets or similar private receptions or parties shall be held at the restaurant. For the purposes of the condition, a banquet or similar private reception or party shall mean any banquet, party, reception or other event during which more than half of the restaurant is closed to the public except by invitation or advanced reservation.
5. The restaurant shall not seat any patron indoors before 6:30 a.m. or after 11:00 p.m. daily. Additionally, the open air dining patio operations of the restaurant, including

any movement of tables and chairs or the setting of dishes and silverware, shall commence no earlier than 8:00 a.m. and the restaurant shall not seat patrons in the open air dining area before 8:00 a.m. or after 9:00 p.m. daily. All diners shall have exited the outdoor dining area no later than 10:30 p.m.

6. Hotel employees shall be prohibited from congregating outside the hotel, and shall be prohibited, to the extent permitted by applicable labor laws, from eating, drinking, or smoking on the sidewalk and other public rights-of-way in the vicinity of the hotel. Lunch trucks/catering trucks servicing hotel employees shall be directed by the hotel to park only in the loading zone immediately adjacent to the hotel on Burton Way, and hotel employees shall be prohibited from patronizing any such truck that is stopped or parked on any other residential street or in the alley.

7. At the time that a reservation is accepted for dining at the restaurant, the holder of the reservation shall be informed that valet parking is available and offered free of charge to the restaurant patrons. The holder of the reservation shall also be asked to use the valet parking as a courtesy to the residential neighbors of the hotel.

8. Off street parking shall be provided free of charge to employees. Valet parking shall be provide free of charge to patrons of the restaurant.

9. All exterior doors to the restaurant, including the exterior doors closest to the adjacent residences to the west of the hotel shall only be used for emergency ingress and egress. However, the doors immediately adjacent to the open air dining area may be used by patrons to access the open air dining area from within the hotel restaurant, but shall not be held, propped, or otherwise kept open. Additionally, all food service to the open air dining area shall occur from the doors immediately adjacent to the open air dining area.

10. To mitigate privacy and noise impacts from the restaurant, open air dining area, and stairway access to the open air dining area located adjacent to the main hotel entrance, the applicant shall construct and maintain a wall at least seven (7) feet high along the entire western perimeter of the open air dining area, and a wall at least six (6) feet high along a portion of the eastern perimeter of the open air dining area to substantially shield the open air dining area from the stairway access located at the Hotel's main entrance. The applicant shall also maintain a landscape buffer between the open air dining area and Burton Way, satisfactory to the Director of Community Development, of sufficient height and density to substantially reduce light and noise impacts onto Burton Way and reasonably protect the quiet enjoyment of neighbors on the south side of Burton Way. The outdoor space adjacent to the hotel's ground floor rotunda room where the open air dining area was located previously, shall remain unoccupied or be converted into a landscape buffer which shall at all times be off-limits to guests, employees, and patrons of the hotel, restaurant, or open air dining area except for emergency egress or parking garage access by hotel employees.

11. No queuing for the restaurant or outdoor dining area shall occur outside the interior of the hotel. Whenever patrons of the restaurant or outdoor dining area cannot be immediately seated, they shall be directed to the hotel lobby to await seating.

12. The hotel shall not accept any deliveries except during the hours of 9:00 a.m. through 6:00 p.m., Monday through Friday, 10:00 a.m. through 5:00 p.m. on Saturday, and 10:00 a.m. through 3:00 p.m. on Sunday.

13. The loading zone on hotel property adjacent to the alley behind the hotel shall at all times remain free of structures or other obstructions. Delivery trucks shall be prohibited from blocking the alley, from stopping or parking in areas of the alley that provide

access to neighboring properties' parking garages or where neighboring properties' garbage bins are located, and from stopping or parking anywhere on Foothill Road or Maple Drive. To ensure compliance with this condition, the applicant shall pay all costs associated with the installation of a sufficient number of closed circuit television ("CCTV") cameras, on the applicant's property to monitor all loading activities occurring in the alley 24 hours per day, 7 days per week. The applicant acknowledges and agrees that photographs or videos taken by such cameras showing violations of this condition shall constitute evidence of such violations for the purposes of Condition Nos. 23 and 24 below. Video footage from the cameras shall be retained for a minimum period of thirty (30) days, and shall be made available to City staff upon request. The Director of Community Development may impose additional conditions on loading operations and/or the location of loading to achieve the greatest level of neighborhood compatibility, but in no event shall permit hours of loading to be extended beyond those set forth in Condition No. 12 above.

