

1 RESOLUTION NO. PC 14-08

2 RESOLUTION OF THE MANHATTAN BEACH PLANNING  
3 COMMISSION APPROVING AN AMENDMENT TO A MASTER USE  
4 PERMIT ALLOWING NOISE MITIGATION MEASURES, FULL FOOD  
5 SERVICE AND MARKETING, SPECIAL EVENTS ON THE TERRACE,  
6 MODIFIED ALCOHOL SERVICE HOURS ON THE SKYDECK, AND  
7 INSTALLATION OF ARCHITECTURAL IMPROVEMENTS AT THE  
8 SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE  
9 (MANHATTAN INN OPERATING COMPANY, LLC - MICHAEL A.  
10 ZISLIS, OWNER)

11 THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH,  
12 CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

13 SECTION 1. The Planning Commission hereby makes the following findings:

- 14 A. Manhattan Inn Operating Company, LLC ("Applicant") seeks City approval of an amendment to the  
15 Master Use Permit for the Metlox project related to the Shade Hotel ("subject property"). Pursuant  
16 to Manhattan Beach Municipal Code Section 10.84, Planning Commission approval is required for  
17 the proposed modifications.
- 18 B. The Planning Commission conducted public hearings regarding the application on February 12,  
19 March 12, April 23, and May 28, 2014. The public hearings were advertised pursuant to applicable  
20 law and testimony was invited and received.
- 21 C. The original Master Use Permit was approved by the City Council in July 2002 through Resolution  
22 Nos. 5770 and 5771 and includes a two-story subterranean public parking structure with a public  
23 Town Square on top of the parking deck, as well as a commercial development approximately  
24 63,850 square feet in area. The commercial development includes a 38-room hotel, the Shade  
25 Hotel.
- 26 D. An Amendment to the Master Use Permit related to the Shade Hotel was approved in 2005 through  
27 Resolution No. PC 05-08.
- 28 E. An Amendment to the Master Use Permit was approved in 2010, on appeal, through City Council  
29 Resolution No. 6275, but it was never implemented and has since expired.
- 30 F. The Applicant's initial application requested an Amendment in order to incorporate the following  
31 revisions to the Master Use Permit:
- 32 1. Noise Mitigation Measures: Installation of revolving front door adjacent to Valley Drive (and a  
non-revolving disabled access door), on the Terrace; sound glass enclosure on the south side t  
corner, sealing of "gaps", acoustic absorbent panels and "clouds" on the ceiling , and curtains.
  2. Full Food Service and Marketing: Throughout the entire Hotel, allow breakfast, lunch and dinner  
service open to all. Increase hours of operation in the Zinc Bar and Lobby, the Terrace,  
Courtyard and Skydeck to also allow daytime and late night service daily. Allow posting of  
menus in front of the Terrace, and advertising, marketing and promotion of the full food service  
and the Zinc Bar and Lobby.
  3. Special Events on the Terrace: Allow events to be scheduled during the daytime and late night;  
currently special events are not specified on the Terrace. Increase occupancy to 90 occupants,  
currently 47.
  4. Skydeck (roof deck): Allow later service of alcohol on the Skydeck; currently alcohol service  
until 9:00 PM, food and non-alcoholic drinks until 10:00 PM with closing at 10:00 PM.
  5. Awnings, curtains and decorative lighting: Allow on the Terrace; new decorative metal shade  
awnings on the south side , curtains surrounding, and lights on support posts. New fiberglass  
canopy over the existing metal arches at the front entry off of Valley Drive.

