

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Anne McIntosh, Community Development Director

SUBJECT:

Recent Planning Commission Quasi-Judicial Decisions

1. Use Permit Amendment - 900 Club
2. Use Permit, Use Permit Amendment and EIR - Skechers

SUPPLEMENT TO INFORMATIONAL MEMO (ITEM 15, MARCH 20, 2018 AGENDA)

Item 15 on the agenda for the March 20, 2018 City Council Meeting lists the following Planning Commission quasi-judicial matters held on March 14, 2018. As shown below, the Commission approved both applications, with conditions.

1. **Consideration of a Resolution Approving a Use Permit Amendment for the 900 Club and Downstairs Bar for operational changes and changes to the Entertainment Permit requirements, for an Existing Restaurant/Bar at 900 Manhattan Avenue (900 Club and Downstairs Bar)**

The Commission Adopted a Resolution Conditionally Approving the Use Permit Amendment (4:1- Burkhalter voting No) with changes.

Members of the public spoke of concerns with the project primarily related to noise at the Downstairs Bar and number of occupants allowed in the building. Commissioners discussed those concerns and the City's Fire Chief responded to questions regarding occupancy, exiting and related Fire Department procedures. Condition language in the Resolution regarding occupant loads, dancing areas, and the 9th Street door were revised. All other conditions remain the same as included in the draft Planning Commission Resolution which included the following changes to the 2014 City Council Resolution: deleting the requirements for the "last call" for food and drink service 60 minutes prior to closing as well as for music ceasing 30 minutes prior to closing, downstairs windows closed after 10:00 PM, increasing Special Events from 18 to 24 annually, new signage advising of smoking prohibition and being respectful to neighbors, an on-site manager to address issues, an employee handbook and training on Use Permit conditions, and a self-closing door mechanism on 9th Street at the Downstairs Bar. The Planning Commission draft Resolution is attached and the revisions to the conditions as approved by the Commission are shown as redline strikeout below.

1. The project shall be in substantial conformance with the project description submitted to, and approved by the Planning Commission on March 14, 2018 as

amended and conditioned. Any substantial deviation from the approved project description, as conditioned, shall require approval from the Planning Commission. The applicant shall provide updated dimensioned floor plans to the Building Official and Fire Marshall in order to reassess occupancy loads for the entire building based on the egress system.

11. ~~Dancing is permitted on Friday and Saturday nights only. Dancing~~ The dedicated dance floor shall be limited to a 12 foot x 12 foot maximum area on the second floor.

17. The occupancy limits stated below shall not be exceeded and are required to be posted on-site downstairs and upstairs respectively at all times, subject to annual review and approval of the Fire Marshall:

Downstairs Bar (downstairs) – 31

900 Club (upstairs) – 92

21. All of the following noise mitigation measures that have not yet been installed shall be installed within 45 days and maintained at all times:

- a. Tempered glass panels installed over each upstairs stained glass window along the south wall.
- b. A separate tempered glass panel installed over the inside windows upstairs along the south rear hallway.
- c. Double pane windows on Manhattan Avenue and 9th Street upstairs and downstairs.
- d. Signage on the Bayview Drive rear door (inside and outside) to not enter or exit after 10:00 pm.
- e. Sound curtains shall be installed on the double pane windows adjacent to Manhattan Avenue and 9th Street on the second floor.
- f. The downstairs windows on Manhattan Avenue and 9th Street and the 9th Street door downstairs shall be closed daily after 10:00 pm, except for normal ingress and egress of patrons.
- g. A self-closing mechanisms shall be affixed to the downstairs 9th Street door.
- h. Signage related to “no smoking and respecting neighbors” as described in condition #15.

2. Consideration of Resolutions Approving Use Permit Applications to Construct a New Office Building and an Office Building Addition and Approving a Final Environmental Impact Report Pursuant to the California

**Quality Act for Projects at 305 and 330 South Sepulveda Boulevard
(Skechers USA)**

The Commission Adopted Resolutions, Approving the Overall Project EIR, and Conditionally Approving the Use Permit and Use Permit. (3:0- Apostol and Seville-Jones Recused)

The public and applicant spoke in favor of the project. Neighbors spoke in support of revisions to the 305 South Sepulveda project prohibiting loading operations on Boundary Place to address their previous concerns. Traffic issues and details were discussed with the City's Traffic Engineer. The Planning Commission discussed the project, felt that conditions imposed on the approval address all concerns, mitigate any impacts of the Project, and adopted the Resolutions, as drafted.

