

Moss, Julia

From: Michelle Strong <info@capitolabarandgrill.com>
Sent: Friday, June 16, 2023 3:51 PM
To: Moss, Julia; City Council; Keiser, Marguax; [REDACTED]; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander
Cc: James Anthony
Subject: [PDF] Upcoming Meeting June 22nd
Attachments: 23-03-24 Declaration of Michelle Strong ISO Provisional Injunctive Relief.pdf; 23-03-24 Memo ISO Claimants' Request for Issuance of Provisional Injunctive Relief.pdf

Dear Madam Clerk:

Please forward this email and attachments to Mayor and City Council Members as soon as possible as a supplement to our previously submitted appeal documents.

Dear Mayor and City Council Members:

We were recently informed that the June 22nd meeting will be held at 4:00pm, instead of the 6:00pm start time that has been recurring from the beginning of the year and resumes to be the start time for the remainder of 2023. This change in time will greatly affect those that want to attend the meeting in person.

Attached please find supplemental legal support for our appeal written by our lawyers. Please include this email and the attached as part of our appeal record. As we said in our original appeal, if you decide to uphold the appeal and grant Capitola Bar & Grill (CPG) an Entertainment Permit for 2023, there are at least two possible legal bases for doing so:

- 1) *The ordinance* does not require a landlord consent signature, therefore the landlord consent request on *the form* is optional, and the lack of it is not grounds for denial of the permit, and as City Council we hereby uphold the appeal, reverse the denial and issue an entertainment permit for 2023; and
- 2) Even if landlord consent is required, as City Council we find as a matter of fact and of law that the Landlord, La Serena Properties, is bound by the lease contract it signed approving the CPG use of the property, which always included and still includes, the right to live music, therefore the Landlord's consent to the Entertainment Permit is deemed given and recognized even without the signature on the permit form, and as City Council we hereby uphold the appeal, reverse the denial and issue an Entertainment Permit for 2023.

After the public hearing closes, any one of you can **make a motion to "uphold the appeal, reverse the denial and issue an Entertainment Permit for 2023" for either one, or both, of the reasons given above (you can detail the reason in your motion by reading the above)**. Procedurally this is the same as adopting the staff report suggested resolution--this is just an alternative. You can vote at the hearing even if staff wants to draft a different resolution for your decision to be approved on consent at a future meeting.

Either reason is enough by itself, and both is an even stronger legal basis to support your decision if challenged. Two of you could decide together to make the motion and second it. (More than two of you cannot come to agreement before the meeting; the final majority decision must be made at the meeting in public.)

Thank you,
Lasalle & Michelle Strong

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JAMS ARBITRATION

9 MICHELLE STRONG, an individual; and
10 LASALLE STRONG, an individual;

11 Claimants,

12 vs.

13 LA SERENA PROPERTIES, LLC, a
14 California limited liability company

15 Respondent.

JAMS Ref. No. 5130000363

MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
CLAIMANTS' REQUEST FOR
ISSUANCE OF PROVISIONAL
INJUNCTIVE RELIEF

Date: TBD
Time: TBD
Location: Virtual

Arbitrator: Hon. Glenda Sanders

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I. INTRODUCTION & SUMMARY

2 Claimants hereby seek **emergency provisional injunctive relief** restoring the *status quo ante*
3 in place prior to Respondent's wrongful interference and disruption of Claimants' live music permit
4 issued by the City of Capitola to prevent irreparable harm to Claimants' business. Emergency relief
5 pursuant to JAMS Rules 2(c) is appropriate because (1) disputes between these parties are subject to
6 arbitration, (2) Claimants are likely to prevail on the merits of the dispute, (3) Claimants can
7 demonstrate that immediate irreparable harm or damage will result to Claimants in the absence of
8 emergency relief and (4) Claimants are entitled to such relief." (*See* JAMS Rules 2(c)).

10 This is a commercial landlord-tenant dispute involving a restaurant space located at 231
11 Esplanade, Capitola, CA. The primary issues to be addressed through arbitration generally are: (1)
12 whether landlord is in breach of contract for obstructing Claimants' live entertainment permit, and
13 (2) whether Landlord and its agents have engaged in deliberate bad faith tactics to evade and/or
14 frustrate service of legal notice of Claimants' exercise of the option to extend the applicable Lease
15 Agreement (the "Lease Option").

17 As set forth in the accompanying declaration of Claimant Michelle Strong, Claimants are
18 currently subtenants of a commercial unit in mixed-use commercial building on the Capitola
19 Esplanade, a well-known scenic locale frequented by locals and tourists. The premises have
20 commercial and residential space alike. Claimants purchased the assets, including the liquor license,
21 from the prior operator JJJ Group Inc., who is currently the Master Tenant. Prior to signing the
22 Sublease, Claimants had extensive communication with Master Tenant, Landlord, and Landlord's
23 manager Steven Yates. In those communications, Claimants unequivocally communicate their intent
24 in writing to have live music at the restaurant. Having extensive knowledge of this intention, Steven
25 Yates executed the sublease agreement on behalf of Landlord La Serena Properties LLC.

27 For approximately 10-12 months, Claimants operated their restaurant with live music without
28 any dispute with Landlord or any other tenants. Steven Yates's son, Ryan Yates, lives on one of the

residential units located in the building. In the beginning of 2022, Ryan Yates began to behave in an increasingly erratic and hostile way, at one point acting highly inappropriately with a minor hostess working at Claimants' restaurant. Claimants believe that the evidence in this matter will demonstrate that much of Steven Yates's unreasonable conduct in this matter is best explained by his relationship with his son Ryan Yates who lives in the building. After Claimants complained to Landlord about Ryan Yates's behavior to Steven Yates in May of 2022, Steven Yeats conduct shifted dramatically in tone and the relationship between the parties began to deteriorate.

In June of 2022, Landlord sent a written communication to Claimants through Landlord's property manager. Although the communication's purpose and form were unclear as to what it was, Claimants treated it as a notice to cure and began to work on addressing the alleged issues identified in this letter. Despite multiple attempts, in writing and otherwise, to communicate with Landlord, Landlord abandoned the matter and did not respond to or otherwise engage in any process to communicate what cures Landlord considered to be required in the circumstances.

Despite abandoning any semblance of process regarding the "notice to cure", In August of 2022, Landlord communicated to Master Tenant its position that Claimants had done nothing to address the alleged problems and Landlord would, therefore, not be honoring the option to extend the lease despite having received written notice of it. Likewise, Landlord has formally withdrawn its consent for the live entertainment permit and Claimants' application to the County of Capitola for a 2023 entertainment permit has been denied on the basis that the application does not have landlord consent.

Throughout this dispute, Steven Yates's conduct may be characterized as petty and unreasonable. He routinely equates his personal distaste of Claimants as legally actionable violations of the Lease Agreement. Likewise, the inappropriate and unreasonable conduct of his son Ryan Yates, who chose to live in a mixed-use building in area known for night life and live music, is undoubtedly exacerbating the entire matter. Claimants have an exceptional record with the City of

1 Capitola, the Capitola Police Department, and enjoy a good reputation in the community. By
2 interfering with Claimants' live music, Claimants weekly revenue has been reduced by approximately
3 \$5,000.00 a week, which is a **conservative** estimate. Patrons no longer think of Claimants' restaurant
4 in the same way and the extreme competitive advantage of having live music has been wholly
5 removed. Claimants' business's reputation, good will, and brand value has been immeasurably
6 damaged.
7

8 An emergency injunction is essential to prevent unknown destruction to Claimants' business.
9 Indeed, there is an overt existential risk that Claimants' very business will become insolvent because
10 of the abrupt change to what was otherwise a lucrative business model. Because this harm includes
11 issues of reputation, business goodwill, brand, and long-term business value, money alone cannot
12 make Claimants whole largely because the true monetary damage is unknown and unknowable. The
13 effects of Landlord's conduct will have a damaging ripple effect across the coming months and years.
14

15 Conversely, Respondents will suffer no harm if Claimants continue to lawfully operate their
16 business as they did for almost 18 months prior to Respondent's wrongful termination of their
17 entertainment permit. Respondent will still receive rent, Claimants will continue to pay CAM charges
18 and other shared expenses, and the subject premises will not be damaged or devalued in any way.
19 Claimants will continue to be subject to local and state law regarding the operation of the business.
20 Respondent cannot reasonably argue that Claimants lawful operation of their business will cause
21 Claimants harm. Likewise, if Respondent tries to argue that Claimants might unlawfully operate their
22 business in the future, the emergency order can be carefully tailored to ensure an expedient process
23 to address that unlikely possibility.
24

25 Under the total circumstances, fundamental notions of justice and fair play requires that an
26 emergency order must issue.
27
28

II. FACTUAL TIMELINE & CONTEXTUAL BACKGROUND

A. Acquisition of Commercial Lease, Assets, Liquor License, and Commencement of Operation of Capitola Bar & Grill by Claimants

In June 2021, Claimants responded to a commercial real estate listing by Broker Bob Brooks offering for sell the assets, including the lease, of a restaurant business in downtown Capitola at 231 Esplanade in Capitola, California 95010 (the “Subject Premises”). (Dec. of M. Strong ¶ 3). Mr. Brooks became broker for seller Jill Ealy, managing member of JJJ Group Inc., and Claimants. The landlord was La Serena Properties LLC (Steven Yates, managing member). (Dec. of M. Strong ¶ 3).

The restaurant, Capitola Bar & Grill (“CBG”) is in the scenic seaside village of Capitola, a longtime resort destination surrounded by restaurants, bars, and hotels. During the due diligence period, prior to execution of the Sublease and Assignment, Claimants learned that many dining establishments in the area offer live music, including Mr. Toots, the coffee shop located in the same mixed-use building. (Dec. of M. Strong ¶¶ 5,6). Claimant also learned that another restaurant in the same building Margaritaville, previously owned by Steven Yates, likewise offered live music and live DJ’s during the time that Mr. Yates operated that business. (Dec. of M. Strong ¶ 6). Claimants concluded that live music would be necessary to run a profitable business in that area. (Dec. of M. Strong ¶ 6).

Extensive communications with Mr. Yates expressing Claimants interest in hosting live music and his approval to do so materially affected Claimants decision to purchase the business and agree to the Sublease. (Dec. of M. Strong ¶ 7). On July 15, 2021, for example, Mr. Brooks forwarded a summary of Claimants’ business plan to Steven Yates which stated that it was important for Claimants “...to offer live music...” (Dec. of M. Strong ¶ 8, Ex. A). Subsequently, Claimants purchased the assets of JJJ Group Inc. for \$240,000.00, including the lease and entered into the Sublease and Assignment Agreement with JJJ Group and the Landlord. (Dec. of M. Strong ¶ 9, Ex. B). Claimants executed the Sublease on July 21, 2021. (Dec. of M. Strong ¶ 9, Ex. C).

2 On August 20, 2021, Mr. Brooks sent an email to Mr. Yates that stated in part: “Michelle and
3 Sal are working with a sign company that will help them with any necessary approvals. They're
4 planning on getting an entertainment permit so they can have a two or three-person bands to provide
5 dinner music and will need your sign off on that.” (Dec. of M. Strong ¶ 10, Ex. D).

6 On August 20, 2021, Mr. Yates responded, “The property manager does all the leasing-lease
7 work. I informed him of the new tenant a month ago and a lease was prepared. Jill should be aware
8 of all this to assist the new tenant in the transition. Thanks for the info.” (Dec. of M. Strong ¶ 11, Ex.
9 D).

10 An annual fire inspection was required to be performed prior to submitting an application to
11 the City of Capitola for an entertainment permit. (Dec. of M. Strong ¶ 12).

12 On September 22, 2021 Claimants sent an email to the property manager Russell Gross,
13 stating in part, “We needed to get an inspection done for entertainment permit. Here are the items
14 that need to be addressed. The items inside our unit have been taken care of, however there are some
15 that pertain to the common area.” (Dec. of M. Strong ¶ 13, Ex. E).

16 On that same day, Mr. Gross replied that he approved SSS Fire Protection to complete the
17 “5-year fire inspection”. (Dec. of M. Strong ¶ 14, Ex. E).

18 Claimants expended not less than \$10,000 in improvements as required for the entertainment
19 permit, including but not limited to, soundproofing, wood paneling, ceiling treatment, curtains, self-
20 closing doors, and cameras. (Dec. of M. Strong ¶ 15)

21 In November 2021, the entertainment permit was issued from the City of Capitola for the
22 remainder of that year. On January 27, 2022 the entertainment permit was renewed for 2022 without
23 issue. (Dec. of M. Strong ¶ 16, Ex. F). During that time, Claimants implemented their business plan
24 involving live music. (Dec. of M. Strong ¶ 17).

25 Beginning in April 2022, Ryan Yates, an upstairs residential tenant who is also the son of
26 Steven Yates, complained about noise violations and involved Capitola Police, who took no action

on the complaints. After Capitola Police declined further action, Ryan Yates began engaging in
2 intimidating and inappropriate behavior to CBG employees—including inappropriate conduct
3 toward a 16-year-old hostess. (Dec. of M. Strong ¶ 18). Michelle Strong immediately reported Ryan
4 Yates’ behavior to Steven Yates. (Dec. of M. Strong ¶ 18).

5 Ryan continued to speak in threatening tones to CBG employees, unreasonably using his
6 relationship to the landlord as authority and posting “notices” on the door purporting to instruct
7 claimants to cease certain conduct. (Dec. of M. Strong ¶ 19) Additionally, Claimants complained to
8 Steven Yates and property manager Russell Gross regarding issues with the condition of the
9 Premises. Notably, that the ADA chair lift to the restaurant never worked and the roof of the
10 residential unit that Claimants are also in possession of constantly leaked during the rainy seasons.
11 (Dec. of M. Strong ¶ 20)

12 Progress on repairs were very slow. Some minor work was done, but not professionally. The
13 chair lift has since been removed and half-replaced, remaining undone. (Dec. of M. Strong ¶ 21).

14
15 **B. Landlord Escalation of Dispute Regarding Claimants' Live Entertainment Use**

16 Ryan Yates on or about April 2, 2022 and May 5, 2022, raised allegations of noise and alleged
17 municipal code violations relating to CBG’s live music to Capitola Police. (Dec. of M. Strong ¶ 22).

18 Capitola Police investigated the allegations and made no finding of any alleged violations,
19 issued no citations, arrested no persons, issued no warrants, and performed no follow up. (Dec. of
20 M. Strong ¶ 23). Specifically, in the case of the May 5, 2022 complaint, Police came to CBG. (Dec. of
21 M. Strong ¶ 23). When Police arrived, it was obvious to them that no such violation had occurred,
22 and they characterized the complaint as **unfounded**. (Dec. of M. Strong ¶ 23, Ex. H).

23 Until Claimants reported Ryan Yates’ behavior, CBG hosted live music performances
24 smoothly, with no complaints or requests to lower music volume from patrons, neighbors or upstairs
25 residential tenants. (Dec. of M. Strong ¶ 24). Nor did Capitola Police issue any reports or citations at
26 any time before or after Ryan Yates’ complaints. (Dec. of M. Strong ¶ 24).

2 Nonetheless, on May 17, 2022, property manager Russell Gross sent Claimants an email
3 which stated in part: “Michelle, I am receiving a number of complaints regarding the music at the
4 premises.” The email further provided for adjustments the owner [Steven Yates] required Claimants
5 to “stay in compliance” with the “entertainment permit and lease agreement.” (Dec. of M. Strong ¶
6 25, Ex. I).

7 On May 17, 2022, Ms. Strong replied to Russell’s email detailing CBG’s compliance with the
8 lease and explaining that CBG received confirmation from Officer Brantley, who responds to noise
9 ordinance complaints on behalf of the City of Capitola, that CBG was in compliance with local law
10 including the entertainment permit. (Dec. of M. Strong ¶ 26, Ex. J). Ms. Strong further requested
11 more details on the alleged “number of complaints” so that she could provide CBG’s security camera
12 footage, as she was not aware of any complaints aside from the two complaints made by Steven’s son
13 on April 2, 2022, and May 5, 2022. (Dec. of M. Strong ¶ 26 Ex. J).

14 Despite not being required to do so, Claimants installed curtains and sound boards and kept
15 doors closed after 8pm. (Dec. of M. Strong ¶ 27). On weekends CBG stopped all music by 10pm
16 even though the permit allowed them to play music until 12:00 am October through April and 12:30
17 am May through September. (Dec. of M. Strong ¶ 27, Ex. J).

18 Ms. Strong did not receive a response to her May 17, 2022, email. (Dec. of M. Strong ¶ 28).
19 Claimants continued to operate their business and provide music to their customers. (Dec. of M.
20 Strong ¶ 28, Exs. F & J). On May 22, 2022, Ryan Yates placed a notice on the door of the premises
21 that purported to tell Claimants to “cease and desist. (Dec. of M. Strong ¶ 28, Ex. S). The same day,
22 Claimants responded in writing addressing the alleged violations requesting a meeting from the
23 Landlord. (Dec. of M. Strong ¶ 28, Ex. S). Landlord never responded to Claimants’ email of May 22,
24 2022.
25

26
27 On June 1, 2022, the property manager sent a perplexing email stating that “[t]he Tenants at
28 the complex would like to know if you have a plan to continue "as is" with the music. They are

2 stating that DBA levels over 100. steady level between 90 and 100. Hearing loss can occur at 15
3 minutes of 90 dba. (Dec. of M. Strong ¶ 28, Ex. S). On June 1, 2023, Claimants responded that:

4 “It’s impossible for them to read 90-100 in their units, as it would have to be 140-150 on the
5 dance floor. That would mean, everyone in our unit would be deaf? What device is Ryan
6 Yates using, as the Capitola Police Department has never documented that our levels are
7 louder than allowed with our permit.

8 In our bar area, the music is rarely over 80, and has its own music as they can't hear the live
9 music in the bar. In our apartment unit #200, we cannot hear the music at all. We have
10 requested to meet and have not heard back. This matter needs more attention than requiring
11 us to give you a yes or no answer. Noise ordinance in its standard everyday allowance is
12 10pm, we have already compromised to end at 10pm, however there is still expected noise
13 levels in our restaurant till closing.

14 Ryan Yates has harassed my staff and I want to have a meeting before this continues to
15 escalate.”

16 (Dec. of M. Strong ¶ 28, Ex. S).

17 On June 1, 2022, Steven Yates emailed Michell Strong stating that the Landlord had opened a
18 harassment investigation due to Claimants’ complaint regarding Ryan Yates’ conduct. (Dec. of M.
19 Strong ¶ 29, Ex. K). The subject line of the email was “Noise and harassment claim.” It stated in
20 part, “Commercial tenant [CBG] has alleged that it has been harassed by either a tenant in the
21 landlords [*sic*] property or by landlord...” (Dec. of M. Strong ¶ 29, Ex. K). on June 9, 2022, the
22 property manager forwarded a letter from Steven Yates from June 8, 2022, that perplexingly
23 concluded that Claimants were harassing Ryan Yates and then used the harassment investigation to
24 reiterate the disputed noise complaints. (Dec. of M. Strong ¶ 29, Ex. K).

25 Without evidence, Ryan Yates implied Claimants involvement in “slashing” his bicycle tires.
26 (Dec. of M. Strong ¶ 31). He made no police report about that purported damage. (Dec. of M.
27 Strong ¶ 31). Yet Steven Yates characterized Ryan Yates’ vandalism claim as “harassment” by
28 Claimants. The letter further commanded, “reverse course and be a responsible tenant in the building
and in the village.” (Dec. of M. Strong ¶ 31 Ex. K).

2 Steven Yates also claimed that he used a cell phone application to measure live music at 105-
3 110 decibels outside of the building. (Dec. of M. Strong ¶ 32, Ex. K). The nature of these readings
4 and the precise locations where they were taken were not stated, nor did the letter advise whether
5 other restaurants in the area were open and contributing to the sound. (Dec. of M. Strong ¶ 32, Ex.
6 K).

7 On June 9, 2022 Michelle Strong responded to Steven Yates's June 8, 2022 letter explaining
8 that his letter completely mischaracterized Ryan Yates and his conduct. (Dec. of M. Strong ¶ 33, Ex.
9 L). She further explained that his decibel readings were grossly inaccurate, and Claimants kept videos
10 and A-weighted decibel readings evidencing that their music remained within compliant levels, that
11 the music did not reach the bar seating area or the residential unit above the premises, and that
12 Capitola Police never issued a citation in response to Ryan Yates' complaints. (Dec. of M. Strong ¶
13 33, Ex. L).

14 Claimants made multiple requests to have Steven Yates perform an on-site inspection to
15 confirm compliance with the entertainment permit, the lease and the Capitola Municipal Code. (Dec.
16 of M. Strong ¶ 34). Mr. Yates refused to do so. (Dec. of M. Strong ¶ 34, Ex. L).

17 To appease Mr. Yates, on June 16, 2022, Michelle Strong sent another email to Steven and
18 Russell requesting to install sound insulation to non-working vents to minimize vibration. (Dec. of
19 M. Strong ¶ 35, Ex. M). The email also informed them that several hotels in the area and tenants in
20 the building, were supportive of their business even promoting the live music to their guests. (Dec. of
21 M. Strong ¶ 35, Ex. M).

22 In June 21, 2022, Steven Yates replied to Michelle's June 16, 2022 email that he saw "no
23 further point in attempting to rationalize"... "the impact your live music-bands-kereoke [sic] is having
24 on the building tenants." Despite having no actual complaint from any residential or commercial
25 tenant aside from his son, Ryan Yates, Mr. Yates further stated, "you [CBG] are in default under the
26 lease..." (Dec. of M. Strong ¶ 36, Ex. M).

2 Claimants never received proper direct notice of the alleged breach and Mr. Yates refused to
3 communicate with them in any capacity regarding their efforts to comply with the improper “notice
4 to cure”. (Dec. of M. Strong ¶ 37).

5 Subsequently, Claimants met with Police Chief Andrew Dally to discuss any compliance
6 issues due to the confusing “notices” from the landlord. The Chief said there were no significant
7 issues or complaints and that he was not concerned with CBG’s use of music. (Dec. of M. Strong ¶
8 38). The Chief, however, informed Claimants that Steven Yates had asked Capitola Police to cancel
9 Claimants’ entertainment permit. (Dec. of M. Strong ¶ 38).

10 During the week of August 22, 2022, Master Tenant, Jill Ealy sent written notice of exercise
11 of the option to extend the Lease by registered mail. (Dec. of M. Strong ¶ 39). On August 29, 2022,
12 Ms. Ealy communicated with Mr. Yates by email to confirm his receipt of the notice. (Dec. of M.
13 Strong ¶ 39, Ex. N).

14 On August 30, 2022, Steven Yates responded to Jill Ealy that Claimants were in “default of
15 the lease” and made “zero attempt” to cure the alleged music breach, and “may not exercise the
16 option while in default and that period to correct the default has passed.” (Dec. of M. Strong ¶ 40,
17 Ex. N). In fact, Claimants installed curtains and sound boards, closed their doors early, reduced
18 music days, times and volume, installed cameras, kept decibel readings, requested permission to add
19 insulation and requested multiple meetings with Mr. Yates. (Dec. of M. Strong ¶ 40, Ex. N)

20 On September 1, 2022, Jill Ealy responded to Steven’s August 30, 2022 email to address the
21 supposed non-compliance and exercise of the option to extend the lease agreement. (Dec. of M.
22 Strong ¶ 42 Ex. N). Claimants hired a law firm to assist with the conflict. (Dec. of M. Strong ¶ 43). In
23 October 2022 Claimants met with Chief of Police Andrew Dally to discuss the renewal of the
24 entertainment permit. Claimants offered to file the same annual renewal form for 2023 that was filed
25 for 2021 and 2022. (Dec. of M. Strong ¶ 43). It became an unexpected issue that Steven Yates
26
27
28

2 refused to sign the renewal form even though he had not signed the forms in 2021 or 2022 and the
3 permits were still issued. (Dec. of M. Strong ¶ 43).

4 On January 31, 2023 Claimants received a letter from the City Manager officially denying
5 their entertainment permit application for 2023, wholly because Landlord did not give his consent by
6 signing the form. There was no other reason listed for denial of the permit. (Dec. of M. Strong ¶ 44,
7 Ex. O).

8 On February 1, 2023 Steven Yates emailed the Broker Bob Brooks to ask if he had any
9 record of communications between us regarding “implied consent” that live music was a prior or
10 contemporaneous understanding of the parties prior to executing the Sublease. (Dec. of M. Strong ¶
11 45, Ex. P). Broker Bob Brooks responded “I checked my email and found the attached business plan
12 Michelle Strong sent me and that I forwarded to you on July 15, 2021. It does mention live music”.
13 (Dec. of M. Strong ¶ 45, Ex. P).

14 Claimants have several communications informing Mr. Yates they intended to have live
15 music/bands. (Dec. of M. Strong ¶ 46, Exs. A, D, & E). On the other hand, Claimants do not have
16 any communications from Mr. Yates opposing live music prior to the complaints of his son. (Dec. of
17 M. Strong ¶ 46).

18 On February 21, 2023, Claimants filed an appeal of the entertainment permit denial. (Dec. of
19 M. Strong ¶ 47, Ex. Q).

20 On March 1, 2023 Steven Yates and Claimants, through their respective counsel, participated
21 in mediation pursuant to the lease agreement to address the alleged default of lease and other
22 outstanding issues, including an exercise of the option to extend the lease agreement. (Dec. of M.
23 Strong ¶ 48).

24 Steven Yates mediation statement consisted of multiple unfounded and untrue statements.
25 For example, Mr. Yates claimed, “The Landlord has been informed that due to past violations of its
26 permit, the CPD [Capitola Police Department] intends to issue a cease-and-desist order to Capitola
27
28

Strong prohibiting it from making loud music noises”. (Dec. of M. Strong ¶ 49 Ex. R). To the
2 contrary, CPD has never issued a cease-and-desist order of any kind, nor have they issued a citation
3 or violation of any kind through the date of filing of this brief. (Dec. of M. Strong ¶ 50).

4 Mr. Yates mediation statement further stated, “The Subtenant has not been a desirable tenant
5 from the Landlord’s viewpoint and noise disturbances to others in the vicinity are unacceptable.”
6 (Dec. of M. Strong ¶ 51, Ex. R).

7
8 The vicinity consists of restaurants, bars and hotels. The only reports of alleged noise
9 disturbances from Claimants’ restaurant came from the Landlord’s son, Ryan Yates, after Claimants
10 complained about his harassing behavior. (Dec. of M. Strong ¶ 52).

11 Despite Claimants efforts to compromise, Steven Yates refused to negotiate or agree to allow
12 Claimants to offer musical performances at any level. (Dec. of M. Strong ¶ 53).

13 As of the date of this brief, Claimants have been forced to stop all music. Landlord’s other
14 commercial tenants in the same building still engage in live music. (Dec. of M. Strong ¶ 54).

15 Live music assisted Claimants in sales especially through slow months. (Dec. of M. Strong
16 ¶ 55). Claimants are losing an estimate \$5,000 each week since the entertainment permit has been
17 cancelled. (Dec. of M. Strong ¶ 55). Claimants are still paying rent and landlord is accepting it. (Dec.
18 of M. Strong ¶ 57). Claimants incurred damages associated with cancelling entertainment contracts
19 and lost revenue for the planned performances by complying with Mr. Yates demands. (Dec. of
20 M. Strong ¶ 58).

21
22 **C. Landlord’s Bad Faith Refusal to Honor Lease Option and Improper Notice of
23 Termination**

24 1. The Lease Option

25 The lease agreement contains an option to renew and certain notice provisions. The option to
26 renew clause in the Lease agreement states in pertinent part:

27 “Option to Renew. Provided that this Lease is in full force and effect and the Tenant
28 is not in default of the Lease at the time of Tenant's election to exercise an option to

renew, Tenant shall have one (1) option to renew this Lease, for a five (5) year term. The renewal term commences upon termination of the initial term. The option shall be exercised by written notice of Tenant's election to exercise the option. Tenant's written notice shall be delivered no sooner than 180 days and no less than 90 days prior to the end of the initial term. **Tenant's notice shall be delivered to Landlord only by certified mail, return receipt.** If Tenant neglects to timely exercise the option, the right to exercise such option automatically expires without notice from Landlord of Tenant's failure to exercise such option. All terms and conditions of this Lease apply during the renewal term, except monthly rent as indicated below.”

