

Planning Commission Staff Report

February 8, 2012
Item 6.a.

SUBJECT: UP-90-43/PCUP-273

APPLICANT: City of Pleasanton

PROPERTY OWNER: FFHA Associates

BUSINESS OWNER: Diamond Pleasanton Enterprise

BUSINESS OPERATOR: Jennifer Wolfes

PURPOSE: Consideration of a possible modification of conditions of approval or revocation of a Conditional Use Permit for the operation of Club NEO

GENERAL PLAN: Business Park (Industrial / Commercial and Office) and Mixed Use

ZONING: PUD-I/C-O (Planned Unit Development- Industrial/Commercial – Office) District

LOCATION: 4825 Hopyard Road, Suite F10

EXHIBITS:

- A. Draft Modified Conditions of Approval
- B. Excerpts of the minutes of the August 25, 2010, Planning Commission Meeting for PCUP-273
- C. Excerpts of the minutes of the October 10, 1990, Planning Commission Meeting for UP-90-43
- D. Planning Commission Resolution No. PC-2010-18 approving PCUP-273
- E. Planning Commission Resolution No. PC-90-93 approving UP-90-43
- F. Planning Commission staff report for PCUP-273
- G. Planning Commission staff report for UP-90-43
- H. Notice of Violation letter dated December 21, 2011, from the Planning Division
- I. Police Activity Overview for Club NEO prepared by Police Lieutenant Knox for October 1, 2011, to January 26, 2012

- J. Previous approvals for Teen Night (Information Packet)
 - K. Public Comments
 - L. Location Map
 - M. Noticing Map
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BACKGROUND

The 88,589-square-foot Gateway Square Shopping Center was approved by City Council in 1986 (case PUD-81-30-35D). In 1990, the Planning Commission approved a conditional use permit for Sh Boom (case UP-90-43), a 1950's themed dance club with alcohol service, to be operated in a 10,746-square-foot tenant space. The approved hours of operation were from 5:00 p.m. to 2:00 a.m., seven days a week with limited food service for 643 people. The original approval allowed the club to utilize a limousine to drive patrons to and from the club. The original approval also allowed private parties for groups up to 300 patrons and catering services provided by the dance club on weekends only, between the hours of 1:00 p.m. and 5:00 p.m. Between the mid 1990's and 2003 a Teen Night was approved, operated, and discontinued. A request to operate Teen Night again (in 2003) was approved. Teen Night provided a venue for kids ages 14 to 18 to socialize and dance in a controlled environment on specified times during the year and for limited hours. Teen Night was voluntarily discontinued at some point after the 2003 reinstatement and the changes to the floor plan in 2004 rendered the Teen Night approval invalid. Staff has provided an informational packet on the previous approvals for Teen Night for the Planning Commission's reference (Exhibit J).

In 2004, the business underwent cosmetic changes and the name was changed to Aura. While cosmetic changes were made to the facility, it continued to operate as a dance club/bar and no changes were made to the existing use permit. Once granted, Conditional Use Permits (CUP) run with the land and remain valid during changes of ownership.

On August 25, 2010, Diamond Pleasanton Enterprise, represented by Ms. Wolfes, received approval from the Planning Commission for modifications to the existing Use Permit to increase the occupancy and to allow outdoor dining (PCUP-273). Diamond Pleasanton Enterprise renamed the club Status, and recently renamed it again as Club NEO. The applicant made the modifications to the interior to increase the maximum occupancy from the 643 to 812 (patrons and employees combined) and added the outdoor patio area with a barrier.

In August 2011, Diamond Pleasanton Enterprise filed an application to further modify the existing CUP to allow activities for patrons under the age of 21 years old (Case P11-0647), however, the processing of this application has been postponed at the request of the applicant.

Recent Incidents requiring Police Intervention

Several incidents have occurred over the last six weeks that have led staff to bring the CUP to the Planning Commission to consider possible modifications to the existing conditions of approval (Exhibit D) and/or a revocation of the Use Permit. See Exhibit I prepared by the Pleasanton Police Department for a summary of activity at the Club between October 1, 2011 and January 26, 2012.

Although the overview of Police activity (Exhibit I) provides a more complete summary of recent incidents requiring police intervention, two incidents stand out. On December 17 & 18, 2011, the Pleasanton Police Department (PPD) encountered a large crowd of people loitering in the parking lot and engaging in fights, "sideshow" vehicle activity (i.e. reckless driving in the parking lot), littering of alcohol bottles and other items. The incident resulted in the allocation of all available officers from the PPD and PPD had to request mutual aid from surrounding law enforcement agencies (i.e., the City of Dublin Police and the Alameda County Sheriff's Department). After law enforcement managed to get patrons to finally leave the parking lot, PPD dispatch received a call that a large group of persons had congregated at the Shell gas station on Hopyard Road near I-580 and were shoplifting items from the convenience store.

On December 20, 2011, the City called a meeting with Ms. Wolfes and her head of security. Members of the Police Department, the Planning Division, and the City Attorney's office attended the meeting to discuss the events of December 17/18 and prior incidents at the Club. The Planning Division discussed the conditions of approval for the applicant's Conditional Use Permit and noted the following violations of the conditions:

1. *Condition Of Approval [COA] #13: The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.*
 - The Incident Report (2011-00055619) on record indicates that Club NEO failed to use its best efforts, including COA #19, below, resulting in this condition of approval being violated in regards to loitering, and impacts to other businesses.
 - Based on the Police Department's Watch Report, it appears that a portion of the crowd moved from the Club NEO site to:
 - The Shell Gas Station on Hopyard Rd. and proceeded to "mob" that establishment. Officers responded to emergency calls from the Shell Station seeking assistance to vacate the relocated Club NEO crowd from that site.
 - The Kelly Moore Paints parking lot area, where Officers had to intervene to stop physical confrontations.
 - The Eddie Papas parking lot area, where Officers had to intervene to stop additional physical confrontations.

