



VENTURA PORT DISTRICT BOARD OF PORT COMMISSIONERS

Michael Blumenberg, Chair
Jackie Gardina, Vice-Chair
Anthony Rainey, Secretary
Brian Brennan, Commissioner
Chris Stephens, Commissioner

Brian D. Pendleton, General Manager
Todd Mitchell, Sr. Business Operations Manager
Tom Bunn, Legal Counsel
Jessica Rauch, Clerk of the Board

REGULAR MEETING WEDNESDAY, JULY 5, 2023

VENTURA PORT DISTRICT OFFICE
1603 ANCHORS WAY DRIVE
VENTURA, CA 93001

AND

17553 BROOKVILLE CT.
ROUNDHILL, VA 20141

CLOSED SESSION – 6:45PM
OPEN SESSION – 7:00PM

PUBLIC PARTICIPATION OPTIONS

MEETINGS WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE
AND VIRTUAL PARTICIPATION.

WATCH THE MEETING LIVE

<https://us02web.zoom.us/j/83276329300>

Webinar ID: 832 7632 9300

1-669-900-6833

1-253-215-8782

PUBLIC COMMENT VIA ZOOM

To request to speak on an item, use the “raise hand” button to notify the Clerk. The Clerk will announce public speakers and unmute participants to speak. Please be mindful that the meeting will be recorded, and all rules of procedure and decorum apply for in-person attendees and those participating virtually.

SUBMIT PUBLIC COMMENT VIA EMAIL

To submit written comments on a specific agenda item, please do so via email by 4:00PM on the day of the meeting. When sending an email, please indicate in the subject line, the agenda item number (i.e. General Public Comment or Consent Item A). Written comments should be no more than 1,000 characters in length. Written comments will be distributed to the Commission and will be posted as a supplemental packet on the District’s website at <https://venturaharbor.com/board-meeting-documents/>. Please submit your comment to the Clerk of the Board at jrauch@venturaharbor.com.

CLOSED SESSION 6:45PM
--

CALL TO ORDER: *By Chair Michael Blumenberg.*

ROLL CALL: *By the Clerk of the Board.*

PUBLIC COMMUNICATIONS (3 minutes)

The Public Communications period is set aside to allow public testimony on items only on the Closed Session Agenda. Each person may address the Commission for up to three minutes or at the discretion of the Chair.

CONVENE IN CLOSED SESSION

CLOSED SESSION AGENDA

1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS - PER GOVERNMENT CODE SECTION 54956.8:

- | | |
|----------------------|---|
| a) Property: | 1583 Spinnaker Drive #203A |
| Negotiating Parties: | Brian D. Pendleton, Todd Mitchell, Tom Bunn
Coastal Cone, Inc. |
| Under Negotiation: | Terms of New Office Lease Agreement (Renewal) |

ADJOURNMENT

OPEN SESSION 7:00PM

CALL TO ORDER: *By Chair Michael Blumenberg.*

PLEDGE OF ALLEGIANCE: *By Chair Michael Blumenberg.*

ROLL CALL: *By the Clerk of the Board.*

ADOPTION OF AGENDA

Consider and approve, by majority vote, minor revisions to agenda items and/or attachments and any item added to or removed/continued from the Port Commission's agenda. Administrative Reports relating to this agenda and materials related to an item on this agenda submitted after distribution of the agenda packet are available for public review at the Port District's office located at 1603 Anchors Way Drive, Ventura, CA during business hours as well as on the District's website - www.venturaharbor.com.

APPROVAL OF MINUTES

The Minutes of the June 21, 2023 Port Commission Regular Meeting will be considered for approval.

PUBLIC COMMUNICATIONS

The Public Communications period is set aside to allow public testimony on items not on today's agenda. Each person may address the Commission for up to three minutes or at the discretion of the Chair.

CLOSED SESSION REPORT

Closed Sessions are not open to the public pursuant to the Brown Act. Any reportable actions taken by the Commission during Closed Session will be announced at this time.

BOARD COMMUNICATIONS

Port Commissioner's may present brief reports on port issues, such as seminars, meetings and literature that would be of interest to the public and/or Commission, as a whole. Port Commissioner's must provide a brief summary and disclose any discussions he or she may have had with any Port District Tenants related to Port District business.

STAFF AND GENERAL MANAGER REPORTS

Ventura Port District Staff, Legal Counsel and General Manager will give the Commission updates on important topics or items of general interest if needed.

STANDARD AGENDA:

1) Adoption of Resolution No. 3482 Approving a Notice of Proposed Ordinance for a New 20-Year Lease between the Ventura Port District and Coastal Cone, Inc. dba Coastal Cone and The Parlor

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners adopt Resolution No. 3482 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for a New Restaurant Lease Agreement between the Ventura Port District dba Ventura Harbor Village and Coastal Cone, Inc. dba Coastal Cone and The Parlor for the premises located at 1583 Spinnaker Drive #102 and #104 consisting of a total of 1,663 square feet of interior space, 1,186 square feet of patio, and 96 square feet of storage and mechanical equipment space for a five-year term with three five-year option.

2) Adoption of Ordinance No. 58 for a New 10-Year Lease between the Ventura Port District and The Boatyard, Inc. dba The Boatyard Pub

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners:

- a) Conduct a public hearing for the purpose of receiving input on proposed Ordinance No. 58.
- b) Waive reading and direct Clerk to place Ordinance No. 58 in the record of this meeting.
- c) Adopt Ordinance No. 58 authorizing execution of a new Restaurant Lease Agreement between Ventura Port District dba Ventura Harbor Village and The Boatyard, Inc. doing business as Boatyard Pub with a commencement date of August 1, 2023.

3) Authorize Application for a Grant from the National Fish and Wildlife Foundation for the Refugio Beach Oil Spill Settlement: South Coast Shoreline Parks and Outdoor Recreation Grants Program - 2023

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners authorize the District to apply for a grant with the National Fish and Wildlife Foundation for up to \$200,000 for the Refugio Beach Oil Spill Settlement: South Coast Shoreline Parks and Outdoor Recreation Grants Program - 2023.

ADJOURNMENT

*This agenda was posted on June 30, 2023 by 5:30 p.m. at the Port District Office and online at
<https://venturaharbor.com/board-meeting-documents/>*

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Ventura Port District at (805) 642-8538 or the California Relay Service at 711 or (800) 855-7100. Notification 72 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)



VENTURA
PORT DISTRICT
Established 1952

BOARD OF PORT COMMISSIONERS JULY 5, 2023

APPROVAL OF MINUTES JUNE 21, 2023 REGULAR MEETING

VENTURA PORT DISTRICT

BOARD OF PORT COMMISSIONERS MINUTES OF JUNE 21, 2023



CLOSED SESSION

CALL TO ORDER:

The Ventura Board of Port Commissioners Regular Closed Session Meeting was called to order by Chair Blumenberg at 6:15PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001 and via Zoom meeting.