(Dec. of M. Strong ¶ 9, Ex. C emphasis added)

Pursuant to the language of the lease, the first date after which notice to exercise the option to extend the Lease was August 4, 2022. The last day for notice was November 2, 2022.

General notice provisions in the Lease state:

“All notices required or permitted under this Lease shall be in writing and shall be personally delivered, sent via reputable overnight courier, or sent by certified mail, return receipt requested, postage prepaid. Notice to Tenant shall be delivered to the address specified in Section 1 above, except that upon Tenant’s taking possession of the Premises, the Premises shall be Tenant’s address from notice purposes. Notices to Landlord shall be delivered to the address specified in Section 1 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.”

(Dec. of M. Strong ¶ 9, Ex. C emphasis added)

The only reference to any mailing address to which notices may be sent is contained in section 1.02 of the Lease, which states: “LA SERENA PROPERTIES, LLC, C/O STEVEN A. YATES 283 CANYON OAKS SANTA CRUZ, CALIFORNIA 95065.” Notably, the address is an uninhabited residential home located in Santa Cruz, California, and is unmonitored. Steven Yates resides in Hawaii.

(Dec. of M. Strong ¶ 3, 9...Ex. C)

2. Master Tenant’s Exercise of Option

As demanded by Claimants, Master Tenant sent written notice of exercise of the option to extend the Lease sometime during the week of August 22, 2022, by registered mail. On Monday, August 29, 2022, Jill Ealy, on behalf of Master Tenant sent an email communication to Steven Yates regarding the registered mailing of the notice to exercise the option, which stated in pertinent part:

“Hello Steve,

I sent the letter exercising the options registered mail. I just wanted to confirm receipt. I haven't heard anything further about CBG's music. I'm hoping that as a good thing and everything has been worked out.

~Jill”

(Dec. of M. Strong ¶ 39, Ex. N.)

On August 30, 2022, Steven Yates replied:

“Jill,

I have not received any letter from you as of yet. I will let you know when I do. You, through your subtenant, are in default of the lease. You have been notified of this default prior and had 30 days to correct the default. The subtenant has made zero attempt to resolve the noise issue or correct the default. The upstairs apartment remains half rented as no one could withstand the noise level. Your sub tenant remains a major problem.

Bottom line is per the lease you may not exercise the option to renew the lease while in default and that period to correct the default has passed.”

(Dec. of M. Strong ¶ 40, Ex. N.)

On September 1, 2022, Ms. Ealy responded:

“Hi Steve,

I actually just received the letter back and it stated there was no receptacle. Is there a better address that I should resend the letter? I know Michelle and Lasalle have reduced their music days, times, and volume all in attempt to appease you and the tenant. It is my understanding they have continually reached out to you for a meeting to no avail. I have informed the tenant that until we are paid in full or the two of you come to some solution, the music needs to stop. We never wanted to be in the middle of this situation nor do we want to spend the time and money hiring an attorney etc.

What do you want or expect us to do at this point? They have an entertainment permit per the city and are well within its guidelines.

~Jill”

(Dec. of M. Strong ¶ 42, Ex. N emphasis added)

3. Claimants Exercise of Option

2 On October 24, 2022, Claimants delivered, via Federal Express ("FedEx") overnight courier, a
3 "Notice of Exercise of Option" to La Serena at the address provided for in the Master Lease. The
4 Notice arrived on October 25, 2022. (Dec. of M. Strong ¶ 67, Ex. T.)

5 On November 1, 2022, Claimants delivered executed copies of the previously served Notice
6 of Exercise of Option via FedEx. (Dec. of M. Strong ¶ 68, Ex. U)

7 III. ARBITRATION AGREEMENT AND LEGAL STANDARD

8 Pursuant to Section 11.03. of the Lease Agreement, "Arbitration of Disputes", the Arbitrator
9 shall have the power to resolve any dispute between the parties not resolved through mediation
10 except with respect to an unlawful detainer based on nonpayment of rent. (Dec. of M. Strong ¶ 9,
11 Ex. C).

12 Here, there is no issue of nonpayment of rent as Claimants have been paying rent and
13 Respondent has accepted rent. (Dec. of M. Strong ¶ 57). The parties completed mediation on March
14 1, 2023. (Dec. of M. Strong ¶ 48).

15 The Lease Agreement further provides if the dispute between the parties is not resolved by
16 mediation, "such dispute shall be resolved by arbitration governed by California law and, to the
17 extent not inconsistent with that statute, conducted in accordance with the rules of practice and
18 procedure for the arbitration of commercial disputes of Judicial Arbitration and Mediation Services,
19 Inc. ("JAMS")" (Lease Agreement § 11.03). Because emergency provisional relief is available under
20 California law and JAMS Rules, an arbitrator has the power to award Claimants provisional relief
21 pursuant to California Code of Civil Procedure §§ 526 & 527 and JAMS Rule 2(c) [providing
22 provisional remedies, such as emergency injunctive relief, where the party seeking emergency relief
23 has "shown that immediate loss or damage will result in the absence of emergency relief and whether
24 the requesting Party is entitled to such relief."] (*See* JAMS Rules 2(c)).
25
26

27 In deciding whether to issue preliminary injunctive relief, "a court must weigh two
28 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits and

2 (2) the relative interim harm to the parties from issuance or non-issuance of the injunction.” (*Midway*
3 *Venture LLC v. Cty. of San Diego*, 60 Cal. App. 5th 58, 76 (2021); *Hunt v. Superior Court*, 21 Cal. 4th 984,
4 999 (1999).) These two factors operate on a sliding scale: where the likelihood of success is high, the
5 court may issue injunctive relief even if the likelihood of irreparable harm is lower, or vice versa.
6 (*Common Cause of California v. Bd. of Supervisors*, 49 Cal. 3d 432, 446-47 (1989); *see also King v. Meese*
7 (1987) 43 Cal.3d 1217, 1227 [held that “the more likely it is that plaintiffs will ultimately prevail, the
8 less severe must be the harm that they allege will occur if the injunction does not issue”]).

9 To determine whether an injunction is **mandatory or prohibitory**, the court should “look to
10 its substance to determine its real nature.” *Paramount Pictures*, 228 Cal. App. 2d at 835. Where an
11 injunction “merely has the effect of preserving the subject of the litigation in status quo” it is
12 prohibitory. *See Dosch v. King*, 192 Cal. App. 2d 800, 804 (1961); *see also Ojye v. Fox*, 211 Cal. App.
13 4th 1036, 1048 (2012) (“an injunction designed to preserve the status quo as between the parties and
14 to restrain illegal conduct is prohibitory, not mandatory”). Further, the “status quo is not simply any
15 situation before the filing of the lawsuit, but rather that last uncontested status that preceded the
16 parties’ controversy.” *Dep’t of Parks & Rec. for State of Calif. v. Bazaar Del Mondo, Inc.*, 448 F.3d 1118,
17 1124 9th Cir. 2006); *see also, People v. Hill*, 66 Cal. App. 3d 320, 331 (1977) (defining status quo as “the
18 ‘last actual peaceable, uncontested status which preceded the pending controversy’”).

20 IV. LEGAL ARGUMENT

21 The facts above provide substantial evidence demonstrating Landlord is in breach of contract
22 for obstructing Claimants’ live entertainment permit. Claimants are likely to prevail on that claim.
23 Respondent’s chicanery regarding the notice of the Lease Option is self-serving and notice was
24 properly given. Claimants have the right to occupy the premises pursuant to the Lease Option.
25 Respondent equates his own person frustration with Claimants to actionable violations of the Lease
26 Agreement. Claimants are and Claimants have been in compliance with the lease. The withdrawal of
27 Landlord Consent constitutes a unilateral material change to the Agreement that was not agreed
28

upon and for which no consideration as given. The Arbitrator must restore the *status quo ante* while the arbitration proceeds.

A. An Emergency Arbitrator Should Grant Claimants Provisional Relief because Claimants are likely to Prevail on the Merits of their Claims

Claimants are entitled to provisional injunctive relief because their underlying claims against Landlord will likely succeed, and Landlord has no defense. Claimants are likely to prevail on the merits of this matter, because (a) the lease agreement is ambiguous as to whether the term “restaurant” did or did not include live music, (b) the parties’ contemporaneous written communications demonstrate unequivocally that the parties reasonably intended for live music to be a part of the Agreement, (c) Claimants possession of a live permit for approximately 18 months demonstrate that intention of the parties, (d) Respondent undisputedly decided to withdraw local approval for the purpose of terminating the live entertainment permit, (e) Respondent had no basis to do so as Respondent’s claims that Claimants were not in compliance with the Lease or otherwise creating a nuisance are devoid of any basis in provable fact, and (f) Claimants properly exercised the relevant option to extend the Lease and have the right to occupy the premises.

1. Claimants have the Lawful Right to Occupy the Premises and have Properly Exercised the Option to Extend the Lease

The factual record in this matter is replete with Tenant and Claimants multiple and extensive efforts to notice Landlord of the intent to exercise the Lease Option. Landlord’s agent Steven Yates’ deliberate and conscientious efforts to engage in gamesmanship and evade service of the notice are apparent. Landlord has admitted to actual receipt of the notice in the notice period (Dec. of M. Strong ¶ 65, Ex. N.) and has stated in writing that Landlord would not be honoring the option regardless due to Steven Yates’s apparent personal grudge against Claimants and his personal desire to stop live music at the premises. (Dec. of M. Strong ¶ 65, Ex. N.) Landlord’s insistence that the option was not exercised because the notice was not sent registered mail return receipt to the unattended, uninhabited residence owned by the Yates family where there is no one available during

business hours to sign a return receipt is patently absurd and an improper weaponization of a trivial aspect of notice to frustrate and destroy Claimants use of the premises. Landlord’s alternative argument that Claimants were not in compliance with Lease is idle fancy. Landlord did not follow any process or procedure to establish such noncompliance, nor did Landlord respond to multiple written attempts to address the supposed non-compliance, and Steven Yates’s personal opinion of Claimants and the music being played at the restaurant does not constitute a violation of the Lease or the Capitola Municipal Code.

a. Master Tenant and Claimants Independently Properly Notified Landlord of Intent to Exercise the Lease Option and Extend the Lease Agreement on Three Distinct Occasions, Landlord Actually Received the Notice, and Notice in the Manner Identified in the Lease was Impossible.

As identified in the factual summary above, Tenant began the process of attempting to notify Landlord of the exercise of the option as early as August 2022. Written communication between Jill Ealy and Steven Yates even reveal that Ms. Ealy requested an address to send the notice since the address in the Lease was unattended and had no receptacle to receive mail. (Dec. of M. Strong ¶ 66, Ex. N.) A finding that it was impossible to send a notice to the address in the Lease in the manner specified in the Lease will result in a holding that performance of that aspect of the notice provision was impossible under law. Steven Yates’s email stated in writing that “[b]ottom line is per the lease you may not exercise the option to renew the lease while in default and that period to correct the default has passed.” (Dec. of M. Strong ¶ 65, Ex. N.) Steven Yates’ written communication reveals that even if the option had been served with return receipt requested, Landlord had no intention of extending the option.

On October 19, 2023, Claimants sent a detailed letter to Landlord addressing many of the disputes between the parties including detailed explanation that Claimants had exercised the Option indicating Claimants’ desire to exercise the option, which itself constituted notice of the intent to exercise the Lease Option. On October 25, 2022, Claimants’ unsigned notice of exercise of the Lease

Option by FedEx overnight arrived at the notice address. (Dec. of M. Strong ¶ 67, Ex. T.) On
2 November 2, 2022, Claimants signed notice of exercise of the Lease Option by FedEx overnight
3 arrived at the notice address. (Dec. of M. Strong ¶ 68, Ex. U.)

4 A lessor's refusal to accept a lessee's exercise of an option to renew constitutes a breach of
5 that covenant of the lease. (Gilman v. Nemetz (1962) 203 Cal.App.2d 81, 87.) Where a lessee has
6 exercised an option to renew a lease, his right to possession of the premises for the additional term
7 cannot be defeated by the actions of the landlord. The lessee is entitled to specific performance of
8 the covenant to renew. (Cicinelli v. Iwasaki (1959) 170 Cal.App.2d 58, 65.) Under the terms of the
9 Master Lease, the 2019 Amendment, and the 2021 Sublease & Assignment, the Master Tenant and
10 Claimants are the only parties entitled to exercise or decline the First Option. The Master Lessor has
11 no right to interfere where no default exists and the Master Lessor's may not deprive Claimants of
12 the right to cure to create a potential claim of a default. Steven Yates has confirmed in writing that
13 Landlord did not want to extend the option due to an alleged noncompliance with the Lease.
14 Landlord is not permitted under law to refuse to accept notice of the lease option exercise because
15 Landlord's agent Steven Yates thinks the music is too loud. The record reflects Landlord's blatant
16 attempt to refuse the exercise of the Lease Option for reasons unrelated to the supposed form of
17 notice, and the multiple attempts by Tenant and Subtenant to exercise the option, as well as
18 Landlord's actual receipt thereof, constitute legally valid service of the exercise of the Lease Option.

19
20
21 Master Tenant sent the notice certified mail. The main difference between certified mail and
22 registered mail is the level of security and tracking provided. Certified mail provides a signature
23 confirmation of delivery, while registered mail provides a signature confirmation and added security
24 measures such as tracking and insurance. Additionally, registered mail may require the recipient to
25 present identification before being able to receive the package, whereas certified mail does not have
26 this requirement. Here, the notice provision permits Landlord to refuse to sign the return receipt and
27 thus block notice of the option. It is legal improper for the form of notice of an option to require an

2 action by the landlord for notice to be tendered. Once mailed and received, service of the notice to
3 exercise the Lease Option was legally sufficient.

4 **b. There is Ambiguity in the Lease Notice Provisions that Must be**
5 **Resolved in Favor of Claimants**

6 Section 12.07 of the Lease states:

7 “All notices required or permitted under this Lease shall be in writing and shall be personally
8 delivered, sent via reputable overnight courier, or sent by certified mail, return receipt
9 requested, postage prepaid. Notice to Tenant shall be delivered to the address specified in
10 Section 1 above, except that upon Tenant’s taking possession of the Premises, the Premises
11 shall be Tenant’s address from notice purposes. Notices to Landlord shall be delivered to the
12 address specified in Section 1 above. All notices shall be effective upon delivery. Either
13 party may change its notice address upon written notice to the other party.”

14 (Dec. of M. Strong ¶ 9, Ex. C).

15 “If a proposal prescribes any conditions concerning the communication of its acceptance, the
16 proposer is not bound unless they are conformed to; but in other cases, any reasonable and usual
17 mode may be adopted.” (Civil Code § 1582.) The Lease is self-contradictory. On the one hand it
18 requires notice of acceptance of the option to “be delivered to Landlord only by certified mail, return
19 receipt.” (Dec. of M. Strong ¶ 9, Ex. C). On the other hand, it also provides, “All notices required or
20 permitted under this Lease shall be personally delivered, sent via reputable overnight courier, or sent
21 by certified mail, return receipt requested, postage prepaid.” (Dec. of M. Strong ¶ 9, Ex. C). There is
22 no doubt that the notice of exercise of the Lease Option was properly sent by overnight mail and
23 actually received by Landlord. See *In re Crossman's Estate* (1964) 231 Cal.App.2d 370, 372–373, and
24 *id.* at 374 [similar provision stating notices “shall” be sent by registered mail construed as merely
25 suggesting a permissive method of renewal such that “notice of exercise of the option was complete,
26 without registration, upon its conceded deposit in the mail”].) At the very least, the inclusion of the
27 alternate notice provision creates serious confusion as to whether registered mail was an absolute
28 condition or merely suggested a permissible manner.

2 Here, if the word “only” in section 1.06 is read as suggestive rather than limiting (like the
3 word “shall” in *In re Crossman’s Estate*, supra) and read together with section 12.07, then registered
4 mail is a permissive (perhaps preferred) method of giving notice of renewal. But, if the words “all”
5 and “or” in section 12.07 are not given effect, then overnight mail is a permissible way to give notice
6 except as to renewal, creating a trap for the unwary tenant that could lead to forfeiture of the
7 leasehold interest. Therefore, the second construction must be avoided.. “A condition involving a
8 forfeiture must be strictly interpreted against the party for whose benefit it is created.” (Civ. Code §
9 1442.) Regarding lease renewals, construing provisions of a lease relating to renewals, if there is any
10 uncertainty, the tenant rather than the landlord is to be favored.” (*Buck v. Cardwell* (1958) 161
11 Cal.App.2d 830, 836.)

12 Landlord seeks to destroy Claimants’ business, involving hundreds of thousands of dollars of
13 investment, on an ambiguous Lease. The established law of California favoring interpretation of
14 Leases in favor of tenants when forfeiture is contemplated is harmonious with the present case.
15 Claimants risk the ruinous loss of hundreds of thousands of dollars on an ambiguous provision of
16 the Lease, largely made moot by Landlord’s actual receipt of the Lease Option exercise and in light of
17 Landlord’s stated intention to not honor the Lease Option regardless of notice.

18
19 **c. Even If Renewal Was Required to Be Made By Registered Mail, the**
20 **Landlord’s Failure to Timely Object Constitutes a Waiver or Estoppel**

21 Civil Code section 1501 states: “All objections to the mode of an offer of performance,
22 which the creditor has an opportunity to state at the time to the person making the offer, and which
23 could be then obviated by him, are waived by the creditor, if not then stated.” “The rationale of the
24 requirement of specific objection is that the offeror should be permitted to remedy any defects in his
25 tender; the offeree is therefore not allowed to remain silent at the time of the tender and later
26 surprise the offeror with hidden objections.” (*Riverside Fence Co. v. Novak* (1969) 273 Cal.App.2d 656,
27 661–662 quoting *Layton v. West* (1969) 271 Cal.App.3d 508, 512 in turn citing *Thomassen v. Carr* (1967)
28

250 Cal.App.2d 341, 350.) Further, “an optionor who has given an irrevocable option to purchase property may not do any act or omit to perform any duty calculated to cause the optionee to delay exercising the option within the specified period. The optionor's good faith is a relevant consideration; his evasion or prevention of exercise of the option may excuse tender of performance and other conditions precedent to acceptance.]” (*Riverside Fence Co. v. Novak* (1969), 273 Cal.App.2d 656, 662–663.)

Landlord is acting in bad faith for the purpose of removing Claimants from the building as stated by Steven Yates. This bad faith is highly relevant to the consideration of whether Landlord has calculated to delay or thwart Claimants from exercising the option. Landlord did not object to Jill Ealy’s notice of the exercise of the Lease Option on the basis of form, but rather on the basis that Claimants were in alleged noncompliance of the Lease. Neither did Landlord object to the certified mailing from October 24, 2022, and November 2, 2022, until well after the option period had elapsed.

d. Claimants Were not in Default of the Lease During the Lease Option Period

See Argument Section A(4)(b).

e. Requiring Return Receipt Signature by Landlord or its Agent is an Improper Impediment to Claimants’ Exercise of the Lease Option

An optionor who has given an irrevocable option regarding property may not do any act or omit to perform any duty calculated to cause the optionee to delay exercising the option within the specified period. (*Riverside Fence Co. v. Novak* (1969) 273 Cal.App.2d 656, 662-663). It is well understood that an option places right in the optionee to enact an agreement between the parties by taking a prescribed and agreed-upon action. An optionor may not place conditions on the exercise of the option. By requiring that notice be sent return receipt, Landlord has generated a situation where he can prohibit the option form being exercised by refusing to sign for the notice. This provision

places power in the hands of the Landlord to unilaterally nullify the option by refusing to sign the return receipt. This is an improper requirement and unenforceable.

2.
The Lease Neither Permits nor Prohibits Live Music as a Part of the Use of the Premises Defined in Section 1.09 of the Lease

Section 1.09 of the Lease states:

“Permitted Use/Exclusive Use. Tenant shall use the Premises for a restaurant, as defined in the City of Capitola use permit existing at the time of execution of this Lease, and for no other purpose. Notwithstanding, in no event shall the use include a Mexican food type restaurant.”

(Dec. of M. Strong ¶ 9, Ex. C).

The Restaurant at issue herein is defined by the Capitola Mixed Use Zoning District Chapter 17.20 as:

“‘Restaurants and cafes’ means a business establishment serving food and beverages to customers where the food and beverages may be consumed on the premises or carried out and where more than one hundred sixty square feet of public area is open to customers. Includes full-service restaurants, fast-food restaurants, coffee shops, cafes, and other similar eating and drinking establishments.”

(Capitola Mixed Use Zon. Dist. Ch. 17.20)

An analysis of the Lease’s plain language coupled with the cited definition of “restaurant,” as defined by the City of Capitola, reveal that there is no clear and unambiguous language in either the Lease or the Code that would cause a reasonable person to assume that live music is prohibited from a restaurant-use. Indeed, live music is played at restaurants world-wide, including restaurants in the “Capitola Village” zoning district where the subject premises are located. As there is no language anywhere that excludes live music as a part of the restaurant use, the term “restaurant” as used in the Lease is at least ambiguous as to whether live music is a part of that use. A strict construction of the term restaurant to exclude live music without specifically doing so is improper because there is no common sense or reasonable understanding of a restaurant use that excludes live music.

If a contract’s language is ambiguous, as it is in this case, the arbitrator must look further to determine what the parties mutually agreed. California law provides two principal means of

2 determining the intention reflected in ambiguous contractual language. First, ambiguity “is resolved
3 by interpreting the ambiguous provisions in the sense the promisor ... believed the promisee
4 understood them at the time of formation.” (Cal. Civ. Code § 1649). Second, “[i]f application of [the
5 foregoing] rule does not eliminate the ambiguity, ambiguous language is construed against the party
6 who caused the uncertainty to exist.” (*Bank of the West v. Superior Court* (1992) 2 Cal. 4th 1258). The
7 latter rule is incorporated in Cal. Civ. Code § 1654, which provides that “[i]n cases of uncertainty not
8 removed by the preceding rules, the language of a contract should be interpreted most strongly
9 against the party who caused the uncertainty to exist.” (Cal. Civ. Code § 1654).

10 There is absolute clarity in the evidentiary record that Claimants objectively intended for the
11 “restaurant” use to include live music. Landlord and Landlord’s property manager received multiple
12 written communications from Claimants and the Broker involved in the transaction that this was
13 Claimants’ intent and at no point prior to the signing of the Sublease and Lease Assignment did
14 Landlord or any of its agents contradict that Claimants’ understanding that live music would be a part
15 of the use. (Dec. of M. Strong ¶ 8, Ex. A.)

17 When faced with ambiguity in the language of a contract, an arbitrator will permit evidence
18 about the parties’ intentions and understandings as to the meaning of the ambiguous term. That
19 meaning and understanding is unequivocal. Live music is a part of the use and Landlord extensive
20 and intentional conduct to thwart that use is blatant breach of contract. Landlord’s current position
21 that it will not permit live music is a unilateral change to a contract term without consideration, and
22 Claimants’ demonstrable damages due to the loss of live music may be counted on a weekly basis by
23 thousands of dollars in lost revenue.

24
25 **a. Landlord Failed to Expressly Exclude Live Music in the Lease
26 Agreement but Did Exclude Other Uses**

27 Section 1.09 of the Lease states in relevant part that “[n]otwithstanding, in no event shall the
28 use include a Mexican food type restaurant.” (Dec. of M. Strong ¶ 9, Ex. C). The neighboring

2 “Mexican food type restaurant” Margaritaville, was previously owned by Steven Yates potentially
3 during the time Master Tenant entered the subject Lease. (Dec. of M. Strong ¶ 6). Here, Landlord
4 intentionally prohibited Mexican restaurants from the permitted use to protect the business interests
5 of Landlord’s principals. The Landlord, who drafted the Lease, had ample opportunity to formalize
6 excluded uses from the Lease. If the Landlord intended to limit the type of music, or to prohibit
7 music altogether at the premises, it had the opportunity to do so. The “Permitted Use” would have
8 been drafted to include such a restriction as it did when it explicitly excluded “[m]exican food type
9 restaurant[s].”

10 In fact, the Landlord and Master Tenant actively welcomed Claimants’ plan at that time
11 without voicing objections or including terms in the rental agreements preventing live music or
12 requiring further consent to such. Construing the ambiguous language against the Landlord drafter,
13 live music is not excluded in the Lease because Landlord did not intend for live music to be
14 excluded.

15
16 **b. Live Music is Commonly a Part of a Restaurant Business**

17 Social entertainment plays an indispensable role in modern commercial enterprise.
18 Entertainment is routinely used to attract, keep and reward customers. Music and forms of
19 entertainment are but incidental to restaurants. It is a matter of common knowledge that restaurants
20 world-wide have some form of entertainment features. Here, there is no clear language in the Lease
21 or Capitola Code that would cause a reasonable person to assume that live music is prohibited from a
22 restaurant-use—especially considering Landlord’s approval of Claimants corresponding
23 entertainment permit. Live music is played at restaurants world-wide, including restaurants in the
24 “Village” zoning district where the subject premises are located. Absent explicit language that
25 excludes live music as a part of the term “restaurant” it is at least ambiguous as to whether live music
26 is a part of that use.
27
28

2 The factual record further reveals a neighboring café, Mr. Toots, in the same mixed-use
3 building regularly showcases live music. (Dec. of M. Strong ¶ 6). Landlord has refused to negotiate or
4 accept any outcome resulting in Claimants engaging in lawful musical performance, despite allowing
5 their other commercial tenants to do so.

6 **c. The Capitola Code is Silent as to whether “Restaurant” Includes Live**
7 **Music but a Ministerial Process Exists to Obtain a Live Music Permit**
8 **for Restaurants**

9 The Capitola Mixed Use Zoning District Chapter 17.20 states:

10 “Restaurants and cafes means a business establishment serving food and beverages to
11 customers where the food and beverages may be consumed on the premises or carried out
12 and where more than one hundred sixty square feet of public area is open to customers.
13 Includes full-service restaurants, fast-food restaurants, coffee shops, cafes, and other similar
14 eating and drinking establishments.”

15 (Capitola Mixed Use Zon. Dist. Ch. 17.20)

16 Capitola ordinances further authorize any business establishment, including restaurants, to
17 offer live entertainment or recorded music for patrons of their businesses.

18 “No owner, manager or operator of any business or establishment (except theaters, as
19 defined in Section 5.24.025) may arrange for or allow entertainment to be conducted on the
20 premises of any such business or establishment without obtaining an entertainment permit as
21 provided in this chapter. No person shall arrange for or promote entertainment on any
22 publicly owned park, street or facility without first obtaining an entertainment permit as
23 provided in this chapter. However, entertainment which is entirely enclosed within a structure
24 and which cannot, at any time, be audible outside of that structure, need not have any
25 entertainment permit.”

26 (Capitola Municipal Code 5.24.020)

27 CBG remains in good standing with the City of Capitola in the category of a “restaurant full
28 bar.” (Dec. of M. Strong ¶ 57). Capitola’s ordinances authorize any business establishment, including
29 restaurants, to offer live entertainment or recorded music for patrons of their businesses pursuant to
30 the Capitola Code so long as the business owner obtains an entertainment permit. (Capitola
31 Municipal Code 5.24.020; 17.160.020(E)(l)(b).) The city council issues entertainment permits upon a
32 finding that "no significant number of non-patrons will be disturbed by the entertainment subject to

2 the permit application or “by the goings and comings of the people patronizing the entertainment
3 events, which are the subject of the permit application” and that “the establishment at which the
4 entertainment is to be provided or the entity which is applying for the entertainment permit is
5 currently in compliance with all applicable state and local building, zoning, fire, and other regulations
6 pertaining to public health and safety as well as any other statutes, ordinances, regulations, or permits
7 that pertain to the establishment or the property on which the establishment is situated.” (Capitola
8 Municipal Code 5.24.040.) Capitola also holds the authority to limit any potential disturbances to
9 non-patrons by enacting specific conditions such as days and hours of operation and noise level
10 limitations for the entertainment.