The Police Department's Watch Report described above demonstrates that the situation at the establishment resulted in impacts to the surrounding property owners and business operators. Therefore, this establishment has not been operating in compliance with the intent of this condition of approval for the business to maintain a "good neighbor" relationship.

2. *COA#17: Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.*
 - At the December 20, 2011, meeting, Ms. Wolfes stated that not all of the employees had obtained this training within four weeks of the start of their employment. Therefore, the establishment has not been operating in compliance with this condition of approval.
3. *COA#19: The business owner/operator shall provide security staff during operating hours subject the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.*
 - A Final Security Plan was not submitted to the Chief of Police prior to operation of the business. Therefore, the establishment has not been operating in compliance with this condition of approval inadequate security was a significant contributing factor to the incidents on Dec. 17th. As of the date this report was written, the operator does not have an approved plan; however, the operator has been working with PPD staff to get a plan approved.
4. *COA#20: The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.*
 - As stated above, the operator's security staff has been unable to control the large crowds and fights within the club and in the parking lot. Therefore, the establishment has not been operating in compliance with this condition of approval.
5. *Standard COA#2: The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.*
 - PPD presented photographs at the meeting on December 20, 2011, showing the presence of trash, glass alcohol bottles, and other items that were discarded throughout the site and the Officer reports indicate that the discarding of trash was by the patrons of the establishment and loiterers who

had tried to enter the establishment. Therefore, the establishment has not been operating in compliance with this condition of approval.

The December 20, 2011, meeting was held to discuss the incident, the conditions of approval for the CUP, and to find a resolution. Efforts were made to identify ways to improve security for the establishment and to avoid future problems. Following the meeting, the Planning Division prepared a Notice of Violation (Exhibit H) to memorialize the meeting and to restate which conditions of approval had been violated by the operator. The Notice also clarified the process by which the CUP could be automatically suspended or revoked if there were future incidents or violations of the CUP conditions.

On January 14 & 15, 2012, another incident, similar to the one that occurred on December 17 & 18, 2011, took place at the establishment, including numerous large fights that started inside the club and that spilled out into the parking lot. Within minutes of the crowd exiting the club, the fights escalated and a shooting occurred with a patron being shot in the leg in front of Kinder's restaurant. The Pleasanton Police Department had to provide 15 police officers at the club that night and call in backup assistance from Livermore (sent 8 officers), Dublin (sent 6 officers), Alameda County (sent 3 officers), and the California Highway Patrol (sent 7 officers). Additionally, the Livermore Pleasanton Fire Department and an ambulance had to respond to the Club to care for the shooting victim.

Given the melee that erupted and subsequent shooting, on January 20, the City issued a letter automatically suspending the club's conditional use permit. The Club's attorney filed a Temporary Restraining Order (TRO) in federal court to prevent the City from being able to suspend the Club's CUP absent a hearing. The federal court judge ruled in favor of the club, and set aside the City's suspension of the CUP absent a hearing. This ruling does not affect the City's ability to hold a hearing and consider modifying the conditions of approval or revoking the club's conditional use permit via a public hearing process. As stated in condition #9, the Director of Community Development may submit the CUP to the Planning Commission for review at a public hearing if the operation of the use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors. Given the incidents detailed above, the Director is submitting the CUP to the Planning Commission for consideration.

SITE DESCRIPTION

The subject property is a 9.7-acre parcel, known as Gateway Square, located at the northeast corner of Hopyard Road and Stoneridge Drive in Hacienda Business Park (HBP). The one-story structure is one of five (5) on-site with a large parking lot (432 spaces) that serves the existing buildings. This is a multi-tenant building with approximately 10,746 square feet of area designated for the existing establishment.

The subject site contains tenants such as: AppleOne, Callahan Tile & Stone, Chili's, City Dry Clean, Diamond Pleasanton Enterprises, Eddie Papa's, Fast Frame, Gateway

Beauty Salon, Gateway Dental Care, Golden Apple Learning Store, Hacienda Park Optometry, Hertz, Huntington Learning Center, Kelly-Moore Paints, Kinder's, La Petite Fleur, Mills, NCAL Computer Source, Professional Nails, Randstad, Round Table Pizza, Tanning Island, The Cheese Steak Shop, The UPS Store, and Ume Sushi. The other uses in the general area are office and hotels. The nearest residential properties are located to the southwest, across Hopyard Road, approximately 600 feet away (Figure 1.1).

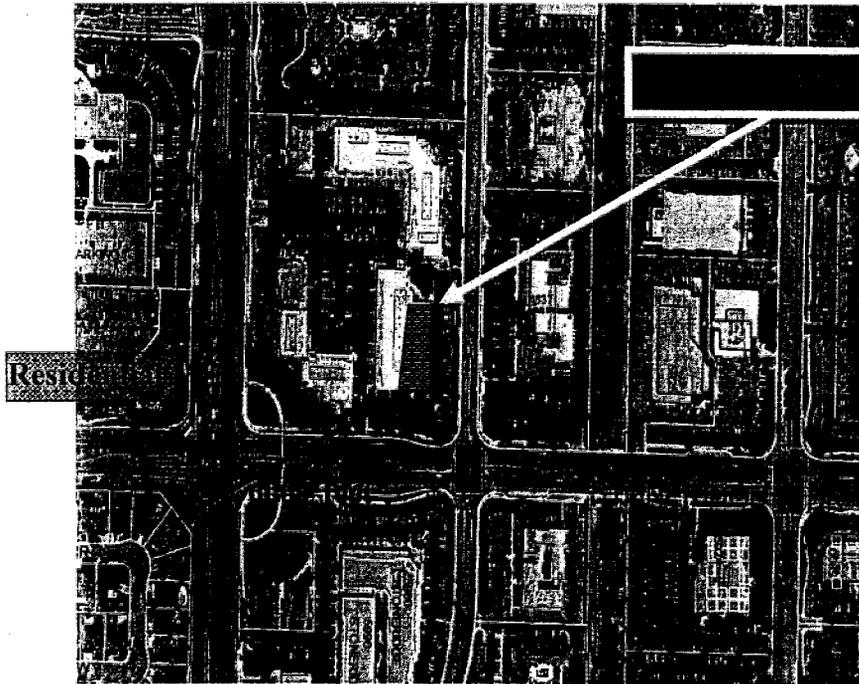


Figure 1.1 – Vicinity Map

Access to the site is provided by four driveway entrances (one off of Hopyard Road, one off of Stoneridge Drive, and two off of Chabot Drive). The existing establishment has direct parking lot access. The front entry of the night club faces Chabot Drive.