ROLL CALL:

Commissioners Present:

Michael Blumenberg, Chair
Jackie Gardina, Vice-Chair
Anthony Rainey, Secretary
Chris Stephens

Commissioners Absent:

Brian Brennan

Port District Staff:

Brian Pendleton, General Manager
Todd Mitchell, Sr. Business Operations Manager
Jessica Rauch, Clerk of the Board via Zoom

Legal Counsel:

Tom Bunn, Lagerlof Lawyers LLP
Jeremy Shulman, Lagerlof Lawyers LLP

Number of interested persons:

0 via zoom; 0 in-person

PUBLIC COMMUNICATIONS: None. Closed at 6:16PM.

CONVENED TO CLOSED SESSION AT 6:17PM.

ADJOURNMENT: Closed Session was adjourned at 6:49PM.

OPEN SESSION

ADMINISTRATIVE AGENDA:

CALL TO ORDER:

The Ventura Board of Port Commissioners Regular Open Session Meeting was called to order by Chair Blumenberg at 7:00PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001 and via Zoom meeting.

PLEDGE OF ALLEGIANCE: By Wayne Hatch.

ROLL CALL:

Commissioners Present:

Michael Blumenberg, Chair
Jackie Gardina, Vice-Chair
Anthony Rainey, Secretary
Brian Brennan via Zoom arrived @ 7:03PM
Chris Stephens

Commissioners Absent:

None.

Port District Staff:

Brian Pendleton, General Manager
Todd Mitchell, Sr. Business Operations Manager
Jessica Rauch, Clerk of the Board
John Higgins, Harbormaster
Gloria Adkins, Accounting Manager
Joe Gonzalez, Capital Projects Manager
Jennifer Talt-Lundin, Marketing Manager
Wayne Hatch, Maintenance Supervisor
Jessica Snipas, Business Operations Analyst via Zoom
Sergio Gonzalez, Facilities Manager via Zoom
Dave Werneburg, Marina Supervisor via Zoom
Jessica Perkins, Accountant via Zoom

Legal Counsel:

Tom Bunn, Lagerlof Lawyers LLP

City of Ventura Liaisons

Councilmember McReynolds, City Council Liaison – Absent

Number of interested persons:

3 via zoom; 5 in person

ADOPTION OF AGENDA

ACTION: Commissioner Rainey moved to adopt the June 21, 2023 agenda.

Commissioner Gardina seconded. The vote was as follows:

AYES: Commissioners Blumenberg, Gardina, Rainey, Stephens

NOES: None

ABSTAINED: None

ABSENT: Commissioner Brennan

Motion carried 4-0.

APPROVAL OF MINUTES

The Minutes of the June 7, 2023 Regular Port Commission Meeting were considered as follows:

ACTION: Commissioner Stephens moved to approve the Minutes of the June 7, 2023 Regular Port Commission meeting with revisions to Standard Item 2.

Commissioner Brennan seconded. The roll call vote was as follows:

AYES: Commissioners Blumenberg, Gardina, Rainey, Brennan, Stephens

NOES: None

ABSTAINED: None.

ABSENT: None

Motion carried 5-0.

PUBLIC COMMUNICATIONS: Hall Stratton commented on the damage the pedal boats have done to his boat and asked if the issue could be addressed.

CLOSED SESSION REPORT: Mr. Bunn stated that the Board met in closed session; discussed and reviewed all items on the closed session agenda. The Board gave direction to staff as to how to proceed. No action was taken that is reportable under The Brown Act.

BOARD COMMUNICATIONS: Vice-Chair Gardina mentioned the large amount of sea lions and dolphins washed up on the beach. Chair Blumenberg attended last week's City Council meeting where he was reappointed to the Commission.

STAFF AND GENERAL MANAGER REPORTS: Mr. Pendleton reported on the current, past and upcoming marketing promotions and events and tenant activities. He also announced that "The Log" featured Ventura Harbor in the May issue.

CONSENT AGENDA:

A) Award of Bid for the FY2023-2024 Janitorial Services for Ventura Harbor Village Restrooms and District Administration Office

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners award the FY2023-2024 Janitorial Services Contract to Jani-King International Inc. in the amount of \$85,000.

Public Comment: None. Closed at 7:18PM.

ACTION: Commissioner Stephens moved to award the FY2023-2024 Janitorial Services Contract to Jani-King International Inc. in the amount of \$85,000.

Vice-Chair Gardina seconded. The roll call vote was as follows:

AYES: Commissioners Blumenberg, Gardina, Rainey, Brennan, Stephens

NOES: None

ABSTAINED: None.

ABSENT: None

Motion carried 5-0.

B) Rejection of Low Bid and Award of Second Low Bid for the FY2023-2024 Security Services for Ventura Harbor Village and Marina

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners:

- a) Find that the low bidder, Dial Security, is not responsible, and reject its bid on that basis.
- b) Award second low bid from Medallion Protective Services for the FY2023-2024 Security Services Contract in the amount of \$2,800/month, \$33,600/year with a contract ceiling of \$50,000.

Public Comment: None. Closed at 7:18PM.

ACTION: Commissioner Stephens moved to find that the low bidder, Dial Security, is not responsible, and to reject the bid and award the second low bid from Medallion Protective Services for the FY2023-2024 Security Services Contract in the amount of \$2,800/month, \$33,600/year with a contract ceiling of \$50,000.

Vice-Chair Gardina seconded. The roll call vote was as follows:

AYES: Commissioners Blumenberg, Gardina, Rainey, Brennan, Stephens

NOES: None

ABSTAINED: None.

ABSENT: None

Motion carried 5-0.

C) Award of Bid for the 1559 Spinnaker Drive Office Tenant Improvement Project

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners award the low bid from FCT Construction LLC in the amount of \$755,000 for the 1559 Spinnaker Drive, Tenant Improvement Modernization Project of approximately 4,000 square feet of office space.

Public Comment: None. Closed at 7:18PM.

ACTION: Commissioner Stephens moved to award the low bid from FCT Construction LLC in the amount of \$755,000 for the 1559 Spinnaker Drive, Tenant Improvement Modernization Project of approximately 4,000 square feet of office space.

Vice-Chair Gardina seconded. The roll call vote was as follows:

AYES: Commissioners Blumenberg, Gardina, Rainey, Brennan, Stephens

NOES: None

ABSTAINED: None.

ABSENT: None

Motion carried 5-0.

STANDARD AGENDA:

1) Ventura West Marina Parcel 17 Preliminary Development Concept and Master Lease Negotiations

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners:

- a) Receive an informational report regarding a preliminary development concept for Ventura West Marina (Parcel 17) by Master Tenant TBBW Company, L.P., a California limited partnership, associated entity Beauchamp Realty, Inc. and Aldersgate Investment.
- b) Authorize the General Manager to initiate formal lease negotiations with TBBW pursuant to the Master Lease.

