

GROUND LEASE

34864

THIS GROUND LEASE ("Lease") is entered into as of November 14, 2017, pursuant to a minute order of the City Council of the City of Long Beach, at its meeting on November 14, 2017, by and between the CITY OF LONG BEACH, a California municipal corporation ("Landlord" or "City"), and LONG BEACH CENTER, LLC, a California limited liability company ("Tenant"). This Lease is executed in connection with Tenant's development of a retail building on certain property commonly known as "The Streets", as more particularly depicted on Exhibit "A" attached hereto (the "Retail Space").

In consideration of the faithful performance of the terms, covenants and conditions herein, the parties agree as follows:

1. Leased Premises. Landlord hereby leases to Tenant and Tenant leases from Landlord approximately 1,400 square feet of that certain public right-of-way located adjacent to Harvey Milk Park, Long Beach, CA (the "Park"), and more particularly described and depicted in Exhibit "A" attached hereto (the "Premises").

2. Use. Tenant shall use the Premises solely for outdoor patio dining for a retail/restaurant facility located in the Retail Space. If for any reason after initial opening the Retail Space ceases to be operated as a retail/restaurant facility open to the public for more than ninety (90) days, then City may immediately terminate this Lease without compensation to Tenant or Tenant's sublessee of the Retail Space. Notwithstanding the foregoing, City may not terminate this Lease during any period where Tenant is actively marketing the Retail Space, or during any period where the construction of improvements to the Retail Space are being actively undertaken.

3. Term. The term of this Lease shall commence on November 14, 2017 (the "Commencement Date") and shall terminate on November 13, 2027 (as may be extended, the "Term"), subject to the termination rights described in Section 2 and in this Section. Tenant shall have ^{two}~~one~~ (2) options to extend the Term each for a five (5)-year period. Landlord shall have the right, upon ninety

(90) days' advance written notice and without payment of compensation to Tenant or Tenant's sublessee of the Retail Space, to terminate this Lease if in Landlord's reasonable discretion the Premises, or a portion thereof, are needed for a public right-of-way pedestrian or vehicular improvement or expansion project.

4. Rent. As consideration for its occupancy of the Premises, Tenant shall pay to Landlord, annually in arrears and upon receipt of an invoice from Landlord for payment of same, an amount equal to Sixteen Thousand Eight Hundred Dollars (\$16,800) ("Rent"). Effective on each five (5) year anniversary of the Commencement Date, the then-current rent shall be increased by ten percent (10%). Tenant shall be entitled to a credit against Rent in an aggregate amount equal to the value, as reasonably determined by Landlord after submission of supporting documentation by Tenant to Landlord, of (i) capital improvements and/or (ii) routine cleaning, maintenance, security and utility service made or provided by Tenant to the public right-of-way and/or the Park immediately adjacent to the Premises. Tenant shall not be entitled to any credits associated with the costs of improvements or the provisions of services to the Premises.

5. Operating Covenants.

A. Tenant's operations on the Premises will not now or at any time interfere with continued public use of the adjacent public street right-of-way; and

B. All personal property, including without limitation planters, tables, chairs, umbrellas, awnings and other sun shade devices, outdoor heating devices and other accessories or equipment as may be necessary for the operation of outdoor patio dining (collectively, the "Personal Property"), shall at all times be kept within the Premises and shall not obstruct traffic on the public street right-of-way or in the Park.

C. The patio to be located upon the Premises and other improvements to the Premises shall at all times comply with the conditions of approval and associated design elements attached hereto as Exhibit "B" and incorporated herein.

1 D. The Premises shall be kept in a good state of repair and in a
2 safe, sanitary, and attractive condition.

3 E. The entrance to the Retail Space shall not be obstructed by
4 barricades, chairs, tables or other furniture.

5 F. Tenant shall place all Personal Property located within the
6 Premises, in strict accordance with Fire Department and Health and Human
7 Services Department standards and contained within Chapter 14.14 of the City of
8 Long Beach Municipal Code.

9 G. Tenant shall not allow cleaning chemicals, or other foreign
10 matter to flow into the adjacent public right-of-way or the Park, and shall otherwise
11 protect the health of adjacent trees, and shall likewise prevent the discharge of litter,
12 cleaning chemicals and all other foreign matter to the storm drain system.