DISCUSSION

The conditions of approval clearly specify the manner in which the business must operate. The meeting with the operator following the first significant incident provided the operator with information on the seriousness of the situation and allowed the City to offer additional support to the operator to ensure that additional incidents would not occur.

Ultimately, on January 14/15, Club NEO was not successful in controlling its patrons which resulted in several public safety and general welfare nuisances, injury to patrons, criminal activity, and increased costs to the City for additional law enforcement staffing, and a general drain on City resources.

The PCUP-273 approval allowed the establishment to modify the interior floor plan to accommodate 812 occupants (patrons and employees combined) (UP-90-43 previously allowed 643 patrons) and allowed the establishment of the outdoor patio area with a barrier (PDR-912) to accommodate up to 80 people standing or 12 people seated.

Staff supported the initial application to increase the number of patrons allowed in the club based on the positive history of dance clubs at this location (under different ownership) and because the new operator's stated experience with other night clubs which indicated that the business would be operated in a well controlled manner.

Occupancy

The UP-90-43 staff report noted that the "facility would accommodate a maximum total of 643 people." With the modification to the Use Permit (PCUP-273) to increase the occupancy, the establishment was allowed a maximum occupancy of 812 (patrons and employees combined). The outdoor patio area was allowed a maximum of 80 patrons standing or 12 patrons sitting, but these patrons are already counted at the entry of the facility and, therefore, are not in addition to the maximum allowed occupancy for the business.

OPTIONS FOR CONSIDERATION

The Planning Commission may keep the current conditions of approval, modify the conditions of approval, or may choose to revoke the CUP. In this section of the report, staff discusses various options to modify the conditions of approval including limiting the occupancy and imposing other operating requirements related to improving security.

Staff has met with the Police Department to determine what modifications to the conditions of approval could be recommended to support this establishment continuing its operations. Based on comments from the Police Department staff has prepared draft modified conditions of approval (Exhibit A) if the Commission is inclined to modify the CUP rather than revoke it in its entirety.

Options for Consideration

The Planning Commission may wish to consider and/or discuss the following four options:

Option 1: Revoke the Use Permit.

Should the Planning Commission believe that the business has been given sufficient time and opportunity to rectify the problems and comply with the conditions of approval, the Planning Commission may revoke the CUP per §18.124.130 of the Pleasanton Municipal Code (PMC).

If the Commission is inclined to revoke the CUP, note that a revocation will preclude a future application for a nightclub in the same or substantially the same

site for a period of one year per Pleasanton Municipal code §18.124.140 which states:

18.124.140 Denial—New application.

Following the denial of a use permit application or the revocation of a use permit, no application for a use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the use permit. (Prior code § 2-11.15)

- Option 2:** Modify the conditions of approval as recommended in Exhibit A but limit the maximum number of patrons allowed to 250. (This would require specific modification to condition #4 which addresses patron limits.)
- Option 3:** Modify the conditions of approval as recommended in Exhibit A but limit the maximum number of patrons allowed to 300. (This would require specific modification to condition #4 which addresses patron limits.) Note that Option number 3 is the Option recommended by the Chief of Police and the Community Development Director.
- Option 4:** Modify the conditions of approval as recommended in Exhibit A but limit the maximum number of patrons allowed to 300. (This would require specific modification to condition #4 which addresses patron limits.) If there are no incidents over the next 30 days and the Club complies with all of the conditions of approval, planning staff will schedule a meeting for the Planning Commission to consider increasing the number of patrons.

PUBLIC NOTICE

Notices regarding the proposed application and related public hearing were mailed to property owners and tenants within 1,000 feet of the subject property.

As of the publication of this staff report, staff received one email pertaining to this application (Exhibit K). Staff has provided the noticing map as Exhibit M for the Commission's reference.

Hacienda Business Park

The Hacienda Business Park Association was contacted by staff in regards to modifying the conditions of approval for the business. The modifications of the conditions of approval for the Conditional Use Permit has been determined by the Hacienda Business Park Association as being consistent with or less intensive than the operations that were previously approved by the Association and, therefore, they have no additional comments.

FINDINGS

The Planning Commission made the required findings prior to granting the original Use Permits. Staff believes that the modified conditions are consistent with the previously approved findings.

ENVIRONMENTAL ASSESSMENT

This project is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15301, Existing Facilities, Class 1 which allows the operation of a uses, permitted or conditionally permitted, within an existing building. Therefore, no environmental document accompanies this report.

CONCLUSION

The recent events occurring as a result of the operations of this establishment have had adverse impacts on the public health, safety, and general welfare. The original conditions of approval proved ineffective in mitigating impacts to the immediate neighbors as well as the community as a whole. The outreach that the Police Department and Planning staff has done was not effective in avoiding additional incidents. Staff believes that the conditions of approval related to occupancy and operations of the nightclub must be modified to avoid incidents similar to what we've seen in recent weeks.

Staff believes that Option 3 and the proposed modified conditions of approval (Exhibit A) will provide the appropriate levels of patrons, security staff, security measures, and operating measures necessary for the establishment to operate without incident.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission modify the conditions of approval for UP-90-43 and PCUP-273 per Exhibit A as outlined in Option 3.