Report by Dick Beauchamp, General Partner, TBBW Company, LP; Matt Mansi, Chief Operating Officer, Aldersgate Home; Eric Leslie, Director of Marina Operations, Beauchamp Realty Inc.

Public Comment: None.

ACTION: Commissioner Stephens moved to authorize the General Manager to initiate formal lease negotiations with TBBW pursuant to the Master Lease.

Vice-Chair Gardina seconded. The roll call vote was as follows:

AYES: Commissioners Blumenberg, Gardina, Rainey, Brennan, Stephens

NOES: None

ABSTAINED: None.

ABSENT: None

Motion carried 5-0.

2) Adoption of Resolution No. 3478 Approving a Notice of Proposed Ordinance for a New 10-Year Lease between the Ventura Port District and The Boatyard, Inc. dba The Boatyard Pub

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners adopt Resolution No. 3478 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for a New Restaurant Lease Agreement between the Ventura Port District dba Ventura Harbor Village and The Boatyard, Inc. dba The

Boatyard Pub for the premises located at 1583 Spinnaker Drive #109 consisting of a total of 2,675 square feet of interior space, 1,681 square feet of patio, and 90 square feet of storage and mechanical equipment space for a five-year term with one five-year option.

Report by Todd Mitchell, Sr. Business Operations Manager.

Public Comment: None. Closed at 8:07PM.

ACTION: Commissioner Brennan moved to adopt Resolution No. 3478 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for a New Restaurant Lease Agreement between the Ventura Port District dba Ventura Harbor Village and The Boatyard, Inc. dba The Boatyard Pub for the premises located at 1583 Spinnaker Drive #109 consisting of a total of 2,675 square feet of interior space, 1,681 square feet of patio, and 90 square feet of storage and mechanical equipment space for a five-year term with one five-year option.

Commissioner Stephens seconded. The roll call vote was as follows:

AYES: Commissioners Blumenberg, Gardina, Rainey, Brennan, Stephens

NOES: None

ABSTAINED: None.

ABSENT: None

Motion carried 5-0.

3) Adoption of Resolution No. 3479 Approving the FY2023-2024 Harbor Patrol Departmental Budget

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners adopt Resolution No. 3479 approving the FY2023-2024 Harbor Patrol Departmental Budget.

Chair Blumenberg announced that his son was employed by Harbor Patrol, and because of that he would not participate in the discussion or the vote on this item. He passed the gavel to Vice Chair Gardina.

Report by Brian D. Pendleton, General Manager.

Public Comment: None.

ACTION: Commissioner Stephens moved to adopt Resolution No. 3479 approving the FY2023-2024 Harbor Patrol Departmental Budget.

Commissioner Brennan seconded. The roll call vote was as follows:

AYES: Commissioners Gardina, Rainey, Brennan, Stephens

NOES: None

ABSTAINED: Chair Blumenberg

ABSENT: None

Motion carried 4-0.

4) Adoption of Resolution No. 3480 and No. 3481 Approving the FY2023-2024 Final Budget, Five-Year Capital Improvement Plan and Salary Schedule for Non-Represented Employees
Recommended Action: Roll Call Vote.

That the Board of Port Commissioners adopt:

- a) Resolution No. 3480 approving the FY2023-2024 Ventura Port District Annual Budget and Five-Year Capital Improvement Plan.
- b) Resolution No. 3481 approving the FY2023-2024 Salary Schedule for Non-Represented Employees of the District.

Report by Brian D. Pendleton, General Manager, Gloria Adkins, Accounting Manager and Todd Mitchell Sr. Business Operations Manager.

Public Comment: None. Closed 8:29PM.

ACTION: **Commissioner Stephens moved to adopt:**
a) **Resolution No. 3480 approving the FY2023-2024 Ventura Port District Annual Budget and Five-Year Capital Improvement Plan.**
b) **Resolution No. 3481 approving the FY2023-2024 Salary Schedule for Non-Represented Employees of the District.**

Commissioner Rainey seconded. The roll call vote was as follows:

AYES: Commissioners Blumenberg, Gardina, Rainey, Brennan, Stephens
NOES: None
ABSTAINED: None.
ABSENT: None

Motion carried 5-0.

5) Approval of Annual Professional Services Agreements for Administrative, Advocacy, Technical, and Legal Support Services
Recommended Action: Roll Call Vote.

That the Board of Port Commissioners approve the Professional Services Agreements with:

- a) Swift Chip, Inc. in the amount of \$112,000 from July 1, 2023 to June 30, 2024, \$113,500 from July 1, 2024 to June 30, 2025 and \$116,500 from July 1, 2025 to June 30, 2026 to provide information technology services.
- b) Carpi & Clay, Inc. in the amount of \$60,000 to provide the District with federal advocacy services from July 1, 2023 to June 30, 2024.
- c) K&L Gates in the amount of up to \$80,000 to provide advocacy for the establishment of aquaculture in proximity to Ventura Harbor and legal support for regulatory agency permitting particularly as it concerns inner harbor dredging and beach maintenance.
- d) Liebert Cassidy Whitmore in the amount of up to \$60,000 to provide human resources legal services from July 1, 2023 to June 30, 2024.
- e) Rincon Consultants, Inc. in the amount of up to \$165,000 to provide dredging support, inner harbor dredging technical support, and coastal development permitting support from July 1, 2023 to June 30, 2024.

- f) Dixon Consultants, Inc. in the amount of up to \$55,000 to provide managed parking consulting, permitting, stakeholder engagement, and procurement support from July 1, 2023 to June 30, 2024.
- g) RRM Design Group, Inc. in the amount of \$40,000 to provide architectural design services for the planning of developing the Parcel 5 grass lawn area from July 1, 2023 to June 30, 2024.

Report by Brian D. Pendleton, General Manager and Jessica Rauch, Clerk of the Board.

Public Comment: None. Closed at 8:34PM

ACTION: Vice-Chair Gardina moved to approve the Professional Services Agreements with:

- a) Swift Chip, Inc. in the amount of \$112,000 from July 1, 2023 to June 30, 2024, \$113,500 from July 1, 2024 to June 30, 2025 and \$116,500 from July 1, 2025 to June 30, 2026 to provide information technology services.
- b) Carpi & Clay, Inc. in the amount of \$60,000 to provide the District with federal advocacy services from July 1, 2023 to June 30, 2024.
- c) K&L Gates in the amount of up to \$80,000 to provide advocacy for the establishment of aquaculture in proximity to Ventura Harbor and legal support for regulatory agency permitting particularly as it concerns inner harbor dredging and beach maintenance.
- d) Liebert Cassidy Whitmore in the amount of up to \$60,000 to provide human resources legal services from July 1, 2023 to June 30, 2024.
- e) Rincon Consultants, Inc. in the amount of up to \$165,000 to provide dredging support, inner harbor dredging technical support, and coastal development permitting support from July 1, 2023 to June 30, 2024.
- f) Dixon Consultants, Inc. in the amount of up to \$55,000 to provide managed parking consulting, permitting, stakeholder engagement, and procurement support from July 1, 2023 to June 30, 2024.
- g) RRM Design Group, Inc. in the amount of \$40,000 to provide architectural design services for the planning of developing the Parcel 5 grass lawn area from July 1, 2023 to June 30, 2024.

