

RESOLUTION NO. 2022-XXX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2022-10 AS CONDITIONED TO ALLOW FOR AN ANCILLARY BANQUET FACILITY USE FOR PRIVATE EVENTS AT AN EXISTING CONCERT FACILITY AT 3503 SOUTH HARBOR BLVD

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The Planning Commission of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Jeffrey Thompson, representing Live Nation Worldwide, Inc., (current operator of The Observatory and project Applicant), on behalf of OC Constellation, LLC (Property Owner), is requesting approval of Conditional Use Permit (CUP) No. 2022-10 to allow for an ancillary banquet facility use for private events at an existing concert facility at 3503 South Harbor Blvd.
- B. On October 17, 1994, the Planning Commission approved CUP No. 1994-16 to allow an indoor concert and dinner facility in conjunction with an alcoholic beverages control (ABC) license for the sale of alcoholic beverages for on-premises consumption (Type 47 – Beer, Wine and Distilled Spirits) for the property located at 3503 South Harbor Boulevard.
- C. On February 22, 2021, the Planning Commission approved CUP No. 2020-22 to expand the existing sale and on-premise consumption of alcoholic beverages outdoors, to a newly converted front patio, at the existing indoor concert and dinner facility at 3503 South Harbor Boulevard.
- D. Pursuant to Section 41-313.5(j) of the Santa Ana Municipal Code (SAMC), banquet facilities are permitted as an ancillary use in the Professional (P) zone, subject to development and operational standards set forth in section 41-199.1 of the SAMC.
- E. CUP No. 2022-10 was originally agendized for the June 13, 2022, Planning Commission meeting. However, at the request of staff, the Planning Commission voted to continue the item to the June 27, 2022, Planning Commission meeting, without opening up the public hearing for testimony, written and oral.
- F. On June 27, 2022, the Planning Commission again voted to continue the item to the next regular Planning Commission meeting, without opening up the public hearing for testimony, written and oral.

- G. On July 25, 2022, the Planning Commission of the City of Santa Ana held the duly noticed, continued public hearing on Conditional Use Permit No. 2022-10 and at that time considered all testimony, written and oral.
- H. The Planning Commission determines that the following findings, which must be established in order to grant this CUP pursuant to SAMC Section 41-638, have been established for CUP No. 2022-10 to allow ancillary banquet facility use for private events:
1. That the proposed use will provide a service or facility, which will contribute to the general well being of the neighborhood or community.

The Observatory is an existing indoor concert and dinner facility with approval for indoor and outdoor sales of alcoholic beverages for on-premises consumption (Type 47 – Beer, Wine and Distilled Spirits) at 3503 South Harbor Boulevard. The applicant's request for an ancillary banquet use for private events will not change the nature of the operation of the venue. In addition, the proposed banquet services would require no changes to the existing venue; all improvements would be existing and no new construction is proposed. The additional use will allow the applicant to maximize the use of the venue and remain economically viable and competitive with similar establishments that provide private events options. This will thereby benefit the community by providing a private banquet facility that can be rented and used. Operational standards applicable to the existing site and for ancillary banquet facilities will mitigate any potential impacts created by the use and ensure that the use will not negatively affect the surrounding community.

2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The proposed ancillary banquet use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity because the operational standards applicable to the existing site and for ancillary banquet facilities will address any potential negative or adverse impacts created by the use. In addition, the subject site is not located within immediate proximity to parks, playgrounds, schools, or religious institutions and the building is located approximately 1,800 feet away from the nearest multi-family residences and approximately 0.5-miles from the nearest single-family residences. Moreover, The Observatory is intended to be an indoor concert and dinner facility and the addition of ancillary banquet use will be ancillary to the main

use. All of the operational standards identified in SAMC Section 41-196 will apply to this establishment.