Staff Planner: Rosalind Rondash, Associate Planner, (925) 931-5613, rrondash@ci.pleasanton.ca.us

Redlined Exhibit A
DRAFT Modified Conditions of Approval
UP-90-43 and PCUP-273, 4825 Hopyard Road
Diamond Pleasanton Enterprise
February 08, 2012

I. Project Specific Conditions:

Planning Division

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If **the applicant desires** additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," (on file in the Planning Division) **or modifications to these conditions**, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. ~~All conditions of Cases UP-90-43 and PCUP-273 shall remain in full force and effect except as otherwise modified by this approval.~~ **These conditions of approval shall supersede all prior conditions of approval (Resolutions PC-2010-18 and PC-90-93).**
4. ~~The proposed dance club shall be limited to a maximum occupancy of 812 people (patrons and employees).~~ **The dance club shall be limited to a maximum of 300 patrons. The operator shall maintain a system to count the number of patrons who are in the club at any given time. The operator shall provide the number of occupants currently in the club upon request of Pleasanton Police Department personnel.**
5. **By March 2, 2012, the operator shall utilize a "Scanshell 800" ID scanner or similar device capable of copying and recording the identification of each guest as they enter the club. The data collected by the scanner shall be made available to Pleasanton Police Department personnel immediately upon request.**

- ~~6. The music selection shall be maintained as proposed (Top 40 mainstream mix). If changes to the music selection are desired, prior City review and approval is required. Such a modification may be approved by the Director of Community Development. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.~~
7. **The operator shall stop serving alcohol at 1 a.m. and all alcoholic beverages shall be collected by 1:30 a.m. The operator shall require patrons to leave the club by 1:45 a.m. and the parking lot areas by 2 a.m.**
8. **Beginning at 1:15 a.m., the operator shall start to gradually increase lighting within the club and all the interior club lights shall be turned on by 1:30 a.m.**
9. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor seating area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
10. The business owner/operator shall designate a smoking area (20 feet from any door or opening). Said area shall have two (2) portable ashtrays provided.
- a. Said smoking area shall be monitored and kept clean.
11. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
12. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors **violations of these conditions**, at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission **to consider medications to the conditions or revocation** for the subsequent review at a public hearing.
13. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use **or for the removal of unruly patrons** only. The applicant shall install and maintain self-closing mechanisms on all exterior doors. **A sign stating that the outside doors of the dance club shall remain closed during all hours of**

operation shall be placed by the all doors [rephrased wording of COA #2 of UP-90-43].

14. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
15. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
16. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
17. **Prior to operation, Club NEO's management shall provide the Chief of Police the name of a Security Manager responsible for ongoing collaboration with Police Staff and a recommended security force plan. This plan shall be subject to the review and approval by the Chief of Police and shall minimally include:**
 - a. **Number of security personnel the operator intends to have onsite in relation to the number of patrons.**
 - b. **Specifically articulated job assignments for each security post, i.e., what duties are assigned and where are persons assigned, i.e., parking lot, door post, patio, etc. A minimum of two security personnel shall be assigned to monitor the outdoor patio area whenever it is in use.**
 - c. **All security staff shall wear a distinctive uniform identifying them as security officers.**
 - d. **All security personnel shall register and maintain valid registration status with the California Department of Consumer Affairs (Bureau of Security and Investigative Services). Such registration shall occur no later than 120 days from the date the security personnel apply for employment with the permittee. To that end, all security personnel must submit the proper application to the State of California Bureau of Security and Investigative Services within three days of employment with the permittee. At no time shall any security personnel register with the state at any level that is less than that of a proprietary private security officer. The operator shall provide proof of registration (or proof of pending registration) upon request of Pleasanton Police Department personnel.**

- e. All patrons shall be searched through full pat down search by gender appropriate personnel or through use of metal detector.
 - f. A plan for staging of patrons in queue for admission.
 - g. Once the club is filled to capacity all persons standing in line to enter shall be advised that the club is at capacity and shall be turned away and directed to immediately leave the property.
 - h. A patron removal plan will include the use of rear exit doors when having to deal with unruly patrons.
 - i. The operator shall maintain a fully functional security video recording system capable of capturing all areas of the club. This will specifically include the point of entry and exit (including the line for persons waiting to enter the club), the main dance floor, other dance floors, private party rooms, all rear hallways, rear exits, etc. Restrooms will not be recorded. The system shall be tested monthly to assure that it is working properly and shall be maintained for a 30-day retention period. Videos shall be made available to Pleasanton Police Department personnel immediately upon request.
 - j. The club shall provide routine and ongoing patrol of the exterior areas and parking lots. The club's Security staff shall not allow loitering, littering, noise, other disturbances, or criminal activity in the parking lots or near the businesses within the commercial center and on neighboring properties within the Hacienda Business Park.
18. That private parties held on the dance club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00 p.m. through 5:00 p.m., and to a maximum of 300 patrons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Director of Community Development may require that the Use Permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties. [rephrased wording of COA #3 of UP-90-43].
19. The limousine associated with the dance club, and provided for its customers as a special service, shall not be parked on-site during hours when the club is not open for business to the general public. [rephrased wording of COA #4 of UP-90-43].
20. That if patrons of the dance club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said

signs shall state the enforcement of Section 21107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as describe in the CVC. In the event that signs are not posted as required above, this approval shall become null and void. [COA #7 of UP-90-43].

21. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
22. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.
23. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
24. ~~Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.~~ **Within 45 days of the original hire date, employees that serve alcohol and security personnel shall obtain certification in TIPS or LEADS training related to the service of alcoholic beverages. Said certification shall be maintained in good standing for the duration of their employment with the club and retraining shall occur every six (6) months from the original training date. The operator shall maintain copies of these certifications and shall make them available for inspection by Pleasanton Police Department personnel upon request.**
25. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
26. ~~The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.~~
Covered in COA# 17.j

~~27. The business owner/operator shall utilize an occupancy counting method that can provide Police or Fire personnel with accurate occupancy information quickly and on demand. Covered in COA# 4.~~

28. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

II. Standard Conditions:

Planning Division

1. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
2. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times. **By 6 a.m., club staff shall have inspected the parking lots and surrounding businesses within the Gateway Square shopping center and removed and/or cleaned up any litter, vomit, etc.**
3. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

III. Code Requirements:

Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.