- G. In response to comments from the Commission, staff and the public, the Applicant has modified the project as follows:
1. A front door vestibule in lieu of a revolving door
  2. Full food service (breakfast, lunch and dinner) only on the entire Terrace and several tables in the Zinc Bar and Lobby, not throughout the entire hotel. Full food service in other areas only during special events and functions. Limited food service, primarily small-plates, to continue in the majority of the Zinc Bar and Lobby, the Skydeck and the conference room. The Courtyard would continue to only be used for special events and functions. A full scale restaurant is not proposed; the primary use will continue to be a hotel.
  3. The Terrace occupancy will remain at 47 occupants, not increased to 90.
  4. The proposed fiberglass canopy over the existing metal arches at the front entry off of Valley Drive will not be installed.
  5. Replace the existing non-acoustic curtains surrounding the Terrace with acoustic curtains to mitigate noise.
- H. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission. An amendment to the Coastal Permit will not be required to be processed as there are no relevant coastal issues related to the subject application, as there is no intensification of use or increase in occupancy as the occupancy remains the same as originally approved by the City of Manhattan Beach Fire Department and posted on the site in 2005. The food and drink services and other services offered by the hotel will continue to be accessory to the primary hotel use, which currently is a first-class visitor serving full-service hotel use with food, drink and event services.
- I. An Environmental Impact Report (EIR) for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. The proposed Amendment, as revised, is within the scope of the EIR, and will not cause any significant environmental impacts or more severe environmental impacts that have not been analyzed in the EIR. In fact, as stated throughout these findings, the Amendment, as revised, has the potential to further reduce impacts related to noise. The EIR is the appropriate environmental document to analyze the proposed Amendment, as revised, inasmuch as: (1) there are no substantial changes in the Project that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) no substantial changes have occurred with respect to the circumstances under which the Project is undertaken that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was adopted, showing that: (a) the Project will have one or more significant effects not discussed in the previous EIR; (b) there are significant effects previously examined that will be substantially more severe than shown in the previous EIR; (c) there are mitigation measures or alternatives previously found not to be feasible that would in fact be feasible and would substantially reduce one or more significant effects of the project, but the City declines to adopt the mitigation measure or alternative; or (d) mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effect on the environment, but the City declines to adopt the mitigation measure or alternative. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The EIR is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerk's office, located at 1400 Highland Avenue, Manhattan Beach, CA 90266, as well as on the City's website. The custodian of these records is Angela Soo, Community Development Department Executive Secretary.

- 1 J. The property is located within Area District III and is zoned Downtown Commercial. The properties  
2 to the west and south are also zoned Downtown Commercial, the property to the north is zoned  
3 Public and Semipublic, and the property to the east is zoned Open Space, with Single Family  
4 Residential and High Density Residential to the east past Valley and Ardmore Drives.
- 5 K. The General Plan designation for the property is Downtown Commercial.
- 6 L. The primary use and purpose of Shade Hotel, is and will continue to be, to serve the community as  
7 a hotel offering first-class accommodations to visitors. The hotel may also offer special event,  
8 function, food, and other similar support services as secondary uses, subject to conditions.  
9 Marketing and promotion of the hotel shall be consistent with these uses as provided in the  
10 conditions.
- 11 M. Resolution No. PC 05-08 approved an Amendment to a Master Use Permit, to allow modifications to  
12 the previously approved alcohol sales and special events and describes the current approved  
13 business operations and project as follows: Breakfast Service in the Living Room (Zinc Bar and  
14 Lobby), Porch (Terrace), and/or Courtyard from 6:00 AM to 10:00 AM Monday-Friday and 6:00 AM-  
15 11:00 AM Saturday and Sunday. The "Wine Bar" (Zinc Bar) to operate in the evenings from 5:00 PM  
16 to 11:00 PM daily, with flexibility for earlier hours based on the needs of the customer. Wedding,  
17 party, and other special event services in the Courtyard, Meeting Room (Conference/Green Room),  
18 and Living Room, as a secondary service to the primary Inn use. These types of events are limited  
19 to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday  
20 and Saturday. The availability of the Inn (Shade Hotel) for special events shall not be marketed as  
21 the primary use. The Hotel may provide full liquor service throughout the Hotel, including self-  
22 service in room "mini-bars", and a portable bar for special events. The service of alcohol at the  
23 Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol  
24 service, shall be consistent with the project description, which is generally breakfast, evening  
25 appetizers and for special events. The Wine Bar shall limit its food menu to appetizers or "small  
26 plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license.  
27 The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast  
28 may be served daily in the Living Room, Porch, and/or Courtyard. Shade Hotel shall not post any  
29 drink or food menus, or any drink or food signage outside of the hotel. The Sun Deck (Skydeck)  
30 shall stop regular alcohol service no later than 9:00 p.m. daily. Alcohol service at events and  
31 functions shall stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday;  
32 11:30 p.m., Friday and Saturday.
- 23 N. Four independent acoustics analyses were conducted by Don Behrens & Associates, two under the  
24 direction of the Community Development Department. The first reports, dated September 30 and  
25 October 7, 2013, are continuous Sound Monitoring Reports from three residential locations across  
26 the street from Shade Hotel to the east on Valley Drive. The reports continuously recorded the noise  
27 received by these properties from Friday September 20 through Friday October 4, 2013. The  
28 reports indicate that the average hourly sound levels in the area range between a low of about 35 to  
29 47 dBA, and a high between about 51 to 69 dBA. The highest levels of noise occur during the  
30 daytime, typically 9:00 AM to 7:00 PM, and the lowest levels of noise typically occur between 2:00  
31 AM and 4:00 AM. The Shade Hotel is not shown to significantly alter the noise levels in the area.  
32 The noise from the Shade Hotel does not exceed the objective noise standards in the Manhattan  
Beach Municipal Code (MBMC); the subjective standard was not evaluated in the reports. The  
actual noise measurements and continuous noise monitoring was conducted during several large  
events on the Skydeck, in the Courtyard, and in the Lobby.
- 23 O. A report dated February 4, 2014 was submitted by the Applicant to evaluate certain noise mitigation  
24 measures, based on the proposed architectural plans, dated December 10, 2013. The report  
25 provides an assessment and recommendations for the Applicant's proposed noise mitigation  
26 measures and indicates a noise reduction of up to 6 dBA at the residences, with the south side  
27 Terrace noise mitigation being most effective. Three-dimensional modeling of noise to assess  
28 various mitigation measures was also constructed.