11 Here, CBG applied for an entertainment permit, specifically requesting a live music permit
12 for a "family friendly" restaurant and setting forth the plan of operations during hours when music
13 will play; this permit was issued on November 16, 2021, and renewed on or about January 27, 2022.
14 Knowing that CBG's restaurant sits within a mixed-used commercial building with residential
15 tenants, City of Capitola still approved the permit and renewed it establishing that CBG's application
16 met the threshold requirements for non-disturbance of non-patrons as outlined above in the Capitola
17 Municipal Code. CBG's Entertainment Permit application expressly states that the application is for a
18 **restaurant offering live music.**

19
20 3. The Intention of the Parties at the Time of Executing the Agreements was that Live
21 Music be a Part of the Restaurant “Use”

22 As detailed in the facts, Claimants began discussing the acquisition of the assets of the
23 previous occupant, running the at-issue restaurant, and taking over operations in the space by buying
24 the assets of the previous business including the ABC license. During due diligence review prior to
25 this transaction, Claimants learned that most dining establishments in the “Village” area offers live
26 music to patrons. (Dec. of M. Strong ¶ 6). Claimants concluded that live entertainment would be
27 necessary to run a profitable business at the Premises. (Dec. of M. Strong ¶ 6). Claimants intended to
28

do so and expressed this intention to Landlord. (Dec. of M. Strong ¶¶ 6-8, Ex. A) Landlord and its agents acknowledged the intended use of live entertainment at the Premises. (Dec. of M. Strong ¶¶ 10-13, Ex. D). Landlord’s conduct materially affected Claimants’ decision to enter the Sublease. (Dec. of M. Strong ¶ 6-8). Landlord actively welcomed Claimants’ plan at that time without voicing objections or including any terms in the Sublease or Lease Assignment preventing live music or requiring its further consent to such. (Dec. of M. Strong ¶ 9, Ex. C). Claimants also reasonably relied on the fact that the neighboring restaurants in and out of the Subject Premises offer amplified music to its dining patrons and offered live music at the time that the Master Landlord owned and operated that business. (Dec. of M. Strong ¶ 6). Following these representations and reasonable conclusions, on July 21, 2021, the parties executed the 2021 Sublease & Assignment. (Dec. of M. Strong ¶ 8-9, Ex. C).

The factual record substantially evidences that Landlord received numerous written communications about Claimants’ intention to host live music at the restaurant. Likewise, Landlord failed to exclude live music prior to signing the Sublease and Lease Assignment. in Respondent’s mediation brief, Respondent states that “[t]he Landlord does not intend to consent to future entertainment permit applications, if any, submitted by Capitola Strong or the Strongs if their tenancy of 231 is extended.” (Landlord’s Mediation Statement). Landlord obfuscated this fact at the time of forming the applicable agreements.

a. The Emails between Broker and Landlord prior to the execution of the Sublease communicate Claimants' intentions to host live entertainment at the Premises

Communications with Landlord expressing Claimants interest in hosting live music and his approval to do so materially affected Claimants decision to purchase the business and agree to the Sublease. (Dec. of M. Strong ¶ 6-8.)

2 On July 15, 2021, real estate broker Bob Brooks forwarded a summary of Claimants business
3 plan to Mr. Yates which stated in part, "...it is important for us to offer live music..." (Dec. of M.
4 Strong ¶ 8, Ex. A).

5 In July 2021, Claimants entered into the Sublease & Assignment Agreement. (Dec. of M.
6 Strong ¶ 9, Ex. C). On August 20, 2021, Mr. Brooks sent an email to Mr. Yates that stated in part:
7 "Michelle and Sal are working with a sign company that will help them with any necessary approvals.
8 **They're planning on getting an entertainment permit so they can have a two or three person**
9 **band** to provide dinner music and will need your sign off on that." (Dec. of M. Strong ¶ 10, Ex. D).

10 On August 20, 2021, Mr. Yates responded, "The property manager does all the leasing-lease
11 work. I informed him of the new tenant a month ago and a lease was prepared. Jill should be aware
12 of all this to assist the new tenant in the transition. Thanks for the info." (Dec. of M. Strong ¶ 11, Ex.
13 D).

14 Any allegation that the Landlord did not give his implied consent to allow live music cannot
15 pass scrutiny, as evidenced by Landlord's correspondence to Claimants and their broker.

16
17 **b. The Emails between Property Manager and Claimants subsequent to the**
18 **execution of the Sublease indicate the parties continuing intention that**
19 **Claimants' host live entertainment at the premises**

20 On September 22, 2021 Claimant Michelle Strong sent an email to the property manager
21 Russell Gross, stating in part, "**We needed to get an inspection done for entertainment permit.**
22 Here are the items that need to be addressed. The items inside our unit have been taken care of,
23 however there are some that pertain to the common area." (Dec. of M. Strong ¶ 13, Ex. E Emphasis
24 added).

25 On that same day, Mr. Gross replied that he approved SSS Fire Protection to complete the 5-
26 year fire inspection. (Dec. of M. Strong ¶ 14, Ex. E). The fire inspection was solely for entertainment
27 permit purposes. (Dec. of M. Strong ¶ 14).

4. Landlord has Completely Frustrated Claimants’ Use of the Property for Live Music

2 Significant evidence supports Claimants position that live music is a part of the use of the
3 premises defined in the Lease, and Landlord is in breach of contract and liable to Claimants for any
4 damages caused by Landlord’s intentional conduct to frustrate Claimants’ use of the Premises for
5 that purpose.

6
7 **a. Steven Yates’s Conduct to Prevent Reissue of Live Entertainment Permit**

8 In October 2022 Claimants met with Chief of Police Andrew Dally to discuss the renewal of
9 the entertainment permit. (Dec. of M. Strong ¶ 43). They offered to file the same annual renewal
10 form for 2023 that was filed for 2021 and 2022. However, Steven Yates refused to sign landlord
11 consent on the renewal form resulting in denial of the permit application. Even though Landlord had
12 not given landlord consent in writing in 2021 or 2022, the permits were still issued. (Dec. of M.
13 Strong ¶ 43).

14 Since entertainment such as live music remains lawful subject to the restrictions of the
15 Capitola Code, there is no question of illegality here. The problem is one of commercial frustration
16 of the purpose and value of a lease where landlord has suddenly restricted a business from engaging
17 in certain lawful activity on the leased premises. The Lease here authorizes “use the Premises for a
18 restaurant, as defined in the City of Capitola”. Accordingly, Capitola’s ordinances authorize any
19 business establishment, including restaurants, to offer live entertainment or recorded music for
20 patrons of their businesses pursuant to the Capitola Code so long as the business owner obtains an
21 entertainment permit. (Capitola Municipal Code 5.24.020; 17.160.020(E)(l)(b).)

22
23 Claimants have proved that hosting live music was a reasonably foreseeable use of the
24 premises and that the value of the lease absent such has been greatly diminished. Claimants
25 purchased the assets of this beach-front business post-COVID restrictions with a specific vision
26 that was shared extensively with the landlord and detailed in their business plan—a family
27 friendly restaurant on the beach offering live music during dinner. (Dec. of M. Strong ¶ 8, Ex. A).

2 This is not an establishment that plays loud music throughout the night and early morning. The
3 lawful conduct of Claimants business was an implied condition of the lease now rendered
4 impossible by Landlords unlawful regulations.

5 On January 31, 2023 Claimants received a letter from the City Manager officially denying
6 their Entertainment Permit application for 2023, solely because of the stated lack of “landlord
7 approval,” which resulted from Steven Yate’s vocally and intentionally removing landlord consent
8 to the entertainment permit. There was no other reason listed for denial of the permit. (Dec. of M.
9 Strong ¶ 44, Ex. O). Steven Yates had communicated in December of 2022 with Capitola Police
10 communicating his withdrawal of landlord consent for live music. (Dec. of M. Strong ¶ 69, Ex. V).
11 Without the entertainment permit, Claimants were forced to stop **all** music and cancel several
12 contracts causing extensive monetary damages and unknowable harm to their business goodwill.

13 At best, the Lease permits Landlord to require Claimants to perform live music in accordance
14 with applicable law. Landlord overstepped its authority and breached the Lease when its agents took
15 specific acts to halt all musical entertainment.
16

17 **b. Claimants Never Committed Actionable Nuisance or Otherwise Violated**
18 **the Lease and Sublease Agreements**

19 During the parties’ dispute, Landlord has inappropriately maintained that Tenants’ use of the
20 property is in violation of the Lease Agreement. The Landlord’s complaints of nuisance are largely
21 unsupported, and the factual record in this matter only contains uninformative and prohibited
22 hearsay communications by unknown and unnamed third parties or unsubstantiated allegations of
23 fact by Steven Yates.

24 Capitola Municipal Ordinance 9.12.030 defines nuisance with respect to noise as “a violation
25 of any provision of this chapter...” Chapter 5.24 of Capitola’s Municipal Code sets forth the
26 conditions for live music entertainment that protect the peace and quiet of non-patrons.
27
28

2 Beginning in April 2022, Ryan Yates, an upstairs residential tenant who is also the son of
3 Steven Yates, began engaging intimidating and inappropriate behavior to CBG employee
4 including inappropriate conduct toward a 16-year-old hostess. (Dec. of M. Strong ¶ 18). Michelle
5 Strong immediately reported Ryan Yates' behavior to Steven Yates. (Dec. of M. Strong ¶ 18).

6 Nonetheless, Ryan continued to speak in threatening tones to CBG employees,
7 unreasonably using his relationship to the Landlord as authority. (Dec. of M. Strong ¶ 19).

8 Ryan Yates raised allegations of excessive noise and alleged municipal code violations
9 relating to CBG's live music to Capitola Police. Capitola Police investigated the allegations and
10 issued no reports, made no citations, and in the case of the May 5, 2022 claim of a code violation,
11 characterized the complaint as **unfounded**. (Dec. of M. Strong ¶¶ 22, 23).

12 Until Claimants reported Ryan Yates' behavior, Claimants hosted live music
13 performances smoothly, with no complaints or requests to lower music volume from patrons,
14 neighbors, or upstairs residential tenants. (Dec. of M. Strong ¶ 24). Nor did Capitola Police issue
15 any reports or citations at any time before or after Ryan Yates' allegations. (Dec. of M. Strong ¶
16 24). In fact, a neighboring hotel recommended Claimants' restaurant as a preferred venue for
17 meals and citing the presence of live music. (Dec. of M. Strong ¶ 23).

18 Accordingly, Landlord has offered no evidence to CBG, the Master Tenant, or the City of
19 Capitola evidencing a violation of the Entertainment Permit or of any local ordinance. CBG stands
20 committed to proving its compliance with its obligations under the same. CBG previously offered
21 video and decibel readings supporting this compliance and remains willing to provide those. (Dec. of
22 M. Strong ¶ 27).

23
24
25 **B. Claimants will suffer and are currently suffering immediate interim harm in the**
26 **absence of emergency injunctive relief, while Landlord would suffer no appreciable**
27 **hardship from the issuance of emergency injunctive relief.**

28 Once a claimant or plaintiff establishes a likelihood of success on the merits, the only
remaining issue is whether the "interim harm that the plaintiff is likely to sustain if the injunction

2 were denied" outweighs "the harm that the defendant is likely to suffer if the preliminary injunction
3 were issued." (*Abba Rubber v. Seaquist*, 235 Cal. App. 3d 1, 17 (1991).)

4 Firstly, Claimants' entire theory of case, which is supported by their direct and admissible
5 evidence, is that they have lawfully operated their business and that Landlord's principals and their
6 son have a personal issue with Claimants. If this is proven true, then there is no ability to reasonably
7 argue that Claimants' operation of their business according to law can cause any harm to
8 Respondent. As a matter of law, a party is never harmed by lawful acts and Respondent cannot be
9 harmed by Claimants' lawful operation of their business. There is no evidence whatsoever that
10 allowing Claimants to continue to lawfully operate their business as they did for almost 18 months
11 prior to Respondent's wrongful termination of the entertainment permit would result in any
12 conceivable harm to anyone. Even if Respondent does claim to have an imminent concern, nothing
13 in the record would support such. Respondents rely on self-serving noise complaints both raised by
14 one tenant, Ryan Yates, son of Steven Yates. (Dec. of M. Strong ¶ 22-25). The police unit that
15 investigated the alleged noise complaints did not issue any reports or citations at any time before or
16 after Claimants entertainment permit was denied. (Dec. of M. Strong ¶ 23).

18 Secondly, Respondent cannot allege any harm to itself as a limited liability company that
19 owns the premises. There are no pending civil lawsuits, no criminal cases, no active code violations,
20 nor any other administrative proceeding involving the building of Claimants. Landlord's claims that
21 other tenants are being harmed are theoretical and self-serving. Even if such tenants were being
22 harmed, Landlord's actions are not justified. Respondents will suffer no harm if Claimants continue
23 to lawfully operate their business as they did for almost 18 months prior to the wrongful termination
24 of their entertainment permit. Respondent will still receive rent, Claimants will continue to pay CAM
25 charges and other shared expenses, the subject premises will not be damaged or devalued in any way.

27 Conversely, Claimants currently suffer extensive weekly monetary damages of thousands of
28 dollars of lost revenue and cancellation fees. Their real harm centers on the unknown and

1 unknowable harm to their business goodwill, community reputation, and brand value. Indeed, there
2 is an existential risk that Claimants' very business will become insolvent because of the abrupt change
3 to what was otherwise a lucrative business model. The existential threat creates the risk of irreparable
4 harm.

5 1. Claimants lose \$5,000 of revenue weekly from loss of the entertainment permit.

6 Claimants incurred and will incur damages associated with cancelling several contracts with
7 entertainers and staff for said events, along with its projected lost revenue that may be counted on a
8 weekly basis by thousands of dollars in lost revenue. (Dec. of M. Strong ¶ 58). Here, there is no
9 question that irreparable harm exists. Claimants are losing an estimate \$5,000 each week and the
10 failure to grant such injunction would cause catastrophic and irreparable injury to Capitola Bar &
11 Grill, including its potential demise. (Dec. of M. Strong ¶ 55).

12 2. The brand and business goodwill of Claimants' business is seriously impacted.

13 In California, the "goodwill" of a business "consists of the benefits that accrue to a business
14 as a result of its location, reputation for dependability, skill or quality, and any other circumstances
15 resulting in probable retention of old or acquisition of new patronage." Cal. Code Civ. Proc. §
16 1263.510(b). Put another way: "Goodwill is the amount by which a business's overall value exceeds
17 the value of its constituent assets, often due to a recognizable brand name, a sterling reputation, or an
18 ideal location. Regardless of the cause, however, goodwill almost always translates into a business's
19 profitability." *People ex rel. Dept. of Transp. v. Dry Canyon Enterprises, LLC* (2012) 211 Cal.App.4th 486,
20 493–94 (internal citation omitted).

21 Claimants' have developed a reputation in the Esplanade to have family-friendly dining with
22 live music and a spectacular view of the ocean. (Dec. of M. Strong ¶ 56). Claimants' restaurant has
23 become a place to go for tourists and locals alike. (Dec. of M. Strong ¶ 56). Local businesses refer
24 their guests to Claimants' restaurant. (Dec. of M. Strong ¶ 56). All of this is risked by Landlord's
25 conduct. People will stop thinking of Claimants' restaurant as a scenic venue with live music. When
26

1 restaurant-goers think about where they will go on a Friday or Saturday they will increasingly think
2 less of Claimants' restaurant and go to other venues that do have live music. Presently, current
3 patrons inquire why there is no more live music and Claimants must embarrassingly explain. (Dec. of
4 M. Strong ¶ 56).

5
6 Claimants are confident that they did not violate any lawful provisions of the Capitola
7 Municipal Code or lease provisions. Yet, in absence of emergency injunctive relief they cannot book
8 any live entertainment, play any music at any capacity, and must cancel all previously booked
9 entertainment. Entertainment directly affects Claimants' income. Moreover, customers of live
10 entertainment are fickle and prohibiting live music for even a short period of time can cause
11 permanent and irreparable harm if the public perceives that the venue is no longer the place to go for
12 live entertainment.

13 **C. Claimants Seek a Prohibitory Injunction and Relief that is within the Power of the**
14 **Arbitrator to Grant**

15 Due to communications from Respondent's attorney, Claimants anticipate that Respondent
16 will argue that Claimants are asking Landlord to do something that it has no power or authority to do
17 and for prospective relief for acts which have not occurred and may never occur. Respondent may
18 argue that Claimants are asking the Landlord to sign an entertainment application which can only be
19 issued by the City of Capitola and before there is a determination as to whether the landlord has any
20 contractual obligation to sign such an application. This constitutes a serious material
21 misunderstanding of the relief requested. Rather, Claimants seek a prohibitory injunction maintaining
22 the status quo prior to Landlord act of breach.

24 Whether an injunction is mandatory or prohibitory depends upon whether the overall effect
25 of the injunction is to prohibit or compel action. (United Railroads of San Francisco v. Superior
26 Court (1916) 172 Cal. 80, 82-87.) An injunction may be prohibitory even if it requires the restrained
27 party to undertake some affirmative act that is necessary to effectuate the principal purpose of the
28

injunction. (Youngblood v. Wilcox (1989) 207 Cal.App.3d 1368, 1372, fn. 1 [Fourth Dist., Div. Two]; Jaynes v. Weickman (1921) 51 Cal.App. 696, 700.) The usual distinction is that a prohibitory injunction requires no action and merely preserves the status quo, whereas a mandatory injunction requires the defendant to take affirmative action. Although the request of Claimants requires action by Landlord, it is not accurate to describe it as a mandatory injunction since it seeks only to have Respondent “undertake some affirmative act” to restore the status quo and then **prohibit** Landlord from acting on the basis that there is no landlord consent for the entertainment permit. Restoring the *status quo ante*, even if it may require some act by Landlord to undo its prior actions, does not make the injunction mandatory in nature. Despite Respondent’s self-serving position, the *status quo* in this case for 18 months was Claimants lawful operation of their business with live music. Landlord took overt intentional action to communicate to the City of Capitola that its consent for the music permit had been withdrawn. (Dec. of M. Strong ¶ 69, Ex. V). Those acts constitute the breach of contract and they disrupted and altered the status quo. Claimants seek an order restoring the *status quo ante* such that Landlord consent be reinstated at which point Claimants will obtain their entertainment permit. Despite Landlord’s desperate attempts in this matter to make it seem like the Capitola Police have “investigated” Claimants and have numerous issues with Claimants, there are no such issues. The only reason that the permit application was denied was the absence of landlord consent. (Dec. of M. Strong ¶ 44, Ex. O). If the arbitrator finds that Claimants are likely to prevail on the merits of the dispute, then it is proper to restore the *status quo* to what it was prior to the abrupt change of circumstances caused by the denial of the entertainment permit.

V. EMERGENCY RELIEF REQUESTED

For all the reasons given herein, Claimants requests:

Emergency injunctive relief pursuant to which Respondent is ordered to:

- 1) Immediately take all actions necessary and appropriate to comply with its duties under the lease to permit Claimants’ use of the premises including**

engaging with the City of Capitola and other agencies, as required, to communicate landlord consent for live entertainment.

- 2) Refrain from taking any action withdrawing its consent for Claimants' live entertainment permit or otherwise communicating with the City of Capitola or the Capitola Police Department for the purpose of withdrawing its consent for the live entertainment permit.

VI. CONCLUSION

For the foregoing reasons, and those that may be presented at a hearing on this matter, Claimants thus respectfully requests appointment of an Emergency Arbitrator and the provisional remedy of preliminary injunctive relief to protect its business during the pendency of this arbitration.

Respectfully submitted,

Date: March 24, 2023

ANTHONY LAW GROUP, PC



Drew M. Sanchez,
Attorneys for Claimants,
Michelle Strong and Lasalle Strong

PROOF OF SERVICE

2 I, Jamila Colbert declare: I am over the age of 18 years, and am not a party to this action. On
3 March 24, 2023, I served the following document:

4 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF**
5 **CLAIMANTS' REQUEST FOR ISSUANCE OF PROVISIONAL INJUNCTIVE**
6 **RELIEF**


7 **VIA U.S. MAIL** – CCP § 1013(a) I caused the above documents to be placed in an
8 envelope with postage thereon fully prepared to be placed in the United States Postal Service with
9 postage fully prepaid and addressed to Plaintiff's counsel: and

10 **VIA ELECTRONIC MAIL** The documents were transmitted in PDF format to each of
11 the email addresses as indicated on the service list.

12 JRG Attorneys at Law
13 **C/O Stephan A. Barber**
14 318 Cayuga Street
15 Salinas, CA 93901
16 steve@jrgattorneys.com

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct.

19 Executed on March 24, 2023 at Oakland, California.

20 
21 _____
22 Jamila Colbert

1 JAMES M. ANTHONY (203150)
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6

7 Attorneys for Claimants
MICHELLE STRONG and LASALLE STRONG

8 JAMS ARBITRATION

10 MICHELLE STRONG, an individual; and
11 LASALLE STRONG, an individual;

12 Claimants,
13 vs.

14 LA SERENA PROPERTIES, LLC, a
15 California limited liability company

16 Respondent.

JAMS Ref. No. 5130000363

**DECLARATION OF MICHELLE
STRONG IN SUPPORT OF
CLAIMANTS' REQUEST FOR
APPOINTMENT OF AN EMERGENCY
ARBITRATOR AND FOR ISSUANCE
OF PROVISIONAL INJUNCTIVE
RELIEF**

**Date: TBD
Time: TBD
Location: Virtual**

Arbitrator: Hon. Glenda Sanders

21
22 I, Michelle Strong declare as follows:

23 1. I am over 18 years of age and I am a Claimant in JAMS Arbitration Ref. No.
24 5130000363. I make this declaration in support of Claimants' Request for Appointment of
25 Emergency Arbitrator and Provisional Injunctive Relief. I have personal knowledge of the
26
27

1 matters set forth in this declaration, and if called upon to testify to such matters, I could and
2 would do so competently.

3 2. My husband, Lasalle Strong and I, are the owners of Capitola Bar and Grill
4 (“CBG”) located at 231 Esplanade in Capitola, California 95010.

5 **A. Acquisition of Commercial Lease, Assets, Liquor License, and**
6 **Commencement of Operation of Capitola Bar & Grill**

7 3. In June 2021, we responded to a commercial real estate listing by Broker Bob
8 Brooks offering for sell the assets of a restaurant business, and lease to the premises in
9 downtown Capitola at 231 Esplanade in Capitola, California 95010. Mr. Brooks became
10 broker for seller Jill Ealy, managing member of JJJ Group Inc., and us. The landlord was La
11 Serena Properties LLC (Steven Yates, managing member).

12 4. Eventually my husband and I signed a Sublease and Assignment with JJJ Group
13 Inc. as Master Lessor, with the authorization of La Serena Properties LLC as Landlord.

14 5. The restaurant is in the scenic seaside village of Capitola, a longtime resort
15 destination on Monterey Bay surrounded by restaurants, bars, and hotels. A well-known
16 restaurant called Margaritaville, which used to be owned wholly or in part by Steven Yates, is
17 in the same building.
18

19 6. During the due diligence period, prior to execution of the Sublease and
20 Assignment, I learned that most dining establishments in the area offer live music, including
21 Mr. Toots, the coffee shop located in the same mixed-use building. I also learned that the
22 restaurant Margaritaville, previously owned by Steven Yates and located in the same building
23 as my restaurant, also offered live music and live DJ’s during the time that Mr. Yates operated
24 that business. Additionally, the building next to us houses Paradise Grille which currently has
25 music. That building is located less than 10ft from our building. I concluded that live music
26 would be necessary to run a profitable business in that area.
27

1 7. Extensive communications with Mr. Yates expressing my interest in hosting live
2 music and his approval to do so materially affected my decision to purchase the business and
3 agree to the Sublease.

4 8. On July 15, 2021, Mr. Brooks forwarded a summary of our business plan to
5 Steven Yates which stated in part: “In creating a casual, family friendly vibe, **it is important**
6 **for us to offer live music**, with small groups of acoustic musicians.” (**Exhibit A**). This
7 business plan formed part of our tenant application, which was submitted to Landlord,
8 reviewed by Landlord, and ultimately approved by Landlord. Landlord’s acceptance of these
9 materials and subsequent execution of the lease agreement led me to believe he understood
10 and consented to our use of live music in our business model.

11 9. Subsequently, we purchased the assets of JJJ Group Inc. for \$240,000.00,
12 including the lease (**Exhibit B**), and entered into the Sublease and Assignment Agreement
13 with JJJ Group and the Landlord on July 21, 2021. (**Exhibit C**).

14 10. On August 20, 2021, Mr. Brooks sent an email to Mr. Yates that stated in part:
15
16 “Michelle and Sal are working with a sign company that will help them with any
17 necessary approvals. **They're planning on getting an entertainment permit so they**
18 **can have a two or three person band to provide dinner music and will need your**
19 **sign off on that.**” (**Exhibit D**).

20 11. On August 20, 2021, Mr. Yates responded,
21
22 “The property manager does all the leasing-lease work. I informed him of the new tenant
23 a month ago and a lease was prepared. Jill should be aware of all this to assist the new
24 tenant in the transition. Thanks for the info.” (**Exhibit D**).

25 12. An annual fire inspection was required to be performed prior to submitting an
26 application to the City of Capitola for an entertainment permit.

27 13. On September 22, 2021 I sent an email to the property manager Russell Gross,
stating in part:

1 **“We needed to get an inspection done for entertainment permit.** Here are the items
2 that need to be addressed. The items inside our unit have been taken care of, however
3 there are some that pertain to the common area.” **(Exhibit E).**

4 14. On that same day, Mr. Gross replied that **he approved SSS Fire Protection to**
5 **complete the “5-year fire inspection”.** The fire inspection was solely for entertainment
6 permit purposes. **(Exhibit E).**

7 15. We expended not less than \$10,000 in improvements as required for the
8 entertainment permit including but not limited to—soundproofing, wood paneling, ceiling
9 treatment, curtains, self-closing doors, and cameras.

10 16. In November 2021, the entertainment permit was issued from the City of
11 Capitola for the remainder of that year. On January 27, 2022 the entertainment permit was
12 renewed for 2022 without issue. **(Exhibit F).**

13 17. During that time, we implemented our business plan involving live music.

14 18. On April 2, 2022, and May 5, 2022, Ryan Yates, an upstairs residential tenant
15 who is also the son of Steven Yates, complained about noise violations and involved Capitola
16 Police, who took no action on the complaints. After Capitola Police declined further action,
17 Ryan Yates began engaging intimidating and inappropriate behavior to employees of our
18 establishment—including inappropriate conduct toward a young 16-year-old hostess. I
19 immediately reported Ryan Yates’ behavior to Steven Yates.

20 19. Ryan continued to speak in threatening tones to our employees, unreasonably
21 using his relationship to the landlord as authority.

22 20. Additionally, I had various communications with Landlord Steven Yates and
23 property manager Russell Gross regarding issues with the condition of the Premises. Notably,
24 the ADA chair lift to the restaurant never worked **(Exhibit G)** and the roof of the residential
25 unit that I am also in possession of, constantly leaked during the rainy seasons.
26
27

1 21. Progress on repairs were very slow. Some minor work was done, but not
2 professionally. The chair lift has since been removed and half-replaced, remaining undone.

3 **B. Landlord Escalation of Dispute**

4 22. Ryan Yates on or about April 2, 2022 and May 5, 2022, raised allegations of noise
5 and alleged municipal code violations relating to our live music to Capitola Police.

6 23. Capitola Police investigated the noise violation allegations and made no finding
7 of any alleged violations, issued no citations, arrested no persons, issued no warrants, and
8 performed no follow up. Specifically, in the case of the May 5, 2022 complaint, Police came to
9 Capitola Bar & Grill. When Police arrived, it was obvious to them that no such violation
10 occurred and characterized the complaint as **unfounded. (Exhibit H).**

11 24. Until we reported Ryan Yates’ behavior, we hosted live music performances
12 smoothly, with no complaints or requests to lower music volume from patrons, neighbors or
13 upstairs residential tenants. Nor did Capitola Police issue any reports or citations at any time
14 before or after Ryan Yates’ allegations. In fact, a neighboring hotel recommended our
15 restaurant as a preferred venue for meals and citing the presence of live music.