Building Division

1. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.

2. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

Exhibit A (Clean)
DRAFT Modified Conditions of Approval
UP-90-43 and PCUP-273, 4825 Hopyard Road
Diamond Pleasanton Enterprise
February 08, 2012

I. Project Specific Conditions:

Planning Division

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If the applicant desires additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," (on file in the Planning Division) or modifications to these conditions, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. These conditions of approval shall supersede all prior conditions of approval (Resolutions PC-2010-18 and PC-90-93).
4. The dance club shall be limited to a maximum of 300 patrons. The operator shall maintain a system to count the number of patrons who are in the club at any given time. The operator shall provide the number of occupants currently in the club upon request of Pleasanton Police Department personnel.
5. By March 2, 2012, the operator shall utilize a "Scanshell 800" ID scanner or similar device capable of copying and recording the identification of each guest as they enter the club. The data collected by the scanner shall be made available to Pleasanton Police Department personnel immediately upon request.
6. The operator shall stop serving alcohol at 1 a.m. and all alcoholic beverages shall be collected by 1:30 am. The operator shall require patrons to leave the club by 1:45 a.m. and the parking lot areas by 2 a.m.

7. Beginning at 1:15 a.m., the operator shall start to gradually increase lighting within the club and all the interior club lights shall be turned on by 1:30 a.m.
8. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor seating area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
9. The business owner/operator shall designate a smoking area (20 feet from any door or opening). Said area shall have two (2) portable ashtrays provided.
 - a. Said smoking area shall be monitored and kept clean.
10. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
11. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or violations of these conditions, at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission to consider modifications to the conditions or revocation.
12. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use or for the removal of unruly patrons only. The applicant shall install and maintain self-closing mechanisms on all exterior doors. A sign stating that the outside doors of the dance club shall remain closed during all hours of operation shall be placed by the all doors.
13. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
14. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
15. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any

applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.

16. Prior to operation, Club NEO's management shall provide the Chief of Police the name of a Security Manager responsible for ongoing collaboration with Police Staff and a recommended security force plan. This plan shall be subject to the review and approval by the Chief of Police and shall minimally include:
- a. Number of security personnel the operator intends to have onsite in relation to the number of patrons.
 - b. Specifically articulated job assignments for each security post, i.e., what duties are assigned and where are persons assigned, i.e., parking lot, door post, patio, etc. A minimum of two security personnel shall be assigned to monitor the outdoor patio area whenever it is in use.
 - c. All security staff shall wear a distinctive uniform identifying them as security officers.
 - d. All security personnel shall register and maintain valid registration status with the California Department of Consumer Affairs (Bureau of Security and Investigative Services). Such registration shall occur no later than 120 days from the date the security personnel apply for employment with the permittee. To that end, all security personnel must submit the proper application to the State of California Bureau of Security and Investigative Services within three days of employment with the permittee. At no time shall any security personnel register with the state at any level that is less than that of a proprietary private security officer. The operator shall provide proof of registration (or proof of pending registration) upon request of Pleasanton Police Department personnel.
 - e. All patrons shall be searched through full pat down search by gender appropriate personnel or through use of metal detector.
 - f. A plan for staging of patrons in queue for admission.
 - g. Once the club is filled to capacity all persons standing in line to enter shall be advised that the club is at capacity and shall be turned away and directed to immediately leave the property.
 - h. A patron removal plan will include the use of rear exit doors when having to deal with unruly patrons.
 - i. The operator shall maintain a fully functional security video recording system capable of capturing all areas of the club. This will specifically include the point of entry and exit (including the line for persons waiting to enter the club), the main dance floor, other dance floors, private party rooms, all rear hallways, rear exits, etc. Restrooms will not be recorded. The system shall be tested monthly to assure that it is working properly and shall be maintained for a 30-day retention period. Videos shall be made available to Pleasanton Police Department personnel immediately upon request.
 - j. The club shall provide routine and ongoing patrol of the exterior areas and parking lots. The club's Security staff shall not allow loitering,

littering, noise, other disturbances, or criminal activity in the parking lots or near the businesses within the commercial center and on neighboring properties within the Hacienda Business Park.

17. That private parties held on the dance club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00 p.m. through 5:00 p.m., and to a maximum of 300 patrons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Director of Community Development may require that the Use Permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
18. The limousine associated with the dance club, and provided for its customers as a special service, shall not be parked on-site during hours when the club is not open for business to the general public.
19. That if patrons of the dance club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 21107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as describe in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
20. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
21. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.
22. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
23. Within 45 days of the original hire date, employees that serve alcohol and security personnel shall obtain certification in TIPS or LEADS training related to the service of alcoholic beverages. Said certification shall be maintained in

good standing for the duration of their employment with the club and retraining shall occur every six (6) months from the original training date. The operator shall maintain copies of these certifications and shall make them available for inspection by Pleasanton Police Department personnel upon request.

24. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.

25. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

II. Standard Conditions:

Planning Division

26. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.

27. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times. By 6 a.m., club staff shall have inspected the parking lots and surrounding businesses within the Gateway Square shopping center and removed and/or cleaned up any litter, vomit, etc.

28. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

III. Code Requirements:

Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.

Building Division

29. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain

a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.

30. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

PCUP-273, Diamond Pleasanton Enterprise

Application to modify the approved Conditional Use Permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) at 4825 Hopyard Road to allow an outdoor seating/standing area and to increase the maximum occupancy at the facility. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial, Commercial, and Office) District.

Commissioner Narum moved to make the conditional use findings as described in the staff report and to approve PCUP-273, Diamond Pleasanton Enterprise, subject to the conditions of approval as listed in Exhibit A of the staff report and the additional condition in the staff memo, dated August 25, 2010. Commissioner Blank seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin.
NOES: None.
ABSTAIN: None.
RECUSED: None.
ABSENT: None.