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

This venue has operated as an indoor concert and dinner facility at 3503 South Harbor Boulevard since 1994 under the names The Galaxy Concert Theatre and most recently under The Observatory (2011). The proposed ancillary banquet use will not adversely affect the economic stability of the area, but will instead allow the venue to maximize the use of the venue and remain economically viable and competitive with similar establishments that provide private event options. Locations for private events are generally in high demand and permitting the venue to be used for a private event space would further benefit the community.

4. That the proposed use will comply with the regulations and conditions specified in Chapter 41 of the SAMC for such use.

The proposed conditional use permit will be in compliance with all applicable regulations and operational standards imposed on ancillary banquet uses pursuant to Chapter 41 of the SAMC. The facility will be maintained as a full-service, bona-fide eating establishment, having suitable kitchen facilities and supplying an assortment of foods. Additionally, the sanitation facilities are in compliance with California Building Code standards and exterior lighting in compliance with police department standards. Moreover, recommended conditions of approval will ensure that uniformed security in compliance with Section 41-199.1 of the SAMC will be provided for all private events. Lastly, operational standards will ensure the project remains in compliance with all applicable codes and regulations related to ancillary banquet uses to ensure that the use does not impact neighboring properties or create an attractive nuisance.

5. That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

The proposed ancillary banquet use at this location will not adversely affect the General Plan or any specific plan. The granting of this CUP supports several policies contained in the General Plan. Policy LU-2.3 of the Land Use Element encourages a diversity of land uses that support residents, visitors, and businesses, and can accommodate the City's needs for goods and services. Providing a variety of full-

service entertainment venues, eating establishments, and private event venues offers additional entertainment and dining options for Santa Ana residents and visitors. Furthermore, Policy LU-3.7 of the Land Use Element supports developments that create a business environment that is safe and attractive. Existing operational standards for the entertainment site (i.e., CUP No. 1994-16 and CUP No. 2020-22) as well as a property maintenance agreement will ensure a safe and attractive environment in the neighborhood. Finally, Policy LU-4.1 of the Land Use Element and EP-2.3 of the Economic Prosperity Element encourages development that is compatible with and supporting of surrounding land uses, and mutually beneficial and complementary businesses. The Observatory is located within a professional office area and its operations (including public and private events) will be compatible with the surrounding commercial businesses.

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the recommended action is exempt from further review under Section 15301 (Class 1 – Existing Facilities). The Class 1 exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The request for an ancillary banquet facility consists of the permitting or minor alteration of an existing private structure involving negligible or no expansion of use. The proposed banquet services would require no changes to the existing venue, and all improvements would be existing. Based on this analysis, a Notice of Exemption, Environmental Review No. 2022-32 will be filed for this project.

Section 3. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively “Actions”), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City’s defense, and that Applicant shall reimburse the City

for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 4. The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby approves Conditional Use Permit No. 2022-10 as conditioned to allow for an ancillary banquet facility use for private events at an existing concert facility at 3503 South Harbor Boulevard, as conditioned in Exhibit A, attached hereto and incorporated herein. This decision is based upon the evidence submitted at the above-referenced hearing, which includes, but is not limited to: the Request for Planning Commission Action dated July 25, 2022, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 25th day of July, 2022.

AYES: Commissioners:
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:

Thomas Morrissey
Chairperson

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Chief Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, SARAH BERNAL, Commission Secretary, do hereby attest to and certify the attached Resolution No. 2022-XXX to be the original resolution adopted by the Planning Commission of the City of Santa Ana on July 25, 2022.

Date: _____

Commission Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit Nos. 2022-10

Conditional Use Permit No. 2022-10 allowing for an ancillary banquet facility use for private events is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with all applicable sections of the Santa Ana Municipal Code, the California Building Standards Code and all other applicable regulations.