The link below provides the Planning Commission Resolutions as adopted without changes:

http://cms6ftp.visioninternet.com/manhattanbeach/commissions/planning_commission/2018/20180314/20180314-4.pdf

‘Draft’ RESOLUTION NO. PC 18-XX

RESOLUTION OF THE PLANNING COMMISSION APPROVING A USE PERMIT AMENDMENT FOR THE 900 CLUB AND DOWNSTAIRS BAR, AN EXISTING RESTAURANT/BAR AT 900 MANHATTAN AVENUE (900 CLUB AND DOWNSTAIRS BAR)

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1.

- A. On April 4, 1995, the Manhattan Beach City Council adopted Resolution No. 5155, modifying a discretionary use permit for a restaurant/bar (then called the Rock Bottom Saloon) at the property located at 900 Manhattan Avenue, subject to a number of conditions.
- B. Under the entitlements conferred by Resolution No. 5155, the 900 Club (established and operated as a private club) and the Downstairs Bar (formally the Red Room and open to the public), were established in the upstairs and downstairs spaces, respectively.
- C. The subject property is legally described as Portion of Lot 6, Block 69, Division No. 2 in the City of Manhattan Beach, County of Los Angeles.
- D. The subject property is located in Area District III and is zoned CD, Downtown Commercial. The surrounding properties are zoned CD to the north, south and west, and RM (Medium-family Residential) to the east.
- E. The use is permitted in the CD zone subject to a Use Permit and is in compliance with the City’s General Plan designation of Downtown Commercial.
- F. At various times during the period of 2011-2014, the Business Operator violated Manhattan Beach Municipal Code (MBMC) provisions and Use Permit conditions. The City initiated code enforcement proceedings, and on February 26, 2014, the Planning Commission held a duly noticed public hearing to consider the modification or revocation of the Use Permit. The Planning Commission found that on one or more occasions the 900 Club had violated several conditions of their Use Permit. Due to such violations, the Planning Commission found that Resolution No. 5155’s then-existing conditions of approval were inadequate and that additional conditions were required. After closing the February 26, 2014 public hearing, the Planning Commission directed staff to prepare a draft resolution with recommended modifications to the Use Permit and its conditions to mitigate the adverse impacts arising from the subject use.
- G. On May 14, 2014, the Planning Commission adopted Resolution No. PC 14-06, modifying the Use Permit with certain conditions, and an appeal of the Planning Commission’s decision was filed requesting that the City Council consider additional conditions.
- H. On August 19, 2014, the City Council held a public hearing to consider the appeal and directed staff to prepare a draft resolution affirming the decision of the Planning Commission plus providing additional conditions.
- I. On September 2, 2014, and again on October 7, 2014, the City Council held public hearings to provide additional opportunity for public comment, and thereafter adopted Resolution No. 14-0063.
- J. On December 9, 2015, the Planning Commission held a Public Hearing for the one-year review of the subject Use Permit for the purpose of assessing whether there has been compliance with all conditions of approval as required under the approved Resolution. At that time, the Planning Commission felt that the applicant had complied with all conditions of approval and that no further annual review or conditions were warranted.
- K. On August 17, 2017, the owner the 900 Club and Downstairs Bar filed an application for a Use Permit Amendment to increase the hours of operation and increase the number of annual

Entertainment Permits.