Resolution No. PC-2010-18 approving PCUP-273, Diamond Pleasanton Enterprise was entered and adopted as motioned.

UP-90-43, Porter A. Hurt, Sh Boom II, Inc.

Application for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00 pm at a facility proposed to be located at 4825 Hopyard Road. Zoning for the property is PUD (Planned Unit Development) - Industrial, Commercial and Office District (CPD).

Mr. Swift presented the staff report recommending approval of Case UP-90-43 subject to the conditions of the staff report. Mr. Swift added that the applicant has requested that they be allowed to open on weekends in the afternoon for private parties. He noted that parking might be a concern if the groups become too large; staff is recommending that the applicant start slow and that private parties before 5 pm be limited to 100 persons. This should eliminate any parking concerns.

Chairman Mahern asked if the entire building is vacant. Mr. Swift said the building is not vacant, but that they are filling the back side of the building. The building is located near Chili's, Amelia's Deli, and the California Federal Bank.

Chairman Mahern asked if everyone in the complex was notified of the proposed dance club. Mr. Swift said it is customary to notify those people within 300 feet of a project.

Commissioner McGuirk asked the vacancy rate of the building. Mr. Swift responded that 25 percent or more is vacant.

Commissioner Horan asked Mr. Swift what he means by having the applicant start slow. Mr. Swift explained staff feels they should start with a limitation of 100 people; the applicant would like to start at 300 people.

Commissioner Hovingh felt this type of function would be more appropriate to the downtown area. Mr. Swift said that may be true, however, there is no vacant building large enough downtown to address their needs.

THE PUBLIC HEARING WAS OPENED.

Lisa Cortese, represented the application and said she is representing the manager of Gateway Square and spoke in favor of the project. She said that Gateway Square business is dependent on Hacienda Business Park patrons; weekends and evenings are practically empty. She said the nearest tenants are Chili's, an office shop, and a deli. She said they would welcome a business that would generate evening and weekend use, and felt that the dance club was very compatible with existing businesses. She did not see that weekend private parties as described by the applicant would be a problem, but would be an asset. She felt that 300 people would be a more reasonable amount of people that

would attend an event like a wedding. She felt that most of the people attending a private party would be three or four in a car; hence, there should be no parking problem. She reiterated that she completely supports the applicant in his request for the desired 300 people limitation for private parties.

Chairman Mahern asked Ms. Cortese if the deli and Chili's serve alcohol. Ms. Cortese said they serve only beer and wine.

Porter Hurt, owner of Sh-Boom, also represented the application. He explained that most of the private parties would be for weddings and bar mitzvahs. He said that originally staff had been opposed to any private parties; then agreed to a limit of 100 people. Mr. Hurt thought that a 100 limitation was too small and would not be economically feasible. He felt a better figure might be at least 200, but preferred 300. He said parking in the complex should not be a problem in the evenings and weekends. He felt the community needs a club such as his for private parties, as the price is about one-half the fee of the Castlewood Country Club.

In response to Commissioner Horan's question, Mr. Hurt described his dance club in Cupertino. He said they do plan to prepare food at the Pleasanton club.

Commissioner Horan asked if people can bring their own D.J. for private parties. Mr. Hurt said they could do this.

In response to Commissioners Michelotti and Mahern, Mr. Hurt said they will serve food every day from 5 to 8 pm; no lunches are served at the present time.

Commissioner McGuirk discussed the location of the front door with Mr. Hurt. Mr. Hurt said they intend to enlarge the present entryway. Commissioner McGuirk expressed concern about the location of the exits. He said most exits seem to be near the kitchen and mechanical equipment. He saw only the front door exit on the drawing. Mr. Hurt said they are planning to upgrade the building as far as fire protection is concerned and are well within the City's firecode regulations.

Commissioner Michelotti said she felt that a total of 100 people for a private party might be too limiting, even though parking did have to be considered. She felt that number might be increased as the neighboring businesses had been notified and no one had registered any complaints.

Mr. Hurt said the building could be further soundproofed and the doors would remain closed.

Commissioner Hovingh asked the reason for the limo. Mr. Hurt said the limo is for public relation reasons or in the case where someone might need a ride home if they had too much to drink.

Commissioner Horan asked the minimum age that would be allowed in the club. Mr. Hurt said that age is 23, not 21 as in most clubs. He said that 72% of fatalities are 22 year olds and under. The club will cater to the 25 to 50 year olds.

Commissioner Horan said he could support a maximum of 300 people for a private party, as he felt that was about an average number of guests for a large occasion like a wedding. He said it is difficult to find party locations in Pleasanton that would accommodate such a number of guests.

Commissioner Michelotti suggested that between 150 and 200 people be allowed for private parties. Commissioner Horan responded that the 300 figure could be reduced if it became a problem.

Further discussion ensued as to the number of people to be allowed for a private party.

Mr. Hurt said he would be willing to accept having parties two weekends a month. Mr. Swift responded that if one weekend a month causes no problems in the complex, then all weekends should be appropriate.

THE PUBLIC HEARING WAS CLOSED.

A motion was made by Commissioner Michelotti, seconded by Commissioner Hovingh, and approving the Negative Declaration prepared for Case UP-90-43 as approval would not have a significant adverse effect on the environment.

ROLL CALL VOTE

AYES: Commissioners Horan, Hovingh, McGuirk, Michelotti
and Chairman Mahern
NOES: None
ABSENT: None
ABSTAIN: None

Resolution No. PC-90-92 was entered and adopted approving the Negative Declaration prepared for Case UP-90-43 as motioned.