13 H. Tenant shall protect any parkway trees in the immediate vicinity
14 of the Premises from damage due to Tenant's cleaning or other activities on the
15 public walkway or the Park. Tenant shall not interfere with Landlord's access to
16 parkway or Park trees for maintenance purposes. Any special maintenance of the
17 parkway or Park trees is the responsibility of Tenant and must be performed by a
18 qualified landscape contractor acting under a permit from City's Street Landscaping
19 Division. Landlord shall not be held financially responsible for damage to Tenant's
20 sidewalk furniture or awnings occurring in the course of regular street or Park tree
21 maintenance.

22 I. All Personal Property and other accessories to dining or
23 entertainment uses may not exceed those enumerated on Exhibit "B", and must be
24 located inside the barrier, as shown on Exhibit "B".

25 J. All dining and entertainment which takes place on the Premises
26 shall conform to the requirements of Chapter 8.80 of the Long Beach Municipal
27 Code regarding noise.

28 K. Tenant shall otherwise comply with all of the requirements of

1 Section 14.14 of the Long Beach Municipal Code, except insofar as the
2 requirements of this Lease conflict with the requirements of Section 14.14, in which
3 case this Lease shall control.

4 6. Termination. Upon termination of this Lease, Tenant, at its own
5 expense, shall remove all improvements existing on the Premises and shall otherwise
6 restore the public street right-of-way and/or Park to a condition substantially the same as
7 existed immediately prior to the occupancy provided for by this Lease, unless instructed
8 otherwise by Landlord acting in its sole discretion. Should Tenant fail or refuse to remove
9 the obstructions and improvements, Landlord may remove the obstructions and
10 improvements and Tenant shall reimburse Landlord for such costs. In the event of removal
11 by Landlord of all or any portion of the obstructions, Landlord shall not be liable for any
12 damage to or loss of any property of Tenant or Tenant's sublessee of the Retail Space.

13 7. Default. The occurrence of any one or more of the following acts shall
14 constitute a material default by Tenant:

15 A. Failure to pay rent or provide documentation as described in
16 Section 4 when due, subject to a five (5) day cure period;

17 B. Abandonment of the Premises, in whole or in part, for a period
18 of ninety (90) days or more;

19 C. Any attempted assignment or transfer of this Lease, except as
20 provided in Section 13;

21 D. Failure to maintain the insurance required herein, subject to the
22 thirty-day cure period described in Subsection "H" of this Section;

23 E. Failure to pay when due all fees and charges for any municipal
24 service or commodity provided by the City of Long Beach in its municipal capacity,
25 including but not limited to water, sewer, gas, electricity, refuse collection, or
26 recycling, subject to a sixty (60) day cure period;

27 F. To the extent permitted by the United States Bankruptcy Code,
28 insolvency of Tenant, which shall be deemed to include an assignment by Tenant

1 for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy;
2 an adjudication that Tenant is bankrupt; the appointment of a receiver of the
3 properties of Tenant if the receiver is not discharged within thirty (30) days; the filing
4 of an involuntary petition of bankruptcy and failure of Tenant to secure a dismissal
5 of the petition within sixty (60) days after filing; attachment of or the levying of
6 execution on the leasehold interest and failure of Tenant to secure discharge of the
7 attachment or release of the levy of execution within thirty (30) days. In the event of
8 any of the foregoing, no notice that an event of default has occurred shall be required
9 from Landlord;

10 G. Failure to comply with a legal determination and/or order which
11 creates a nuisance or waste on the Premises;

12 H. Any failure to perform any other material term, covenant, or
13 condition of this Lease not otherwise specifically described in this Section 7 shall be
14 enforced in accordance with the enforcement procedures described in Exhibit "D"
15 attached hereto and incorporated herein by this reference.

16 8. Remedies. Upon the occurrence of any material default and the
17 expiration of any applicable cure periods, in addition to any other rights or remedies of
18 Landlord hereunder, by law or in equity, Landlord shall have the following rights and
19 remedies:

20 A. Landlord may terminate this Lease by giving to Tenant written
21 notice of termination. If Tenant fails to promptly surrender possession of the
22 Premises as described elsewhere herein, then Landlord may commence eviction
23 proceedings in accordance with applicable law. Termination hereunder shall not
24 relieve Tenant from the payment of any sum due to Landlord for damages or
25 indemnity. Landlord shall be entitled to recover from Tenant all damages
26 determined by the court in the eviction proceeding.