- L. On January 24, 2018, the Planning Commission held a duly noticed public hearing to consider the amendment of the Use Permit. The City provided public notice of the public hearing on January 11, 2018, in accordance with State law. At the public hearing, the Commission provided an opportunity to all interested parties, including the owners, operators, and agents of the 900 Club and the Downstairs Bar, neighbors and residents, to offer testimony. There was testimony presented that the 900 Club has generally operated within the conditions of approval of the existing Use Permit, but that the Downstairs Bar had become a source of noise concerns detrimental to public health, safety and welfare. The Planning Commission continued the Public Hearing to the meeting of February 28, 2018, and directed staff to prepare draft conditions removing the "last call" requirement of Condition #1 and increasing the Entertainment Permit Events to 24 annually, and to work with the applicant and neighbors to discuss noise mitigation conditions. Staff met once at the 900 Club and Downstairs Bar with the applicants and a second time with both the applicants and neighboring residents to produce solutions to the noise concerns, which are reflected in the conditions of approval.
- M. At the continued public hearing on February 28, 2018, the Planning Commission took additional testimony, closed the public hearing, and directed staff to bring a draft resolution back on March 14, 2018 for consideration of amendments to the Use Permit to address the issues and concerns at the hearings, to eliminate the last call provision and increase the annual Entertainment Events to 24, but not increasing the hours of operation.
- N. On March 14, 2018, the Planning Commission discussed and considered the draft Resolution.
- O. The subject property is a single commercial building occupied by the 900 Club upstairs and the Downstairs Bar downstairs with three existing on-site parking spaces.
- P. The amendment of the existing Use Permit (the "Project") was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that the Project has no potential to result in a significant environmental impact and is exempt from CEQA pursuant to Section 15301 (Existing Facilities) and Section 15321 (Enforcement Actions of Regulatory Agencies) of Title 14 of the California Code of Regulations.
- Q. A de minimis impact finding is hereby made that the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. In accordance with Manhattan Beach Municipal Code Section 10.84.060, the Planning Commission makes the following findings related to the Use Permit Amendment:

1. The proposed location of the use is in accord with the objectives of this title and the purpose of the district in which the site is located;

The proposed project is located within the (CD) Downtown Commercial district. The project does not encompass a change in classification of use, but rather a change in the operational characteristics. The use is within an existing commercial building and will continue as a commercial use consisting of a restaurant/bar. The business is in accord with the objectives of this title and the purpose of the district in which it is located since the project is a commercial use consistent with Section 10.16.010 of the Manhattan Beach Zoning Code, which states that the district is intended to provide opportunities for a full range of commercial uses needed by residents of, and visitors to, the City and region, and to strengthen the City's economic base, but also protect small businesses that serve City residents.

With amended and additional conditions, the application is consistent with the purpose of the district and zone. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located, as conditioned.

- 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city;**

The restaurant/bar use, with the amended and additional conditions, would pose no detrimental effects to the public health, safety, or welfare of persons residing or working on the proposed project site, or to the adjacent neighborhood; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city in that the site continues to operate as a restaurant/bar use providing a variety of services to the public and City's residents.

The General Plan designation for the property is Downtown Commercial. This designation reflects the commercial nature of the area with various retail, restaurants and supportive commercial services. The modifications, as conditioned, are consistent with the following General Plan Goals and Policies:

Goal LU-4: Support and encourage the viability of the commercial areas of Manhattan Beach.

The proposed project is consistent with offering a wide variety of services and supporting the mix of commercial uses.

Goal LU-5: Encourage high quality, appropriate private investment in commercial areas of Manhattan Beach.

The proposed project will provide a desired service to customers, therefore supporting the downtown Manhattan Beach area.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

The proposed project will support the operational viability of two existing businesses in the Downtown area.

- 3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located; and**

The proposed amendments are in compliance with applicable performance and development standards. Therefore, the proposed amendments will comply with the provisions of Title 10 of the Municipal Code (Zoning Ordinance), including any specific condition required for the proposed use in the CD zoning district in which it is located. A Use Permit Amendment is required to modify the existing operational approvals for the subject property. The proposed amendments are for an existing commercial use which is permitted with a use permit in the (CD) Downtown Commercial zone.

- 4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated.**

The proposed operational changes will not adversely impact nearby properties as the use currently exists at the site, and further conditions are imposed. The proposed

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operational change poses no increase to the parking demand in the Downtown Commercial zone. The change in operations of the use will not affect required parking, and the conditions imposed by the Use Permit Amendment will lessen impacts on noise, resident security and personal safety. It is not anticipated that the operational changes in the existing commercial property will impact the capacity of public services and facilities.