- P. The Applicant also requested an analysis of the data from the continuous sound monitoring reports prepared for the City in September/October 2013, to determine the source of single-event noise increases above the average sound levels. The twelve instances analyzed show noise levels ranging from 68.2 to 99.5 dB. None of these single-event noise events were attributable to the Shade Hotel but instead were attributable to vehicles, mainly emergency vehicles, and airplanes. The Fire and Police station is directly to the north of the Shade Hotel across 13<sup>th</sup> street and emergency vehicles exit and enter from that location, sometimes onto Valley Drive.
- Q. After the February 12, 2014 Planning Commission meeting, City staff contracted with the noise consultant to evaluate additional possible noise mitigation measures for the hotel. The consultant's report dated April 16, 2014 indicates that the only really effective and clearly significant noise mitigation improvements would be the combination of a door on the Terrace entrance and new upgraded sound curtains, which would achieve a minimum decrease of 5 dBA, which is considered to be clearly noticeable. Three-dimensional modeling of noise to assess various mitigation measures was also constructed. Mitigation is incorporated into the conditions based on all of these evaluations and recommendations, public hearing comments and Planning Commission discussion and direction.
- R. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- S. Based upon State law and MBMC Section 10.84.060, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
  - 1. 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 since the proposed amendments to the use permit for Shade Hotel are consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the City and region. The project will strengthen the City's economic base. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts through the conditions of approval, which require physical noise mitigation and operational revisions.
  - 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 since the proposed amended use permit is consistent with the General Plan for the Commercial Downtown designation because it is granting additional privileges to already approved uses that will result in minimal fundamental changes of those uses. Amending the use permit will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the hotel facility. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city, due to the conditions placed on the amended Use Permit and the additional mitigation measures related to noise that will be implemented. Additionally, the project is consistent with the following General Plan Goals and Policies:

**GOALS AND POLICIES: LAND USE**

**Goal LU-5: Protect residential neighborhoods from the intrusion of inappropriate and incompatible uses.**

Policy LU-5.2: Work with all commercial property owners bordering residential areas to mitigate impacts and use appropriate landscaping and buffering of residential neighborhoods.

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Policy LU-5.4: Discourage the outdoor commercial and industrial use of property adjacent to residential use.

Policies LU-5.7, 6.4 and 7.6: Recognize the unique qualities of mixed-use areas, and balance the needs of both the residential and commercial uses.

**Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.**

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

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

Policy LU-7.1: Encourage the upgrading and growth of businesses in the Downtown area to serve as a center for the community and to meet the needs of local residents and visitors.

**GOALS AND POLICIES: NOISE**

**Goal N-2: Incorporate noise considerations into land use planning decisions.**

Policy N-2.2: Ensure acceptable noise levels near residences, schools, medical facilities, and other noise-sensitive areas.

Policy N-2.5: Require that the potential for noise be considered when approving new development to reduce the possibility of adverse effects related to noise generated by new development, as well as impacts from surrounding noise generators on the new development.

