RESOLUTION NUMBER 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA APPROVING PLANNING APPLICATION PA-16-55 FOR LIVE ENTERTAINMENT AT HOLIDAY (FORMERLY LION'S DEN AND MAISON) AT 719 WEST 19TH STREET

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Pacific Planning Group, representing Pange Family Trust, the property owner, requesting approval of a conditional use permit for the following:

- Conditional Use permit to allow live entertainment including, but not limited to, music, dancing, and open microphones, for an entertainment venue (Holiday, formerly Lion's Den and Maison) within 200 feet of residentially-zoned properties, and on-site valet parking. A current public entertainment permit allows disc jockey entertainment (DJ) and dancing. Proposed hours of operation are from 7:00 a.m. to 2:00 a.m., seven days a week; proposed hours for live entertainment are 11:00 a.m. to 2:00 a.m., seven days a week.

WHEREAS, a duly noticed public hearing was held by the Planning Commission on September 12, 2016 with all persons having the opportunity to speak for and against the proposal, and the project was approved by the Commission on a 5-0 vote.

WHEREAS, on September 19, 2016, the approval of PA-16-55 was called up for review by a council member.

WHEREAS, on November 15, 2016, a duly noticed public hearing was held by the City Council.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, the City Council hereby **APPROVES** PA-16-55.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for PA-16-55 and upon applicant's compliance with each and all of the conditions contained in Exhibit B as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to

review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 15th day of November, 2016.

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

CITY CLERK OF THE
CITY OF COSTA MESA

APPROVED AS TO FORM:

CITY ATTORNEY

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, BRENDA GREEN, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution Number 16__ as considered at a regular meeting of said City Council held on the _____, 2016, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the _____, 2016, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ___ day of _____, 2016

EXHIBIT A

FINDINGS (APPROVAL)

A. The proposed project complies with Title 13, Section 13-29(g)(2), conditional use permit and minor conditional use permit, of the Municipal Code due to the following:

- *The proposed use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area*. The proposed use, with the recommended conditions of approval, will be consistent with the other uses in the immediate vicinity. Compliance with the conditions of approval will allow this use to operate with minimal impact on surrounding properties and uses.

- *Granting the conditional use permit and minor conditional use permit will not be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood*. The use is an existing commercial project consistent with the C1 zoning of the property and residentially-zoned properties in the vicinity. Compliance with the applicable Building and Fire Safety Codes will ensure that the use is not materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

- *Granting the conditional use permit and minor conditional use permit will not allow a use, density, or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property*. The use is zoned C1 (Local Business District) and has a General Plan Designation of General Commercial. The use, as conditioned, is consistent with the applicable provisions of the General Commercial General Plan Designation. The request, as conditioned, is consistent with the following policy of the 2015-2035 General Plan.

  - **Policy LU-3.1:** *Protect existing stabilized residential neighborhoods, including mobile home parks (and manufactured housing parks), from the encroachment of incompatible or potentially disruptive land uses and/or activities.*

B. The project is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15301 for Existing Facilities. This project site contains an existing building with no increase in total floor area for the building proposed. The project, as conditioned, is consistent with the applicable General Plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

C. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT B

CONDITIONS OF APPROVAL

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1. The use shall be limited to the type of operation as described in the staff report. Any change in the operational characteristics including, but not limited to, the hours of operation indicated (7:00 a.m. to 2:00 a.m., seven days a week for the venue; 11:00 a.m. to 2:00 a.m., seven days a week for live entertainment), shall require review by the Planning Division and may require an amendment to the conditional use permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change. The applicant is reminded that Code allows the Planning Commission to modify or revoke any planning application based on findings related to public nuisance and/or noncompliance with conditions of approval [Title 13, Section 13-29(o)].
2. Entertainment shall include, but not be limited to, amplified live music, dancing, DJ, and open microphones. Any change to the operational characteristics shall require approval of an amendment to the conditional use permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change.
3. Any music or live entertainment, including a DJ and/or dancing, may only be permitted subject to City issuance of a "Public Entertainment Permit" on an annual basis. Within 15 days of the approval of the CUP, the applicant shall submit an application for the Public Entertainment Permit to the Community Improvement/Code Enforcement Division. The initial approval of this permit will be temporary for a probationary period of six months and may only become a permanent yearly renewal when the following conditions are met:
   a) Within one month of the approval of the CUP, the applicant shall remit a noise study by an acoustical engineer which identifies the noise levels at the rear property line abutting the residential properties. Noise monitoring shall occur for a four-hour period from 11:00 a.m. to 2:00 a.m. for a minimum of 4 different types of events (live bands, DJ, open microphone, and dancing). Study shall provide conclusions as to whether or not the operations of the bar/lounge comply with the City's Noise Ordinance with regard to the adjacent residences. Study shall make recommendations that shall be implemented by the applicant to reduce noise levels (as applicable) to ensure compliance with the Noise Ordinance. The Development Services Director may impose additional conditions as necessary to mitigate noise issues.
4. If staff determines that a violation of the noise ordinance has occurred, the Public Entertainment Permit may be placed into suspension and all entertainment approved under this conditional use permit must cease. Staff will work with the applicant to