SECTION 2. The Planning Commission of the City of Manhattan Beach hereby **APPROVES** the Use Permit Amendment subject to the following conditions:

Operational

1. The project shall be in substantial conformance with the project description submitted to, and approved by the Planning Commission on March 14, 2018 as amended and conditioned. Any substantial deviation from the approved project description, as conditioned, shall require approval from the Planning Commission.
2. In the event that the businesses known as 900 Club and Downstairs Bar should vacate the premises, either or both tenant spaces at 900 Manhattan Avenue, may be occupied by another similar use if, upon its review, the Department of Community Development determines that the replacement use has the same use characteristics as 900 Club and Downstairs Bar, including but not limited to, type of service provided, and peak hours of activity.
3. Hours of operation for the establishment shall be permitted as follows:

Monday - Thursday	11:00am – midnight
Friday	11:00am – 1:00am
Saturday	9:00am – 1:00am
Sunday	9:00am – midnight
4. At closing time, all areas (inside and outside) of the business must be vacated. All music (house system and bands) shall be turned off, and no sales, service or consumption of food or alcohol shall occur after closing time. Staff may remain on the premises for one hour after closing time.
5. The service of alcohol shall occur in conjunction with food service as a “bona fide eating place” type of alcohol license (Type 47) from the State of California shall be maintained.
6. The Business Operator's representatives shall provide a state licensed, bonded and certified security guard from 9:30 pm on Thursday, Friday and Saturday and any day there is a Special Event or Amplified Sound until all staff members have left the premises. The security guard shall ensure that operations comply with all conditions of approval, including but not limited to the following: noise, use of the back door, litter, access, windows and doors being closed, directing patrons exiting both establishments to wait for ride-hail services on Manhattan Avenue and addressing any other adverse impacts on the neighborhood.
7. The back door and storage/utility room on Bayview Drive shall remain closed and not be used after 10:00 pm, except the back door may be used for trash removal or disabled or emergency access only. Additionally, bands shall be allowed to use the back door for the loading and unloading of amplified sound equipment and shall vacate the site by closing time. The back door keypad access shall be maintained and only be accessible from the outside by the owners/operators and employees, however, all outside areas shall be disabled after 10:00 pm. No patron shall be provided a key or

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access code for the back door or the storage/utility room. The Business Operator's representatives shall contact the Police Department the first of every month to advise of key access code changes and any other changes.

8. Patrons must use Manhattan Avenue for access to the 900 Club after 10:00 pm except for the purpose of disabled or emergency access. The entrance on Bayview Drive for the 900 Club may be used by patrons before 10:00 pm and the door shall remain closed when not in use. Patrons shall use the 9th Street entrance for access to the first floor and the door shall remain closed when not in use. The downstairs windows on Manhattan Avenue, and 9th Street shall be closed daily after 10:00 pm.
9. Background music through the house system, is allowed on both the first and second floors during all hours of operation, so long as the music cannot be heard with the unaided ear at the eastern-most edge of Bayview Drive and the southern edge of 9th Street.
10. Non-amplified sound (up to a total of three instrumental musicians and/or vocalists) shall be allowed on both the first and second floors during all operating hours, so long as the music cannot be heard with the unaided ear at the eastern-most edge of Bayview Drive and the southern edge of 9th Street. Musicians performing with non-amplified sound shall be allowed to use the back or side door for the loading and unloading of equipment during operating hours only.
11. Dancing is permitted on Friday and Saturday nights only. Dancing shall be limited to a 12 foot x 12 foot maximum area on the second floor.
12. A. The Business Operator (and its successors-in-interest if applicable) shall submit a complete application for an entertainment permit, pursuant to the process set forth in MBMC Chapter 4.20 applicable to Class I Permits, within 30 days of the date of this Resolution, and annually thereafter on or before the anniversary date of the initial issuance date in the event such permit is issued.
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B. The City may issue, issue with conditions, or deny the entertainment permit. In addition to the conditions that may be imposed pursuant to MBMC Section 4.20.080, any entertainment permit issued pursuant to this condition shall contain the following additional conditions: entertainment is permitted only: (a) on the second floor of the premises; (b) on Thursday, Friday, Saturday, or on a day of a "Special Event" as defined in Condition 10; and (c) for no more than 24 days per year. Entertainment is not permitted downstairs. The Business Operator shall provide written notification of the proposed entertainment to the Director of Community Development, the Police Department and each residence located on 9th Street between Highland Avenue and Manhattan Avenue and Bayview Drive between 9th Street and 10th Street a minimum of 7 days prior to such entertainment. For the purposes of this subsection B, "entertainment" shall mean any activity involving music, including but not limited to live bands, one or more performers of music, or amplified radio or pre-recorded music but shall not include background music allowed by Condition 6 or non-amplified sound allowed by Condition 7.
13. A maximum of 6 Special Events shall be allowed annually. For the purpose of this section, "Special Events" are events of more than 50 people for which there is a contract for exclusive use of the second floor of the venue. A security guard shall be on-site at all times during Special Events to ensure that operations comply with all conditions of approval, including but not limited to, noise, use of back door, litter, access, windows and doors being closed, and any other adverse impact on the neighborhood. If entertainment (as defined in Condition 9) is proposed for a Special Event, the day of the Special Event shall be included in the maximum allowable 24 days per year for entertainment, as specified in any permit issued pursuant to Condition No. 9. The Business Operator shall provide written notification of each Special Event to the