16 25. Nonetheless, on May 17, 2022, property manager Russell Gross sent me an email
17 which stated in part:

18 “Michelle, I am receiving a number of complaints regarding the music at the premises.”
19 The email further provided for adjustments the owner [Steven Yates] required we make
20 to, “stay in compliance” with the “entertainment permit and lease agreement.”
21 **(Exhibit I)**

22 26. On May 17, 2022, I replied to Russell’s email detailing our compliance with the
23 lease and explaining that we received confirmation from Officer Brantley, who responds to noise
24 ordinance complaints on behalf of the City of Capitola, confirming that we were in compliance
25 with local law and our permit. I also requested more details on the alleged “number of
26 complaints” so that we could provide our security camera footage, as we had not received notice
27

1 of any complaints aside from the two complaints made by Steven’s son on April 2, 2022, and
2 May 5, 2022. (**Exhibit J**).

3 27. Despite not being required to do so, we installed curtains and sound boards and
4 kept doors closed after 8pm. On weekends we stopped all music by 10pm, even though our
5 permit allowed us to play music until 12:30am. (**Exhibit F**) (**Exhibit J**). We stand committed to
6 proving our compliance with our obligations under our permit and any local ordinance. We
7 previously offered Landlord video and decibel readings supporting this compliance and remain
8 willing to provide those.
9

10 28. I did not receive a response to my May 17, 2022 email, we continued to operate
11 our business and provide music to our customers. On May 22, 2022, Ryan Yates posted a
12 notice on our door that appeared to be on behalf of the landlord. I sent an email on that same
13 date, a true and correct copy of which is attached hereto as **Exhibit S**. In the email I explained
14 the circumstances and requested landlord intervention before the dispute escalated. On June 1,
15 2022, the property manager sent an email stating that, “[t]he Tenants at the complex would
16 like to know if you have a plan to continue "as is" with the music. They are stating that DBA
17 levels over 100. steady level between 90 and 100. Hearing loss can occur at 15 minutes of 90
18 dba.” On June 1, 2023, I responded with an email saying that the reported levels were not
19 possible as 140 dBa would cause deafness in a human being and insisting on a meeting with
20 landlord intervention. (**Exhibit S**).
21

22 29. On June 1, 2022, Steven Yates emailed me stating that the Landlord had opened
23 a harassment investigation due to my complaint regarding Ryan Yates’ conduct. The subject
24 line of the email was “Noise and harassment claim.” It stated in part, “Commercial tenant
25 [CBG] has alleged that it has been harassed by either a tenant in the landlords [sic] property or
26 by landlord...” On June 9, 2022, the property manager forwarded a letter from Steven Yates
27

1 from June 8, 2022, that perplexingly concluded that I was harassing Ryan Yates and then used
2 the harassment investigation to reiterate the disputed noise complaints. (**Exhibit K**).

3 30. Perplexingly however, the letter concluded by claiming that we were harassing
4 Ryan Yates and put forth yet again unfounded claims of noise ordinance violations. (**Exhibit**
5 **K**).

6 31. Without evidence, Ryan Yates implied our involvement in “slashing” his bicycle
7 tires. He made no police report about that purported damage. Yet Steven Yates characterized
8 Ryan Yates’ vandalism claim as “harassment” by us. The letter further commanded, “reverse
9 course and be a responsible tenant in the building and in the village.” (**Exhibit K**).

10 32. Steven Yates also claimed that he used a cell phone application to measure our live
11 music at 105-110 decibels outside of the building. (**Exhibit K**). The nature of these readings and
12 the precise locations where they were taken were not stated, nor did the letter advise whether
13 other restaurants in the area were open and contributing to the sound.

14 33. On June 9, 2022 I responded to Steven Yate’s June 8, 2022 letter explaining that
15 his June 8, 2022 letter completely mischaracterized Ryan Yates’s behavior. I further explained
16 that his decibel readings were grossly inaccurate, and we kept videos and a-weighted decibel
17 readings evidencing that our music remained within compliant levels, that the music did not
18 reach the bar seating area or our residential located adjacent to the restaurant, and that Capitola
19 Police never issued a citation in response to Ryan Yates’ complaints. (**Exhibit L**).

20 34. I made multiple requests to have Steven Yates perform an on-site inspection to
21 confirm compliance with our entertainment permit, our lease and with the Capitola Municipal
22 Code. Mr. Yates refused to do so. (**Exhibit L**).

23 35. On June 16, 2022, I sent another email to Steven and Russell requesting to install
24 sound insulation to non-working vents to minimize vibration at my expense. I also informed
25
26
27

1 them that I reached out to several hotels in the area and tenants in the building, all who were
2 supportive of our business even promoting our live music to their guest. (**Exhibit M**).

3 36. On June 21, 2022, Steven Yates replied to my June 16, 2022 email that he saw “no
4 further point in attempting to rationalize”... “the impact your live music-bands-kereoke is
5 having on the building tenants.” Despite having no actual complaint from any residential or
6 commercial tenant aside from his son, Ryan Yates. Mr. Yates further stated, “you [CBG] are in
7 default under the lease...” (**Exhibit M**).

8 37. We never received proper direct notice of the alleged breach and Mr. Yates refused
9 to communicate with us in any capacity regarding our efforts to comply with the improper
10 notice.
11

12 38. Subsequently, we met with Police Chief Andrew Dally to discuss any compliance
13 issues due to the confusing “notices” from the landlord. The Chief said there were no significant
14 issues or complaints and that he was not concerned with our use of music—however, we were
15 informed that Steven Yates had asked Capitola Police to cancel our entertainment permit.
16

17 39. During the week of August 22, 2022, Master Tenant, Jill Ealy sent written notice
18 of exercise of the option to extend the Lease by registered mail. On August 29, 2022, Jill reached
19 out to Steve to confirm his receipt of the notice. (**Exhibit N**).

20 40. On August 30, 2022, Steven Yates responded to Jill Ealy that we were in “default
21 of the lease” and made “zero attempt” to cure the alleged music breach, and “may not exercise
22 the option while in default and that period to correct the default has passed.” (**Exhibit N**)

23 41. In fact, we installed curtains and sound boards, closed our doors early, reduced
24 music days, times and volume, installed cameras, kept decibel readings, requested permission to
25 add insulation and requested multiple meetings with Steven. (**Exhibit J**).

1 42. On September 1, 2022, Jill Ealy responded to Steven’s August 30, 2022 email to
2 address the supposed non-compliance and exercise of the option to extend the lease agreement.
3 **(Exhibit N)**.

4 43. We hired a law firm to assist with the conflict. In October 2022 we met with Chief
5 of Police Andrew Dally to discuss the renewal of the entertainment permit. We offered to file
6 the same annual renewal form for 2023 that was filed for 2021 and 2022. However, suddenly it
7 became an issue that Steven Yates refused to sign the renewal form even though he had not
8 signed the forms in 2021 or 2022 and the permits were still issued.

9
10 44. On January 31, 2023, we received a letter from the City Manager officially denying
11 our entertainment permit application for 2023, wholly because Steven Yates did not give his
12 consent by signing the form. There was no other reason listed for denial of the permit. **(Exhibit**
13 **O)**.

14 45. On February 1, 2023 Steven Yates emailed our broker to ask if he had any record
15 of communications between us regarding “implied consent” to use the space for Bands. Broker
16 Bob Brooks responded “I checked my email and found the attached business plan Michelle
17 Strong sent me and that I forwarded to you on July 15, 2021. It does mention live music”.
18 **(Exhibit P)**

19
20 46. We have several communications informing Mr. Yates that we intend to have live
21 music/bands. (*See Exhibit A, Exhibit D, Exhibit E*). We do not have any communications
22 from Mr. Yates opposing live music prior to our complaints against his son.

23 47. On February 21, 2023, we filed an appeal of the entertainment permit denial.
24 **(Exhibit Q)**.

1 48. On March 1, 2023 Steven Yates and I through our respective counsel participated
2 in mediation pursuant to the lease agreement to address the alleged default of lease and other
3 outstanding issues, including an exercise of the option to extend the lease agreement.

4 49. Steven Yates mediation statement consisted of multiple unfounded and untrue
5 statements. For example, Mr. Yates claimed, “The Landlord has been informed that due to past
6 violations of its permit, the CPD [Capitola Police Department] intends to issue a cease-and-
7 desist order to Capitola Strong prohibiting it from making loud music noises”. (**Exhibit R**)

8 50. To the contrary, CPD has never issued a cease-and-desist order of any kind, nor
9 have they issued a citation or violation of any kind through the filing of this declaration.
10

11 51. Mr. Yates mediation statement further stated, “The Subtenant has not been a
12 desirable tenant from the Landlord’s viewpoint and noise disturbances to others in the vicinity
13 are unacceptable.”

14 52. The vicinity consists of restaurants, bars and hotels. The **only** reports of alleged
15 noise disturbances from our restaurant came from the Landlord’s son Ryan Yates *after* we
16 complained about his harassing behavior.
17

18 53. Despite our efforts to compromise, Steven Yates refused to negotiate or agree to
19 allow us to offer musical performances at any level.

20 54. As of the date of this declaration we have been forced to stop **all** music. Landlord’s
21 other commercial tenants in the same building still engage in live music.

22 55. Live music assisted in sales especially through slow months, and it has been a
23 struggle keeping the doors open since Steven refused to sign off on our entertainment permit.
24 We are losing an estimate \$5,000 each week since our entertainment permit has been cancelled.

25 56. We have developed a reputation in the Esplanade to have family-friendly dining
26 with live music and a spectacular view of the ocean. Our restaurant has become a place to go
27

1 for tourists and locals alike. Local businesses refer their guests to our restaurant. Presently,
2 current patrons inquire why there is no more live music and we must embarrassingly explain.

3 57. Our restaurant is still paying rent and landlord is accepting it. We remain in good
4 standing with the City of Capitola in the category of a “restaurant full bar”.

5 58. We incurred damages associated with cancelling entertainment contracts and lost
6 revenue for the planned performances by complying with Mr. Yates demands.
7

8 **C. Landlord’s Bad Faith Refusal to Honor Lease Option and Improper Notice of
Termination**

9 59. The lease agreement contains an option to renew and certain notice provisions.
10 The option to renew clause in the Lease agreement states in pertinent part:

11 “Option to Renew. Provided that this Lease is in full force and effect and the Tenant is
12 not in default of the Lease at the time of Tenant's election to exercise an option to renew,
13 Tenant shall have one (1) option to renew this Lease, for a five (5) year term. The renewal
14 term commences upon termination of the initial term. The option shall be exercised by
15 written notice of Tenant's election to exercise the option. Tenant's written notice shall be
16 delivered no sooner than 180 days and no less than 90 days prior to the end of the initial
17 term. **Tenant's notice shall be delivered to Landlord only by certified mail, return
receipt.** If Tenant neglects to timely exercise the option, the right to exercise such option
18 automatically expires without notice from Landlord of Tenant's failure to exercise such
19 option. All terms and conditions of this Lease apply during the renewal term, except
20 monthly rent as indicated below.” (Exhibit C)

18 60. Pursuant to the language of the lease, the first date after which notice to exercise
19 the option to extend the Lease was August 4, 2022. The last day for notice was November 2,
20 2022

21 61. The general notice provisions in the Lease states:

22 **“All notices required or permitted under this Lease shall be in writing and
23 shall be personally delivered, sent via reputable overnight courier, or sent
24 by certified mail, return receipt requested, postage prepaid.** Notice to
25 Tenant shall be delivered to the address specified in Section 1 above, except that
26 upon Tenant’s taking possession of the Premises, the Premises shall be Tenant’s
27 address from notice purposes. Notices to Landlord shall be delivered to the
address specified in Section 1 above. All notices shall be effective upon delivery.
Either party may change its notice address upon written notice to the other party.”
(Exhibit C)

1
2 62. The only reference to any mailing address to which notices may be sent is
3 contained in section 1.02 of the Lease, which states: “LA SERENA PROPERTIES, LLC, C/O
4 STEVEN A. YATES 283 CANYON OAKS SANTA CRUZ, CALIFORNIA 95065.” (**Exhibit**
5 **C**). Notably, the address is an uninhabited residential home located in Santa Cruz, California,
6 and is unmonitored. Steven Yates resides in Hawaii.

7 63. Master Tenant sent written notice of exercise of the option to extend the Lease
8 sometime during the week of August 22, 2022, by registered mail.

9 64. On Monday, August 29, 2022, Jill Ealy, on behalf of Master Tenant sent an email
10 communication to Steven Yates regarding the registered mailing of the notice to exercise the
11 option, which stated in pertinent part: “Hello Steve, I sent the letter exercising the options
12 registered mail. I just wanted to confirm receipt. I haven't heard anything further about CBG's
13 music. I'm hoping that as a good thing and everything has been worked out.” (**Exhibit N**)
14

15 65. On August 30, 2022, Steven Yates replied:

16 “Jill, I have not received any letter from you as of yet. I will let you know when I do. You,
17 through your subtenant, are in default of the lease. You have been notified of this default
18 prior and had 30 days to correct the default. The subtenant has made zero attempt to
19 resolve the noise issue or correct the default. The upstairs apartment remains half rented
20 as no one could withstand the noise level. Your sub tenant remains a major problem.

21 Bottom line is per the lease you may not exercise the option to renew the lease while in
22 default and that period to correct the default has passed.” (**Exhibit N**).

23 66. On September 1, 2022, Ms. Ealy responded:

24 “Hi Steve,

25 **I actually just received the letter back and it stated there was no receptacle. Is there a**
26 **better address that I should resend the letter?** I know Michelle and Lasalle have reduced
27 their music days, times, and volume all in attempt to appease you and the tenant. It is my
understanding they have continually reached out to you for a meeting to no avail. I have
informed the tenant that until we are paid in full or the two of you come to some solution,
the music needs to stop. We never wanted to be in the middle of this situation nor do we
want to spend the time and money hiring an attorney etc.

1 What do you want or expect us to do at this point? They have an entertainment permit per
2 the city and are well within its guidelines.

3 ~Jill” (**Exhibit N**).

4 67. On October 24, 2022, I delivered, via Federal Express ("FedEx") overnight
5 courier, a "Notice of Exercise of Option" to La Serena at the address provided for in the Master
6 Lease. The Notice arrived on October 25, 2022. (**Exhibit T**)

7 68. On November 1, 2022, I delivered executed copies of the previously served Notice
8 of Exercise of Option via FedEx. (**Exhibit U**).

9 69. On December 10, 2022, Steven Yates emailed to Capitola Police withdrawing
10 consent for the live entertainment permit. (**Exhibit V**).

11
12
13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing declaration is true and correct. This declaration is executed on this 24th day of March
15 2023, in Capitola, California.


16 
17 _____
18 Michelle Strong

EXHIBIT A

From: Firehouse Brew & Grill
Sent: Thursday, July 15, 2021 1:41:08 PM
To: Bob Brooks <[REDACTED]>
Subject: Menu

Hi Bob,

Here is a quick summary and menu draft.

Thank you,

Michelle Strong

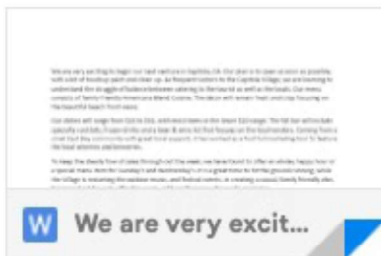
Firehouse Brew & Grill

611 Escobar St.

Martinez, CA 94553

Firehousemartinez.com

2 Attachments • Scanned by Gmail ⓘ



Thanks!

Got it.

Got it, thanks!

We are very exciting to begin our next venture in Capitola, CA. Our plan is to open as soon as possible, with a bit of touchup paint and clean up. As frequent visitors to the Capitola Village, we are learning to understand the struggle of balance between catering to the tourist as well as the locals. Our menu consists of family friendly Americana Blend Cuisine. The décor will remain fresh and crisp focusing on the beautiful beach front views.

Our dishes will range from \$14 to \$42, with most items in the lower \$20 range. The full bar will include specialty cocktails, frozen drinks and a beer & wine list that focuses on the local vendors. Coming from a small East Bay community with great local support, it has worked as a fruit full marketing tool to feature the local wineries and breweries.

To keep the steady flow of sales through out the week, we have found to offer an all-day happy hour or a special menu item for Tuesday's and Wednesday's. It is a great time to hit the ground running, while the Village is restarting the outdoor music, and festival events. In creating a casual, family friendly vibe, it is important for us to offer live music, with small groups of acoustic musicians.

Lasalle and I are very grateful for the opportunity create and share our vision with the Capitola Village.

Thank you,

Michelle Strong

EXHIBIT B

DATE: September 28, 2021

ESCROW NO.: 30109-CV

BILL OF SALE

FOR VALUE RECEIVED, the undersigned Vendor, hereby sells, assigns and transfer to:

Capitola Strong, Inc.

As Vendee, all right, title and interest of the Vendor in and to the following property situated in the county of **Santa Cruz, California**,

To wit: **ALL FURNITURE, FIXTURES, EQUIPMENT, TRADENAME, GOODWILL, LEASE, LEASEHOLD IMPROVEMENTS, ABC LICENSE & ALL OTHER ASSETS**

of that certain business known as: **Sotola Bar & Grill**

located at: **231 Esplanade, Capitola, CA 95010**

Fixtures and equipment are more specifically detailed in the list attached hereto.

Vendor warrants that at the time of execution of this Bill of Sale, Vendor is lawfully possessed in his own right of a good title to the above described property and that he has good, right and lawful authority to sell and deliver the same, that same is free and clear of all encumbrances of whatsoever kind or nature. The singular as used herein includes the plural.

WITNESSETH the hand and seal of the Vendor this 29 day of September, 2021

Capitola JJ Group Inc.


By: Jill Ann Ealy, President

Equipment List

List of Fixtures & Equipment Included in Purchase Price

Entryway

- 1 Wait bench (opens for storage)
- 1 Front desk/hostess stand
- 1 Front desk light
- 1 Phone system
- 1 Employee storage closet
- 1 Succulent plant wall in bathroom hallway
- 1 Potted plant
- 1 Framed article on Sotola name
- 1 Mini iPad
- 1 Sidewalk sign
- 1 Circle mirror
- 1 Nest security camera

Dining Room

- 12 Custom cyprus wood tables
- 8 Four top tables
- 4 Two top tables
- 38 Padded metal chairs
- 1 Custom preserved moss trim wrap
- 1 Neon open sign
- 1 Custom built succulent box
- 1 Concrete box planter with fig plant
- 1 White ceramic pot with plant
- 1 Jack O'Neill surf board - on ceiling - **Not Included**
- 1 Wood root structure

Server station

- 1 Toast POS system and printer
- Wooden cabinets
- 1 Custom concrete counter top w/built in sink - 9'
- 1 Curtis CGC1 Gold Cup coffee brewer w/hot water
- 1 Fire extinguisher
- 1 Custom Sotola moss sign - 7'
- 1 Cabinet/book shlf storage unit
- 1 Immersion blender
- 1 Robot Coupe 3 quart food processor
- 1 Advantco double induction range/cooker 120 V
- 1 Advantco 2 door refrigerator w/backsplash
- 1 Advantco 2 drawer refrigerated chef base
- 1 Turbo Air TWF 60SD 2 door worktop freezer
- 1 Deli meat slicer
- 4 Storage bins w/lids - 21 gallon
- 1 Globe GPS 10 digital portion control scale
- 1 Prep sink

Bar Area

- 2 Metal stools
- 1 Mini ipad for music
- 4 Custom cyprus wood high tables
- 2 Two top tables
- 2 Four top tables
- 17 Black metal padded bar chairs
- 1 Granite top bar - 14'
- 1 Three compartment sink
- 1 Hand sink
- 1 True two door cooler
- 1 Wall mounted 42" TV
- 2 Framed beer signs
- 1 "BAR" light up sign
- 1 Mini refrigerator
- 1 Toast POS monitor
- 1 Toast cash drawer
- 1 Toast printer
- 1 Ticket printer
- 1 Stand alone ice well/prep station
- 1 Carbonics 5 tap beer tower
- 1 Zap N Trap wall sconce insect trap
- 1 Nest security camera
- 1 True 3 door cooler
- 1 Ceiling mounted wooden glass rack

Large Patio

- 9 Aluminum tables
- 23 Wicker chairs
- 2 Fixed patio gas heaters
- Hanging lights

Bar Patio

- 10 Black metal bar stools
- 1 Wall mounted 42" TV
- Outdoor plants
- Outdoor string lights

Kitchen

- 1 Nest security camera
- 1 Imperial range w/2 ovens & 8 burners
- 1 Hood & ansul system - 12'
- 1 Imperial griddle
- 1 Stratus grill
- 1 Stainless steel shelving unit - 7'
- 1 Imperial deep fryer
- 1 Imperial deep fryer

Handwritten signature: Oliver A. V. V.

Kitchen (continued)

- 1 Hand sink
- 1 Sink with floor pedals
- 2 True refrigerated 4 drawer prep tables - 6'
- 1 Stainless steel shelving unit - 4.5'
- 1 Manitowok ice maker
- 1 Stainless steel shelving unit w/4 shelves
- 1 Auto Chlor dishwasher - **Leased**
- 1 Magnetic knife strip
- 1 True refrigerator
- 1 Fire extinguisher
- 1 Step ladder
- 1 Wire shelving unit - 40"
- 1 Pan rack on wheels - 20 pans
- 1 Carbonics ice machine - **Leased**

Office/Storage Area

- 1 Traulson freezer
- 1 True refrigerator
- 2 Traulsen refrigerators
- 1 Liquor cage
- 5 Metro shelving units
- 2 Desks
- 1 Hollon safe
- 1 Four drawer filing cabinet
- 1 Two drawer filing cabinet
- 2 Office chairs
- 2 Nest security cameras

gallagher 7.26.21

Equipment List

List of Fixtures & Equipment
Included in Purchase Price

Entryway

- 1 Wait bench (opens for storage)
- 1 Front desk/hostess stand
- 1 Front desk light
- 1 Phone system
- 1 Employee storage closet
- 1 Succulent plant wall in bathroom hallway
- 1 Potted plant
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- 1 Sidewalk sign
- 1 Circle mirror
- 1 Nest security camera

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- 8 Four top tables
- 4 Two top tables
- 38 Padded metal chairs
- 1 Custom preserved moss trim wrap
- 1 Neon open sign
- 1 Custom built succulent box
- 1 Concrete box planter with fig plant
- 1 White ceramic pot with plant
- 1 Jack O'Neill surf board - on ceiling - **Not Included**
- 1 Wood root structure

Server station

- 1 Toast POS system and printer
- Wooden cabinets
- 1 Custom concrete counter top w/built in sink - 9'
- 1 Curtis CGC1 Gold Cup coffee brewer w/hot water
- 1 Fire extinguisher
- 1 Custom Sotola moss sign - 7'
- 1 Cabinet/book shlf storage unit
- 1 Immersion blender
- 1 Robot Coupe 3 quart food processor
- 1 Advantco double induction range/cooker 120 V
- 1 Advantco 2 door refrigerator w/backsplash
- 1 Advantco 2 drawer refrigerated chef base
- 1 Turbo Air TWF 60SD 2 door worktop freezer
- 1 Deli meat slicer
- 4 Storage bins w/lids - 21 gallon
- 1 Globe GPS 10 digital portion control scale
- 1 Prep sink
- 1 Santa Cruz Roasting coffee machine - **Leased**

Bar Area

- 2 Metal stools
- 1 Mini ipad for music
- 4 Custom cyprus wood high tables
- 2 Two top tables
- 2 Four top tables
- 17 Black metal padded bar chairs
- 1 Granite top bar - 14'
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- 1 Hand sink
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- 1 Wall mounted 42" TV
- 2 Framed beer signs
- 1 "BAR" light up sign
- 1 Mini refrigerator
- 1 Toast POS monitor
- 1 Toast cash drawer
- 1 Toast printer
- 1 Ticket printer
- 1 Stand alone ice well/prep station
- 1 Carbonics 5 tap beer tower
- 1 Zap N Trap wall sconce insect trap
- 1 Nest security camera
- 1 True 3 door cooler
- 1 Ceiling mounted wooden glass rack

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- 23 Wicker chairs
- 2 Fixed patio gas heaters
- Hanging lights

Bar Patio

- 10 Black metal bar stools
- 1 Wall mounted 42" TV
- Outdoor plants
- Outdoor string lights

Kitchen

- 1 Nest security camera
- 1 Imperial range w/2 ovens & 8 burners
- 1 Hood & ansul system - 12'
- 1 Imperial griddle
- 1 Stratus grill
- 1 Stainless steel shelving unit - 7'
- 1 Imperial deep fryer

Kitchen (continued)

- 1 Hand sink
- 1 Sink with floor petals
- 2 True refrigerated 4 drawer prep tables - 6'
- 1 Stainless steel shelving unit - 4.5'
- 1 Manitowok ice maker
- 1 Stainless steel shelving unit w/4 shelves
- 1 Auto Chlor dishwasher - **Leased**
- 1 Magnetic knife strip
- 1 True refrigerator
- 1 Fire extinguisher
- 1 Step ladder
- 1 Wire shelving unit - 40"
- 1 Pan rack on wheels - 20 pans
- 1 Carbonics ice machine - **Leased**

Office/Storage Area

- 1 Traulson freezer
- 1 True refrigerator
- 2 Traulsen refrigerators
- 1 Liquor cage
- 5 Metro shelving units
- 2 Desks
- 1 Hollon safe
- 1 Four drawer filing cabinet
- 1 Two drawer filing cabinet
- 2 Office chairs
- 2 Nest security cameras

EXHIBIT C

COMMERCIAL LEASE AGREEMENT

ARTICLE ONE: BASIC TERMS

Section 1.01. **Date of Lease.** February 1, 2018

Section 1.02. **Landlord.** LA SERENA PROPERTIES, LLC
C/O STEVEN A. YATES
[REDACTED]
SANTA CRUZ, CALIFORNIA 95065

Section 1.03. **Tenant, Guarantor.** SOTOLA BAR AND GRILL COMPANY
By: ASHLEY DAYLE BERNARDI, DIRECTOR
[REDACTED]
SANTA CRUZ, CALIFORNIA 95062

ASHLEY DAYLE BERNARDI
Guarantor
ADAM BERNARDI
Guarantor

Section 1.04. **Premises.** The lease premises are located in the City of Capitola, Santa Cruz County, State of California, consisting of approximately 2200 square feet of space, including all reasonably necessary access and emergency exit routes, within the building located at 231 Esplanade, Capitola, California 95010 (the "Premises"), situated on Assessor's Parcel Number 035-211-01 ("Landlord's Property").

Section 1.05. **Lease Term.** The lease term is approximately 5 years commencing on February 1, 2018, 2018, and ending on January 31, 2023. The Lease Term is the period stated above. The "Commencement Date" shall be the date specified above for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease.

Section 1.06. **Option to Renew.** Provided that this Lease is in full force and effect and the Tenant is not in default of the Lease at the time of Tenant's election to exercise an option to renew, Tenant shall have one (1) option to renew this Lease, for a five (5) year term. The renewal term commences upon termination of the initial term. The option shall be exercised by



written notice of Tenant's election to exercise the option. Tenant's written notice shall be delivered no sooner than 180 days and no less than 90 days prior to the end of the initial term. Tenant's notice shall be delivered to Landlord only by certified mail, return receipt. If Tenant neglects to timely exercise the option, the right to exercise such option automatically expires without notice from Landlord of Tenant's failure to exercise such option. All terms and conditions of this Lease apply during the renewal term, except monthly rent as indicated below.