Policy N-3.4: Recognize in the Noise Ordinance that nighttime noise levels create a greater sensitivity than do daytime noise levels.

- 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 because, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the implementation of the new modifications. The proposed amended use permit is consistent with the already approved primary and secondary uses of the facility. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors, with accessory food, drink and event services.
- 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. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the hotel facility, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities. Additionally the conditions of approval require installation of noise mitigation on the Terrace and front door, limitations on hours of operation, special events, sales and service of alcohol, food and drinks, entertainment, amplified sound, security, marketing, closing of doors and windows, limitations on valet, taxis, queue, staff parking, buses, and drop off.
- T. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution supersedes Resolution No. PC 05-08. It also amends Condition Nos. 28 and 38 of Resolution No. 5770, all other conditions in that Resolution (unless amended by other separate Resolutions for other Metlox tenants) remain effective and in full force.

SECTION 2. The Planning Commission hereby APPROVES the subject Master Use Permit Amendment, including new Noise Mitigation Measures, modifications to Food Service, marketing, Special Events on the Terrace, and alcohol service modifications, and awnings, curtains and lighting as shown in the concept plan dated February 4, 2014, subject to the following conditions:

Entertainment and Noise

1. General. The Director of Community Development shall not reduce restrictions or conditions as set forth in this Amendment, without approval by the Planning Commission, with notice to property owners within a 500 foot radius with standard notice procedures.
2. Noise Mitigation and other improvements. The following noise mitigation measures, as shown on the approved concept plans dated February 4, 2014, are required to be installed, and to include the following sound specifications: a) All new glass shall be acoustic glass rated at Sound Transmission Coefficient STC-36 or better; b) All new acoustic absorbers shall be rated at Noise Reduction Coefficient (NRC) of 0.85 or better; and, 3) All assemblies and gaps acoustically sealed:
  - A) A new front door vestibule adjacent to Valley Drive with acoustic glass. The existing laminated glass building wall may remain.
  - B) A new acoustic glass enclosure on the south wall of the southeast corner of the Terrace located from the top of the existing glass rail to the ceiling.
  - C) Acoustic sealing of all existing openings and gaps in the glass enclosure on the southeast corner of the Terrace.
  - D) Acoustic absorbent panels on the ceiling and suspended acoustic panel "clouds" below the ceiling of the Terrace.
  - E) Acoustic curtains surrounding the Terrace on all sides in the areas where there is not a floor-to-ceiling glass enclosure, except the curtain above the access steps on the south side of the Terrace, which shall be a minimum of 7 feet 6 inches above the finished floor of the Terrace. Curtains are not required on the west side of the Terrace.
3. Public Areas-Venue (definition). Any area or space open to the public where sales, service and consumption of food, alcohol, and other beverages is permitted.
4. Special events and functions (definition).
  - A) Special Events are private events in which an unaffiliated third party under contract has exclusive use of one or more venues or a portion of a venue. Attendees at special events shall have an invitation from the host client, with the exception of non-profit or charity types of events such as the Downtown Holiday Open House, Charity Education Wine Events, and Chamber of Commerce events.
  - B) Functions are generally "themed" public events held periodically for the general public, up to twelve (12) per year, such as, Halloween, New Years, Valentines, St Patrick's Day, Manhattan Beach Open, Surf Festival, Mothers Day, Fathers Day and Six-Man.
  - C) Special Events and functions with over 100 people require pre-approval from the Community Development Department through the annual Entertainment Permit, and notification of the Fire Department.
5. Special Events and functions and required noise mitigation improvements- All noise mitigation improvements as detailed in Conditions No. 2, 7-9, 15, and 24-31 must be completed to the satisfaction of the Community Development Director within 5 months of the final approval of this Amendment. No special events or functions after 10:00 PM with more than 100 people may take place during this 5 month period unless they have been booked prior to the approval of this Amendment. After this 5 month period no special events shall be conducted after 10:00 PM with more than 100 people, until all of the required noise mitigation improvements are completed to the satisfaction of the Community Development Director.
6. Entertainment and amplified sound- Non-amplified music and sound is permitted in all public areas/venues described in Condition No. 19 subject to meeting the MBMC Noise regulations, with the exception that none is permitted on the Terrace. All amplified music and sound, including live