The Applicant must comply in full with each and every condition listed below prior to exercising the rights conferred by this conditional use permit.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. The sales, service, and consumption of alcoholic beverages shall be permitted in accordance with the operational standards for on-sale establishments pursuant to Section 41-196(g) of the SAMC, in accordance with the provisions of an on-premises alcohol license by the California Department of Alcoholic Beverage Control (ABC), and in accordance with the site and floor plans attached to the staff report documenting the approved scope of the project.
2. The sales, service, and consumption of alcoholic beverages shall be limited from 8:00 a.m. and 2:00 a.m., Monday through Sunday.
3. All Conditions of Approval approved by the City of Santa Ana Planning Commission on October 17, 1994, for Conditional Use Permit No. 1994-16 and on February 22, 2021, for Conditional Use Permit No. 2020-22, shall remain in effect.
4. The shared parking arrangements required by the Conditions of Approval for Conditional Use Permit No. 1994-16 shall include the following additional conditions: (a) a requirement that Applicant conduct monthly (once per calendar month) inspections (pursuant to the inspection protocol to be demonstrated to Applicant by City Public Works Agency representatives) of the approximately 451 linear feet of street area of, and the sidewalks on the north and south side of, Lake Center Drive immediately adjacent to the concert and dinner facility at 3503 South Harbor Boulevard as shown in Attachment "A" (the "Inspection Area") for any potential tripping or walking hazards, that may give rise to personal injuries to the Applicant's customers when walking between the concert and dinner facility at 3503 South Harbor Boulevard and the off-site parking area designated by the effective shared parking arrangements ("Off-Site Parking"); (b) a requirement that the Applicant report within 5 days of inspection and no later than the end of the same calendar month any potential tripping or walking hazards, discovered in the Inspection Area during the inspections referenced in (a) above that may give rise to personal injuries by the Applicant's customers walking between the concert and dinner facility at 3503 South Harbor Boulevard and the Off-Site Parking, to the City of Santa Ana by using the mySantaAna mobile app or at <https://www.santa->

ana.org/#/city/report, within five (5) days of the Applicant identifying any such conditions; and (c) a requirement that the Applicant maintain a commercial general liability policy of insurance for no less than \$2,000,000 listing the City of Santa Ana as an additional insured with respect to any and all claims by Applicant's customers alleging they suffered injury in the Inspection Area, during the one hour before The Observatory opens for business for concerts and private events and until one hour after The Observatory closes for business after such events, to the extent such injury arises from the Applicant's failure to meet its obligations under this Condition 4.

5. Any changes to the shared parking arrangements shall require review and approval of a Minor Exemption by Zoning Administrator. The Applicant shall be responsible to obtain all necessary approvals from the City prior to utilizing any sites as part all business operations.
6. Any noise or music associated with the use of the outdoor patio shall be kept to ambient noise levels for purposes of providing a relaxed outdoor setting. At no time shall the ambient noise levels exceed the City of Santa Ana Noise Ordinance requirements.
7. Live amplified musical performances shall not be permitted within any outdoor patio areas. Musical performances are limited to acoustic music only.
8. Conditional Use Permit No. 2022-10 shall be in compliance with all required development and operational standards required for banquet facilities, as outlined in Section 41-199.1 of the SAMC.
9. All private events with or without alcohol, shall provide a uniformed state licensed security guard, as approved by the chief of police, at the rate of one (1) guard/one hundred (100) attendees, with a minimum of one (1) security guard, or other security measures as approved by the chief of police. The guards shall be present until all attendees have left the premises
10. Conditional Use Permit No. 2022-10 is subject to review by the Planning Division within one (1) year of its adoption date. Should there be a noticeable increase in the calls for Police Department and/or Code Enforcement service to the site, or complaints from the surrounding community, the City may reschedule the CUP for Planning Commission reconsideration and/or condition modification at the full expense of the property owner and Applicant.
11. Within 90 days of approval of CUP No. 2022-10, a Property Maintenance Agreement must be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained, Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded

against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:

(a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);

(b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);

(c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;

(d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about and immediately adjacent to the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);

(e) If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms.

(f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement.

(g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City.

(h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of final approval for any construction permit related to this entitlement.

Attachment "A"

Inspection Area