Section 1.07. **Holding Over.** If Tenant does not vacate the Premises upon the expiration or earlier termination of this Lease, and Landlord thereafter accepts rent from Tenant, Tenant's occupancy of the Premises shall be a "month-to-month" tenancy, subject to all of the terms of this Lease applicable to a "month-to-month" tenancy, except that the Base Rent then in effect shall be increased by twenty-five percent (25%).

Section 1.08 **Initial Security Deposit.** Landlord has required no Security Deposit, but reserves the right to require such Security Deposit at a future date at Landlord's sole discretion.

Section 1.09. **Permitted Use/Exclusive Use.** Tenant shall use the Premises for a restaurant, as defined in the City of Capitola use permit existing at the time of execution of this Lease, and for no other purpose. Notwithstanding, in no event shall the use include a Mexican food type restaurant.

ARTICLE TWO: RENT

Section 2.01. Rent and Other Charges Payable by Tenant.

(a) **Base Rent.** During the months of January, February, March, October, November and December Tenant shall pay to Landlord the sum of \$7,000 per month as base rent for the initial term of the Lease. During the months of April through September Tenant shall pay to Landlord the sum of \$9,000 per month as base rent for the initial term of the Lease.

The base rent, as described above, shall increase for year 2 and year 3 as stated below. Base rent shall increase 2% each year thereafter:

Year 1 - \$7,000 / \$9,000
Year 2 - \$7,500 / \$9,500
Year 3 - \$8,000 / \$10,000
Year 4 - \$8,160 / \$10,200
Year 5 - \$8,323.20 / \$10,404

If the Tenant timely elects to exercise an option to renew the Lease, the base rent, as described above, shall be increased by 2% per year for each year of the option term.

(b) **Other Payments.** Other payments due shall be deemed additional rent, and include: Utilities; Taxes (See Section 3.01 and 3.02); Insurance (See Section 3.03); and Maintenance, Repairs, and Alterations (See Article Five).

Section 2.02. **Reimbursable Expenses.** Tenant shall reimburse Landlord for Tenant's specified share (as defined herein) of property taxes, insurance, and shared trash service, as more specifically provided in Section 3 hereof.

Section 2.03. **Time and Manner of Payment.** On the first day of each month of the Lease term, and each month thereafter, Tenant shall pay Landlord all rent, in advance, without offset, deduction or prior demand. Rent shall be payable at Landlord's address or at any other place Landlord may designate in writing.

Section 2.04. **Late Charges.** If Landlord does not receive a rent payment within five (5) days after it becomes due, Tenant shall pay Landlord a late charge equal to five percent (5%) of the overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment.

Section 2.05. **Interest on Past Due Obligations.** Any amount owed by Tenant to Landlord that is not paid when due shall bear interest at the rate of ten percent (10%) per annum

before a late charge would accrue if the rent is paid before a late charge is incurred. Interest shall not be payable on late charges to be paid by Tenant under this Lease. The payment of interest on past due amounts shall not excuse or cure any default by Tenant under this Lease.

ARTICLE THREE: PROPERTY EXPENSES

Section 3.01. Property Taxes.

(a) **Real Property Taxes.** Tenant shall pay a portion of the real estate property taxes on the Premises during the Lease Term. Tenant shall pay 20% of the property taxes attributable to Landlord's Property, subject to the provisions hereof. Tenant's share of property taxes shall be prorated for any partial lease year during the term. Landlord shall furnish Tenant with a copy of the tax bill, along with a letter outlining Tenant's share of such bill. Tenant shall submit payment to Landlord within twenty-one (21) days after receipt of the foregoing correspondence from Landlord.

If the Landlord sell Landlord's Property during the term of this Lease, or any extension thereof, then the Tenant's share of property taxes shall be equal to the amount paid by Tenant for the 2017 assessment plus 2.5% for each year thereafter. In the interest of clarity, the intent of the parties is to limit the increase in Tenant's share of property taxes resulting from the sale of the subject property, but only if Landlord actually completes the sale of Landlord's Property.

Tenant shall have the right, at its own cost and expense, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of taxes assessed to or levied upon the premises and required to be paid against Landlord's estate and, if required by law, Tenant may take this action in the name of Landlord, who shall cooperate with Tenant to the extent Tenant may reasonably require; however, Tenant shall fully defend, indemnify and save Landlord harmless from all loss, cost,

damage and expense incurred by or to be incurred by Landlord as a result thereof, and Tenant shall, at Landlord's request, escrow or post a bond for the full amount of the tax claimed pending the abatement proceedings.

(b) **Personal Property Taxes.** Tenant shall pay all personal property taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant.

Section 3.02. **Utilities.**

(a) **Separately Metered Utilities.** Tenant shall pay directly to the appropriate supplier the cost of all utilities, including but not limited to natural gas, heat, light, power, telephone, water, and other utilities and services supplied to the Premises.

(b) **Garbage.** The trash area and refuse removal are shared by all occupants of Landlord's Property; Tenant shall be responsible for paying for 30% of such refuse removal service attributable to the period during the Lease Term.

(c) **Sewer.** (i) Sewer charges are billed by the County of Santa Cruz on a semi-annual basis, generally on or about December 1 and April 1 of each year, and appear on Landlord's property tax bill. Tenant shall timely pay those charges as part of Tenant's obligation to reimburse Landlord for a portion of the property taxes. (ii) Tenant is responsible for maintenance and upkeep of all sewer apparatus exclusively serving the Premises, including from the public sewer line branch and any portion of the sewer line running from the public line into Landlord's Property. Landlord shall have no responsibility to maintain or repair sewer apparatus serving the Premises. (iii) Tenant is responsible for maintenance and upkeep of all shared sewer apparatus serving Landlord's Property, which apparatus serves the Premises along with any other portions of Landlord's Property, including from the public sewer line branch and any portion of

the sewer line running from the public line into Landlord's Property. Landlord shall have no responsibility to maintain or repair shared sewer apparatus. The costs of any reasonably necessary repairs or maintenance of the shared sewer apparatus shared among the commercial tenants of Landlord's Property shall be apportioned among the commercial tenants on a percentage basis, with each commercial tenant's percentage being equal to the percentage paid by that tenant for garbage service pursuant to this Lease. Tenant and the adjoining restaurant, presently known as Margaritaville (231 Esplanade) shall be responsible for keeping the shared grease trap cleaned and in good working order, and each shall be responsible for one half of the total cost of grease trap cleaning and maintenance. Landlord shall have no responsibility to maintain, clean, or repair the grease trap or to coordinate such activities between Tenant and the adjoining tenant.

Section 3.03. **Insurance Policies.**

(a) **Liability Insurance.** During the Lease Term Tenant shall maintain a commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property), and personal injury arising out of the operation, use or occupancy of the Premises. Landlord shall be named as an additional insured under the policy. The limit of the insurance shall be at least Two Million Dollars (\$2,000,000) per occurrence. The amount and coverage of the insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.

(b) **Property and Rental Loss Insurance.** During the Lease Term, Landlord shall maintain a policy of fire and extended coverage insurance covering loss of or damage to the improvements on Landlord's Property in an amount determined solely by Landlord to be

sufficient. The policy shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, sprinkler leakage and any other like perils. Said policy shall also include rental loss coverage, insuring Landlord for up to one year of lost rent due to an insured casualty. If such insurance coverage has a deductible, Landlord shall be responsible for such deductible amount in the event of an insured loss. The proceeds of such insurance coverage shall be the sole property of Landlord to use as Landlord determines. In the event of an insured loss, Landlord shall not be responsible for any shortage in such proceedings, whether resulting from any lack or insufficiency of coverage, deductibles, or otherwise. Commencing with the start of the lease, Tenant shall reimburse Landlord for 20% of the cost of this insurance during the Lease Term, prorated for any partial lease year.

(c) **Tenant's Fixtures Insurance.** Tenant shall obtain insurance for Tenant's fixtures and equipment or building improvements installed by Tenant on the Premises. If such insurance coverage has a deductible, Tenant shall be responsible for such deductible amount in the event of an insured loss. In the event of an insured loss, Tenant shall be responsible for any shortage in such proceeds, whether resulting from any lack or insufficiency of coverage, deductibles, or otherwise.

(d) **General Insurance Provisions.**

(i) Any insurance that Tenant is required to maintain under this Lease shall include a provision requiring the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of coverage.

(ii) If Tenant fails to deliver any policy, certificate or renewal required under this Lease to Landlord within the prescribed time period, or if any such policy is canceled or modified during the Lease Term without Landlord's consent, after at least fifteen (15) days' prior



written notice to Tenant, Landlord may obtain the required insurance, in which case Tenant shall reimburse Landlord for the cost of that insurance within fifteen (15) days after receipt of a statement indicating the amount due.

(iii) All insurance required under this Lease shall be written with companies holding a "General Policy Rating" of A-VII or better, as set forth in the most current issue of "Best Key Rating Guide".

(iv) Unless prohibited under any applicable insurance policies maintained, Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or property of others under its control, if the loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of the loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation.

ARTICLE FOUR: USE OF PREMISES

Section 4.01. **Permitted Use.** Tenant may use the Premises only for the Permitted Uses set forth in Section 1.09 above.

Section 4.02. **Manner of Use.** Tenant shall not cause or permit the Premises to be used in any way that constitutes a violation of any law, ordinance, or governmental regulation or order, or that unreasonably annoys or interferes with the rights of other tenants of Landlord's Property, or that constitutes a nuisance or waste. Tenant shall obtain and pay for all permits required for Tenant's occupancy of the Premises and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements

regulating the use by Tenant of the Premises, including but not limited to the Occupational Safety and Health Act.

Section 4.03. **Hazardous Materials.** As used in this Lease, the term “Hazardous Materials” means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials” or “toxic substances” now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any products and materials subsequently found to have adverse effects on the environment or the health and safety of persons. Tenant shall not cause or permit any Hazardous Materials to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Premises in violation of law by Tenant, its agents, employees, contractors, sublessees, guests or invitees without the prior written consent of Landlord. Landlord shall be entitled to take into account any factors or facts that Landlord may reasonably determine to be relevant in determining whether to grant or withhold consent to Tenant’s proposed activity with respect to Hazardous Materials. In no event, however, shall Landlord be required to consent to the installation or use of any storage tanks on the Premises.

Section 4.04. **Signs.** Tenant shall not be permitted to place any sign, signage or advertising in the window of or on the Premises that is visible from public or neighboring property, except as may be approved in writing by Landlord and allowed by the sign ordinances of Capitola, California. Landlord will not unreasonably withhold consent for Tenant’s request to

change signage. Landlord shall cooperate, at no cost to Landlord, in Tenant's efforts to obtain approval from applicable governmental authorities with regard to any signage desired by Tenant.

Section 4.05. **Indemnity.** Tenant shall indemnify Landlord against and hold Landlord harmless from any and all damages, costs, claims or liability arising from: (i) Tenant's use of the Premises; (ii) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Premises, including any contamination of the Premises resulting from the presence or use of Hazardous Materials caused or permitted by Tenant; (iii) any breach or default in the performance of Tenant's obligations under this Lease; (iv) any misrepresentation or breach of warranty by Tenant under this Lease; or (v) other acts or omissions of Tenant. Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to and approved by Landlord. As used in this Section, the term "Tenant" shall include Tenant's employees, agents, contractors, guests and invitees. Landlord shall indemnify Tenant against and hold Tenant harmless only from any and all costs, claims or liability arising from: (i) Landlord's interference with Tenant's lawful use of the Premises; (ii) any breach or default in the performance of Landlord's obligations under this Lease; (iii) any misrepresentation or breach of warranty by Landlord under this Lease. Landlord shall defend Tenant against any such cost, claim or liability at Landlord's expense. As used in this Section, the term "Landlord" shall include employees, agents, contractors and invitees, if applicable.

Section 4.06. **Landlord's Access.** Upon providing Tenant with twenty-four (24) hours prior notice, Landlord or its agents may enter the Premises at reasonable times to show the Premises to potential buyers, investors, tenants or other parties; to inspect and conduct tests or do any other act in order to monitor Tenant's compliance with this Lease and all applicable environmental laws and all laws governing the presence and use of Hazardous Materials; or for

any other purpose Landlord deems reasonably necessary. Landlord will use best efforts to schedule any such entry and inspection when Tenant is closed to the public. In any situation the Landlord determines to be an emergency Landlord shall have the right of entry without advance notice. Tenant acknowledges the presence of a cell phone antenna apparatus on the roof of Landlord's Property, and that from time to time access may be required for repairs and maintenance of said apparatus. Within the last ninety (90) days of the Lease Term, Landlord may place customary "For Sale" or "For Lease" signs on the Premises.

ARTICLE FIVE: CONDITIONS OF PREMISES; MAINTENANCE REPAIRS AND ALTERATIONS

Section 5.01. **Existing Conditions.** Tenant accepts the condition of the Premises in its "AS IS" condition and Tenant's possession is subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Premises or the suitability of the Premises for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Premises and is not relying on any representations of Landlord.

Section 5.02. **Maintenance Obligations.**

(a) **Tenant's Obligations.** Tenant, at its own expense, shall keep in good order, condition, and repair, all aspects of the Premises except for those items that are specifically enumerated as Landlord's responsibility herein. Tenant's maintenance and repair obligations shall include, without limitation, repair and maintenance of HVAC, plumbing within the Premises, sewer system (pursuant to section 3.02 herein), utility outlets within the Premises, smoke detectors, interior walls, ceilings, floors, windows, doors, plate glass, skylights within the Premises and signs installed by Tenant. Tenant shall, at Tenant's expense, repair any damage to

the Premises caused by the actions or omissions of Tenant or Tenant's employees, agents, guests or invitees. Tenant shall be responsible for 1/3 (33%) of the cost of maintenance and repair of the ADA lift that serves the Premises.

(b) **Landlord's Obligations.** Landlord shall maintain and repair in good condition structural components of the Premises and building (including, but not limited to, the foundation, bearing walls and roof structure), the exterior walls, floor slab or sub-flooring, roof membrane, gutters, downspouts and canopies of the building, wiring facilities within the walls of the Building or under the flooring (except for outlets thereof serving the Premises) and any common areas not otherwise enumerated as Tenant's responsibility. Except as provided herein, Tenant shall be responsible for any costs associated with complying with laws, statutes, ordinances, or codes where compliance is triggered as a result of Tenant's particular use of the Premises, or change of use, or work performed or to be performed by Tenant in the Premises.

(c) **Costs.** Each party shall fulfill all of its obligations under this Section 5.02 at such party's sole expense. If either party fails to maintain, repair or replace the Premises or building as required by this Section, the other party may, upon ten (10) days' prior notice to the Responsible party (except that no notice shall be required in the case of an emergency), enter the Premises or the building and perform needed maintenance or repair (including replacement, as needed) on behalf of other party. In this event, the responsible party shall reimburse the party performing the work for all costs incurred in performing the maintenance or repair within fifteen (15) days after receipt of all invoice for said work.

Section 5.03. **Alterations, Additions, and Improvements.**

(a) **Tenant's Right to Make Alterations.** Tenant shall not have the right to make any alterations, additions or improvements to the Premises or redevelopment of the Premises

(including the removal, reconstruction and redevelopment of any building on the Premises) without the Landlord's express written consent, which consent shall not be unreasonably withheld. Any alteration, improvement or addition constructed by the Tenant (with the Landlord's consent) shall be done in strict compliance with all applicable laws and regulations and in a good and workmanlike manner.

(b) **Landlord's Non-Responsibility.** Tenant shall pay when due all claims for labor and materials furnished to the Premises. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Premises for work contracted by Tenant. Tenant shall not allow any lien to be recorded against Landlord's Property. Landlord may elect to record and post notices of non-responsibility on the Premises.

Section 5.04. **Condition Upon Termination.** Upon termination of the Lease, Tenant shall surrender the Premises to Landlord, clean and well maintained, reasonable wear and tear excepted. All fixtures, alterations, additions, and redevelopment improvements constructed by Tenant on the Premises shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant's machinery or equipment that can be removed without material damage to the Premises. Notwithstanding, Tenant shall at Tenant's expense remove any fixtures, alterations, additions, and redevelopment improvements constructed by Tenant on the Premises upon written demand of Landlord. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the removal of any such fixtures, machinery or equipment.

ARTICLE SIX: DAMAGE OR DESTRUCTION

Section 6.01. If the Premises is damaged or destroyed by fire, earthquake or other casualty, Tenant will immediately promptly give written notice to Landlord of the casualty.



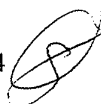
Landlord will have the right to terminate this Lease following a casualty if any of the following occur: (a) insurance proceeds actually paid to Landlord and available for use are not sufficient to pay the entire cost to fully repair the damage; (b) Landlord determines that the Premises or the Building cannot be fully repaired within 90 days from the date restoration commences; (c) the Premises are damaged or destroyed within the last 12 months of the Term; (d) Tenant is in default of this Lease at the time of the casualty; (e) Landlord would be required under this Lease to abate or reduce Tenant's rent for a period in excess of 6 months if the repairs were undertaken; or (f) the Property, or the Building in which the Premises is located, is damaged such that the cost of repair of the same would exceed 10% of the replacement cost of the same. If Landlord elects to terminate this Lease, Landlord will be entitled to retain all applicable Tenant insurance proceeds and Tenant shall assign or endorse over to Landlord (or to any party designated by Landlord) all property insurance proceeds payable to Tenant under Tenant's insurance, excepting those attributable to Tenant's furniture, fixtures, equipment, and any other personal property.

ARTICLE SEVEN: CONDEMNATION

Section 7.01. **Condemnation.** If all or any part of the Premises is appropriated or condemned by any public or quasi-public authority in the exercise of its right of condemnation or eminent domain, then condemnation awards or payments shall be the sole property of Landlord, whether such award is made as compensation for diminution of value of the leasehold, the value of the part taken or severance damages. Tenant hereby waives all rights it may otherwise have pursuant to section 1265.130 of the California Code of Civil Procedure, or any similar laws.

ARTICLE EIGHT: ASSIGNMENT AND SUBLETTING

Section 8.01. **Landlord's Consent Required.** This Lease may not be assigned, transferred or subleased without the Landlord's express written consent, which consent shall not



be unreasonably withheld, conditioned or delayed. However, no transfer shall release Tenant from or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any right Landlord may have against Tenant.

ARTICLE NINE: DEFAULTS; REMEDIES

Section 9.01. **Covenants and Conditions.** Tenant's right to continue in possession of the Premises is conditioned upon its performance of each obligation, covenant and condition of this Lease. Time is of the essence in the performance of all covenants and conditions.

Section 9.02. **Defaults.** Tenant shall be in material default under this Lease if Tenant: (i) abandons the Premises; (ii) fails to pay rent or any other charge when due and that failure persists for a period of three (3) days after written notice from Landlord; or (iii) pays rent late three or more times in any 12 month period; or (iv) fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord, provided that if more than thirty (30) days are required to complete the performance, Tenant shall not be in default if Tenant commences performance within the thirty (30) day period and thereafter diligently pursues its completion.

Section 9.03. **Remedies.** On the occurrence of any material default by Tenant, Landlord may elect any of the following courses of action.

(a) **Termination of Right of Possession.** Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including (i) the worth at the time of the award of the unpaid base rent, additional rent and other

charges that Landlord had earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid base rent, additional rent and other charges that Landlord would have earned after termination until the time of the award exceeds the amount of rental loss that Tenant proves Landlord could have reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid base rent, additional rent and other charges that Tenant would have paid for the balance of the Lease Term after the time of award exceeds the amount of rental loss that Tenant proves Landlord could have reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment that is proximately caused by Tenant's failure to perform its obligations under the Lease or that in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses Landlord incurs in maintaining in preserving the Premises after the default or in recovering possession of the Premises. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting the described amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) **Maintenance of Right to Possession.** Landlord may maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. Landlord shall be entitled to all of Landlord's right and remedies under this Lease, including the right to recover the rent as it becomes due.

(c) **Other Remedies.** Landlord may pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of California.

(d) **Cumulative Remedies.** Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

ARTICLE TEN: LENDER PROVISIONS

Section 10.01. **Subordination.** This lease shall be subordinate to any deed of trust or mortgage encumbering the Premises, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded, provided that Landlord furnishes Tenant with a subordination, nondisturbance and attornment agreement ("SNDA") meeting the requirements of this section. Landlord shall furnish to Tenant, and Tenant agrees to execute in recordable form, an SNDA on a form reasonably acceptable to Tenant and any mortgage lender of Landlord, within ten (10) days after written request from Landlord for the purpose of subordinating this Lease to the lien of any deed of trust, provided that such SNDA shall include commercially reasonable nondisturbance language that generally provides that so long as Tenant is not in default in the payment of any rent or the performance of any other material covenant or condition of this Lease, (i) its rights as Tenant under this Lease shall not be affected or terminated, (ii) Tenant's possession of the Premises shall not be disturbed, (iii) unless otherwise required by applicable laws, no action or proceedings shall be commenced against Tenant and (iv) the Lease shall continue in full force and effect, all notwithstanding the foreclosure or termination of any estate of Landlord.

Section 10.02. **Attornment.** If Landlord's interest in the Premises is acquired by foreclosure, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Premises and recognize the transferee or successor as Landlord under this Lease in accordance with the terms of the SNDA. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord's interest.

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Section 10.03. **Signing of Documents.** Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any attornment or agreement to attorn. If Tenant fails to do so within ten (10) days after written request, Tenant hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of Tenant to execute and deliver any such instrument or document.

Section 10.04. **Estoppel Certificates.** Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the Terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated; (iii) the latest date of payment of the base rent and other charges and the time period covered by that payment; (iv) that Landlord is not in default under this Lease or, if Landlord is claimed to be in default, stating the reason for that claim. Tenant shall deliver this statement to Landlord within ten (10) days after Landlord's written request therefor. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Premises, and the purchaser or encumbrancer may rely conclusively upon that statement as true and correct.

If Tenant does not deliver the described statement to Landlord within the ten (10) day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon, and Tenant shall be estopped from denying the truth of, the following: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been canceled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's base rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease.

ARTICLE ELEVEN: LEGAL PROCEEDINGS AND COSTS

Section 11.01. **Legal Proceedings.** If Tenant or Landlord breaches or is in default under this Lease, that party (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any costs or expenses that the Nondefaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced, including but not limited to the costs of preparing and serving any notices. The court or arbitrator in any action or proceeding commenced due to the breach or default shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys' fees and costs, and the losing party shall pay those attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (i) instituted by Tenant against any third party, or by a third party against Tenant, or by or against any person holding any interest under or using the Premises by license of or agreement with Tenant, where Landlord is named solely by virtue of Landlord's ownership of Landlord's Property; (ii) for foreclosure of any lien for labor or material furnished to or for Tenant or any person holding any interest under or using the Premises by license of or agreement with Tenant; (iii) otherwise arising out of or resulting from any act, omission or transaction of Tenant or any person holding any interest under or using the Premises by license of or agreement with Tenant, where Landlord is not a party to such license or agreement; or (iv) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under Title 11 of the United States Code, as amended, of which Tenant is the subject. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord.

Section 11.02. **Mediation of Disputes.** Except with respect to nonpayment of rent, if any dispute arises out of or relates to this Lease or a breach thereof, the parties agree, by initialing in the spaces below, to first try in good faith to settle the dispute by non-binding mediation before resorting to a court action or binding arbitration. Any party may deliver to the other a written demand to mediate a dispute, in which case the parties shall select a mutually agreeable neutral mediator (who has at least five years of experience in real property mediation matters). If the parties are not able to agree upon a neutral mediator, such a mediator shall be appointed by the Superior Court in Santa Cruz County. The mediation shall be scheduled within 60 days of the selection of a mediator, subject to availability of the mediator. The mediation shall occur in Santa Cruz County. The cost of the mediator shall be split evenly by the parties.

LANDLORD:  (initial)

TENANT:  (initial)

Section 11.03. **Arbitration of Disputes. EXCEPT WITH RESPECT TO AN UNLAWFUL DETAINER BASED ON NONPAYMENT OF RENT, IF ANY DISPUTE BETWEEN THE PARTIES ARISING OUT OF THIS LEASE IS NOT RESOLVED THROUGH MEDIATION, SUCH DISPUTE SHALL BE RESOLVED BY ARBITRATION GOVERNED BY CALIFORNIA LAW AND, TO THE EXTENT NOT INCONSISTENT WITH THAT STATUTE, CONDUCTED IN ACCORDANCE WITH THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. ("JAMS"). THE ARBITRATION SHALL BE CONDUCTED IN SANTA CRUZ COUNTY, CALIFORNIA AND ADMINISTERED BY JAMS, WHICH WILL APPOINT A SINGLE ARBITRATOR. IN THE ARBITRATION PROCEEDING, THE PARTIES SHALL HAVE THE RIGHT TO DISCOVERY IN ACCORDANCE**

WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1283.05. ALL ARBITRATION HEARINGS WILL BE COMMENCED WITHIN SIXTY (60) DAYS OF THE DEMAND FOR ARBITRATION UNLESS THE ARBITRATOR, FOR SHOWING OF GOOD CAUSE, EXTENDS THE COMMENCEMENT OF SUCH HEARING. THE DECISION OF THE ARBITRATOR WILL BE BINDING ON THE PARTIES, AND JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION AND THE DETERMINATION AND AWARD, IF ANY, MAY THEN BE ENFORCED AMONG THE PARTIES, WITHOUT FURTHER EVIDENTIARY PROCEEDINGS, AS IF ENTERED BY A COURT AT THE CONCLUSION OF A JUDICIAL PROCEEDING IN WHICH NO APPEAL WAS TAKEN. THE PARTIES ACKNOWLEDGE THAT, BY AGREEING TO ARBITRATE DISPUTES, EACH OF THEM IS WAIVING CERTAIN RIGHTS, INCLUDING ITS RIGHT TO SEEK REMEDIES IN COURT (INCLUDING A RIGHT TO A TRIAL BY JURY), AND TO DISCOVERY PROCESSES THAT WOULD BE ATTENDANT TO A COURT PROCEEDING. THIS ARBITRATION PROVISION SHALL NOT APPLY TO AN UNLAWFUL DETAINER BASED ON NONPAYMENT OF RENT.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED ABOVE AND, AS APPLICABLE, BY CALIFORNIA LAW, AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY



AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE
“ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO
ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE
COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE FEDERAL
ARBITRATION ACT AND/OR THE CALIFORNIA CODE OF CIVIL PROCEDURE.
YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO
SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE
“ARBITRATION OF DISPUTES” PROVISION TO NEUTRAL ARBITRATION.

LANDLORD:  (initial)

TENANT:  (initial)

ARTICLE TWELVE: MISCELLANEOUS PROVISIONS

Section 12.01 **Certified Access Specialist.** The Premises have not undergone inspection
by a Certified Access Specialist.

Section 12.02 **CASp.** A Certified Access Specialist (CASp) can inspect the subject
Premises and determine whether the subject Premises comply with all of the applicable
construction-related accessibility standards under state law. Although state law does not require a
CASp inspection of the subject Premises, the commercial property owner or Landlord may not
prohibit the Lessee or tenant from obtaining a CASp inspection of the subject Premises for the
occupancy or potential occupancy of the Lessee or tenant, if requested by the Lessee or tenant.
The parties shall mutually agree on the arrangements for the time and manner of the CASp
inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs
necessary to correct violations of construction-related accessibility standards within the
premises.

Section 12.03 **CASP.** If Lessee requests or obtains a CASp inspection, Lessee shall be solely responsible for the costs and/or fees for obtaining the CASp inspection, as well as the costs of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

Section 12.04. **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of the provisions or of this Lease, which shall remain in full force and effect.

Section 12.05. **Interpretation.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant or Landlord, the terms "Tenant" or "Landlord", as the case may be, shall include their respective agents, employees, contractors, invitees, successors or others acting with their express or implied permission.

Section 12.06. **Incorporation of Prior Agreements; Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Premises and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 12.07. **Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered, sent via reputable overnight courier, or sent by certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered to



the address specified in Section 1 above, except that upon Tenant's taking possession of the Premises, the Premises shall be Tenant's address for notice purposes. Notices to Landlord shall be delivered to the address specified in Section 1 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 12.08. **Waivers.** All waivers must be in writing and signed by the waiving party. Either party's failure to enforce any provisions of this Lease, or the payment or acceptance of rent, shall not be a waiver and shall not prevent either party from enforcing any provision of this Lease in the future.