Commissioner Rainey seconded. The roll call vote was as follows:

AYES: Commissioners Blumenberg, Gardina, Rainey, Brennan, Stephens
NOES: None
ABSTAINED: None.
ABSENT: None

Motion carried 5-0.

ADJOURNMENT: The meeting was adjourned at 8:35PM.

The next regular meeting is Wednesday, July 5, 2023.

Anthony Rainey, Secretary



BOARD OF PORT COMMISSIONERS JULY 5, 2023

STANDARD AGENDA ITEM 1 ADOPTION OF RESOLUTION No. 3482 APPROVING A NOTICE OF PROPOSED ORDINANCE FOR A NEW 20-YEAR LEASE BETWEEN THE VENTURA PORT DISTRICT AND COASTAL CONE, INC. DBA COASTAL CONE AND THE PARLOR

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 1
Meeting Date: July 5, 2023

TO: Board of Port Commissioners
FROM: Brian D. Pendleton, General Manager
Todd Mitchell, Sr. Business Operations Manager
SUBJECT: Adoption of Resolution No. 3482 Approving a Notice of Proposed Ordinance for a
New 20-Year Lease between the Ventura Port District and Coastal Cone, Inc. dba
Coastal Cone and The Parlor

RECOMMENDATION:

That the Board of Port Commissioners adopt Resolution No. 3482 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for a New Restaurant Lease Agreement between the Ventura Port District dba Ventura Harbor Village and Coastal Cone, Inc. dba Coastal Cone and The Parlor for the premises located at 1583 Spinnaker Drive #102 and #104 consisting of a total of 1,663 square feet of interior space, 1,186 square feet of patio, and 96 square feet of storage and mechanical equipment space for a five-year term with three five-year option.

SUMMARY:

The existing tenant Coastal Cone, Inc. is seeking to enter into a new Lease Agreement for its existing space commencing August 1, 2023.

GUIDING PRINCIPLES:

- 3) Grow financial sustainability through a reliable, recurring revenue stream supplemented with grants and public-private partnership investment while maintaining responsible budgeting practices.
- 5) Build respectful, productive relationships with employees, tenants, residents, visitors, stakeholders, public officials, and elected representatives while promoting diversity, equity, and inclusion.

5-YEAR OBJECTIVES:

- R) Seek opportunities to grow revenues and secure grants; continue to improve the quality, efficiency, and transparency of financial reporting, monitoring, and property management.
 - 3) Leasing/Property Management

BACKGROUND:

Coastal Cone, Inc. (doing business as both Coastal Cone as well as The Parlor) has been a tenant of Ventura Harbor Village since December 2004, when they assumed the lease from Coastal Cone Company. Their most recent Lease expired on April 30, 2023, and the tenant is seeking a new Lease with the District.

Since the proposed Lease and Option together equal twenty (20) years, the Board is required, pursuant to the California Harbors and Navigations Code Section 6270, to authorize and direct staff to publish a notice of its intent to adopt an Ordinance authorizing execution of the Lease. A copy of the Notice of Proposed Ordinance is attached for the Board's consideration.

If the Board adopts Resolution No. 3482 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for the new Lease in a newspaper of general circulation, the Board may then adopt the Ordinance at the next Board meeting and the new Lease would go into effect as of August 1, 2023.

FISCAL IMPACT:

This Lease reflects regular market rate for restaurant rent at Ventura Harbor Village with annual increases. The tenant has committed to making an investment of approximately \$75,000 in improvements to the space including constructing physical improvements, furniture, fixtures, and equipment.

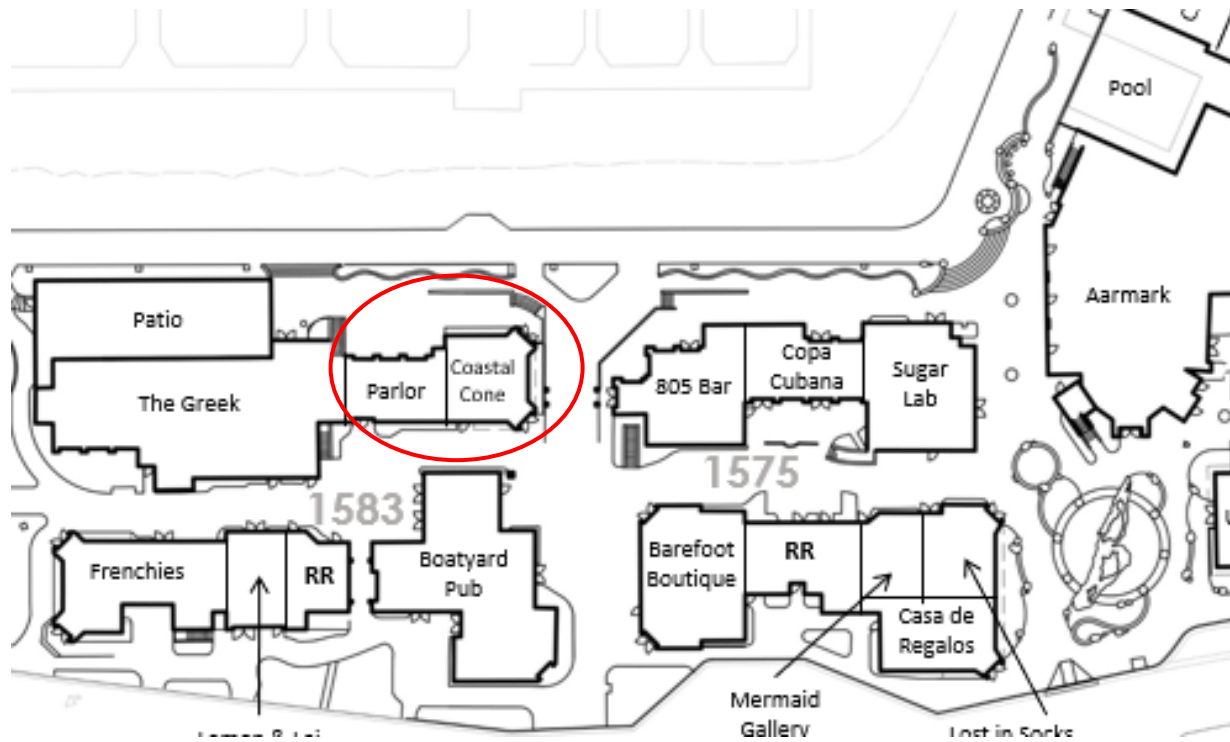
The District shall perform improvements to the concrete patio surface surrounding the restaurant in conjunction with the tenant's modernization of the patio structures and the District shall also reimburse the tenant up to \$20,000 in improvements performed by the tenant limited to those that are permanent improvements to the building and patios.