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Director of Community Development, the Police Department and each residence located on 9th Street between Highland Avenue and Manhattan Avenue and Bayview Drive between 9th Street and 10th Street a minimum of 7 days prior to such entertainment.

14. Noise emanating from the site shall not exceed maximum noise standards established by the Municipal Code and any applicable State Code. Outdoor sound equipment and outdoor amplification systems are prohibited. All doorways and windows shall remain closed during entertainment (as defined in Condition 9) and any Special Event (as defined in Condition 10) except as required for ingress and egress.
15. Three parking spaces shall be maintained on-site at the rear of the building.
16. Required access and exits shall remain unobstructed at all times in compliance with Fire and Building requirements.
17. The occupancy limits stated below shall not be exceeded and are required to be posted on-site downstairs and upstairs respectively at all times:
 - Downstairs Bar (downstairs) – 31
 - 900 Club (upstairs) – 92
18. All signs shall be in compliance with the City's Sign Code. Pole signs and internally illuminated awnings shall be prohibited. New signage stating that smoking is prohibited and occupants need to be respectful of neighbors shall be posted near the downstairs exit, subject to review and approval of the Director of Community Development.
19. An on-site manager shall be available at all times to actively address noise and other issues, be responsive to neighbors, and manage unruly patrons.
20. The operator shall provide the list of conditions for the business to all employees when they are hired and trained, include them in any employee handbook and make sure they are physically available at the bars both upstairs and downstairs.
21. All of the following noise mitigation measures that have not yet been installed shall be installed within 45 days and maintained at all times:
 - a. Tempered glass panels installed over each upstairs stained glass window along the south wall.
 - b. A separate tempered glass panel installed over the inside windows upstairs along the south rear hallway.
 - c. Double pane windows on Manhattan Avenue and 9th Street upstairs and downstairs.
 - d. Signage on the Bayview Drive rear door (inside and outside) to not enter or exit after 10:00 pm.
 - e. Sound curtains shall be installed on the double pane windows adjacent to Manhattan Avenue and 9th Street on the second floor.
 - f. The downstairs windows on Manhattan Avenue and 9th Street and the 9th Street door downstairs shall be closed daily after 10:00 pm.
 - g. A self-closing mechanisms shall be affixed to the downstairs 9th Street door.
 - h. Signage related to "no smoking and respecting neighbors" as described in condition #15.
22. The Business Operator's representatives shall police the property in all areas immediately adjacent to the premises to keep it free of litter, and shall undertake and implement all

reasonably necessary actions to discourage patrons from entering residential areas. Business Operator's representatives shall ensure all City and other governmental laws, rules, ordinances, regulations, codes, requirements, operating permits, and conditions are met, maintained and upheld. The Business Operator's representatives Management shall undertake and implement all reasonably necessary techniques to prevent loitering, unruliness, boisterous activities of patrons and limit all activities to comply with the City's Municipal Noise Ordinance.