27 B. Landlord may continue the Lease in full force and effect and
28 enforce all of its rights and remedies hereunder.

1 C. Landlord shall have the right to recover all damages caused by
2 Tenant's default. Damages shall include but not be limited to all costs incurred by
3 Landlord as a result of Tenant's default, and all costs incurred by Landlord in
4 restoring the Premises to the same condition as of the Commencement Date.

5 D. Nothing in this Lease shall be deemed to require that Landlord
6 wait until the date on which the Lease term expires to bring or maintain any suit or
7 action relating to a material breach of this Lease after expiration of any applicable
8 cure periods.

9 These remedies are not exclusive but cumulative to other remedies provided by law in the
10 event of Tenant's material default and the exercise by Landlord of one or more rights and
11 remedies shall not preclude Landlord's exercise of additional or different remedies for the
12 same or any other material default by Tenant.

13 9. Condition of Premises. Tenant accepts the Premises in its present
14 condition and agrees to maintain the same in a safe, clean, and orderly condition. Any and
15 all uses made of the Premises shall be at the sole risk, cost, and expense of Tenant.
16 Tenant, by its acceptance of this Lease, agrees to indemnify, defend, save and keep the
17 City of Long Beach, its officers, agents, and employees free and harmless from and against
18 any and all liability as well as from and against any and all loss, claims, demands, damages,
19 expenses and costs of whatsoever nature arising out of or in any manner resulting, directly
20 or indirectly, from Tenant's or its sublessee's operations on or the condition, use or misuse
21 of the Premises, including liability, claims or damages to or as a result of any structures or
22 fixtures on the Premises or appurtenances to it.

23 10. Insurance. In partial performance of this obligation, Tenant shall
24 obtain and keep in full force and effect such public liability insurance and property damage
25 insurance as required from time to time by the City's Risk Manager.

26 11. Applicable Laws. Nothing in this Lease shall be construed to excuse
27 compliance by Tenant with any and all of the laws and ordinances of City and State; neither
28 shall this Lease be deemed to obviate the necessity of Tenant's and/or its sublessee's

1 obtaining such other permits or licenses as are required to conduct specific activities within
2 the Premises, including but not limited to entertainment or the sale, service or consumption
3 of alcoholic beverages.

4 12. Attorneys' Fees. In case suit shall be brought for the recovery of
5 possession of all or any portion of the Premises or because of the breach of any covenant
6 contained in this Lease to be kept and performed on the part of Tenant, Tenant shall pay
7 to Landlord reasonable attorneys' fees which shall be fixed by the court.

8 13. Assignment. Tenant shall not assign this Lease, or any interest in it,
9 nor shall this Lease, or any interest in it, be subject to transfer or assignment by order of
10 any court. Any such transfer or assignment shall not create any right whatsoever in the
11 transferee or assignees and shall entitle the City Manager, at his discretion, to terminate
12 this Lease. Notwithstanding the foregoing, Tenant (and its assigns) shall have the right,
13 without the consent of City, to transfer or assign the entirety of its leasehold interest under
14 this Lease to any subsequent purchaser of the Retail Space.

15 14. Notice. All notices required hereunder shall be in writing and
16 personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid,
17 as follows:

18 To Tenant: Long Beach Center, LLC
19 9200 W. Sunset Blvd., PH9
20 West Hollywood, CA 90069
21 Attention: Tony Shishooni

22 To Landlord: City of Long Beach
23 333 W. Ocean Blvd., 13th Floor
24 Long Beach, CA 90802
25 Attention: City Manager

26 Change of address shall be given in the same manner as stated for other
27 notices. Notice shall be deemed given on the date deposited in the mail or on the date
28 personal delivery is made, whichever first occurs.