ATTACHMENTS:

Attachment 1 – Location Map

Attachment 2 – Resolution No. 3482

Attachment 1 – Location Map





RESOLUTION NO. 3482

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS
OF THE VENTURA PORT DISTRICT APPROVING A
NOTICE OF PROPOSED ORDINANCE FOR A NEW LEASE AGREEMENT WITH OPTIONS
BETWEEN THE VENTURA PORT DISTRICT AND COASTAL CONE INC. DBA COASTAL
CONE AND THE PARLOR FOR 1583 SPINNAKER DRIVE, SUITES #102 and #104**

WHEREAS, the Ventura Port District ("District") is considering entering into a new Lease with options with Coastal Cone Inc. dba Coastal Cone and The Parlor, with a commencement date of August 1, 2023, which options will entitle Coastal Cone Inc. to a new twenty (20) year lease ("Lease") upon the meeting of certain conditions, as set forth in the Lease.

WHEREAS, the Lease is for a period of five (5) years with three (3) five (5) year options for a total of up to twenty (20) years.

WHEREAS, pursuant to the California Harbors and Navigation Code section 6270, a lease of District property for a period of ten (10) or more years must be authorized by ordinance and published in a newspaper of general circulation in Ventura County at least once before final passage (Exhibit A).

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the Ventura Port District hereby authorizes and directs District staff to publish a notice of its intent to adopt an ordinance authorizing execution of the Lease and Options as Exhibit B, which is available for inspection at the District Office, to comply with Harbors and Navigation Code section 6270.

PASSED, APPROVED, AND ADOPTED at a Regular Meeting of the Board of Port Commissioners of Ventura Port District held this 5th day of July 2023, adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Michael Blumenberg, Chair

Anthony Rainey, Secretary

EXHIBIT A

**NOTICE OF PROPOSED ORDINANCE
OF THE VENTURA PORT DISTRICT**

(California Harbors and Navigation Code section 6270)

NOTICE IS HEREBY GIVEN that on July 19, 2023 at 7:00 PM, a meeting of the Board of Port Commissions of the Ventura Port District will be held at the District office located at 1603 Anchors Way Drive, Ventura, California and virtually via Zoom meeting.

Said meeting of the Board of Port Commissions is, in part, for the purpose of considering the adoption and passage of the following ordinance:

“ORDINANCE NO. 59

AN ORDINANCE OF THE BOARD OF PORT COMMISSIONERS
OF VENTURA PORT DISTRICT APPROVING A NEW
LEASE AGREEMENT WITH OPTIONS BETWEEN THE VENTURA PORT DISTRICT AND
COASTAL CONE INC. DBA COASTAL CONE AND THE PARLOR
(California Harbors and Navigation Code section 6270)

The Board of Port Commissioners of the Ventura Port District hereby ordains as follows:

The General Manager of the Ventura Port District is authorized and directed to execute the New Lease between Ventura Port District dba Ventura Harbor Village and Coastal Cone, Inc. doing business as Coastal Cone and The Parlor with a commencement date of August 1, 2023.”

A copy of the proposed lease agreement is available for inspection during regular business hours at the District Office located at 1603 Anchors Way Drive, Ventura, California.

If the foregoing ordinance is adopted upon the majority vote of the Board of Port Commissioners of the Ventura Port District, said ordinance will become effective immediately after final passage.

This Notice is published at the direction of the Board of Port Commissioners pursuant to Resolution No. 3482 duly adopted at the regular meeting of the Board of Port Commissioners of the Ventura Port District held on July 5, 2023.

Brian D. Pendleton, General Manager
Ventura Port District

EXHIBIT B

VENTURA PORT DISTRICT RESTAURANT LEASE

COASTAL CONE, INC.

TABLE OF CONTENTS

Articles		Page
ARTICLE 1	Fundamental Lease Provisions	1
ARTICLE 2	Exhibits	2
ARTICLE 3	Premises	3
ARTICLE 4	Term	3
ARTICLE 5	Rent	4
ARTICLE 6	Definition of "Adjusted Gross Sales"	6
ARTICLE 7	Records and Accounting	8
ARTICLE 8	Possession And Use	9
ARTICLE 9	Utilities Services	10
ARTICLE 10	Indemnity – Insurance – Waiver of Subrogation	11
ARTICLE 11	Title of Landlord	12
ARTICLE 12	Tenant's Right to Make Alterations	13
ARTICLE 13	Mechanics' Liens	14
ARTICLE 14	Advertising Signs	14
ARTICLE 15	Fixtures and Personal Property	14
ARTICLE 16	Assigning, Mortgaging, Subletting, Change in Corporate Ownership	15
ARTICLE 17	Tenant's Conduct of Business	17
ARTICLE 18	Repairs and Maintenance	18
ARTICLE 19	Reconstruction	20
ARTICLE 20	Automobile Parking and Common Areas	21
ARTICLE 21	Hazardous Substances and Environmental Indemnity	24
ARTICLE 22	Default and Breach by Tenant - Remedies	24
ARTICLE 23	Breach by Landlord	27
ARTICLE 24	Condemnation	27
ARTICLE 25	Dispute Resolution	28
ARTICLE 26	Sale of Premises by Landlord	29
ARTICLE 27	Subordination, Attornment	29
ARTICLE 28	Quiet Possession	29
ARTICLE 29	Marketing and Promotion Fund	29
ARTICLE 30	Captions and Terms	29
ARTICLE 31	Notices	30
ARTICLE 32	Successors - Covenants	30

{107700-01/000/00789494-2 }

-i-

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

VENTURA PORT DISTRICT
RESTAURANT LEASE

EXHIBIT B

ARTICLE 33	Consent of Landlord and Tenant	30
ARTICLE 34	Security Deposit	30
ARTICLE 35	Compliance with Permits and Approvals	31
ARTICLE 36	Miscellaneous	31
Exhibit A	General Site Plan	
Exhibit A-1	Approximate location, configuration and dimensions of Tenant's Premises	
Exhibit B	Description of the Premises	
Exhibit C	Provisions Relating to Construction of Tenant's Improvements	
Exhibit D	Tenant's Certificate	
Exhibit E	Guaranty of Lease	
Exhibit F	Sign Criteria	
Exhibit G	Parking Rules and Regulations	
Exhibit H	Options to Extend	
Exhibit I	Relocation of Premises	
Exhibit J	Grease Trap Maintenance	
Exhibit K	Forms of Faithful Performance and Payment Bonds	

{107700-01/000/00789494-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

-ii-

VENTURA PORT DISTRICT
RESTAURANT LEASE

EXHIBIT B

VENTURA PORT DISTRICT

RESTAURANT LEASE

In consideration of the rents and covenants hereinafter set forth, Landlord named below hereby leases to Tenant named below, and Tenant hereby leases from Landlord the following described Premises upon the following terms and conditions:

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

1.1 Date of Lease: August 1, 2023

1.2 Landlord: Ventura Port District, doing business as "Ventura Harbor Village".

1.3 Tenant: Coastal Cone, Inc.

1.4 Tenant's Trade Names: Coastal Cone and The Parlor (Section 8.1 and Exhibit "B")

1.5 Premises: Approximately 1,663 square feet of floor area, 1,186 square feet of patio space, and xx square feet of storage space in Ventura Harbor Village, commonly known as 1583 Spinnaker Drive, # #102 and #104, Ventura California 93001. (Article 3 and Exhibit "B")

1.6 Lease Term: Five (5) years and Zero (0) months, commencing on August 1, 2023 ("Commencement Date"), subject to exercise of Three (3) Five (5) year Option(s) to Extend (Exhibit "H"). (Total Lease Term of more than 10 years approved by ordinance. Harbors & Navigation Code Section 6270)

1.7 Minimum Monthly Rent: three thousand seven hundred fifty-eight dollars (\$3,758.00) per month, payable on the first day of each calendar month commencing with the Commencement Date. (Section 5.1)

1.7.1 Minimum Monthly Rent shall be adjusted on each anniversary of the Commencement Date in accordance with the chart below for the first five (5) years of the Lease Term (the "Negotiated Rent Term"). Thereafter, Minimum Monthly Rent shall be adjusted in accordance with Section 5.12.

Year	Minimum Monthly Base Rent			Per Month	Per Square Foot	Increase
Year 1	August 1, 2023	to	July 31, 2024	\$3,758.00	\$2.26	N/A
Year 2	August 1, 2024	to	July 31, 2025	\$3,875.00	\$2.33	3%
Year 3	August 1, 2025	to	July 31, 2026	\$3,991.00	\$2.40	3%
Year 4	August 1, 2026	to	July 31, 2027	\$4,108.00	\$2.47	3%
Year 5	August 1, 2027	to	July 31, 2028	\$4,224.00	\$2.54	3%
Option Years	August 1, 2028		Onward	Annual CPI Increases		

1.8 Additional Percentage Rent: one and one half percent (1.5%) of Tenant's Adjusted Gross Sales (as defined in Article 6) from, internet sales (as defined in Paragraph 6.19); three percent (3%) of Tenant's Adjusted Gross Sales of food, beverages, and retail; and three percent (3%) of Tenant's Adjusted Gross Sales that do not fall into any category of Adjusted Gross Sales listed above; provided, however, notwithstanding the foregoing, the preceding is subject to adjustment pursuant to the option to sell alcohol described in Exhibit "B". (Section 5.6)

1.9 Permitted Use: Tenant shall use the Premises only for a quick-service casual dining restaurant that serves ice cream, desserts, breakfast, lunch, and dinner with the sale of non-alcoholic beverages; provided, however, notwithstanding the foregoing, the preceding is subject to adjustment pursuant to the option to sell alcohol described in Exhibit "B". (Section 8.1 and Exhibit "B")

1.10 Addresses for Notices:

To Landlord:
Ventura Port District
1603 Anchors Way Drive
Ventura, California 93001

To Tenant:
Coastal Cone, Inc.
1583 Spinnaker Drive, #104
Ventura, California 93001

{107700-01/000/00789494-2 }

EXHIBIT B

- 1.11 Security Deposit: three thousand seven hundred fifty-eight dollars (\$3,758) (Article 34)
- 1.12 Trash Removal Expenses Charge: three hundred (\$300) per month for the first year, payable on the first day of each calendar month commencing with the Commencement Date. (Section 17.3)
- 1.12.1 Trash Removal Expenses Charge shall be adjusted on each anniversary of the Commencement Date in accordance with the chart below for the first three (3) years. Landlord may adjust charge each calendar year during the Lease after Year 3.
- | | |
|-----------------|-------------------|
| \$300.00 | Monthly in Year 1 |
| \$400.00 | Monthly in Year 2 |
| \$465.64 | Monthly in Year 3 |
- 1.13 Common Area Expenses rate per square foot: Sixty Cents (\$.66) (Section 20.4)
- 1.14 Common Area Expenses Initial Charge: one thousand ninety-seven dollars and fifty-eight cents (\$1,097.58) per month, payable on the first day of each calendar month commencing with the Commencement Date. (Section 20.4)
- 1.15 Marketing and Promotion Fund Payment: four hundred forty-nine dollars and one cent (\$449.01) per month, payable on the first day of each calendar month commencing with the Commencement Date. This amount shall be increased by three and a half percent (3.5%) each anniversary of the Commencement Date during the Lease Term, including any option periods of the Lease Term. (Section 29.2)
- 1.16 FOG Expenses Charge: Tenant shall have its grease pits serviced at least two (2) times during each calendar year or more frequently as needed. Landlord, at least yearly, shall remove any FOG in the sewer lines of the Complex by hydro-jetting the sewer lines from beyond the exterior wall of the building in which the Premises are located out to the City's main sewer line. All expenses in connection with this FOG removal service and maintenance ("FOG Expenses") shall be paid by those tenants generating FOG. The amount of the FOG Expenses charged shall be proportional based on actual cost incurred by Landlord. (Exhibit "J")

All references in this Article 1 to other Articles and Sections are for the purposes of convenience and to designate the principal other Articles and Sections in which the matters summarized under the particular Fundamental Lease Provision are dealt with in detail. Each reference in this Lease to any of the Fundamental Lease Provisions contained in this Article 1 shall be construed to include all of the terms provided for under each such Fundamental Lease Provision or incorporated therein by reference. In the event of any apparent conflict between any Fundamental Lease Provision and specific clauses contained within the balance of the Lease, the latter shall control.

ARTICLE 2 - EXHIBITS

The following special provisions are attached hereto as Exhibits and made a part of this Lease:

2.1 Exhibit "A" - General Site Plan of the integrated retail/commercial complex known as "Ventura Harbor Village" on approximately thirty-six (36) acres of land and water within the Ventura Port District, located at the City of San Buenaventura, County of Ventura, State of California, which land is bounded by Spinnaker Drive, the Ventura Yacht Club, the Ventura Harbor Basin, and the Ventura Isle Marina, and is hereinafter referred to as the "Complex." Said site plan shows, among other things, the principal improvements and uses which comprise the Complex. Tenant acknowledges that Landlord may change shape, size, location, number, and extent of the improvements shown thereon and eliminate or add any uses or improvements to any portion of the Complex, provided that Landlord shall not change the size or location of Tenant's Premises without Tenant's consent.