1 entertainment and live music, shall use the house system only and shall be limited to background  
2 music, including background music with DJ's, with the following exceptions:

- 3 A) Courtyard-Microphones are allowed only prior to 10 PM and shall use the house system only;
- 4 B) Terrace- Background music through house system only is allowed. No DJ's, microphones, live  
5 entertainment, live music, amplified (other than background music through house system) or  
6 non-amplified sound.
- 7 C) Skydeck- Microphones are allowed and shall use the house system only. No amplified live  
8 entertainment or amplified live music is permitted. Microphone use shall end at the same time  
9 as food and drink service, which is 9:30 PM.
- 10 D) Zinc bar and Lobby-Amplified sound for DJ's, live entertainment or live music, other than  
11 background music is permitted, provided all doors and windows leading to the outside, including  
12 those adjacent to the Courtyard, shall remain closed at all times, except when patrons and staff  
13 are entering and exiting.

14 7. House sound amplification system - The house sound amplification system and any changes shall be  
15 reviewed and approved by the Director of Community Development.

16 8. Terrace enclosure- A new acoustic glass enclosure on the south wall of the southeast corner of the  
17 Terrace located from the top of the existing glass rail to the ceiling, acoustic sealing of all existing  
18 opening in the glass enclosure on the southeast corner, acoustic absorbent panels on the ceiling  
19 and suspended acoustic panel "clouds" below the ceiling of the Terrace shall be installed.

20 The existing curtains shall be replaced within 5 months with acoustic curtains that shall surround the  
21 Terrace on all sides in the areas where there is not a floor-to-ceiling glass enclosure, except the  
22 access steps on the south side shall have curtains that are a minimum of 7 feet 6 inches above the  
23 finished floor of the Terrace to allow required emergency access. Additionally, curtains shall not be  
24 required on the west side of the Terrace, but if they are installed, they shall not be higher than 12  
25 feet above the finished floor of the Terrace floor so that the top portion is always open to provide  
26 ventilation to meet Fire Department and Building Safety requirements.

27 The curtains shall remain open in the daytime and closed at nighttime, starting at 9:00 PM at the  
28 latest and then open again at 11:30 PM. Curtains may also be closed at anytime during inclement  
29 weather; such as cold or rain. Closure of curtains may be subject to special conditions by the Fire  
30 Department.

31 Existing heaters or other patio features shall be modified as required to meet Fire and Building  
32 Safety requirements. No temporary heaters, umbrellas, covers or other features that violate Fire and  
33 Building Safety requirements shall be placed on the Terrace. The applicant shall verify, to the  
34 satisfaction of the Fire Department, that the heaters may be operational when the curtains are  
35 closed or the heaters shall be turned off when the curtains are closed. An emergency gas shut-off  
36 for the heaters shall be installed at the ground level in an accessible location. An emergency strobe  
37 light shall be provided on the Terrace.

38 The Terrace and all improvements shall meet all Building Safety, Fire and other City requirements,  
39 including but not limited to emergency egress and accessibility requirements.

40 9. Front (East) Main Entryway- The existing primary front entrance/exit doors shall be replaced with a  
41 double-door vestibule.

42 The double-door vestibule shall include self-closing doors, or a similar device or door hardware, so  
43 that doors close automatically instead of remaining open. . The vestibule shall be large enough to  
44 allow gurney access. Between 10:00 PM and 6:00 AM both sets of doors will remain in the  
45 automatic closed position and not propped open. This is to mitigate noise from escaping out of the  
46 front door to the east.

47 The doors shall meet all Building Safety, Fire and other City requirements, including but not limited  
48 to emergency egress and accessibility requirements.