LONG BEACH CENTER, LLC, a California
limited liability company

Nov. 30th, 2017

By [Signature]
Name Tony Shoshani
Title Outgoing Member

_____, 2017

By _____
Name _____
Title _____

"TENANT"

CITY OF LONG BEACH, a municipal
corporation

12/1, 2017

By [Signature] EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.
City Manager Tom Modica
"LANDLORD" Assistant City Manager

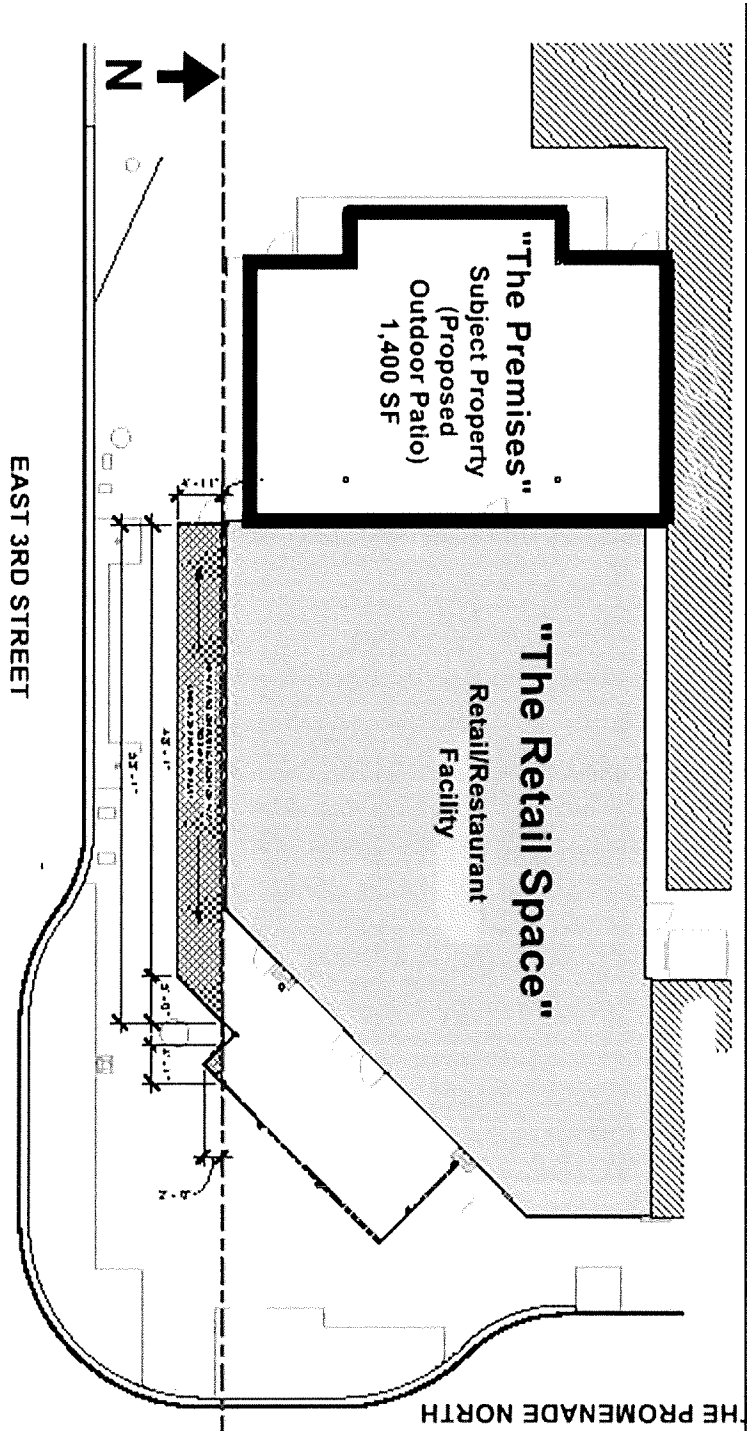
Approved as to form this 30 day of November, 2017.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy City Attorney

EXHIBIT "A-1"

RETAIL SPACE DEPICTION



OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Loma Beach, CA 90802-4664

EXHIBIT "A-2"