- 2.2 Exhibit "A-1" - Approximate location, configuration and dimensions of Tenant's Premises
- 2.3 Exhibit "B" - Description of the Premises, authorized use, noise level, and Tenant's trade names
- 2.4 Exhibit "C" - Provisions Relating to Construction of Tenant's Improvements
- 2.5 Exhibit "D" - Tenant's Certificate

{107700-01/000/00789494-2 }

EXHIBIT B

- 2.6 Exhibit "E" – Guaranty of Lease
- 2.7 Exhibit "F" – Sign Criteria
- 2.8 Exhibit "G" – Parking Rules and Regulations
- 2.9 Exhibit "H" – Options to Extend
- 2.10 Exhibit "I" – Relocation of Premises
- 2.11 Exhibit "J" – Grease Trap Maintenance
- 2.12 Exhibit "K" – Forms of Faithful Performance and Payment Bonds

ARTICLE 3 - PREMISES

Landlord leases to Tenant and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, the commercial space referred to herein as the "Premises," and described on Exhibit "B." Any statement of square footage set forth in this Lease or its attachments is an approximation which Landlord and Tenant agree is reasonable, and the rent is not subject to revision whether or not the actual square footage is more or less.

Landlord hereby warrants that the Premises have undergone inspection by a Certified Access Specialist (CASp) pursuant to Civil Code Section 1938. The Premises have not been determined to meet all applicable construction-related accessibility standards pursuant to Civil Code Section 55.53. Tenant acknowledges, understands, and agrees that: (i) it has been given an opportunity to inspect and measure the Premises; (ii) it is familiar with the Premises and improvements now existing thereon, and takes and accepts its leasehold interest in the Premises in their **PRESENT "AS IS"** condition and with all faults; (iii) it has been advised by Landlord to satisfy itself with respect to the size and condition of the Premises (including, but not limited to, the plumbing, electrical, HVAC and fire sprinkler systems, if any, security, environmental aspects, and compliance with any and all building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances, and the Americans with Disabilities Act of 1990 and any corresponding laws of the State of California), and their suitability for Tenant's intended use; (iv) it has made such investigation as it deems necessary with reference to such matters, and assumes all responsibility therefor, at its sole cost and expense, as the same relate to its occupancy and use of the Premises, including, but not limited to, making any necessary corrective work thereto that may be required for Tenant's use and occupancy of the Premises, and/or to ensure compliance with all building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances, and the Americans with Disabilities Act of 1990 and any corresponding laws of the State of California; and (v) the square footage of the Premises was not material to Tenant's decision to lease the Premises and pay the rent stated herein.

ARTICLE 4 - TERM

4.1 Setting Term. The obligations of Landlord and Tenant under this Lease shall begin as of the date stated in Section 1.1 hereof and shall continue thereafter during the Lease Term specified in Article 1 hereof and shall end on the last day of the last full calendar month of the Lease Term, unless extended or sooner terminated as hereinafter provided in this Lease. The Lease Term shall begin on the Commencement Date set in Section 1.6.

4.2 Delivery of Possession. Landlord shall deliver to Tenant and Tenant shall accept from Landlord, possession of the Premises forthwith upon substantial completion of Landlord's work on the Premises as described in Exhibit "C," if any. In the event that Landlord is unable to deliver a substantially complete Premises ready for the installation by Tenant of its improvements within nine (9) months from the date hereof, then this Lease shall terminate as of said date and each of the parties hereto shall be released from any further obligations hereunder.

4.3 Definition of Substantial Completion. The phrase "substantial completion of Premises" is defined as the date when the Premises are substantially complete with respect to the finishing of Landlord's work as specified in Exhibit "C" so that Tenant's contractor may commence the construction of Tenant's work as described in Exhibit "C"

{107700-01/000/00789494-2 }

EXHIBIT B

hereof. Tenant and its contractor shall diligently prosecute such construction of Tenant's work to completion and shall open the Premises for business on or before the Commencement Date specified in Section 1.6.

4.4 Acceptance of Premises. Upon substantial completion of the Premises and Tenant's acceptance of the same, Tenant shall be deemed to have satisfied itself with respect to the condition of the Premises and the present and future suitability of the Premises for Tenant's intended use. Tenant shall be responsible for making such investigation as it deems necessary, and Tenant shall not rely on any oral or written representations or warranties made with respect to the Premises by Landlord or its employees, agents, or contractors, except as set forth in this Lease and its attachments.

4.5 Tenant's Certificate. Within ten (10) days after the Date of Lease specified in Section 1.1, Tenant shall execute and deliver to Landlord a certificate substantially in the form of the attached Exhibit "D," indicating thereon any exceptions thereto which may exist at that time. Failure of Tenant to execute and deliver such certificate shall constitute an unqualified acceptance of the Premises and an acknowledgment by Tenant that the statements included in Exhibit "D" are true and correct, without exception. In addition thereto, if Tenant fails to execute and deliver such statement to Landlord within said ten (10) day period, Landlord may, as attorney in fact of Tenant, coupled with an interest, execute such statement for, and on behalf of, and in the name of Tenant. If requested by Landlord in writing, Tenant shall give similar certificates from time to time during the term of this Lease in the manner hereinabove provided.

ARTICLE 5 - RENT

Tenant shall pay to Landlord as rent for the use and occupancy of the Premises, at the times and in the manner hereinabove provided, the following sums of money:

5.1 Minimum Monthly Rent. The Minimum Monthly Rent specified in Section 1.7 hereof shall begin on the Commencement Date specified in Section 1.6; and it shall be payable in monthly installments during the Lease Term, in advance, on the first day of each calendar month, without offset or deduction. If the rent payment period commences on a day of the month other than the first day of such month, the rent for the first fractional month shall be computed on a daily basis for the period from the date of commencement to the end of such calendar month and in an amount equal to one-thirtieth (1/30) of the said Minimum Monthly Rent for each such day, and shall be paid together with the rent for the first full calendar month.

5.2 Taxes. Under all circumstances, Tenant shall be responsible for all taxes and general and special assessments levied upon Tenant, Tenant's personal property, and Tenant's interest in the Premises and the underlying realty of which the Premises are a part, including all possessory interest taxes. A taxable possessory interest is created when a private party is granted the exclusive use of real property owned by a non-taxable entity. Therefore, a tax assessment is automatically triggered by the County Assessor's office due to the lease of government-owned property by a private corporation/citizen (see: the link below for more information concerning why possessory interest taxes are assessed and why this is not included in your lease payments).

<https://assessor.countyofventura.org/assessmentresources/PossessoryInterests.asp>

Tenant acknowledges and agrees that this Lease may create a possessory interest subject to property taxation. In addition to the Minimum Monthly Rent provided for in Section 5.1 above, Tenant shall pay County Assessor's Office on demand prior to the taxing authorities' delinquency date each year or partial year of the Lease Term, all taxes and general and special assessments levied upon the Tenant. If at any time during the Lease Term, the federal government, the State of California or any political subdivision of the state, including any county, city, public corporation, district, or any other political entity or agency of the state, levies or assesses against Landlord a tax, fee, or excise: (1) on rents, (2) on the square footage of the Premises, (3) on the act of entering into this Lease, (4) on the occupancy of Tenant, or (5) any other tax, fee, or excise, including, without limitation, a so-called value added tax as a direct substitute in whole or in part for, or in addition to, any real property taxes, Tenant shall pay, upon demand before delinquency that tax, fee, or excise on rents.