23. The Community Development Department staff shall be allowed to inspect the site at any time. Management shall provide the Police, Fire, County Health Departments and the Alcoholic Beverage Control (ABC) with the key pad code for access any time. Management shall contact the Police Department the first of every month to advise of any key access code changes.

Procedural

24. At any time in the future, the Planning Commission or City Council may review the Use Permit for the purpose of revocation or modification. The Planning Commission or City Council may modify the Use Permit in any manner it deems necessary to protect the public health, safety, and welfare, and ensure that the activities on the premises do not adversely impact neighboring properties, including, but not limited to the following: limitation of hours; limitation of total occupancy; requiring valet parking; elimination of live entertainment or amplified sound; dancing or the establishment of any other condition deemed necessary to mitigate or alleviate impacts to adjacent land uses.
25. One year following the effective date of this Resolution, a duly noticed public hearing shall be conducted by the Planning Commission for the purpose of reviewing the subject Use Permit Amendment for compliance with all conditions.
26. This Resolution shall serve as the amended and restated Use Permit for the subject property. Resolution Nos. 5155, 3555, 5117, and 14-0063 shall no longer be in effect, however the facts and findings stated in Resolution No 14-0063 are incorporated into this Resolution by reference.
27. APPEAL. This Resolution shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
28. VIOLATION OF CONDITIONS: If within 45 days of this final approval the Use Permit is not complied with, the City may initiate revocation or modification proceedings. A violation of any of the conditions may result in further proceedings to consider revocation or modification of the Use Permit pursuant to MBMC Section 10.104.030.
29. Terms and Conditions are Perpetual; Recordation of Covenant. The provisions, terms and conditions set forth herein are perpetual, and are binding on 900 Club/Downstairs Bar, their respective successors-in-interest, and, where applicable, all tenants and lessees of 900 Club/Downstairs Bar. Further, 900 Club/Downstairs Bar shall record a covenant indicating its consent to the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The covenant is subject to review and approval by the City Attorney, 900 Club/Downstairs Bar shall deliver the executed covenant, and all required recording fees, to the Department of Community Development within 30 days of the adoption of this Resolution. If 900 Club/Downstairs Bar fails to deliver the executed covenant within 30 days, this Resolution shall be null and void and of no further effect. Notwithstanding the foregoing, the Director may, upon a request by 900 Club/Downstairs Bar, grant an extension to the 30-day time limit.
30. *Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City.* 900 Club/Downstairs Bar shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, volunteers, agents, and

those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from and against any claims, damages, actions, causes of actions, lawsuits, suits, proceedings, losses, judgments, costs, and expenses (including, without limitation, attorneys' fees or court costs) in any manner arising out of or incident to this approval, related entitlements, or the City's environmental review thereof. 900 Club/Downstairs Bar shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding. The City shall promptly notify 900 Club/Downstairs Bar of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify 900 Club/Downstairs Bar of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, 900 Club/Downstairs Bar shall not thereafter be responsible to defend, indemnify, or hold harmless the City or the Indemnitees. The City shall have the right to select counsel of its choice. 900 Club/Downstairs Bar shall reimburse the City, and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Section shall be construed to require 900 Club/Downstairs Bar to indemnify Indemnitees for any Claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the approval, the City shall estimate its expenses for the litigation. 900 Club/Downstairs Bar shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 3. The Secretary shall certify to the adoption of this Resolution and shall forward a copy of this Resolution to the applicant. The Secretary shall make this resolution readily available for public inspection.

I hereby certify that the following is a full, true, and correct copy of the Resolution as **ADOPTED** by the Planning Commission at its regular meeting on March 14, 2018 and that said Resolution was adopted by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Anne McIntosh
Secretary to the Planning Commission

Rosemary Lackow
Recording Secretary