PREMISES

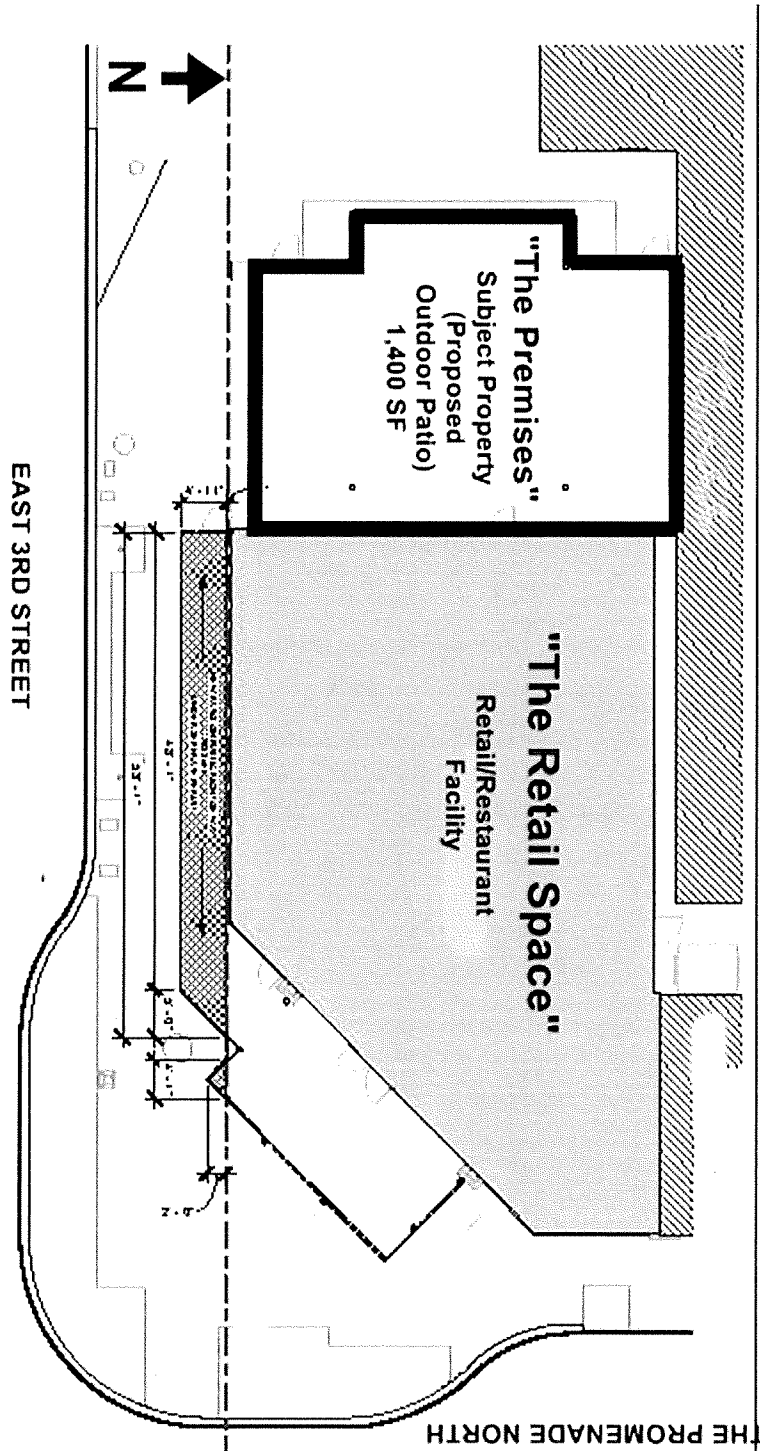