10. Courtyard- Only special events and functions may use the courtyard. No general public gatherings permitted in the courtyard, and no "spillover" from the Zinc bar and lobby or other public areas.
11. Zinc bar and Lobby interior separation wall- A separation wall or retractable partition as detailed in Finding "O." of Resolution No. PC 05-08 is not required to be installed.
12. Sound audibility- Noise emanating from the site, including but not limited to the volume of music, entertainment, group singing or group voices, whether or not amplified, shall comply with Section 5.48.140 of the MBMC and the California Penal Codes. All doorways and windows shall remain closed at all times during special events or functions in indoor areas after 10:00 PM.
13. Entertainment Permit- Each year, the hotel shall apply for an annual entertainment permit on or before March 1, in accordance with Condition 40 in Resolution 5770, Metlox Master Use Permit. Special events and functions with more than 100 people require an Entertainment Permit, which shall be subject to conditions imposed by the Community Development Director.
14. Resident notification- The hotel shall e-mail to adjacent neighbors who sign-up, the schedule of special events and functions sent to the City, excluding client information.
15. Balconies- A permanent notice shall be placed on or near the doors to the hotel room balconies informing guests to be respectful of the neighbors at all times and to make no noise on the balconies or outside after 10:00 PM.
16. Exterior Doors- All exterior doors and windows to the public areas of the hotel facility shall be closed after 10:00 PM.
17. Noise Compliance Verification- The privileges within this Use Permit shall only be granted after the installation of the mitigation measures, implementation of the improvements, and modifications to the operations of the facility. After completion of these requirements, the Community Development Director, in cooperation with the Noise consultant, shall determine if the measures are effective and meeting the objective noise criteria and mitigation standards described in the previously submitted Noise reports.
18. Closed-definition.
  - A) Outdoor Public Areas/Venues- Terrace and Courtyard
    - a) 30 minutes prior to closed- No sales or service of alcohol, food or any drinks.
    - b) Closed- No sales, service or consumption of alcohol, food or any drinks. At closed time, all drinks, food and other associated items shall be removed. Music and/or amplification shall be turned off or end, and lights turned up or turned off. All areas vacated, except staff may remain for one hour after closed.
  - B) Outdoor Public Area/Venue- Skydeck
    - a) 60 minutes prior to closed- (9:30 PM) No sales or service of alcohol, food or any drinks.
    - b) 30 minutes prior to closed- (10:00 PM) Any music, and/or amplification shall be turned off or end, and lights turned up or turned off. Staff shall remind customers of the closed time.
    - c) Closed- (10:30 PM) No sales, service or consumption of alcohol, food or any drinks.. At closed time, all drinks, food and other associated items shall be removed. All areas vacated, except staff may remain for one hour after closed.
  - C) Indoor Public Area/Venue-(Zinc Bar and Lobby)  
Consumption of alcohol, food and drinks is allowed up until closed time.
    - a) Closed- No sales, service or consumption of alcohol, food or any drinks at closed time. At closed time, all drinks, food and other associated items shall be removed. Background music only through the house system permitted, no DJ's or live entertainment or live music. All areas vacated, except staff may remain for one hour after closed. All doors and windows, including the folding doors/wall on the east side of the Lobby that opens onto the Courtyard, shall remain closed.



19. Hours of operation – See condition #18 for definition of closed and further regulations for when Public Areas/Venues are closed. See condition No. 32 for food service regulations. Although the hotel is a 24-hour operation and is the primary use on the site, there are limits to the hours of operation on the secondary uses of the site for food, drink and alcohol service, events, and other activities, as addressed below and in other conditions.

<u>Public Area/Venue</u>	<u>Day-to-day Operations and Special Events and Functions Hours of Operation- Opening and Closing times</u>	<u>Occupancy</u>
<b><u>Outdoor Public Area/Venues</u></b>		
<b>Terrace-</b> south side of Zinc Bar and Lobby	6 AM to 10:00 PM Sunday thru Thursday 6 AM to 11:00 PM Friday, Saturday and Sunday before Holidays	47
<b>Courtyard-</b> Special events and functions only allowed; no day-to-day operations (pass-through area only)	6 AM to 11 PM Sunday thru Thursday 6 AM to 12 AM (midnight) Friday, Saturday and Sunday before Holidays	151
<b>Skydeck-</b> roof deck	8 AM to 10:30 PM daily	92
<b><u>Indoor Public Areas/Venues</u></b>		
<b>Zinc bar and Lobby</b>	6 AM to 12 AM (midnight) daily	159
<b>Conference (Green) Room</b>	24/7- 24 hours a day, seven days a week	44

A) Room service for alcohol is subject to ABC regulations of 6:00 AM to 2:00 AM. Room service for food is permitted 24/7.

B) New Years Eve- Closing hours for all venues as regulated by the MBMC. Currently may request 1:00 AM closing time through a Temporary Use Permit, except the Skydeck which shall close at the time specified above which is 10:30 PM.