14. The applicant shall instruct any limousine company contracted or retained by the hotel to direct its drivers to stop or park exclusively in the loading zone on Burton Way immediately adjacent to the hotel, or on Civic Center Drive to the north of the hotel, and to not stop or park on any other street in the vicinity of the hotel, including but not limited to Foothill Road and the south side of Burton Way. The applicant shall not instruct or encourage, directly or indirectly, any driver of any taxi or limousine to stop or park anywhere other than the loading zone on Burton Way immediately adjacent to the hotel, or on Civic Center Drive, and whenever the topic arises, hotel staff shall explicitly instruct all drivers of taxis and/or limousines not park on any residential street in the vicinity of the hotel (other than Burton way immediately adjacent to the hotel), including but not limited to Foothill Road and the south side of Burton Way.

Finally, hotel staff shall walk the north side of Burton Way between Foothill Road and Maple Drive once each day, at or about 5:00 p.m., and collect and dispose of any trash or debris that may be present on the sidewalk or parkway, regardless of whether the trash or debris was generated by hotel operations.

15. The applicant shall maintain all restaurant areas as well as the public right of way directly adjacent to the subject property in a clean and sanitary condition at all times.

Rooftop Events

16. Evening functions on the rooftop of the hotel involving more than 25 attendees, excluding persons residing at the hotel, shall not occur more than fifty-two (52) times during any calendar year. For the purposes of this condition, “evening function” shall mean any function which does not conclude before 6:00 p.m.

17. Evening functions on the rooftop of the hotel shall not occur more than twice during any week (Monday through Sunday). However, the applicant may submit a request to the Director of Community Development or his/her designee (“Director”) to allow one additional event, for a total of three events within a single week, one time during the months of January through March. Any additional events granted pursuant to this request shall be counted toward the maximum of fifty-two (52) events during the calendar year. For the purposes of this condition, “evening function” shall mean any function which does not conclude before 6:00 p.m.

18. Prior to any evening function, the Applicant shall submit a traffic and parking plan for the evening function to the Director of Community Development or his/her designee (“Director”) for approval. No such function shall take place until such traffic and parking plan is approved by the Director. The Director may, without limitation, require the traffic and parking plan to address limousine parking and to include free off-site parking for

employees and the provision of adequate valet parking attendants so that, in the Director's judgment, adequate parking and valet service will be available at the site to prevent parking, traffic, and noise impacts from intruding into the adjacent neighborhood. For the purposes of this condition, "evening function" shall mean any function which does not conclude before 6:00 p.m.

19. The applicant shall file with the Director of Community Development or his/her designee ("Director") on the last day of each month a written schedule of the dates and times of each evening function of 25 or more attendees, excluding persons residing at the hotel, planned for the following month. The applicant shall provide the Director with a written amendment to that schedule at any time that a new function is added to the schedule or there is a change in the date or time of any originally listed function. Any such amendment shall be provided at least 48 hours before commencement of the function that is the subject of the amendment. Notwithstanding this condition, the applicant shall have the right to submit a request to the Director for an amendment to the schedule of functions less than 48 hours before commencement of the function. For the purposes of this condition, "evening function" shall mean any function which does not conclude before 6:00 p.m.

20. All rooftop events, including associated live entertainment and amplified sound, shall conclude no later than 10:00 p.m., and all rooftop event attendees shall have vacated the rooftop by 11:00 p.m. every day of the week. To facilitate timely vacation of all rooftop event attendees and minimize the potential for noise impacts outside the hotel entrance on the ground floor, the hotel shall provide the ability for rooftop event attendees to call for their vehicles from the valet at the rooftop. In order to ensure compliance with this condition, the applicant shall pay the full costs of hiring a site monitor to be present at each rooftop event until at least 11:00 p.m. The person(s) designated as site monitor shall be a third party contractor or a

member of City staff, and such person(s) shall be subject to prior approval by the Director of Community Development.

21. Deliveries, setup, and/or event breakdown for any rooftop functions shall not occur except during the hours of 9:00 a.m. through 6:00 p.m., Monday through Friday, 10:00 a.m. through 5:00 p.m. on Saturday, and 10:00 a.m. through 3:00 p.m. on Sunday.