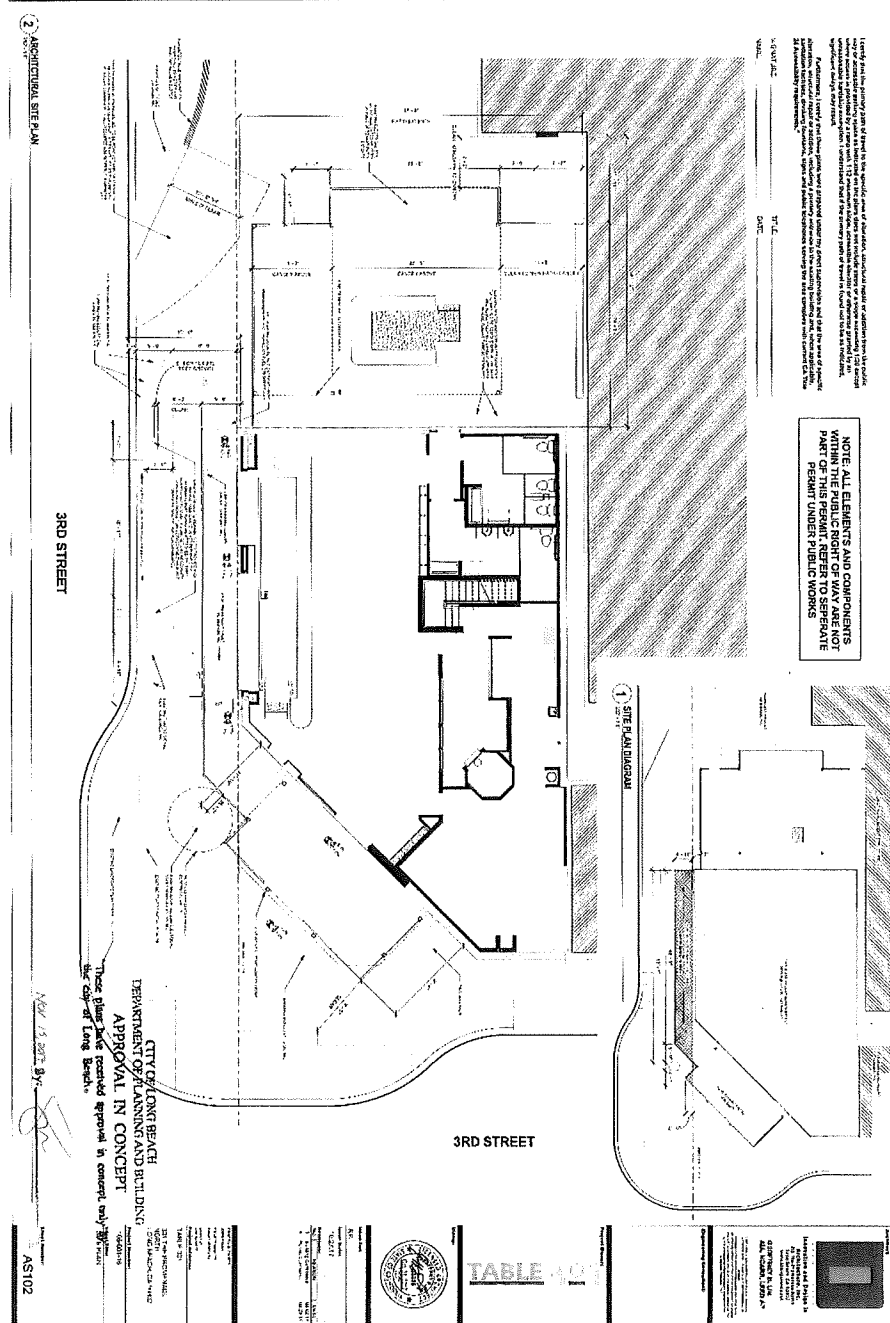