General Conditions

20. Substantial Compliance- The proposed changes shall be in substantial conformance with the plans submitted, and the project description as approved by the Planning Commission, subject to any special conditions set forth in this amendment. The design, specifications and layout of sound mitigation measures is subject to further review and approval by the Director of Community Development, and the Planning Commission as determined to be necessary by the Director of Community Development. Any substantial deviation from the approved plans, or project description, shall require review by the Director of Community Development, who shall determine if Planning Commission review and a further amendment to the Master Use Permit or other approvals are required.

21. Occupancy Limits- Required occupancy loads shall not be exceeded and required access and exits shall remain unobstructed at all times. The exact occupancy numbers stated below are required to be posted on the site:  
 Skydeck – 92  
 Zinc Bar and Lobby – 159  
 Terrace/Porch-south side of Lobby- 47  
 Courtyard – 151  
 Conference (Green) Room - 44
22. Terrace Use- The terrace shall not be a conditioned interior space as defined by the Uniform Building Code.
23. Public property clean up- The Shade staff shall monitor the area so that Shade patrons do not litter or loiter on adjacent public property, including but not limited to the sidewalk, street, Metlox Town Square and all other public areas at Metlox. The hotel staff shall promptly clean up all areas with any litter and spills after all Special Events and Functions. Public Works may bill Shade for any Special event and Function related public property clean-up costs.
24. Security. The Hotel shall provide a 3<sup>rd</sup> party security staff person for all Special Events and Functions with over 50 persons, and any Special Event or Function that has amplified sound, live entertainment or live music after 10:00 PM, and for any Special Event or Function on the Skydeck that ends at 10:00 PM or later and has 50 or more people, or when required by the Fire Department. The Security staff shall supervise the site and surrounding area to ensure that all conditions of approval, including but not limited to noise, sales and service of food and drinks, access, windows and doors being closed, littering, loitering, occupancy limits, and any other nuisances are complied with. The Security staff shall work cooperatively, and meet periodically with the Police and Fire Departments, if requested.

Ingress-Egress Control

25. Valet- At 10:00 PM daily, customers using the Shade valet service shall wait inside of the lobby, not outside, until the valet arrives with their vehicle. The hours and days may be modified to be more, but not less, restrictive as determined to be necessary by the Director of Community Development. The valet shall keep all driving lanes, parking back up areas, and all vehicular and pedestrian accessways free and accessible to the general public, subject to approval of the Director of Community Development.
26. Taxis- Hotel employees shall discourage the public from using taxis on Valley Drive at 10 PM. Taxi pickups and drop-offs for the general public at the Shade entrance shall be prohibited at 10 PM. Everyone, except for registered hotel guests and disabled persons, shall be directed to the taxi stand on Morningside Drive and 13<sup>th</sup> Street, at 10:00 PM. Hotel staff may call for a taxi to pickup registered guests and disabled persons at the hotel entrance on Valley Drive at any time.
27. Entry-Exit Queue- At 10:00 PM, no queue or line or gathering of people waiting to enter or exit the Shade shall be located outside of the building except the queue may be located on the Terrace, or customers may be directed to the Metlox Town Square area near the outdoor fireplace and fountain and be provided with "beepers" or electronic notification devices.
28. Staff parking- The hotel shall instruct its employees, contract employees, contractors servicing events, and all others providing services to the Hotel to not park on the public streets east of Valley Drive, in the residential areas or in Parking Lot 8 (in the median of Valley and Ardmore). All parking shall be on the Metlox site or in other public parking structures or lots such as Lot 3. (at the southwest corner of Morningside Drive and 12<sup>th</sup> Street)
29. Buses- Any large transportation such as buses, oversized shuttles, or recreational vehicles shall not use the hotel drop off area on the east side after 10:00 PM daily, but shall load and unload off of Morningside Drive or 13th Street. The vehicles shall observe and comply with all parking regulations in these areas.