22. At all times the hotel shall operate in compliance with the City's noise ordinance.

Penalties for Violations

23. Within ten (10) days of the adoption of this resolution, the applicant shall submit to the City a cash deposit of \$20,000 from which to draw financial penalties in case of any violation(s) of the conditions of approval. If and when the deposit balance reaches \$10,000 or less as a result of such violation(s), the City shall notify the applicant of the remaining balance, and the applicant shall submit to the City within ten (10) business days additional funds in an amount sufficient to bring the deposit balance back to \$20,000. Failure to make a timely deposit of such additional funds shall cause the Director of Community Development to promptly schedule a hearing before the Planning Commission for revocation of the Conditional Use Permit, Development Plan Review, and Extended Hours Permit granted herein.

24. Upon verification of evidence that a violation of any condition of approval contained herein has occurred, financial penalties shall be withdrawn from the cash deposit in the following amounts for each violation within a single calendar year:

1st Violation	2nd Violation	3rd Violation	4th Violation	5th Violation
\$1,000	\$2,500	\$5,000	\$10,000	\$10,000 and automatically return to Planning Commission for review and possible revocation. All application fees would be required in addition to the assessed penalty.

The applicant shall be provided a written notice of decision to withdraw the penalty charge, and shall be provided with the evidence demonstrating the occurrence of the violation, and shall have the right to appeal the decision to withdraw the penalty charge from the cash deposit to the Director of Community Development within 14 days of the issuance of the City’s notice of the determination. A written notice of the Director’s decision shall be provided to the applicant, who shall have the right to appeal the decision to the Planning Commission within 14 days of the issuance of the notice of the Director’s decision. The decision of the Planning Commission shall be final, and the applicant shall have no further right to appeal. Upon verification of evidence that five (5) or more violations of any conditions of approval contained herein have occurred within a single calendar year, in addition to the financial penalties, the entitlements shall be referred to the Planning Commission for further review, and possible revocation. All costs associated with such hearing shall be fully borne by the Applicant.

25. Notwithstanding the provisions of condition 24 above, the City expressly reserves all rights to undertake any and all enforcement actions within its authority should it choose to do so, and shall not be obligated to first exhaust the penalty structure as outlined in conditions 23 and 24 above.

26. Within thirty (30) days after the adoption of this resolution, the applicant shall submit to the City a deposit of \$10,000 for the purpose of offsetting the costs of Code Enforcement activities associated with the project.

27. RECORDATION. This resolution approving the Conditional Use Permit, Development Plan Review, and Extended Hours Permit shall become effective immediately upon adoption of this resolution, however, the Owner of the Project shall deliver to the Department of Community Development an executed covenant accepting the conditions of approval set forth in this resolution within five (5) days of receiving such covenant from the City. The covenant shall be satisfactory in form and content to the City Attorney. The covenant shall include a copy of this resolution as an exhibit. 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 5 days, this resolution approving the Project **shall be null and void and of no further effect**. Notwithstanding the foregoing, the Director of Planning & Community Development may, upon a request by the Applicant, grant a waiver from the 5 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 Project.

28. APPROVAL RUNS WITH LAND. The approvals and conditions set forth in this resolution shall run with the land and shall remain in force for the duration of the life of the permits.

29. EXPIRATION AND RENEWAL. The Conditional Use Permit, Development Plan Review, and Extended Hours Permit shall expire twelve (12) months from the date of this approval. Upon application by the Applicant filed at least 30 days prior to the

expiration of such permit, the Planning Commission may extend the Permit if the reviewing authority determines that the uses are being operated in a manner approved by the Planning Commission, are abiding by the conditions imposed by the Planning Commission, and are not creating significant adverse impacts on the surrounding neighborhood. Permits shall remain valid until such a time as a decision on a timely filed extension application is made by the Planning Commission. The Applicant shall file all necessary applications and pay all applicable fees associated with said extension requests. Furthermore, in the event the Director of Community Development believes the hotel may not be in compliance with the Conditional Use Permit, Development Plan Review, and Extended Hours Permit provisions, the Director of Community Development or their designee, at their discretion, may require the project be returned to the Planning Commission for further review and analysis prior to the expiration of the entitlements. The Applicant shall file all necessary applications and pay all applicable fees associated with said review.

Section 17. 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: May 2, 2016

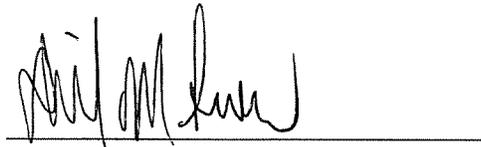
Alan Robert Block
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



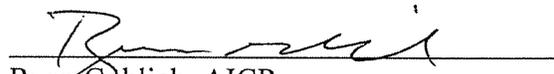
Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Ryan Gohlich, AICP
City Planner / Assistant Director
of Community Development