EXHIBIT "B"

CONDITIONS OF APPROVAL + DESIGN ELEMENTS



OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

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**SITE PLAN REVIEW
CONDITIONS OF APPROVAL**

301 The Promenade
App. No. 1706-05, SPR17-056

1. A Site Plan Review approval to allow the remodel of the front façade of an existing one-story commercial building located at 301 The Promenade in PD-30, the Downtown Plan.
2. This permit and all development rights hereunder shall terminate one year from the effective date of this permit unless construction is commenced or a time extension is granted, based on a written request submitted to and approved by the Zoning Administrator prior to the expiration of the two-year period as provided in Section 21.21.406 of the Long Beach Municipal Code.
3. This permit shall be invalid if the owner(s) and/or applicant(s) have failed to return written acknowledgment of their acceptance of the conditions of approval on the *Conditions of Approval Acknowledgment Form* supplied by the Planning Bureau. This acknowledgment must be submitted within 30 days from the effective date of approval (final action date or, if in the appealable area of the Coastal Zone, 21 days after the local final action date).

Special Conditions:

4. Signage shall be strategically placed on the building in a manner consistent with the style of the building. All signs shall also be in compliance with the recently approved sign program for "The Streets".
5. The proposed outdoor patio areas located on City property shall be approved by means of a lease agreement and/or Outdoor Dining Permit, to the satisfaction of the Planning Manager.
6. Address numbers, which include the street name and unit number, shall be placed on the street side of the main building and clearly visible from the street. Address number should also be painted on the rooftop in four foot strokes that are visible to emergency helicopter only.
7. All address sign/s shall be well lit and remain free and clear of obstructions.
8. The proposed outdoor patio fencing shall be compatible with existing outdoor dining fencing found along The Promenade North, and shall not exceed 4-feet in height.

Standard Conditions:

9. If, for any reason, there is a violation of any of the conditions of this permit or if the use/operation is found to be detrimental to the surrounding community, including public health, safety or general welfare, environmental quality or quality of life, such shall cause the City to initiate revocation and termination procedures of all rights granted herewith.

Conditions of Approval
No. 1706-05
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10. This approval is required to comply with these conditions of approval as long as the use is on the subject site. As such, the site shall allow periodic re-inspections, at the discretion of city officials, to verify compliance. The property owner shall reimburse the City for the inspection cost as per the special building inspection specifications established by City Council (Sec. 21.25.412, 21.25.212).
11. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the permitted use and development of said property as set forth by this permit together with all conditions that are a part thereof. These specific requirements must be recorded with all title conveyance documents at time of closing escrow.
12. Exterior security bars and roll-up doors applied to windows and pedestrian building entrances shall be prohibited.
13. Any graffiti found on site must be removed within 24 hours of its appearance.
14. All rooftop mechanical equipment shall be fully screened from public view. Said screening must be architecturally compatible with the building in terms of theme, materials, colors and textures. If the screening is not specifically designed into the building, a rooftop mechanical equipment plan must be submitted showing screening and must be approved by the Director of Development Services prior to the issuance of a building permit.
15. Demolition, site preparation, and construction activities are limited to the following (except for the pouring of concrete which may occur as needed):
 - a. Weekdays and federal holidays: 7:00 a.m. to 7:00 p.m.;
 - b. Saturday: 9:00 a.m. - 6:00 p.m.; and
 - c. Sundays: not allowed
16. All trash and refuse containers shall be fully screened from public view to the satisfaction of the Director of Development Services.
17. The applicant shall defend, indemnify, and hold harmless the City of Long Beach, its agents, officers, and employees from any claim, action, or proceeding against the City of Long Beach or its agents, officers, or employees brought to attack, set aside, void, or annul an approval of the City of Long Beach, its advisory agencies, commissions, or legislative body concerning this project. The City of Long Beach will promptly notify the applicant of any such claim, action, or proceeding against the City of Long Beach and will cooperate fully in the defense. If the City of Long Beach fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Long Beach.

EXHIBIT "D"

**OPERATING COVENANT
ENFORCEMENT PROCESS**

1. Letter of information sent to Tenant regarding Lease requirements and request to correct an observed violation of Lease covenants.
 - If not remedied in ten (10) working days, send official Notice of Violation.
2. Notice of Violation
 - Indicates that Tenant can be found in default under the Lease.
 - Alerts Tenant that the Alcoholic Beverage Control (ABC) will be notified that the Lease will be declared in default.
 - If violation of Lease covenants is not corrected within ten (10) working days, send Second Notice of Violation by certified mail.
 - Copies of Notice of Violation to be sent to the City Manager and Downtown Long Beach Associates (DLBA).
3. Second Notice of Violation
 - Inform Tenant that "On (date 10 working days hence) you will receive a Notice of Default if Lease violations not corrected."
 - If Lease violations not corrected within ten (10) working days, send Notice of Default by certified mail.
 - Copies of Second Notice of Violation to be sent to the City Manager and DLBA.
4. Notice of Default by Department of Public Work
 - Provides Tenant ten (10) working days, or any longer cure period provided for in the Lease, to remedy violation.
 - If Tenant fails or refuses to remedy the violation within the time specified, City may immediately terminate the Lease.
 - If a Notice of Default is issued, the Security Deposit will be forfeited.
 - Second ABC notice of Lease status upon actual default.
 - City Manager and DLBA informed when final default occurs.
5. City removal of obstructions and improvements at Lessee's expense and/or possible legal action by City to restrain use of sidewalk.