- 1 30. Town Square- Special Events and functions may not use the Town Square or other Public Open  
2 Areas unless prior approval is granted by the City. The Applicant shall work cooperatively with the  
3 management company, landlord, any security personnel and the City to ensure that Shade facility  
4 patrons are not gathering in the Town Square and public areas outside of the hotel and disturbing  
5 the neighbors after the hotel public areas are closed. The doorman or other Shade employee or  
6 security shall ensure that patrons do not leave the hotel facility premises with alcoholic beverages.
- 7 31. Front Drop Off- Vehicles occupying the drop off/driveway area in front of the hotel off Valley Drive  
8 shall not park on the curb or sidewalk or past the end of the south landscaped "island". Any  
9 temporary barricade across the driveway shall not block access to 12<sup>th</sup> Walk at the bollards. The  
10 area at Valley and 12<sup>th</sup> Walk by the bollards shall remain open, unobstructed and free of vehicles at  
11 all times, to allow for emergency vehicle access at the bollards, and vehicle access into the parking  
12 structure.

13 Food service

- 14 32. Food Service- The hotel may provide full food service (breakfast, lunch and dinner) on the entire  
15 Terrace. The Zinc Bar and Lobby may have up to twelve (12) seats of "spill-over" from the Terrace  
16 with full food service. Full food service may be provided in all other public areas only during Special  
17 Events and Functions. Food service, primarily small-plates, may be provided in the Zinc Bar and  
18 Lobby , and on the Skydeck only during the hours of operation. This shall not preclude 24-hour  
19 room service for food and non-alcoholic drinks, and room service of alcohol in compliance with ABC  
20 regulations. A full scale restaurant will not be provided; the primary use on the site will continue to  
21 be a hotel.

22 Marketing

- 23 33. Marketing-General- Marketing and promotion of the facility will be first and foremost as a hotel use.  
24 The availability of the hotel for Special Events and Functions, as well as food and the bar service,  
25 may be marketed as secondary uses, but not as the primary use. The hotel shall not advertise,  
26 market or promote drink or "happy hour" types of specials.
- 27 34. Menu Posting- The hotel may post drink or food menus or signage outside of the hotel, except that  
28 the hotel may not post information about any drink or "happy hour" types of specials. Any menu  
29 posted on the south side of the Terrace shall be adjacent to the outside of the Terrace and not  
30 extend past the existing planters on the south side.

31 Procedural

- 32 35. Review and Violations. All provisions of the Master Use Permit Amendment shall be reviewed by  
the Community Development Department within 6 months after completion of improvements and  
yearly thereafter. The Planning Commission may hold a public hearing within one year after the  
adoption of this Resolution to review the status of the implementation of the Resolution,  
conformance with the conditions of approval, and any related information as the Director of  
Community Development deems appropriate. At any time, the City may schedule a public hearing  
to consider revocation or modification of the Amended Master Use Permit as it relates to the Shade  
Hotel. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to  
adjacent land uses. If the Applicant fails to meet the conditions within this Resolution, the City will  
schedule a revocation or modification hearing.
36. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code  
Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.

37. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the Applicant to bind all future owners and possessors of the subject property to the terms and conditions. This permit and rights conferred in this approval shall not be effective until the applicant signs and returns an affidavit accepting the conditions of approval. The applicant shall file this affidavit with the Community Development Department within 30 days of the final approval and prior to issuance of any development or building permits pursuant to this approval. The format of the covenant shall be reviewed and approved by the City Attorney.
38. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
39. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
40. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
41. Legal. Applicant shall defend, indemnify, and hold 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") free and harmless from and against any and all claims (including, without limitation, claims for bodily injury, death, or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including, without limitation, attorneys' fees, consequential damages, disbursements, and court costs) of every kind and nature whatsoever (individually, a "Claim," collectively, "Claims"), in any manner arising out of or incident to: (i) this approval and related entitlements, (ii) the City's environmental review of this project, (iii) any construction related to this approval, or (iv) the use of the property that is the subject of this approval. Applicant 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 arising out of or incident to this approval, any construction related to this approval, or the use of the property that is the subject of this approval. The City shall have the right to select counsel of its choice. Applicant shall reimburse the City, and the other Indemnitees, for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Applicant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Applicant or Indemnitees. This indemnity shall apply to all Claims and liability regardless of whether any insurance policies are applicable. Nothing in this Section shall be construed to require Applicant 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 permit, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

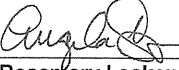
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SECTION 3.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of May 28, 2014 and that said Resolution was adopted by the following vote:

**AYES:** Chairperson Gross, Commissioners  
Ortmann, Andreani and Conaway  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** Paralusz

  
Richard Thompson,  
Secretary to the Planning Commission

 for  
Rosemary Lackow,  
Recording Secretary 