Section 12.09. **No Recordation.** Tenant shall not record this Lease without prior written consent from Landlord. However, either Landlord or Tenant may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring the recording shall pay all transfer taxes and recording fees.

Section 12.10. **Binding Effect; Choice of Law.** This Lease is made and performed in Santa Cruz County, California. The laws of the State of California shall govern this Lease. This Lease binds any party who legally acquires any rights or interest in this Lease.

Section 12.11. **Authority.** Each person signing this Lease represents and warrants to the other party that he or she has full authority to do so and that this Lease binds the corporation, partnership or entity on whose behalf he or she executes this Lease.

Section 12.012. **Force Majeure.** If either Landlord or Tenant cannot perform any of its obligations due to events beyond the control of Landlord or Tenant, the time provided for performing those obligations shall be extended by a period of time equal to the duration of those events. Events beyond Landlord's or Tenant's control include, but are not limited to, acts of



God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions.

Section 12.13. **Execution of Lease.** This Lease may be executed in counterparts, and when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

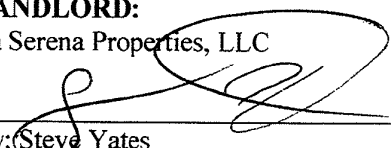
Section 12.14. **Joint and Severable Liability.** All parties signing this Lease as Tenant and Guarantors shall be jointly and severally liable for all obligations of Tenant.

Section 12.15. **Personal Guarantee.** The undersigned (Guarantor) in consideration of the execution of this Lease and hereby unconditionally guarantees and promises to pay or perform on demand any and all debts, obligations, and liabilities of Tenant under or arising out of this Lease agreement, including during any renewal, extension, modification or amendment of this Lease. Guarantor hereby waives any notice of default, renewal, extension, modification or amendment of this Lease and agrees that Landlord may proceed against Guarantor directly and independently of any other party, and in the event an action is brought to enforce this provision of this Lease, the prevailing party shall recover reasonable attorney's fees and court costs.

THEREFORE, TO WITNESS AND DOCUMENT THEIR AGREEMENT to the terms and conditions of this Lease, Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below.

LANDLORD:

La Serena Properties, LLC

By:  Steve Yates

Its: President

Date 2-8-2018

TENANT:
SOTOLA BAR AND GRILL COMPANY
A California corporation

Date 2/8/18

Ashley Bernardi
By: Ashley Dayle Bernardi, Director

GUARANTOR:

Date 2/8/18

ASB
Adam Bernardi

SC, CA 95062
ADDRESS AND PHONE # [REDACTED]

GUARANTOR:

Date 2/8/18

Ashley Bernardi
Ashley Dayle Bernardi

SC, CA 95062
ADDRESS AND PHONE # [REDACTED]

ASB

**SUBLEASE & ASSIGNMENT OF
COMMERCIAL LEASE AGREEMENT**

Date of Lease February 1, 2018

Premises 231 Esplanade, Capitola, California 95010

Landlord La Serena Properties, LLC
c/o Steven A. Yates
[REDACTED]

Sublessor/Assignor JJJ Group, Inc., a California Corporation
c/o Jill Ealy
203 Esplanade, Capitola, California 95010

Sublessee/Assignee Michelle & Lasalle Strong
[REDACTED]

Preamble

Whereas, Sublessor currently occupies the Premises under the terms of that certain Lease dated February 1, 2018 and amended January ___, 2019; and

Whereas, the Sublessor has the consent of the Landlord and wishes to sublease the above-mentioned Premises to the Sublessee upon the terms and conditions contained in the Lease; and

Whereas, the Sublessee wishes to sublease the above-mentioned Premises from Sublessor upon the terms and conditions contained herein;

Now, therefore, in consideration of all the mutual promises and covenants set forth herein, the Landlord, Sublessor and Sublessee agree as follows:

Sublessee assumes all Sublessor’s rights in the Lease, as amended, and Sublessee hereby agrees to occupy the Premises and to comply with all the terms and obligations of the Lease, as amended.

Landlord, Sublessor and Sublessee agree that the Sublessee will take early possession of the Premises on July ___, 2021 and will operate the business with a temporary ABC license until escrow closes.

Sublessee shall pay the rent payments directly to the Landlord and Landlord will notify Sublessor if any payment is more than five days late.

Landlord, Sublessor and Sublessee further agree that after 18 months from the change of possession if Sublessee is not in default of any terms and conditions of the lease and has paid in full the seller note owed to Sublessor, the lease will be assigned to Sublessee who will then become the Lessee under the lease and Sublessor will be relieved of all obligations under the lease.

This agreement may only be changed or supplemented by a written amendment, signed by authorized representatives of each party.

^{DS}
MS

^{DS}
LS

^{DS}
JE

^{DS}
SY

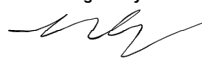
THIS SUBLEASE AGREEMENT, AND SUBSEQUENT ASSIGNMENT OF THE LEASE, IS CONDITIONED ON THE CLOSE OF ESCROW ON THE SALE OF SOTOLA BAR & GRILL FROM SUBLESSOR TO SUBLESSEE AND IF ESCROW DOES NOT CLOSE, THIS SUBLEASE AND SUBSEQUENT ASSIGNMENT WILL BE NULL AND VOID

By signing below, the Sublessees hereby confirm the acceptance of the Sublease and subsequent assignment of the lease, as amended and agree to be bound by its terms.

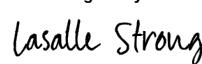
SUBLESSEE/ASSIGNEE

Michelle Strong & Lasalle Strong

Date 7/21/2021

DocuSigned by:

0A7275243CF844F...
Michelle Strong

Date 7/21/2021


DocuSigned by:

0A7275243CF844F...
Lasalle Strong

By signing below, the Sublessor hereby confirms its agreement with this Sublease and subsequent assignment.

SUBLESSOR/ASSIGNOR

JJJ GROUP, INC., a California Corporation

Date 7/22/2021

DocuSigned by:

7D97A46941F04ED...
by Jill Ealy, its President

Landlord hereby consents to the Sublease and to the subsequent assignment of the lease, as amended, but makes no express or implied approval of future assignments.

LANDLORD

La Serena Properties, LLC

Date 7/22/2021

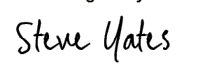
DocuSigned by:

BA034A062F2C415...
by Steven Yates, its President

EXHIBIT D



www.bayareabizbrokers.com

From: Steve Yates <[REDACTED]>
Date: Sat, Aug 21, 2021 at 9:47 AM
Subject: Re: Sotola Bar & Grill
To: Bob Brooks <[REDACTED]>

The property manager does all the leasing-lease work. I informed him of the new tenant a month ago and a lease was prepared. Jill should be aware of all this to assist the new tenant in the transition. Thanks for the info.

On Friday, August 20, 2021, 02:25:53 PM PDT, Bob Brooks <[REDACTED]> wrote:

Steve,

Michelle and Sal are working with a sign company that will help them with any necessary approvals.

They're planning on getting an entertainment permit so they can have a two or three person band to provide dinner music and will need your sign off on that.

They also will be painting the apartment and putting in a new floor. How are you coming with that lease?

The posting went up Wednesday.

Bob

The posting went up on Wednesday.

Bob Brooks, CBB, Lifetime CBI
51 East Campbell Avenue #101 B
Campbell, California 95008
408-246-3846 - office
[REDACTED] cell
DRE #00805283



www.bayareabizbrokers.com

EXHIBIT E

From: Bob Brooks
Sent: Wednesday, September 22, 2021 1:23 PM
To: RUSSELL GROSS
Subject: Re: fire inspection summary

Russell,

The fire marshall has already come and completed the inspection. He will be contacting you with the report.

Can we get a signed copy of the apartment lease?

Thanks,

Bob

Bob Brooks, CBB, Lifetime CBI
51 East Campbell Avenue #101 B
Campbell, California 95008
408-246-3846 - office
[REDACTED] ell
DRE #00805283



www.bayareabizbrokers.com

On Wed, Sep 22, 2021 at 1:10 PM RUSSELL GROSS <[REDACTED]> wrote:
We have approved SSS Fire Protection to complete the 5 year fire inspection.
They will be contacting you for access.
Russell

On Wed, Sep 22, 2021 at 12:14 PM Firehouse Brew & Grill <[REDACTED]> wrote:
We needed to get an inspection done for entertainment permit. Here are the items that need to be addressed. The items inside our unit have been taken care of, however there are some that pertain to the common area.

Also if we can get a signed copy of apartment lease for parking permits.

Thank you,
Michelle Strong
Get [Outlook for iOS](#)

From: Gaby Manzo <gaby.manzo@centralfiresc.org>

Sent: Wednesday, August 25, 2021 12:05:03 PM

To: Firehouse Brew & Grill <[REDACTED]>

Subject: fire inspection summary

Good Afternoon,

Attached is the fire inspection report for your records.

Please let me know if you have any questions or if I can assist with anything else.

Thanks,



Central Fire District
of Santa Cruz County

GABY MANZO

FIRE INSPECTOR

Central Fire District of Santa Cruz County

6934 Soquel Dr., Aptos, CA. 95003

(831) 685-6698 • (831) 685-6699 FAX

(831) 316-3550 DIRECT • (831) 400-6095 CELL

www.centralfpd.com

--

Russell E. Gross Real Estate, Inc.

3140 Porter Street

Soquel, CA 95073

DRE# 00887251

EXHIBIT F

CITY OF CAPITOLA ENTERTAINMENT PERMIT



Type of Permit: Single Minor Regular

Business Name: Capitola Bar & Grill

Applicant: Lasalle Strong

Address: 231 Esplanade #102, Capitola

Telephone: (831) 854-2888

Type of Entertainment: Live Music

Days and Hours Approved: All days of the week, not to exceed 10:00 p.m.

Permit Conditions:

Permittee must comply with all local, state and federal laws, rules and regulations including all use permit conditions relating to the premises (see ATTACHMENT 1). This entertainment permit can be revoked at any time by the City Manager or Chief of Police. This permit may be issued by the Chief of Police on a case by case basis upon applicant's request and payment of fees.

Expiration Date: 12/31/2021

**Permit to be Posted in a
Conspicuous Place on the
Premises**

Issued by: , Chief of Police
Andrew Dally

Approved on: 11/16/2021

CITY OF CAPITOLA ENTERTAINMENT PERMIT



Type of Permit: Single Minor Regular

Business Name: Capitola Bar & Grill

Applicant: Lasalle Strong

Address: 231 Esplanade #102, Capitola, CA 95010

Telephone: (831) 854-2888

Type of Entertainment: Live Music

Days and Hours Approved: 0800 Hours to 2300 Hours Sunday through Thursday
0800 Hours to 2400 Hours Friday and Saturday; October - April
0800 Hours to 0030 Hours Friday and Saturday; May - September
0800 Hours to 0030 Hours on December 31, 2022

Permit Conditions:

Permittee must comply with all local, state and federal laws, rules and regulations including all use permit conditions relating to the premises (see ATTACHMENT 1). This entertainment permit can be revoked at any time by the City Manager or Chief of Police. This permit may be issued by the Chief of Police on a case by case basis upon applicant's request and payment of fees.

Expiration Date: 12/31/2022

Issued By: , Chief of Police
Andrew J. Dally

Approved On: 1/27/2022

**Permit to be Posted in a
Conspicuous Place on the
Premises**

EXHIBIT G

BAY AREA BUSINESS BROKERS

www.bayareabizbrokers.com

----- Forwarded message -----

From: **Firehouse Brew & Grill** <[REDACTED]>
Date: Mon, Aug 29, 2022 at 10:27 AM
Subject: Re: 231 Esplanade - Elevator
To: Steve Yates <[REDACTED]>, Russell Gross <[REDACTED]>, Sal <[REDACTED]>, Bob Brooks <[REDACTED]>

Please give an update on the elevator. We have a customer coming in and they are handicapped.

Thanks,
Michelle Strong

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From: Steve Yates <[REDACTED]>
Sent: Thursday, August 18, 2022 10:23:22 AM
To: Russell Gross <[REDACTED]>; Firehouse Brew & Grill <[REDACTED]>
Subject: Re: 231 Esplanade - Elevator

Elevator is set for repair with the deposit paid.
Materials for repair just arrived last week and we are scheduled for next week.

On Wednesday, August 17, 2022, 08:44:22 PM PDT, Firehouse Brew & Grill <[REDACTED]> wrote:

Hi Russell,

Do we have any updates on the elevator? We noticed the lock has been removed. However, there has been several occasions that our customers tried to use it.

Since it doesn't work, they asked staff to help carry them up the stairs.

Please advise,
Michelle Strong

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Marcie Wollesen

To You

10:21 AM



Thanks! We're going for [a 12:45](#) reservation.
I'm handicapped, have a placard, but my friends could drop me off and go for a spot behind the police station.



Reply



Mail



Search



Calendar

From: **Firehouse Brew & Grill** <[REDACTED]>
Date: Tue, Aug 30, 2022 at 11:04 AM
Subject: Re: 231 Esplanade - Elevator
To: Steve Yates <[REDACTED]>, Russell Gross <[REDACTED]>, Sal <[REDACTED]>, Bob Brooks <[REDACTED]>

This matter is very concerning for safety and liability. The door can be opened at street level, with a 5-6 foot drop. There have been elevator monitoring fees included in our monthly invoices, these fees are not valid as the elevator has not been working since we took possession in September 2021.

Please provide the elevator service company, so we can verify the repairs.

Michelle Strong

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From: Firehouse Brew & Grill <[REDACTED]>
Sent: Monday, August 29, 2022 10:26:58 AM
To: Steve Yates <[REDACTED]>; Russell Gross <[REDACTED]>; Sal <[REDACTED]>; Bob Brooks <[REDACTED]>
Subject: Re: 231 Esplanade - Elevator

Please give an update on the elevator. We have a customer coming in and they are handicapped.

Thanks,
Michelle Strong

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From: Steve Yates <[REDACTED]>
Sent: Thursday, August 18, 2022 10:23:22 AM
To: Russell Gross <[REDACTED]>; Firehouse Brew & Grill <[REDACTED]>
Subject: Re: 231 Esplanade - Elevator

Elevator is set for repair with the deposit paid.
Materials for repair just arrived last week and we are scheduled for next week.

On Wednesday, August 17, 2022, 08:44:22 PM PDT, Firehouse Brew & Grill

< [REDACTED] > wrote:

Hi Russell,

Do we have any updates on the elevator? We noticed the lock has been removed. However, there has been several occasions that our customers tried to use it.

Since it doesn't work, they asked staff to help carry them up the stairs.

Please advise,
Michelle Strong

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EXHIBIT H

September, 2021 - June 28, 2022

Incident #	Beat	All Assigned Units	Incident Date/Time	Type	Mod Circ	Location	Dispo	Report #
CP2100014181	10	524, 529	10/31/2021 / 21:24:57	415	Domestic	231 Esplanade	A-16 / Arrest - Domestic	21C-01296
CP2100015006	10	528, 532	11/19/2021 / 23:48:55	415	Domestic	231 Esplanade	S-67 - Subject Contacted - Disturbance	N/A
CP2100015454	10	522, 524, 521, S515	11/30/2021 / 22:33:00	415	Domestic	231 Esplanade	R-67 - Report - Disturbance	21C-01439
CP22000004971	10	S513, 532, 527	4/2/2022 / 22:15:07	415	Noise	231 Esplanade	S-67 - Subject Contacted - Disturbance	N/A
CP22000006926	10	528/532	5/5/2022 / 18:57:37	415	Noise	231 Esplanade	U-70 - Unfounded - Muni Codes	N/A
CP22000006928	10	532	5/5/2022 / 19:53:01	415	Noise	231 Esplanade	S-70 - Subject Contacted - Muni Code	N/A
CP22000010090	10	564/525/483/524/528	6/27/2022 / 16:42:15	415	B	231 Esplanade	H-67 - Handled at Scene - Disturbance / H-60 - Handled at Scene - Alarms	N/A

EXHIBIT I

From: RUSSELL GROSS <[REDACTED]>
Sent: Tuesday, May 17, 2022 11:11:17 AM
To: Firehouse Brew & Grill <[REDACTED]>
Cc: Jill Ealy <[REDACTED]>; Erin Heath <[REDACTED]>
Subject: [231 Esplanade](#)

Michelle,

I am receiving a number of complaints regarding the music at the premises.

The owner informed me, "Per your application:

Must maintain a video recording system at both doors.

Live music to be completed by 11:00 pm

Minimum number of LICENSED security guards (through the State of California) is at least one but two are required if over 50 patrons.

Prohibited from playing any amplified sound above 60 DBA within 30 ft. of premises (they hit 120 dba with the karaoke)

Lease:

They are in violation of the lease section 4.02 "Manner of Use." "

Just wanted to share the owner's concern as well as other tenant's complaints at the building. You will need to make the above adjustments as to stay in compliance with your entertainment permit and your lease agreement.

Thank you

Russell Gross

Property Manager

--

Russell E. Gross Real Estate, Inc.

[REDACTED]
[3140 Porter Street](#)

DRE# 00887251

EXHIBIT J

From: Firehouse Brew & Grill
Sent: Tuesday, May 17, 2022 11:43 AM
To: RUSSELL GROSS
Cc: Jill Ealy; Erin Heath; Sal
Subject: Re: 231 Esplanade

Hi Russell,

We have met with the Chief of Police. We have a major permit license. The Chief understands that it's the same few people complaining and has shared with them that we are in compliance. We have installed curtains, sound boards inside the venue and keep the doors closed after 8pm. There are staff designated at the front door.

Although our major entertainment is allowed to go to 12am on weekends, we end our events 9:30 to 10:00pm.

Our staff has a dba reader as well and crosses the street to check levels.

Can you give more details on where the complaints are coming from, with dates and times, so we can provide footage from our cameras?

Thank you,
Michelle Strong

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From: RUSSELL GROSS <[REDACTED]>
Sent: Tuesday, May 17, 2022 11:11:17 AM
To: Firehouse Brew & Grill <[REDACTED]>
Cc: Jill Ealy <[REDACTED]>; Erin Heath <[REDACTED]>
Subject: 231 Esplanade

Michelle,

I am receiving a number of complaints regarding the music at the premises.

The owner informed me, "Per your application:

Must maintain a video recording system at both doors.

Live music to be completed by 11:00 pm

Minimum number of LICENSED security guards (through the State of California) is at least one but two are required if over 50 patrons.

Prohibited from playing any amplified sound above 60 DBA within 30 ft. of premises (they hit 120 dba with the karaoke)

Lease:

They are in violation of the lease section 4.02 "Manner of Use." "

Just wanted to share the owner's concern as well as other tenant's complaints at the building. You will need to make the above adjustments as to stay in compliance with your entertainment permit and your lease agreement.

Thank you

Russell Gross
Property Manager

--

Russell E. Gross Real Estate, Inc.


3140 Porter Street
Soquel, CA 95073
DRE# 00887251

EXHIBIT K

Fwd: Noise and harassment claim

From: Firehouse Brew & Grill <[REDACTED]>
Sent: Thursday, June 2, 2022 5:40:30 PM
To: Steve Yates <[REDACTED]>; RUSSELL GROSS <[REDACTED]>; Jill Ealy <[REDACTED]>; Josh Parmelee <[REDACTED]>
Subject: Re: Noise and harassment claim

Hi Steve,

We appreciate your assistance in this matter. I will get written statements from our staff, call logs and additional footage from our security cameras. As we already sent photos of Ryan putting notices on our doors.

The Capitola Police Department has call logs as well, however they will not release info unless we request a Civil Harassment Restraining Order. They did advise that we have been in compliance, whenever calls have been received.

Thank you,
Lasalle & Michelle Strong

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From: Steve Yates <[REDACTED]>
Sent: Wednesday, June 1, 2022 9:18:47 PM
To: Firehouse Brew & Grill <[REDACTED]>; RUSSELL GROSS <[REDACTED]>; Jill Ealy <[REDACTED]>; Josh Parmelee <[REDACTED]>
Subject: Noise and harassment claim

I have opened an investigation into the harassment claim made by the current tenant Capitola Bar and Grill. The landlord takes these claims very seriously. Could I please get from any party their view regarding the alleged harassment. (Including employees of CBG) We're there threats or intimidation involved? What was the nature of the harassment? Sexual, Civil? What staff were harassed. How many incidents are involved? Despite any relationship I have with the tenant, harassment against anyone will not be tolerated. Please get me this info ASAP. I will move as quickly on this as you all do.
Thank you
Steve Yates for LA Serena Properties


[Sent from Yahoo Mail on Android](#)

From: RUSSELL GROSS [REDACTED]
Sent: Thursday, June 9, 2022 11:47:25 AM
To: Firehouse Brew & Grill [REDACTED]; [REDACTED]
<[REDACTED]>; Jill Falv <[REDACTED]>
Cc: Steve Yates <[REDACTED]>
Subject: [231 Esplanade](#)

Michelle and LaSalle,
The Landlord has requested that I forward you the attached letter regarding a Harassment Claim dated June 8, 2022 for your review.
In addition, I need to remind you that there is no smoking outside of the building between Mr. Toots and the apartment entrances. Please make sure that you, your employees and customers refrain from smoking in this area.
Thank you,
Russell Gross
Property Manager

--
Russell E. Gross Real Estate, Inc.
[REDACTED]

[3140 Porter Street](#)
[Soquel, CA 95073](#)
DRE# 00887251

 **202206091140.pdf**
155K

June 8th 2022

To; Capitola Bar and Grill Et. Al.

From; La Serena Properties landlord for CBG

Re; Harassment Claim

HARASSMENT (civil) Def:

"UNLAWFULL VIOLENCE, LIKE ASSAULT OR BATTERY OR STALKING, (OR) A CREDIBLE THREAT OF VIOLENCE, AND. THE VIOLENCE OR THREATS SCARE, ANNOY, OR HARASS SOMEONE AND THERE IS NO VALID REASON FOR IT."

Commercial tenant (CBG) has alleged that it has been harassed by either a tenant in the landlords property or by landlord. It is not completely clear. Landlord has requested statements from the tenants, Capitola Police, any and all employees and owners of CBG.

Landlord has received a statement from one residential tenant, e-mails from one other residential tenant, copies of YELP reviews from other commercial tenants. Landlord did not receive any statement from CBG or from any of their employees or owners.

Landlord engaged in conversation, a third party HR expert to get an opinion as to whether the facts presented support the claim there had been any "harassment ."

Facts as presented:

1. Residential apartment tenant contacted in person a gentleman that identified himself as the manager of CBG. Tenant requested a reduction of the noise level. The response was that he (the manager) would look into it. This was described as a simple and civil conversation. No level in reduction of noise occurred.
2. Residential apartment tenant again contacted in person the same individual about a week later regarding the noise level. Tenant was offered free drinks. Tenant declined the free drinks. Again this conversation was described as "civil." There was no reduction in the noise level according to the apartment tenant although.

3. Tenant received a call from "Lasalle" who said he was the owner of CBG. This occurred 10 minutes after the previous conversation with the "manager" of CBG. Tenant was chastised for "moving in above a bar" by the owner of CBG. Again the tone was civil but "completely unproductive" as described by tenant.

4. Tenant contacted Captain Sarah Ryan of the Capitola police to discuss the problem. According to tenant she claimed "they (CBG) are a problem and we will look into it."

5. I personally went to the property and recorded a 105 to 110 DB outside the property from across the street and DB levels that rose to 100 DB within the apartment of tenant. The noise level complaint by apartment tenant is credible as witnessed by me. I recorded the decibel level on an i phone ap. That ap is reported to be within 2% accurate. The recording (s) is available to anyone who want them.

6. Residential tenant claims to have had the tires of his bike slashed twice since contacting the police.

7. Landlord placed a "Cease and Desist" notice on both doors of CBG informing commercial tenant of both the breach of lease and the violation of City ordinance regarding noise.

8. One of the tenants in the building is related to the building owner.

9. This concludes all contact(s) by any apartment tenant with employees or owners of CBG. (reported)

CONCLUSION;

The HR person contacted by landlord has declined to write a report as the claim for harassment appears "absurd" on its face. "Does a tenant renting a space in a building abdicate their right to quiet enjoyment as provided within their lease by a simple complaint and request to "turn it down?"

Further there has been no report of violence or threat of violence made to any employee or owner of CBG by the owners of CBG. No report of violence or threat of violence has been reported to Capitola Police by CBG. Of concern (IS) the repeated slashing of apartment tenants tires although there is no police report of that incident or witnesses of the incident (s).

I will be forwarding this report to the building insurance carrier as required by them after all parties have had a chance to review and respond. Harassment is a serious allegation and the landlord will always take this or any other claim or breach under the lease seriously.

Ongoing is the noise complaint(s) made by residential tenants of the building. The landlord has for 40 years attempted to insure that a legitimate restaurant only venue occupy the premises. This is outlined in the lease Section 1.09:

PERMITTED USE/ EXCLUSIVE USE

"TENANT SHALL USE THE PREMISES FOR A RESTAURANT, AS DEFINED IN THE CITY OF CAPITOLA USE PERMIT EXISTING AT THE TIME OF EXECUTION OF THE LEASE, AND FOR NO OTHER PURPOSE."

"Restaurants" have successfully operated in this location over this 40 year period without bands, karaoke, open mic and all those elements associated with a "night club". I feel that most honest opinions would say that a bandstand- live music venue is not a good fit in a commercial -RESIDENCIAL building. It is further not at the discretion of the restaurant tenant to say; " Hey, we got a music permit, this supersedes any other provision in the lease."

It is the hope of the landlord that Capitola Bar and Grill will reverse course and be a responsible tenant in the building and in the village. The other tenants have all expressed a willingness to accommodate "reasonable" disturbances. They all understand where they live.

Respectfully,

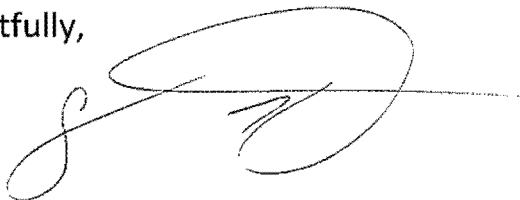
A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a series of loops and a long horizontal stroke extending to the right.

EXHIBIT L

Sent from [Mail](#) for Windows

From: [Firehouse Brew & Grill](#)
Sent: Thursday, June 9, 2022 1:41 PM
To: [RUSSELL GROSS](#); [REDACTED] [Jill Ealy](#)
Cc: [Steve Yates](#)
Subject: Re: 231 Esplanade

We are requesting to have an onsite meeting. I have explained the behavior of Ryan Yates, to be demanding, unreasonable and intimidating, especially to a 16-year-old hostess. Ryan's demeanor is falsely represented in your letter.

The restaurant is not operating as a "night club", we offer music and entertainment to our dining guest before 10:00pm. (Attached "Manner of Use") There have been no violations to any laws or regulations. Our kitchen has a full menu available during our open hours. There are many difficulties for a new restaurant to gain momentum, the live music draws in customers that have stayed away from the crowded Village scene.

There are false claims of live music occurring seven days a week, and the dba readings are grossly incorrect. To have a reading of 100 and above across the street, would need to be over 200 inside the restaurant. If that were true, the Police would lawfully issue us a ticket. We have videos as well, that show our bar seating, cannot hear the music. In unit #200, the music cannot be heard. The Capitola Police have no incidents of requesting our music to be lowered and have not issued any citations of noise violations.

We have requested an onsite meeting for the third time, as well as the lease offering arbitration for any disputes. (Attached)

Sarah from Margaritaville and I communicate to keep the walkway clear. When people go "outside" they assume they can smoke. It's impossible to monitor this area 24/7. We suggest the landlord post "no smoking" signs and add cameras, to deter this behavior.

Lasalle and I own two restaurants with 50+ employees, we will not entertain any suggestive or defamatory comments regarding vandalism of Ryan Yate's personal property. It's disgusting and insulting to attach any illegal activity towards us or our business.