mitigate the violation and may make recommendations. This includes, but is not limited to, the lifting of the suspension, a change of status in the Public Entertainment Permit from a permanent to probationary status, and/or a recommendation for change/revocation to the conditional use permit.

5. The rear doors shall remain closed during any performance of live entertainment, pre-recorded music, and dancing.
6. The conditions of approval and ordinance or code provisions of planning application PA-16-55 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
7. The maximum occupancy, as determined by provisions of the Uniform Building Code or other applicable codes, shall be posted in public view within the premises, and it shall be the responsibility of management to ensure that this limit is not exceeded at any time.
8. There shall be no room or designated area reserved for the exclusive use of designated persons or "private club members."
9. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The operator and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
10. There shall be no sales of alcoholic beverages for off-site consumption.
11. For establishments with a State Alcoholic Beverage Control (ABC) License, all sales and service staff (within 90 days of hire) shall complete Responsible Beverage Service (RBS) training with a provider approved by the California Department of Alcoholic Beverage Control. A copy of the training certificates shall be kept on premises and presented to any authorized City official upon request.
12. Parking for patrons and employees of the business shall occur on-site. Patron parking shall be restricted to the front parking area only; employee parking shall be restricted to the rear parking area only.
13. The parking lot shall be posted with signs directing customers and employees to use consideration when entering their cars and leaving the parking lot.
14. The valet parking plan shall be subject to the following:
    a) The valet parking plan shall be reviewed and approved by the Transportation Services Division prior to implementation.
    b) The valet station(s) shall be located on private property in areas that do not interfere with parking for other properties, drive aisles, public alleys, or public streets.
    c) Valet parking shall occur on-site only. No valet parking may occur on any other property or in any public alley or public street.
    d) Valet parking shall specify the hours it will take place.
    e) To minimize impacts to adjacent residential properties, drop-off and pick-up of customer cars shall not occur within the parking

area at the rear of the property.

f) Parking spaces not reserved for valet parking shall remain open and unobstructed for customer self-parking.

15. An adequate number of security personnel, as determined by the Police Department Crime Prevention Bureau and/or the Development Services Director, shall be provided to ensure that all parking lots are monitored during the days and hours the business is in operation. Security personnel shall provide parking management, noise control, loitering prevention, as well as general security of all parking areas on and immediately abutting the subject site.
16. Operator shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas under which applicant has control, to prevent trash, graffiti and littering. Any lighting under the control of applicant shall be directed in such a manner so as not to unreasonably interfere with the quiet enjoyment of nearby residences. Applicant shall further provide adequate lighting above the entrance to the premises sufficient in intensity to make visible the identity and actions of all persons entering and leaving the premises.
17. The intensity and location of lights shall be limited to minimize nighttime light and glare to residents and shall be subject to the Development Services Director's approval.
18. All site lighting fixtures shall be provided with a flat glass lens. Photometric calculations shall be submitted and shall indicate the effect of the flat glass lens fixture efficiency.
19. Lighting design and layout shall limit light spillage to no more than 0.5 foot-candles at the property line of residential properties, consistent with the level of lighting that is determined necessary for safety and security purposes on site. Light standards near residential properties shall be shielded in such a way as to minimize light spillage onto surrounding properties.
20. The operator shall maintain free of litter all areas of the premises under which applicant has control.
21. A copy of the conditions of approval shall be kept on the premises and presented to any authorized City Official upon request. New business/property owners shall be notified of conditions of approval upon Transfer of business or ownership of land.
22. The applicant shall defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of, or which are in any way related to, the applicant's project, or any approvals granted by City related to the applicant's project. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in

connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the applicant's obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section. City shall have the right to choose its own legal counsel to represent the City's interests, and applicant shall indemnify City for all such costs incurred by City.