A motion was made by Commissioner Michelotti, seconded by Commissioner Hovingh, making the required findings, and approving Case UP-90-43 subject to the conditions of the staff report with the following modifications:

- * That the location and operation of the use shall conform substantially to Exhibit A (the site plan, floor plan, and details of operation), dated September 10 and 19, 1990 on file with the Planning Department. In the event that the applicant proposes to modify the hours of operation as specified in the details of operation, the modification shall be subject to the review and approval of the Planning Director. The Director may refer the matter to the Planning Commission which may apply additional conditions to the subject conditional use permit, based upon the expanded hours of operation.

- * That private parties held on the dance-club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00pm through 5:00pm, and to a maximum of 300 persons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Planning Director may require that the use permit be subject to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.

ROLL CALL VOTE

AYES: Commissioners Horan, Hovingh, McGuirk, Michelotti,
and Chairman Mahern
NOES: None
ABSENT: None
ABSTAIN: None

Resolution No. PC-90-93 was entered and adopted approving Case No. UP-90-43 as motioned.

PLANNING COMMISSION CITY OF PLEASANTON

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-2010-18

RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR
DIAMOND PLEASANTON ENTERPRISE AS FILED UNDER CASE PCUP-273

WHEREAS, Diamond Pleasanton Enterprise has applied to modify the approved Conditional Use Permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) at 4825 Hopyard Road to allow an outdoor seating/standing area and to increase the maximum occupancy at the facility; and

WHEREAS, zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District; and

WHEREAS, at its duly noticed public hearing of August 25, 2010, the Planning Commission considered all public testimony, relevant exhibits, and recommendations of the City staff concerning this application; and

WHEREAS, this project is categorically exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15301, Existing Facilities, and Class 1, which allows the operation of permitted or conditionally permitted uses within an existing building; and

WHEREAS, the Planning Commission made the following findings:

1. The proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.

The objectives of the zoning ordinance include fostering a harmonious, convenient, workable relationship among land uses, protecting land uses from inharmonious influences and harmful intrusions, and ensuring that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. As conditioned, the proposed modifications to the existing establishment would be consistent with these objectives. The dance club establishment has been a compatible use with the surrounding businesses, and the expansion of the subject site would also be consistent with the existing business operations.

The site is located within the Hacienda Business Park's CPD (Retail/Commercial/Financial Planned District), which permits the uses of the City's C-C (Central Commercial) and C-F (Freeway Commercial) Districts. Bars, including entertainment and dancing, are conditionally permitted uses in the C-C and C-F Districts and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The proposed conditions of approval for the project give the City appropriate controls to ensure that the use does not have any negative impacts on surrounding businesses and properties. The modification to the Use Permit is, therefore, in accordance with the objectives of the zoning district in which the site is located; therefore, this finding can be made.

2. The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

As conditioned, the proposal will not have a detrimental impact on the public health, safety, or welfare, or be materially injurious to the properties or improvements in the vicinity. In particular, conditions require adherence to hours of operation and parking to mitigate for possible impacts to adjacent uses. The new business owner has assured staff that he will work proactively to ensure that all patrons behave in an orderly manner. The outdoor patio area will enable the establishment to control noise, loitering, or other nuisances that would otherwise occur within the parking lot. Further, if a conflict arises with the operation of the business, a condition of approval provides that the proposal may return to the Planning commission for further consideration or additional mitigation measures. The existing dance club establishment has provided a social benefit to the community. Therefore, this finding can be made.

3. The proposed conditional use will comply with each of the applicable provisions of the Zoning Ordinance.

The Pleasanton Municipal Code states that because of the unusual or uncharacteristic nature of some proposed land uses, conditional uses require special consideration so that they may be located properly with respect to their effects on the surrounding properties. The proposed use has conditions of approval to ensure that the applicable provisions of the Pleasanton Municipal Code are met and that adjacent businesses and residences will not be adversely impacted. Therefore, this finding may be made.

WHEREAS, the Planning Commission determined that the proposed modification to the operation of the night club would be compatible with the existing uses in the area.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RESOLVES THE FOLLOWING:

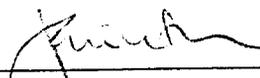
Section 1. Approves Case PCUP-273, the application of Diamond Pleasanton Enterprise to modify the approved Conditional Use Permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) at 4825 Hopyard Road to allow an outdoor seating/ standing area and to increase the maximum occupancy at the facility, subject to the conditions shown in Exhibit A, attached hereto and made part of this case by reference.

Section 2. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

THIS RESOLUTION ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 25TH DAY OF AUGUST 2010 BY THE FOLLOWING VOTE:

AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin.
NOES: None.
ABSTAIN: None.
RECUSED: None.
ABSENT: None.

ATTEST:

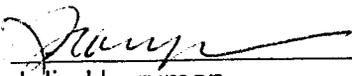


Janice Stern
Secretary, Planning Commission



Arne Olson
Chair

APPROVED AS TO FORM:



Julie Harryman
Assistant City Attorney

**EXHIBIT A
CONDITIONS OF APPROVAL**

**PCUP-273, Diamond Pleasanton Enterprise
4825 Hopyard Road
August 25, 2010**

I. Project Specific Conditions:

Planning Division

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," on file in the Planning Division, are desired, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. All conditions of Case UP-90-43 shall remain in full force and effect except as otherwise modified by this approval.
4. The proposed dance club shall be limited to a maximum occupancy of 812 people (patrons and employees).
5. The music selection shall be maintained as proposed (Top 40 mainstream mix). If changes to the music selection are desired, prior City review and approval is required. Such a modification may be approved by the Director of Community Development. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
6. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor patio area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.

7. The business owner/operator shall designate a smoking area (20 feet from any door or opening). Said area shall have two (2) portable ashtrays provided.
 - a. Said smoking area shall be monitored and kept clean.
8. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
9. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission for the subsequent review at a public hearing.
10. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use only. The applicant shall install and maintain self-closing mechanisms on all exterior doors.
11. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
12. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
13. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
14. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
15. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business

owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.

16. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
17. Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.
18. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
19. The business owner/operator shall provide security staff during operating hours subject to the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.
 - a. The business owner/operator shall provide two security personnel to monitor the outdoor patio area whenever it is in use.
20. The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.
21. The business owner/operator shall utilize an occupancy counting method that can provide Police or Fire personnel with accurate occupancy information quickly and on demand.
22. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

II. Standard Conditions:

Planning Division

1. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
2. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.
3. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

III. Code Requirements:

Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.

Building Division

1. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
2. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

{end}

PLANNING COMMISSION CITY OF PLEASANTON

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-90-93

RESOLUTION APPROVING A CONDITIONAL USE PERMIT AS FILED UNDER CASE UP-90-43 FOR SH BOOM II, INC., PORTER A HURT, FOR A DANCE CLUB

- WHEREAS, SH Boom II, Inc., (Porter A. Hurt) has applied for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00pm at a facility proposed to be located at 4825 Hopyard Road; and
- WHEREAS, zoning for the property is PUD (Planned Unit Development) - Industrial, Commercial and Offices District; and
- WHEREAS, at their duly noticed public hearing of October 10, 1990, the Planning Commission considered all public testimony, relevant exhibits and recommendations of the City staff concerning this application; and
- WHEREAS, after considering all public testimony, relevant exhibits, and recommendations of the City staff, the Planning Commission approved a negative declaration for Case UP-90-43; and
- WHEREAS, the Planning Commission made the following findings:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the district in which the site is located.

The site of the proposed use is located in the Hacienda Business Park's CPD (Retail/Commercial and Financial Planned) District, which permits the uses of the City's C-C (Central Commercial) District. Bars, including entertainment and dancing, are a conditionally permitted use in the C-C District and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The use permit for the alcoholic beverage service is, therefore, in accordance with the objectives of the zoning district.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

The proposed alcoholic beverage service and dance club will be contained completely on-site. Sufficient parking, traffic capacity and distance from residential neighborhoods have been provided and the site and building can accommodate the proposed use. The proposed use operates during hours which, and is located in an area where, nighttime uses would not create a nuisance to adjoining areas. Streets leading to the site are designed per City standards and are signalized to provide safe access into and out of the site. The conditions of approval of the use permit, as well as the applicant's design of the tenant space the use will occupy, will ensure that the establishment remains within the standards of all applicable City codes.

- c. That the proposed conditional use will comply with each of the applicable provisions of the zoning ordinance.

The site's PUD zoning permits the establishment of dance clubs and bars, as defined by Municipal Code Section 18.08.028. The proposed dance club complies with all relevant sections of the zoning ordinance. Granting a conditional use permit to Sh Boom II, Inc. for serving alcoholic beverages after 10:00pm is consistent with the City's ability to regulate zoning as listed in the Municipal Code Section 18.124.

WHEREAS, the proposed use is consistent with the zoning designation and General Plan policies of the City of Pleasanton.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RESOLVES THE FOLLOWING:

Section 1. Approves Case UP-90-43, the application of Sh boom, Inc., (Porter A. Hurt) for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00pm at a facility proposed to be located at 4825 Hopyard Road subject to the conditions shown on Exhibit "A" attached hereto and made part of this case by reference.

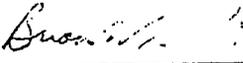
Section 2. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

THIS RESOLUTION ADOPTED THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 10TH DAY OF OCTOBER 1990 BY THE FOLLOWING VOTE:

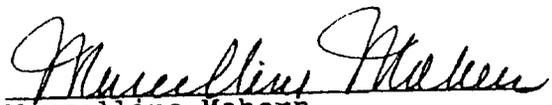
AYES: Commissioners Horan, Hovingh, McGuirk, Michelotti and
Chairman Mahern
NOES: None
ABSENT: None
ABSTAIN: None

DATE: October 10, 1990

ATTEST:



Brian W. Swift
Secretary



Marcelline Mahern
Chairman

APPROVED AS TO FORM:



Dennis Beougher
Assistant City Attorney

pc9093/sm

EXHIBIT B
CONDITIONS OF APPROVAL
UP-90-43

1. That the location and operation of the use shall conform substantially to Exhibit A (the site plan, floor plan, and details of operation), dated September 10 and 19, 1990 on file with the Planning Department. In the event that the applicant proposes to modify the hours of operation as specified in the details of the operation, the modification shall be subject to the review and approval of the Planning Director. The Director may refer the matter to the Planning Commission which may apply additional conditions to the subject conditional use permit, based upon the expanded hours of operation.
2. That the outside doors of the dance club shall remain closed during all hours of operation. A sign to that effect shall be placed by the entry doors.
3. That private parties held on the dance-club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00 PM through 5:00 PM, and to a maximum of 300 persons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Planning Director may require that the use permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
4. That the limousine associated with the dance club, and provided for its customers as a special service, not be parked on-site during hours when the club is not open for business to the general public.
5. That the applicant obtain all necessary permits from the State and County prior to beginning the operation of the establishment.
6. That if, at any time in the future, the activities of the operation deviate from the above description or the

the dance club encourages loud noise, litter, traffic problems, drunkenness, etc., to the detriment of the surrounding uses or to the City in general, the Planning Commission may review and, if necessary, revoke the subject conditional use permit per Municipal Code Section 18.124.130.

7. That if patrons of the dance club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to the Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 21107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as described in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
8. That the applicant shall apply for and obtain all applicable City permits for the dance club establishment prior to the commencement of business.
9. That the operation shall comply with all applicable Fire, Building, and Public Health codes, to the satisfaction of the Fire Marshall, the Chief Building Inspector and representatives of the County Health Department. Non-compliance with said codes may result in a Planning Commission review and, if necessary, revocation of the subject conditional use permit per Municipal Code Section 18.124.130.
10. That the owner/manager of the dance club apply for sign review approval for the dance club. If the signs proposed are not consistent with the comprehensive sign program of the Gateway Square shopping center, then the applicant shall apply for Design Review approval of the proposed sign program.

(up9043ca.pc)kjl
October 4, 1990