Our restaurants are our livelihood, and any interference to our safety or right to conduct business, will be handled within lawful means.

It's our goal to come to a compromise that is fair to both sides.

Thank you,

Michelle Strong

EXHIBIT M

From: Steve Yates
Sent: Tuesday, June 21, 2022 11:14 AM
To: Firehouse Brew & Grill
Subject: Re: 231 Esplanade

Dear Ms. Strong,

AND SUBLESSEE CAPITOLA BAR AND GRILL

I see no further point in attempting to rationalize to you the impact your live music-bands-kereoke is having on the building tenants. The lease is clear as to ALL tenants rights to quiet enjoyment of their premises. I will not "compromise" their rights.

I am hereby noticing you that you are in default under the lease as described in ARTICLE FOUR SECTION 4.01 & 4.02 under the lease dated February 1st 2008.

Further, I will be noticing the LESSEE, JJJ GROUP INC. of the breach. As I can assume per your recent correspondence that you have retained legal counsel, it would be preferable to have that counsel contact me directly. I will put them in touch with counsel for La Serena.

Respectfully,

Steve Yates for La Serena Properties

On Thursday, June 16, 2022, 12:39:45 PM PDT, Firehouse Brew & Grill
[REDACTED] wrote:

Steve and Russell,

We reached out to several of the hotels in the area and tenants in the building. The hotels have been supportive and promote our restaurant to their guest, especially since we are now serving breakfast.

Is there any information on the air ducting? We were told that the heating unit does not work and there are no plans to fix it. In our effort to buffer noise, we are asking permission to add insulation to the interior of the ducting that opens to our dining room, as this may be a source of noise traveling to the unit above. Also we are adding ceiling fans to the dining room and the bar, to help with air flow.

In addition we have required our Management to monitor dba from outside the front door, and they are keeping a record of the readings.

Thank you,

Michelle Strong

EXHIBIT N

Fwd: Exercise of Option

From: Jill Ealy [REDACTED]
Sent: Wednesday, December 21, 2022 5:05:57 PM
To: Firehouse Brew & Grill [REDACTED]
Subject: Fw: Exercise of Option

----- Forwarded Message -----

From: Jill Ealy [REDACTED]
To: [REDACTED]
Sent: Thursday, September 1, 2022, 06:21:10 PM PDT
Subject: Re: Exercise of Option

Hi Steve,

I actually just received the letter back and it stated there was no receptacle. Is there a better address that I should resend the letter? I know Michelle and Lasalle have reduced their music days, times, and volume all in attempt to appease you and the tenant. It is my understanding they have continually reached out to you for a meeting to no avail. I have informed the tenant that until we are paid in full or the two of you come to some solution, the music needs to stop. We never wanted to be in the middle of this situation nor do we want to spend the time and money hiring an attorney etc.

What do you want or expect us to do at this point? They have an entertainment permit per the city and are well within its guidelines.

~Jill

-----Original Message-----

From: Steve Yates [REDACTED]
To: Jill Ealy [REDACTED]
Sent: Tue, Aug 30, 2022 10:00 am
Subject: Re: Exercise of Option

Jill,
I have not received any letter from you as of yet. I will let you know when I do. You, through your subtenant, are in default of the lease. You have been notified of this default prior and had 30 days to correct the default. The subtenant has made zero attempt to resolve the noise issue or correct the default. The upstairs apartment remains half rented as no one could withstand the noise level. Your sub tenant remains a major problem.
Bottom line is per the lease you may not exercise the option to renew the lease while in default and that period to correct the default has passed.

On Monday, August 29, 2022, 12:09:12 PM PDT, Jill Ealy [REDACTED] wrote:

Hello Steve,

I sent the letter exercising the options registered mail. I just wanted to confirm receipt.

I haven't heard anything further about CBG's music. Im hoping that as a good thing and everything has been worked out.

~Jill

EXHIBIT O



FINAL NOTICE OF DECISION

January 31, 2023

Capitola Bar and Grill
231 Esplanade #102
Capitola, CA 95010

RE: Notice of Decision on Application for 2023 Regular Entertainment Permit at 231 Esplanade #102

On behalf of Capitola Bar and Grill you applied for a 2023 Entertainment Permit as required by Capitola Municipal Code 5.24 – Entertainment Permits. Our understanding is that you lease the space at 231 Esplanade #102, and manage and operate Capitola Bar and Grill in that space.

We have reviewed your application and have determined the application does not include the property owner's consent to the application, as required on page 3 of the application (IX. Property Owner Statement).

The requirement for the property owner's consent is a standard inclusion on the City's application form. The form was developed pursuant to Capitola Municipal Code section 5.24.080, which allows the City Manager to develop the application.

Because your application does not include all of the required information, your application is denied.

If you would like to appeal this determination to the City Council, you must file your appeal within 14 working days of the date of this letter. The Council will hear the appeal at the City Council meeting following receipt of your appeal or, upon a request from staff, may hear the appeal at a later date. The deadline for you to file an appeal is five p.m. on February 22, 2023.

All appeals must be in writing and delivered to the office of the City Clerk with payment of the Administrative Decision Appeal Fee, which is \$562. The request for appeal must set forth the appellant's name, the phone number for the appellant, an address to which notices may be sent to the appellant and the grounds upon which the appeal is made. Further detail regarding the appeal procedure can be found in Chapter 2.52 of the Capitola Municipal Code.

Please note that because you do not currently have a valid Entertainment Permit, you are not permitted to engage in entertainment activities, as described in 5.24.010 of the Capitola Municipal Code.

Sincerely,

Jamie Goldstein, City Manager
City of Capitola

EXHIBIT P



FW: Capitola Bar and Grill

From: [Bob Brooks](#)
Sent: Thursday, February 2, 2023 5:41 PM
To: [Steve Yates](#)
Subject: Re: Capitola Bar and Grill

Steve,

I don't know about any conversations you had or didn't have with them, but I did send you that business plan on July 15, 2021.

Bob

Bob Brooks, CBB, Lifetime CBI
51 East Campbell Avenue #101 B
Campbell, California 95008
408-246-3846 - office
[REDACTED] - cell
DRE #00805283

BAY AREA
BUSINESS BROKERS

www.bayareabizbrokers.com

On Thu, Feb 2, 2023 at 5:25 PM Steve Yates [REDACTED] wrote:

Ya, it's just their story. They're even saying they had the conversation with me. I've never met or talked to either of them.

Sent from Yahoo Mail on Android

On Thu, Feb 2, 2023 at 2:56 PM, Bob Brooks

<[REDACTED]> wrote:

Steve,

Yes, I did hear that there were some issues about music on the premises. I don't remember any talk of bands. I checked my email and found the attached business plan Michelle Strong sent me and that I forwarded to you on July 15, 2021. It does mention live music.

I'll go through the rest of my emails and phone notes from the time they were buying the business to see if there was anything else said about music.

Bob

Bob Brooks, CBB, Lifetime CBI

51 East Campbell Avenue #101 B

Campbell, California 95008

408-246-3846 - office

[REDACTED] - cell

DRE #00805283

**BAY AREA
BUSINESS BROKERS**

www.bayareabizbrokers.com

On Wed, Feb 1, 2023 at 12:38 PM Steve Yates <[REDACTED]> wrote:

Hey Bob,

You may have caught wind that there is a problem with the tenant here.

They are claiming that an "implied consent" was given by someone to have the space be OK for bands. I didn't, Jill says she certainly didn't so I gave to ask you if there was any communication between you and them regarding this issue. Bands obviously don't work for the residential tenants and I can put this issue to bed with a statement from you. Can you check and get back to me one way or the other.

Thanks, Steve

EXHIBIT Q

February 21, 2023

CITY OF CAPITOLA
CITY CLERK
FEB 21 2023

To: Hon. Mayor and City Council Members

From: Michelle and Lasalle (Sal) Strong, Capitola Bar & Grill proprietors

Phone: [REDACTED]

Mailing Address: 231 Esplanade, Suite 102, Capitola, CA 95010

Email: info@capitolabarandgrill.com PLEASE ALSO EMAIL ANY COMMUNICATIONS. Thank you.

RE: Appeal to City Council of City Manager's Decision to Cancel Capitola Bar & Grill's Permit for Music and Dancing (Entertainment Permit) by letter of 1/31/23. (Attached.)

Introduction

We appeal to you for fair and even-handed treatment in continuing to offer music and dancing to the community for afternoon and early evening enjoyment. We have had no significant complaints. We first got the permit in summer of 2021. The Chief of Police renewed it for 2022. And then suddenly at the beginning of this year, the City Manager decided to cancel it despite the last couple years of bringing life back to the Village. Why? There were no significant complaints. The only explanation is that our landlord, who is trying to force us out of the space before the end of our lease, somehow influenced him. That's not fair. The City should stay out of private disputes and not take sides either way. All we are asking is that you continue the status quo of the past couple years and allow us to continue to peacefully share entertainment at our restaurant in the Village. Thank you for the wise exercise of your power as Capitola's lawmakers in hearing our appeal.

What Happened (the Facts)

August 2021-

We took over from the old Sotola B&G, including a lease assignment with the landlord, Steve Yates, who (at first) wanted us in the space and approved of us getting an Entertainment Permit. He knew we were offering music and dancing and approved our lease with that knowledge. Entertainment is a big part of our business.

September 2021-

Chief of Police Andrew Dally issued us an Entertainment Permit, including conditions for sound proofing, hours of use, sound limits, etc., all of which we complied with. We spent almost \$10,000 on various improvements, because we had the Permit, for soundproofing, wood paneling, ceiling treatment, curtains, self-closing doors, cameras, and more.

January 2022-

Chief of Police Andrew Dally renewed our Entertainment Permit as a matter of course.

September 2021 through March 2022-

We had various communications with the landlord Steve Yates and his property manager. We were concerned about the elevator to the restaurant that never worked since we got there (and which has since been removed and half-replaced, remaining undone). We were also concerned that the roof of the residential unit we rented leaked during the rains. We noticed that progress was very slow and that the little work done was unprofessional. At first though, at least the tone of these communications was cordial on both sides.

April 2022-

Lasalle (Sal) Strong bumped into the landlord Steve Yates who was on site trying to fix the elevator himself. (He lives in Hawaii.) This was the first time they saw each other in person. The relationship deteriorated from there. For whatever reason, Mr. Yates' emails became argumentative and angry in tone. His tone remained cordial with our master tenant, the previous restaurant owners. He referred to our patrons as the wrong "element."

He was very concerned about the cost of repairs to his building and asked us to pay for the elevator. And he began complaining about the music. We began getting confusing legalistic notices about posted on our doors. Since then, he has consistently taken a scolding tone with us and refused to negotiate or identify any actual operational issues, including entertainment. We are mystified as to why; we have done nothing wrong.

June 2022-

We met with Police Chief Andrew Dally to discuss any compliance issues because of the confusing notices posted on our doors by the landlord. The Chief said there were no significant issues or complaints and that he was not concerned with our providing music and dancing. Police Captain Sarah Ryan informed us that landlord Steve Yates had asked them to cancel our Entertainment Permit.

August 2022-

We hired a law firm to help us with our landlord conflict which continued, and continues, to escalate. He wants us out and is pressuring us every way he can, including by getting our Entertainment Permit cancelled by the City.

October 2022-

We met with Chief of Police Andrew Dally. We offered to file the same annual renewal form for 2023 that we had filed for 2021 and 2022. However, suddenly it became an issue that the landlord Steve Yates refused to sign the form. But he had not signed the first two forms either, and the City gave us the Entertainment permit in 2021 and renewed it in 2022. We used the Permit and provided a community gathering place for live music and dancing in the afternoon and early evening. We had very few if any complaints (if you don't count the complaints of the landlord Steve Yates which were and are part of his campaign to remove us).

December 2022-

We filled out and submitted the annual renewal form for Entertainment Permit.

January 2023-

We received the 1/31/23 letter from the City Manager cancelling our Entertainment Permit because Steve Yates did not give his consent by signing the form. Whether intentional or not, the cancellation letter contains the wrong deadline date for filing this appeal. If we had followed the City Manager's instructions in the letter we would have been a day late and this appeal would have been dead on arrival.

February 2023-

We filed this appeal on time and paid the fee.

Here are Some Factual Questions that We Would Like to Ask (or Have You Ask) the City Manager and Other City Staff:

- 1) Did the City Manager delegate his authority to issue Entertainment Permits to the Chief of Police?
- 2) Did the police exercise discretion to issue permits with or without explicit landlord consent on the form?
- 3) How many entertainment permits issued in last five years? How many with explicit landlord consent on the form? How many without?
- 4) Why the change in that policy?
- 5) Did City Manager, Police Department, or any other staff communicate with Steve Yates about this matter?
- 6) When, how, and what did he say?
Did Mr. Yates say that he never consented to entertainment, or that he changed his mind?
- 7) Did he say or imply he would sue the City if the permit was not cancelled or not renewed?

What You Should Do and Your Legal Power to Do It (Our lawyer helped with this part)

Your role is to serve as the judges in this appeal, our disagreement with the City Manager over the Entertainment Permit. As the judges, you are independent of both sides. To be fair to both us and the City Manager, you are required by law to have your own independent lawyer, separate from the City Attorney who has been advising the City Manager. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 91-94.) To the extent that the City Attorney has been advising the City Manager who cancelled our permit, she is biased having already formed an opinion of the matter and taken a side. They cannot give you objective legal advice. At the very least, they should confirm that you have the power to decide the questions of fact and law in this matter, should have independent counsel, and need not follow their legal opinion in the matter (already formed to support the City Manager).

As the judges in this hearing, the Capitola Municipal Code (CMC) gives you the power to make your own decisions regarding the facts and the law. (CMC 2.52.050 saying that this hearing is "de novo" meaning, a complete do over of facts and law.) You are not bound by the City Manager's decision. You have the power to make a different decision.

The City Manager's letter says that he cancelled the Permit (or denied the application for renewal, it comes to the same thing) because it did not include the landlord Steve Yates' consent on the application form that the City Manager himself made up. But under the Municipal Code section that he cites, his power to develop the form is limited. *One legal question for you to decide is if that requirement is properly on the form or not.* If you decide that the form shouldn't have that requirement on it, then the City Manager's decision is baseless, and you must overturn it and renew the Permit.

CMC 5.24.080 gives the City Manager limited power to develop the application form. Specifically, it limits the form to "any nonprivileged information reasonably related to the concerns expressed in Section 5.24.005." That's it. Nothing else. So now the question is does Section 5.24.005 give the City Manager the power to require the landlord's signature on the form.

Section 5.24.005 addresses the purposes and concerns of the Entertainment Permits program. (We have copied the entire section at the end of this appeal.) They include only issues related to entertainment: noise; attracting business; traffic; peace and quiet and nightly sleep; hours of operation; concentration of similar businesses (an entertainment district); proximity to residences; the need for a permit system; and the need for fees to cover the cost of the system.

That's it. That is what the form is supposed to focus on: controlling noise, traffic, hours of operation, and the like—all issues directly related to the conduct of the business. Nothing in that section relates to landlord-tenant issues. Which makes sense because it is not the City's job to regulate the private contracts (including leases) between commercial businesses and the landlords.

The City Manager could have left landlord consent off the form entirely and it would have been proper and legal under the municipal code. This is also shown by CMC 5.24.020 which lists who can obtain an Entertainment Permit: "owner, manager or operator." Nowhere in the municipal code does it say that only the owner can apply—or that their consent is required. But it does say explicitly that an operator can obtain a Permit. Nor is this a land use right that might involve the property owner. It's in the Municipal Code under Business Regulations, not under Zoning.

The landlord consent requirement is improperly on the form, irrelevant, and not authorized by the ordinance. This is clear from the track record of the City having twice issued the permit without requiring such extraneous information.

If a landlord wants to control the use of his property by his tenants, that is properly done in his contractual agreements with them. Here, the landlord is legally bound by his agreements to allow Entertainment. (If there were actual bona fide nuisance complaints they could be addressed with the City under the municipal code—but there is no mention of such complaints in the City Manager's 1/31/23 letter.)

The City has authorized entertainment at our restaurant for two years running. The City twice issued an annual permit that we relied on in building our business and offering music and dancing to Village. In all fairness, the City should not cancel that permit unless there is a good reason such as excessive noise complaints. Here, the only complaint is from the landlord who is trying to break our lease—and our business.


For those reasons we ask that you find that the landlord’s consent is not related to the purposes of the Entertainment Permit program under Section 5.24.005 and is not a required part of the form. Based on that legal finding we ask that you reinstate our Entertainment Permit for 2023 so that we can continue providing entertainment in the Village as we have for the past two years.

Alternatively, if you decide that the landlord’s consent is required, you can still reinstate the Permit by finding that the issue of whether the landlord can revoke his previously given consent, under the lease and other agreements with, us is a matter for the courts to decide—or for us to negotiate with him. You can find that the issue of landlord consent does not require the City Manager’s form as a kind of “magic paper.” The requirement can be met by the landlord’s binding legal agreements that authorize us to have entertainment at the restaurant. Even if landlord consent is required, he has already given it in the lease and other contracts and he cannot revoke it now; the form is unnecessary because he has consented as a matter of law.

As the City’s policymakers you can decide, based on the policy of keeping the City out of private commercial disputes, and based on the landlord’s binding consent, that the City will maintain the status quo of music and dancing at the restaurant and reinstate the permit.

In Conclusion

For all the reasons given above, we ask that you exercise your legal powers to make this decision based on the facts and law as presented above and reinstate the Permit. Thank for supporting our continuing to share music and dancing in afternoons and early evenings in the Village.



LaSalle Strong



Michelle Strong

Capitola Municipal Code

5.24.005 Findings.

The city council finds as follows:

A. Entertainment often produces noise which is obtrusive to persons not patronizing the business or activity which produces the noise.

B. The availability of entertainment is often a significant factor in attracting patrons who infringe upon the peace and quiet and nightly sleep of nonpatrons, and is exacerbated by any of the following:

1. The entertainment is offered in conjunction with the distribution of alcohol.
2. The entertainment is offered by businesses which are open after nine p.m. and do not, like theaters, have fixed beginning and ending times at which most of the patrons enter and exit.
3. The entertainment is offered in an area where there is a concentration of similar businesses, thereby resulting in the area becoming an after-hours draw and the patrons of those businesses frequently entering and exiting the other establishments.
4. The entertainment is offered in locations where many of the patrons, when leaving, pass through or near areas where people reside.

C. To protect the peace and quiet of nonpatrons and their nightly ability to sleep it is necessary to have a licensing system and to thereby limit and condition the establishments offering such entertainment.

D. Policing and monitoring entertainment licenses entails considerable expense to the city, such that it is appropriate to collect a portion of such expenses from the entities providing the entertainment. (Ord. 1020 § 1 (part), 2018; Ord. 699 (part), 1990)



FINAL NOTICE OF DECISION

January 31, 2023

Capitola Bar and Grill
231 Esplanade #102
Capitola, CA 95010

RE: Notice of Decision on Application for 2023 Regular Entertainment Permit at 231 Esplanade #102

On behalf of Capitola Bar and Grill you applied for a 2023 Entertainment Permit as required by Capitola Municipal Code 5.24 – Entertainment Permits. Our understanding is that you lease the space at 231 Esplanade #102, and manage and operate Capitola Bar and Grill in that space.

We have reviewed your application and have determined the application does not include the property owner's consent to the application, as required on page 3 of the application (IX. Property Owner Statement).

The requirement for the property owner's consent is a standard inclusion on the City's application form. The form was developed pursuant to Capitola Municipal Code section 5.24.080, which allows the City Manager to develop the application.

Because your application does not include all of the required information, your application is denied.

If you would like to appeal this determination to the City Council, you must file your appeal within 14 working days of the date of this letter. The Council will hear the appeal at the City Council meeting following receipt of your appeal or, upon a request from staff, may hear the appeal at a later date. The deadline for you to file an appeal is five p.m. on February 22, 2023.

All appeals must be in writing and delivered to the office of the City Clerk with payment of the Administrative Decision Appeal Fee, which is \$562. The request for appeal must set forth the appellant's name, the phone number for the appellant, an address to which notices may be sent to the appellant and the grounds upon which the appeal is made. Further detail regarding the appeal procedure can be found in Chapter 2.52 of the Capitola Municipal Code.

Please note that because you do not currently have a valid Entertainment Permit, you are not permitted to engage in entertainment activities, as described in 5.24.010 of the Capitola Municipal Code.

Sincerely,



Jamie Goldstein, City Manager
City of Capitola

EXHIBIT R

Fwd: Capitola Strong Inc. and La Serena Properties, LLC - Mediation on March 1, 2023 at 9:30 am

----- Forwarded message -----

From: **Steve Barber** <steve@jrgattorneys.com>

Date: Thu, Feb 23, 2023 at 2:49 PM

Subject: Capitola Strong Inc. and La Serena Properties, LLC - Mediation on March 1, 2023 at 9:30 am

To: leslie@HULawyers.com <leslie@hulawyers.com>

Cc: Drew Sanchez <drew.sanchez@anthonylaw.group>

Dear Ms. Holmes:

I represent the Landlord for both rental spaces at issue in this matter, La Serena Properties, LLC, whose Managing Member is Steven Yates.

This is a commercial landlord-tenant dispute involving a restaurant space located at [231 Esplanade, Capitola](#) ("231") and an apartment space used for restaurant storage purposes located at 200 Esplanade ("200"). Both spaces are on the second floor of a building on the water in Capitola. Technically, the Subtenant of 231 and Tenant of the apartment is Michelle and Lasalle Strong. However, their corporation, Capitola Strong, pays the rent on 231 and 200. There are other tenants in the building, including a long-standing residential tenant who is on the third floor. As far as the Landlord is concerned, both leases have been validly terminated and the Subtenant is occupying 231 unlawfully. The Tenants have not been evicted because the lease agreements require mediation and then arbitration of these disputes. The leases and termination notices are attached.

The only reasons we are mediating this dispute are: (1) The Tenants refuse to accept the reality that the Restaurant Lease either expired on January 31, 2023 and/or was terminated due to lease violations by the Tenant effective January 31, 2023; (2) The Tenants refuse to acknowledge that the month-to-month Apartment Lease will terminate effective April 30, 2023; and (3) the Tenants believe the Landlord is required by the Restaurant Lease to allow live music at the restaurant and that its failure to agree to live music is a breach of the Lease which has caused them some unspecified and unprovable damages.

The Landlord's position is simple: (1) the Restaurant Lease terminated on January 31, 2023; (2) the Apartment Lease will terminate on April 30, 2023; (3) the Restaurant Lease does not expressly or impliedly require the Landlord to authorize live music; and (4) the Capitola Police Department must issue an entertainment permit allowing live music, which is speculative given the past complaints about the loud noise emanating from the CBG.

The Tenants are currently paying rent to Landlord, who is accepting it without waiver of any of the parties' rights or defenses because the Tenants continue to occupy and use 231 and 200.

Restaurant Lease

The original tenant was Sotola Bar and Grill Company. The Lease was assigned to the Strongs on February 1, 2018 and they became the Subtenant and opened the Capitola Bar and Grill ("CBG"). The Sublease & Assignment Agreement among Sotol, the Strongs, and La Serena incorporates all terms of the Lease including the 5-year option provision. During the subtenancy, the CBG played live band music which sometimes violated the terms of their entertainment permit issued by the Capitola Police Department ("CPD"). The residential tenant and others complained about the noise and the police often "visited" the premises to investigate (including three consecutive nights on January 29-31, 2023). The Subtenant apparently believes that they have the inherent right under the Lease to have an entertainment permit and live music. This could not be farther from the truth. The words "entertainment," "entertainment permit," "band," and "music" do not appear in the Lease. However, Section 109 states that the only permitted use is for a restaurant, as defined in the City of Capitola's use permit which existed at the time the Lease was executed in February 2018.

Section 1.06 provides for a 5-year option which must be exercised in writing between 180 and 90 days before the end of the initial lease term on January 31, 2023. Section 1.06 strictly prescribes the required notice which must be given to exercise the option: "Tenant's notice shall be delivered to Landlord only by certified mail, return receipt. If Tenant neglects to timely exercise the option, the right to exercise such option automatically expires without notice from Landlord of Tenant's failure to exercise such option." The general notice provisions in Section 12.07 apply to other circumstances where notice must be given. We all know that specific terms of a contract control general terms and that if the language of the contract is clear and unambiguous, the contract will be interpreted according to its clear meaning. Section 1.06 cannot be clearer and more unambiguous as to how the Tenant must notify the Landlord of the exercise of the option and is not trumped by Section 12.07.

Through their prior counsel, Hoge-Fenton, the Strongs sent a letter to Mr. Yates on October 24, 2022 which enclosed an unsigned Notice of Exercise of Option. The letter and enclosure were delivered by FedEx. This communication purported to exercise the option. This "exercise" was ineffective as a matter of law and contract and was not compliant with Section 1.06 because the "Notice of Exercise of Option" was unsigned and was not sent by certified mail, return receipt. On November 1, 2022, counsel sent a signed Notice of Exercise of Option to Mr. Yates via FedEx.

On December 28, 2022, Hoge-Fenton sent a letter with enclosures claiming they supposedly complied with the general notice provision of Section 12.07. This letter only solidifies that the Option was not validly exercised by the Subtenant as Section 1.06 of the Lease unequivocally states that the notice exercising the option shall be sent to the Landlord only by certified mail, return receipt no later than the 90th day before the expiration of the Lease on January 31, 2022. The Strongs' admission that their counsel sent a signed copy of the purported notice of exercise by FedEx on November 1, 2022 to the Landlord establishes the failure to comply with the delivery requirement of Section 1.06. This "notice" does not comply or substantially comply with Section 1.06 and is therefore void and of no legal effect. In sum, the Option was not properly exercised in accordance with the express terms of the Lease and the Lease expired on January 31, 2023, regardless of whether the Subtenant was in default or not.

The Lease was also terminated effective January 31, 2023 via the attached Notice of Termination as a result of the Subtenant's violation of Section 4.02 of the Lease in late January 2023, as well as before. This Notice terminates the Lease regardless of whether the Option was validly exercised or not.

Apartment Lease

This Lease became effective on September 1, 2021 and terminated on August 31, 2022. By its terms, it is a month-to-month tenancy after August 31, 2022. The current Tenant does not use it as a residence but rather as a storage area. On February 8, 2023, the Landlord served the 60-day notice of termination. By the terms of the Notice, the tenancy ends on April 30, 2023. The Landlord is not aware of any valid defense the Tenant has to the termination even if the Strongs arguably have the right to use 200 as a residence. In California, a residential tenancy of more than one year can be terminated by giving a 60-day notice, which has been done here.

Entertainment Permit

A business which wants an Entertainment Permit must apply to the Capitola Police Department and pay an application fee. An exemplar copy of the Application is attached. IF the CPD issues the permit, it is good for one year. The property owner must consent to the live entertainment described in the Application. The CPD is not required to issue a permit or can require a new permit if the business activity or the circumstances change, The CPD can revoke the permit for failure to comply or for having supplied false information.

Capitola Strong did have entertainment permits in prior years. It does not have one for 2023. The Landlord has been informed that due to past violations of its permit, the CPD intends to issue a cease-and-desist order to Capitola Strong prohibiting it from making loud music noises.

The Landlord does not intend to consent to future entertainment permit applications, if any, submitted by Capitola Strong or the Strongs if their tenancy of 231 is extended.

Concluding Comments

The Restaurant Lease has expired under its express terms because the Subtenant (and original Tenant) did not exercise the Option in the manner required by Section 1.06. This is clear. The Apartment Lease terminates on April 30, 2023 and the Tenant has no possible defense. The Subtenant has no contractual right to an Entertainment Permit or to have live music at the CBG. The Subtenant has not been a desirable tenant from the Landlord's viewpoint and noise disturbances to others in the vicinity are unacceptable. The Landlord want to rent the restaurant space and apartment to others and needs the Strongs and their corporation to vacate.

Thank you for your attention.