23. The project is subject to compliance with all applicable Federal, State, and local laws. A copy of the applicable Costa Mesa Municipal Code requirements has been forwarded to the Applicant and, where applicable, the Authorized Agent, for reference.

CODE REQUIREMENTS

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

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1. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.
2. Hours of construction shall comply with Section 13-279, Title 13, of the Costa Mesa Municipal Code.
3. Any mechanical equipment such as air-conditioning equipment and duct work shall be screened from view in a manner approved by the Planning Division.
4. All exits shall be clearly marked with "EXIT" signs.
5. Outdoor public communication systems shall not be audible in adjacent residential areas.

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6. Comply with the requirements of the 2013 California Building Code, 2013 California Residential Code, 2013 California Electrical Code, 2013 California Mechanical Code, 2013 California Plumbing Code, 2013 California Green Building Standards Code and 2013 California Energy Code (or the applicable adopted, California Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Green Building Standards, and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa.

SPECIAL DISTRICT REQUIREMENTS

The requirements of the following special districts are hereby forwarded to the applicant:

Sani.	1.	Applicant shall contact Costa Mesa Sanitary District at (949) 654-8400 for any additional district requirements.
AQMD	2.	Applicant shall contact the Air Quality Management District (AQMD) at (800) 288-7664 for potential additional conditions of development or for additional permits required by AQMD.
Water	3.	Customer shall contact the Mesa Water District – Engineering Desk and submit an application and plans for project review. Customer must obtain a letter of approval and a letter of project completion from Mesa Water District.
State	4.	Comply with the requirements of the California Department of Food and Agriculture (CDFA) to determine if red imported fire ants (RIFA) exist on the property prior to any soil movement or excavation. Call CDFA at (714) 708-1910 for information.

RESOLUTION NUMBER 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA DENYING PLANNING APPLICATION PA-16-55 FOR LIVE ENTERTAINMENT AT HOLIDAY (FORMERLY LION'S DEN AND MAISON) AT 719 WEST 19TH STREET

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Pacific Planning Group, representing Pange Family Trust, the property owner, requesting approval of a conditional use permit for the following:

- Conditional Use permit to allow live entertainment including, but not limited to, music, dancing, and open microphones, for an entertainment venue (Holiday, formerly Lion's Den and Maison) within 200 feet of residentially-zoned properties, and on-site valet parking. A current public entertainment permit allows disc jockey entertainment (DJ) and dancing. Proposed hours of operation are from 7:00 a.m. to 2:00 a.m., seven days a week; proposed hours for live entertainment are 11:00 a.m. to 2:00 a.m., seven days a week.

WHEREAS, a duly noticed public hearing was held by the Planning Commission on September 12, 2016 with all persons having the opportunity to speak for and against the proposal, and the project was approved by the Commission on a 5-0 vote.

WHEREAS, on September 19, 2016, the approval of PA-16-55 was called up for review by a council member;

WHEREAS, on November 15, 2016, a duly noticed public hearing was held by the City Council.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, the City Council hereby **DENIES** PA-16-55.

PASSED AND ADOPTED this 15th day November, 2016.

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

CITY CLERK OF THE
CITY OF COSTA MESA

APPROVED AS TO FORM:

CITY ATTORNEY

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, BRENDA GREEN, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution Number 16__ as considered at a regular meeting of said City Council held on the _____, 2016, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the _____, 2016, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ___ day of _____, 2016

EXHIBIT A

FINDINGS

A. The proposed project does not comply with Title 13, Section 13-29(g)(2), conditional use permit and minor conditional use permit, of the Municipal Code due to the following:

- The proposed use is not substantially compatible with developments in the same general area and would be materially detrimental to other properties within the area. The proposed use, is not consistent with the other uses in the immediate vicinity.

- Granting the conditional use permit and minor conditional use permit will be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood. The use is not consistent with residentially-zoned properties in the vicinity. The use is not materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood due to noise impacts.

- Granting the conditional use permit and minor conditional use permit will allow a use, density, or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property. The use is zoned C1 (Local Business District) and has a General Plan Designation of General Commercial. The project is not consistent with the applicable provisions of the General Commercial General Plan Designation. The request is not consistent with the following goals and objectives of the General Plan:

  - Policy LU-3.1: Protect existing stabilized residential neighborhoods, including mobile home parks (and manufactured housing parks), from the encroachment of incompatible or potentially disruptive land uses and/or activities.

B. The Costa Mesa City Council has denied Planning Application PA-16-55. Pursuant to CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.

C. The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.