Stephan A. Barber

Partner

JRG Attorneys at Law

[318 Cayuga Street](#)

[Salinas, CA 93901](#)

(831)744-2444 x607

steve@jrgattorneys.com

EXHIBIT S

Get [Outlook for iOS](#)

From: Firehouse Brew & Grill
Sent: Sunday, May 22, 2022 1:18:07 PM
To: Russell Gross <>; Jill Ealy <>
Subject: Request for a Meeting

We received a notice on our doors today. We are requesting to meet with Russell Gross and Steve Yates. Lasalle and I are available this coming week on Monday, Wednesday or Thursday.

Its come to our attention that the tenant above our commercial business, Ryan Yates has been disturbed by our "noise" levels. Ryan has taken some steps on behalf of representing the landlord and put a notice on our doors today.

As we understand there are residential units in the building, the residents of the building should have consideration that they choose to reside in a commercial building as well.

In regards to live music, I have attached our live music permit. Although our permit allows music to 11pm Sunday to Thursday, 12:30 am Friday and Saturday, in consideration of the surrounding residents and hotels, we stop our music at 10pm. As required for the permit, we have installed curtains, and sound boards to assist in noise levels.

Lasalle and I have met with the Chief of Police, Andy Dally, to ensure we are doing everything required to stay in compliance. Per our discussion with him, we are allowed to have our windows and doors open, due to the normal sound levels of the traffic and surrounding buildings are louder than our music during the day. The compromise is for us to make a daily decision to close doors and windows, as the outside noise lessens, which is usually by 9:00pm.

There is a false claim that we are in violation of our lease and permit. Ryan putting these notices on our doors, is harrasing and violates our rights to run our business. It put unnecessary fear and distress on our staff. The city noise ordinance for residential is 10:00pm, and we are doing business in our rights of leasing the commercial property, along with following the guidelines of the city music permit. Ryan is making false claims that the decibal level reaches 120 in his unit, however 120 is deafening levels and standing directly in front of the band, our readings are 80-90, at the front steps with the door closed our readings are 65, which is in compliance. In unit #200, with the patio door closed, the music is not heard. We place the live music towards the far right corner as you enter the front door. Ryan's apartment is over our bar and kitchen areas, which have normal sounds of business, from radios and tv's, along with the ceiling mounted speakers, which were installed prior to our occupancy.

The lease states that any disputes be handled in mediation, (Section 11.02 Mediation of Disputes). We have not been given the opportunity to speak with Russell or Steve regarding Ryan's complaints. We are going to continue business as we have been, which includes live music, as we believe we have already compromised by made by ending at 10pm, along with closing the doors and windows at 9:00pm.

Please set a time so we can discuss.

Michelle & Lasalle Strong

Sent from [Mail](#) for Windows

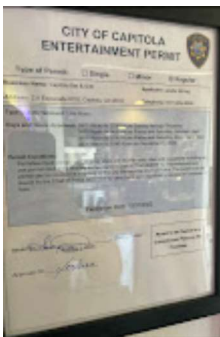
5 attachments



IMG_7823.jpg
321K



IMG_7824.jpg
326K



Music Permit.jpeg
1509K



Notice On Door.jpg
1364K



NOTICE OF NONCOMPLIANCE

CEASE AND DESIST

May 22, 2022

To; Occupant(s) 231 Esplanade, Capitola Bar and Grill

From; landlord La Serena Properties

Demand is hereby made upon the occupant(s) of above mentioned premises to cease and desist any and all music, noise and other disturbances that exceed the permitted use as contained in your

APPLICATION FOR ENTERTAINMENT PERMIT AND

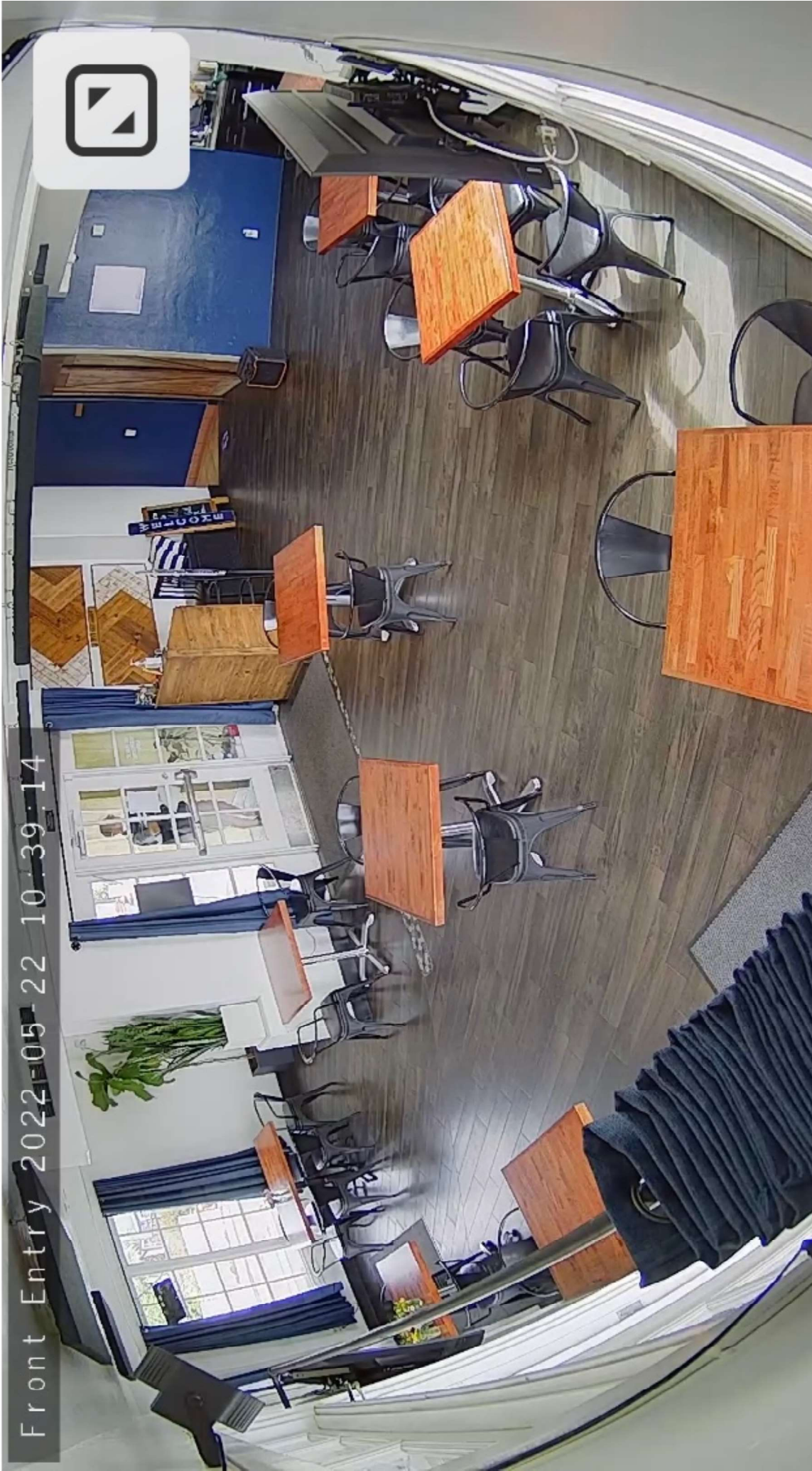
IN THE LEASE DATED FEBRUARY 1st 2018

ALLOWABLE EXTERIOR NOISE LEVELS NOT TO EXCEED 65 DBA MUNICIPAL CODE 5.24.005

Additionally you are in violation of the terms of your lease dated February 1st 2018 section 4.02

"Tenant shall not cause or permit the Premises to be used in any way that constitutes a violation of any law, ordinance, or governmental regulation or order, or that unreasonably annoys or interferes with the rights of other tenants of Landlords property."

Front Entry 2022-05-22 10:39:14



From: Firehouse Brew & Grill
Sent: Wednesday, June 1, 2022 11:50:57 AM
To: RUSSELL GROSS
Cc: Jill Ealy ; Erin Heath Sal
Subject: Re: 231 Esplanade Music

Hi Russell,

It's impossible for them to read 90-100 in their units, as it would have to be 140-150 on the dance floor. That would mean, everyone in our unit would be deaf? What device is Ryan Yates using, as the Capitola Police Department has never documented that our levels are louder than allowed with our permit.

In our bar area, the music is rarely over 80, and has its own music as they can't hear the live music in the bar. In our apartment unit #200, we cannot hear the music at all. We have requested to meet and have not heard back. This matter needs more attention than requiring us to give you a yes or no answer. Noise ordinance in its standard everyday allowance is 10pm, we have already compromised to end at 10pm, however there is still expected noise levels in our restaurant till closing.

Ryan Yates has harassed my staff and I want to have a meeting before this continues to escalate.

Thank you,

Michelle Strong

Get [Outlook for iOS](#)

From: RUSSELL GROSS
Sent: Wednesday, June 1, 2022 11:36:09 AM
To: Firehouse Brew & Grill
Cc: Jill Ealy ; Erin Heath <
Subject: 231 Esplanade Music

Michelle and LaSalle,
The Tenants at the complex would like to know if you have a plan to continue "as is" with the music. They are stating that DBA levels over 100. steady level between 90 and 100. Hearing loss can occur at 15 minutes of 90 dba. Just reply yes, it is going to continue or no, if you are canceling the bands booked for all summer. Please kindly respond so I can inform the tenants. Thank you
Russell

--

Russell E. Gross Real Estate, Inc.

EXHIBIT T

NOTICE OF EXERCISE OF OPTION

TO: La Serena Properties, LLC c/o Steven A. Yates
FROM: Michelle Strong & LaSalle Strong, dba Capitola Bar & Grill
RE: Exercise of Option

On July 21, 2021, pursuant to a Sublease & Assignment of Lease by and among lessor La Serena Properties, LLC c/o Steven A. Yates (the "Master Lessor" or "You"), JJJ Group, Inc. (the "Master Tenant") and Michelle Strong & Lasalle Strong ("Capitola Bar & Grill"), Master Tenant subleased, assigned and transferred to Capitola Bar & Grill all of Master Tenant's rights and obligations under the master lease for use of the premises located at 231 Esplanade #102, Capitola, CA 95010, as originally executed on February 1, 2018 (the "Master Lease"), as amended by:

- 1) the Amendment to Commercial Lease Agreement in January 2019 (the "2019 Amendment");
- 2) the 2019 assignment of the Master Lease (the "2019 Assignment") to JJJ Group, Inc. (the "Master Tenant"); and
- 3) the July 22, 2021 Sublease & Assignment of Commercial Lease Agreement (the "2021 Sublease & Assignment") to Capitola Bar & Grill.

The Master Lease contains a tenants' option to renew under Section 1.06(A) (the "First Option"), as amended by the 2019 Amendment and 2021 Sublease & Assignment.

The 2021 Sublease & Assignment states, "Sublessee assumes all Sublessor's rights in the Lease, as amended, and Sublessee hereby agrees to occupy the Premises and to comply with all the terms and obligations of the Lease, as amended." "A subtenant who expressly assumes the obligations of the prime lease, with the consent of the landlord, comes into privity of contract with the landlord" and accordingly, the 2021 Sublease & Assignment here empowers Capitola Bar & Grill to tender its demand directly upon you. (*Vallely Investments, L.P. v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 823.)

You are hereby notified that Capitola Bar & Grill exercises its rights under the First Option, and thereby renews the Master Lease for the stated term. Capitola Bar & Grill will timely deliver the increased rent in consideration therefor as stated in Section 2.01(a) of the Master Lease as set forth in the 2019 Amendment.

Capitola Bar & Grill reserves all rights.

[Signature page follows]

Dated: October 24, 2022

Michelle Strong, Sublessee/Assignee

Signature: _____

Dated: October 24, 2022

Lasalle Strong, Sublessee/Assignee

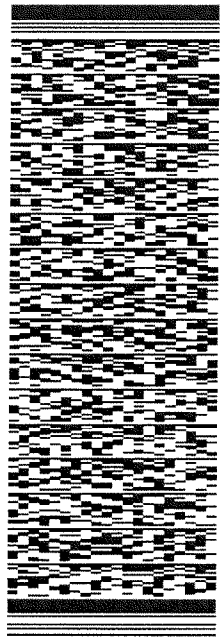
Signature: _____

ORIGIN ID: LVKA (925) 224-7780
MAUREEN ALEXANDER SLETTEVOLD
HOGE FENTON JONES & APPEL
6801 KOLL CENTER PARKWAY, #210
PLEASANTON, CA 94566
UNITED STATES US

SHIP DATE: 24OCT22
ACTWGT: 1.00 LB
CAD: 100082087/INLT4530
BILL SENDER

TO **C/O STEVEN A. YATES**
LA SERENA PROPERTIES, LLC
283 CANYON OAKS

SANTA CRUZ CA 95065
(000) 000-0000 REF: 206212
PO NV DEPT



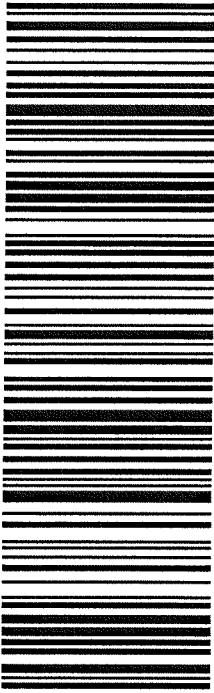
581J1/AC5F/FE2D

TUE - 25 OCT 4:30P

STANDARD OVERNIGHT

TRK# 7702 9272 0367
0201

WA SRUZJ
CA-US **95065 SJC**



After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

Giuliana R. Ferrante

From: TrackingUpdates@fedex.com
Sent: Tuesday, October 25, 2022 2:08 PM
To: Maureen Alexander-Slettevold
Subject: FedEx Shipment 770292720367: Your package has been delivered
Attachments: DeliveryPicture.jpeg



Hi. Your package was
delivered Tue, 10/25/2022 at
1:53pm.



Delivered to 283 CANYON OAKS, SANTA CRUZ, CA 95065

[OBTAIN PROOF OF DELIVERY](#)



Delivery picture not showing? [View](#) in browser.

TRACKING NUMBER	770292720367
FROM	Hoge Fenton Jones & Appel 6801 Koll Center Parkway, #210 PLEASANTON, CA, US, 94566
TO	La Serena Properties, LLC c/o Steven A. Yates 283 Canyon Oaks SANTA CRUZ, CA, US, 95065
REFERENCE	206212
SHIPPER REFERENCE	206212
SHIP DATE	Mon 10/24/2022 03:54 PM
DELIVERED TO	Residence
PACKAGING TYPE	FedEx Envelope
ORIGIN	PLEASANTON, CA, US, 94566
DESTINATION	SANTA CRUZ, CA, US, 95065
SPECIAL HANDLING	Deliver Weekday Residential Delivery
NUMBER OF PIECES	1
TOTAL SHIPMENT WEIGHT	0.50 LB
SERVICE TYPE	FedEx Standard Overnight

EXHIBIT U

NOTICE OF EXERCISE OF OPTION

TO: La Serena Properties, LLC c/o Steven A. Yates
FROM: Michelle Strong & LaSalle Strong, dba Capitola Bar & Grill
RE: Exercise of Option

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The 2021 Sublease & Assignment states, “Sublessee assumes all Sublessor’s rights in the Lease, as amended, and Sublessee hereby agrees to occupy the Premises and to comply with all the terms and obligations of the Lease, as amended.” “A subtenant who expressly assumes the obligations of the prime lease, with the consent of the landlord, comes into privity of contract with the landlord” and accordingly, the 2021 Sublease & Assignment here empowers Capitola Bar & Grill to tender its demand directly upon you. (*Vallely Investments, L.P. v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 823.)

You are hereby notified that Capitola Bar & Grill exercises its rights under the First Option, and thereby renews the Master Lease for the stated term. Capitola Bar & Grill will timely deliver the increased rent in consideration therefor as stated in Section 2.01(a) of the Master Lease as set forth in the 2019 Amendment.


Capitola Bar & Grill reserves all rights.

[Signature page follows]

Dated: November 1, 2022

Michelle Strong, Sublessee/Assignee


Signature: _____


DocuSigned by:
0A7275243CF844E...

Dated: November 1, 2022

Lasalle Strong, Sublessee/Assignee

Signature: _____


DocuSigned by:
47DFCE8E22D84FF...



December 22, 2022

Dear Customer,

The following is the proof-of-delivery for tracking number: 770369685322

Delivery Information:

Status:	Delivered	Delivered To:	Residence
Signed for by:	Signature not required	Delivery Location:	
Service type:	FedEx First Overnight		
Special Handling:	Deliver Weekday; Residential Delivery		SANTA CRUZ, CA,
		Delivery date:	Nov 2, 2022 07:28

Shipping Information:

Tracking number:	770369685322	Ship Date:	Nov 1, 2022
		Weight:	0.5 LB/0.23 KG
Recipient:		Shipper:	
SANTA CRUZ, CA, US,		PLEASANTON, CA, US,	

Reference 206212

Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

(<https://www.fedex.com/en-us/home.html>)

FedEx® Tracking



DELIVERED

Wednesday

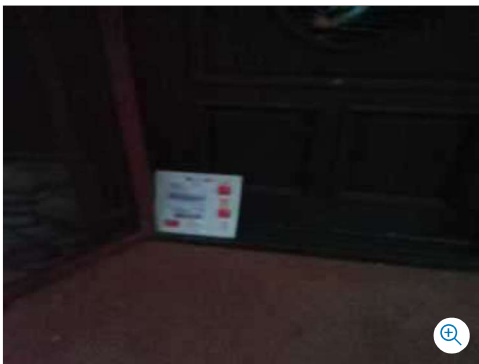
11/2/2022 at 7:28 am

Signature not required
Package delivered to recipient address

[↓](#) Obtain Proof of delivery

DELIVERY STATUS

Delivered



TRACKING ID

770369685322

FROM
PLEASANTON, CA US
Label Created
11/1/2022 1:17 PM

PACKAGE RECEIVED BY FEDEX
PLEASANTON, CA
11/1/2022 4:33 PM

IN TRANSIT
SOQUEL, CA
11/2/2022 7:12 AM

OUT FOR DELIVERY
SOQUEL, CA
11/2/2022 7:12 AM

DELIVERED
SANTA CRUZ, CA US
DELIVERED

EXHIBIT V

The city manager and I met with the owners of Capitola Bar and Grill. As you know they have submitted an application for entertainment and the paperwork requires your signature to complete the application. They have submitted the paperwork and I have rejected it because it does not have your consent signature for entertainment. During today's conversation the owners offered several concessions including reducing the hours of operation, the days for entertainment, and/or the type of music. Are you open to any adjusted conditions or the possibility of conflict resolution?

I appreciate you taking the time to evaluate this issue and look forward to your response.

Chief Dally

From: Dally, Andrew (adally@ci.capitola.ca.us)

Sent: Monday, December 12, 2022 9:12 AM

To: Steve Yates

Subject: RE: Capitola Bar & Grill

Good morning Mr. Yates,

I really appreciate you contacting me and letting me know your concerns. At this point, their Entertainment Permit application is with Captain Ryan. Captain Ryan does the initial review and then forwards it to me for approval. The conditions for the application are from the City Manager and we do require a landlords signoff for these permits.

Not having your signature will make their application incomplete. I do not intend, nor do I feel it is appropriate, to override your signature.

I do appreciate you providing me with the below information. I will include it in their application file.

Chief Dally

From: Steve Yates

Sent: Saturday, December 10, 2022 11:34 AM

To: Dally, Andrew (adally@ci.capitola.ca.us) <adally@ci.capitola.ca.us>

Subject: Capitola Bar & Grill

Hi Chief Dally,

This is Steve Yates landlord for CBG.

I agreed with the tenant to reach out to you to discuss their music permit application.

The current license expires this month and they want a new one for the following year. I have received 53 recorded complaints from my tenants of noise violations- nuisance regarding the bands playing there weekly.

I spoke with Capt. Ryan in, I think June regarding the complaints internal to the building. She asked that I handle it internally. I decided to cut the rent to the tenants in half for the remainder of the year as compensation for the disturbance. I still lost a tenant.

This IS an internal building matter. Bands on a weekly basis don't work in this local. It's in the lease. Should be simple, right?

Anyway I'm open to any thoughts you may have and completely understand a "not our problem" position by CPD.

As it stands I will not take a position of CBG over the rights of other tenants, so I will not sign for approval of a new license that CBG violates every band night. (DBL levels in the apartments reach as high as 105, 90 is normal from them. 65 is the limit per regulation. (They admit to 85 + Dbl 3 ft. away from the apartment)

Anyway I'm open to any thoughts you may have re music in River City!

Steve Yates

PROOF OF SERVICE

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I, Jamila Colbert declare: I am over the age of 18 years, and am not a party to this action. On March 24, 2023, I served the following document:

DECLARATION OF MICHELLE STRONG IN SUPPORT OF REQUEST FOR ISSUANCE OF PROVISIONAL INJUNCTIVE RELIEF


VIA U.S. MAIL – CCP § 1013(a) I caused the above documents to be placed in an envelope with postage thereon fully prepared to be placed in the United States Postal Service with postage fully prepaid and addressed to Plaintiff’s counsel: and

VIA ELECTRONIC MAIL The documents were transmitted in PDF format to each of the email addresses as indicated on the service list.

JRG Attorneys at Law
C/O Stephan A. Barber
318 Cayuga Street
Salinas, CA 93901
steve@jrgattorneys.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 24, 2023 at Oakland, California.



Jamila Colbert

Moss, Julia

From: Ryan Yates <rynyates@outlook.com>
Sent: Monday, June 19, 2023 10:40 AM
To: Moss, Julia; Brown, Kristen; Keiser, Marguax; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander
Cc: Dally, Andrew (adally@ci.capitola.ca.us)
Subject: Restraining Order: A Ploy to Silence Valid Concerns

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Capitola City Council,

Michelle Strong, the owner of Capitola Bar and Grill located beneath my residential unit, has sought a restraining order against me, which appears to be a ploy to prevent me from voicing my concerns at the upcoming city council meeting on June 22nd, 2023.

“Stop contacting local agencies and trying to harm my livelihood. Stop calling the police to make false reports.” – Michelle Strong

I, a resident of 231 Esplanade, Unit 301, have raised legitimate concerns about the establishment's disruptive activities breaching local and state regulations. It seems this restraining order is an attempt to silence my voice, thereby abusing its intended purpose and undermining our community's democratic values. Falsely using a restraining order is felony perjury in the State of California.

I urge the council to recognize the timing and motivation of this restraining order and safeguard the principles of open dialogue and justice. I will not be attending due to actions by the Strongs.

I trust the council has my previous statements.

Thank you for your attention.

Best regards,

Ryan Yates
rynyates@outlook.com
831-247-7604

Moss, Julia

From: Marc Garcia <marc4jax@gmail.com>
Sent: Monday, June 19, 2023 12:00 PM
To: City Council; Keiser, Marguax; [REDACTED]; Brooks, Yvette;
[REDACTED]; admin@capitolastrong.com; Clarke, Joe
Cc: Marc Garcia
Subject: I support Capitola Bar & Grill

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & City council,

I am a resident here in Capitola for 4 years now and I have recently taken a position bartending at CBG. I'm asking for your support to the music program at CBG. The music in the village is part of the culture in Capitola. It's one of the primary attractions for locals and for visitors. CBG is located right on the corner and right on the beach. Music, dancing, good food, and delicious drinks all go together with the the esplanade and other businesses. This location has always had music under different ownership. I don't understand why it's different now not to allow music. Even more now since the wharf house is closed as they were a popular place for the music. Besides music bringing fun and culture to Capitola at large, it brings revenue for the city. Music at CBG affects the livelihood of all the employees that work there. Supporting the music program at CBG will support the people that work there, the city's revenue, and most of all, the culture of the beach city, CAPITOLA. It's the RIGHT thing to do.

Thank you, Marc Garcia

Sent from my iPhone

Moss, Julia

From: Tamra Loomis <eastbaydressday@gmail.com>
Sent: Monday, June 19, 2023 12:54 PM
To: City Council; Keiser, Marguax; [REDACTED]; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

Moss, Julia

From: La Serena <laserenaproperties@yahoo.com>
Sent: Monday, June 19, 2023 10:50 PM
To: Brown, Kristen; Keiser, Marguax; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; Moss, Julia
Cc: margaritavillegolf@yahoo.com; Ryan, Sarah (sryan@ci.capitola.ca.us); Dally, Andrew (adally@ci.capitola.ca.us)
Subject: [PDF] Opposition to the issuance of a live entertainment permit to Capitola Bar and Grill without landlord permission
Attachments: La Serena Letter to Capitola City Council.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Good day, Madam Mayor, City Council and Staff,

Please find attached letter of opposition to the city council issuing a live entertainment permit to Capitola Bar and Gill.

Thank you,

La Serena Properties
231 Esplanade, Capitola, Ca 95010

Steve Yates
La Serena Properties
231 Esplanade
Capitola, California 95010

Capitola City Council
420 Capitola Ave
Capitola, CA 95010

Re: Opposition to the issuance of a live entertainment permit to Capitola Bar and Grill without landlord permission

Dear Members of the Capitola City Council,

I hope this letter finds you in good health and high spirits. I am writing to express my strong opposition to the request made by Capitola Bar and Grill to obtain a live entertainment permit from the City without seeking permission from their landlord. Based on the recent decision of the Honorable Glenda Sanders, the Emergency Arbitrator for the JAMS, I believe it is crucial that the City Council considers the implications of this request and acts in accordance with the decision reached.

On April 17th, 2023, the Honorable Glenda Sanders rendered a decision that denied the interim relief sought by Capitola Bar and Grill. The decision clearly stated that the claimants failed to demonstrate immediate loss or damage that would necessitate emergency relief. Furthermore, the arbitrator found that the claimants did not establish a likelihood of success on the merits at that stage of the proceedings.

Considering the decision of the Emergency Arbitrator, it is evident that the request for emergency relief, whether characterized as a provisional mandatory injunction, a provisional injunction, or an interim declarator, was unequivocally denied. This decision reinforces the importance of adhering to established legal procedures and respecting the rights and obligations of all parties involved.

Allowing, Capitola Bar and Grill to proceed with obtaining a live entertainment permit without the consent of their landlord would not only disregard the decision made by the Honorable Glenda Sanders but also set a dangerous precedent that undermines the legal framework and compromises the rights of property owners. It is crucial for the City Council to uphold the principles of fairness and legal integrity by respecting the rights and responsibilities of both tenants and landlords.

I kindly request that the City Council carefully consider the ramifications of granting a live entertainment permit to Capitola Bar and Grill without the necessary permission from their landlord. Doing so would not only contravene the decision made by the Honorable Glenda Sanders but also disregard the established legal processes and protections in place. It is essential to maintain a fair and just environment for all parties involved and uphold the integrity of our legal system.

Thank you for your time and consideration. I trust that you will make a decision that reflects the best interests of the community and ensures a harmonious balance between the rights of tenants and landlords. Please feel free to contact me if you require any further information or if there are any opportunities for public input regarding this matter.

Sincerely,

Steve Yates, La Serena Properties

231 Esplanade, Capitola, Ca 95010

Moss, Julia

From: Nancy Cibotti <ncibotti@gmail.com>
Sent: Tuesday, June 20, 2023 7:35 AM
To: City Council; Keiser, Marguax; [REDACTED] Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

Thank you,
Nancy Cibotti
Aptos

Moss, Julia

From: Kathy Keenan <kdoylekeenan@gmail.com>
Sent: Tuesday, June 20, 2023 3:23 PM
To: City Council
Subject: Capitola Bar & Grill

I am writing to the City Council to support Capitola Bar & Grill in obtaining its entertainment license. As I understand it, their lease does not exclude live music, and the restaurant follows all regulations regarding live music, including ending by 10 pm. There is no reason to deny them an entertainment license, and the folks around here love live music. Restaurants were badly hit by the pandemic, and we need to support these businesses in their comeback. Thank you.

Regards,
Kathy Keenan
kdoylekeenan@gmail.com
408-358-7358