Tenant Initial: 

{107700-01/000/00789494-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT B

5.3 Assessments. If any general or special assessment is levied and assessed against the Complex and the underlying realty of which the Premises are a part, Landlord can elect to either pay the assessment in full or allow the assessment to go to bond. If Landlord pays the assessment in full, Tenant shall pay to Landlord each time a payment of real property taxes is due a sum equal to that which would have been payable (as both principal and interest) had Landlord allowed the assessment to go to bond.

5.4 Proration of Taxes. Tenant's liability to pay real property taxes and other taxes pursuant to Section 5.2 shall be prorated on the basis of a 360-day year to account for any fractional portion of a fiscal year included in the Lease Term at its commencement and expiration.

5.5 Insurance Expense. In addition to the Minimum Monthly Rent provided for in Section 5.1 above, and in addition to the payment of taxes as provided for in Section 5.2, Tenant shall pay to Landlord, as additional rent, on demand, during each year or partial year of the Lease Term beginning on the Commencement Date, its proportionate share of all insurance premiums paid by Landlord with respect to the Complex, including but not limited to the premiums for that insurance obtained under Article 10 of this Lease. Tenant's proportionate share of such insurance premiums shall be determined in the manner provided in Section 5.4 for the determination of Tenant's proportionate share of real property taxes.

5.6 Additional Percentage Rent. Tenant shall also pay Landlord Additional Percentage Rent in an amount equal to the total of the applicable percentages of Tenant's Adjusted Gross Sales (as defined in Article 6), as specified in Section 1.8, made each calendar month during the Lease Term. On or before the tenth (10th) day of each calendar month, Tenant shall compute and pay to Landlord Additional Percentage Rent for Tenant's Adjusted Gross Sales made during the immediately preceding calendar month. Payments of Additional Percentage Rent will not be accepted, and will be considered unpaid, if such payment is not accompanied by a statement of Adjusted Gross Sales for the applicable month, as specified in Section 5.8.

5.7 Fractional Months. For the purposes of computing Additional Percentage Rent, the Adjusted Gross Sales in the first fractional month in which such rent commences shall be added to the Adjusted Gross Sales for the first full calendar month thereafter and any percentage rent due and payable for such entire period shall be in addition to the monthly installments of Minimum Monthly Rent which Tenant shall have paid during said period. For the purpose of computing the percentage rent, the Adjusted Gross Sales in the last fractional month shall be determined and any percentage due and payable for this period shall be such sum as may be in addition to the monthly installments of Minimum Monthly Rent which Tenant shall have paid during such period.

5.8 Statement of Adjusted Gross Sales. Tenant shall furnish or cause to be furnished to Landlord a statement of Adjusted Gross Sales of Tenant within ten (10) days after the close of each calendar month, and an annual statement of Adjusted Gross Sales, to be certified as correct by Tenant under penalties of perjury or by a certified public accountant employed by Tenant, within thirty (30) days after the close of each calendar year. Such statements shall be signed by Tenant if Tenant is composed of individuals, or by a responsible officer, member, or partner if Tenant is a corporation, limited liability company or partnership, or by a certified public accountant. No later than May 1, the Tenant shall also furnish a copy of the business's Form 1120 Tax Form (page 1) from the previous year to the Landlord. Tenant shall keep full and accurate books of account, records and other pertinent data on the gross sales and "Adjusted Gross Sales" as hereinafter defined and the business relating to the Premises (including the gross sales and Adjusted Gross Sales of any subtenant, licensee, or concessionaire) and such books and records shall be kept for a period of five (5) years after the close of each calendar year. The receipt by Landlord of any statement or any payment of percentage rent for any period shall not bind it as to the correctness of the statement or the payment. At any time within three (3) years after the receipt of any statement, Landlord shall be entitled to an audit of such gross sales and Adjusted Gross Sales conducted by Landlord or by a certified public accountant to be designated by Landlord. Such audit shall include the determination of the "Adjusted Gross Sales" as defined in this Lease and shall be conducted during normal business hours and either at the Premises or the principal place of business of Tenant. If it shall be determined as a result of such audit that there has been a deficiency in the payment of percentage rent, then such deficiency shall become immediately due and payable with interest at the maximum legal rate from the date when said payment should have been made. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated Adjusted Gross Sales by more than two percent (2%) and Landlord is entitled to any additional percentage rent as a

{107700-01/000/00789494-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT B

result of said understatement, then Tenant shall pay all of Landlord's reasonable costs and expenses connected with the audit. Any information gained from such statements or inspection shall be confidential and shall not be disclosed other than to carry out the purposes of this Lease or to meet the disclosure requirements governing public bodies; Landlord shall also be permitted to divulge the contents of any such statements in connection with any financing arrangements or assignments of Landlord's interest in the Premises or in connection with any administrative or judicial proceedings in which Landlord is involved and where Landlord may be required to divulge such information.

5.9 Designation as Additional Rent. Tenant shall pay, as additional rent, all sums of money required to be paid pursuant to the terms of this Article 5, the sums to be paid pursuant to Articles 8, 9, 13, 17, 18, 19, 20, 29 and Exhibit "C" of this Lease, and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not the same be designated "additional rent." If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as additional rent with the installment of Minimum Monthly Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charges at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord.

5.10 Interest and Late Charges. If Tenant shall fail to pay, when the same is due and payable, any rent or any additional rent, or amounts of charges of the character described in Section 5.9 hereof, such unpaid amounts shall bear interest at the rate of Twelve Percent (12%) per year, or the maximum legal rate, whichever is less, from the date due to the date of payment. In addition to such interest, if Tenant shall fail to pay the Minimum Monthly Rent, additional rent, or charges described in Section 5.9, a late charge shall be payable pursuant to Section 22.3. All rent called for in this Lease shall be payable in lawful money of the United States. The interest and late charge provisions contained herein are in addition to and do not diminish or represent a substitute for any or all of Landlord's rights under Article 22 hereof.

5.11 Address for Payment of Rent. All rent and other payment shall be paid by Tenant to Landlord at the following address: 1603 Anchors Way Drive, Ventura, California 93001, or at such other place as may from time to time be designated by Landlord in writing at least ten (10) days prior to the next ensuing payment date.

5.12 Cost of Living Adjustment. The Minimum Monthly Rent to be paid pursuant to the terms of Sections 1.7 and 5.1 shall be subject to adjustment as of the first anniversary of the Commencement Date after the Negotiated Rent Term, and on each subsequent anniversary of the Commencement Date, and also on each subsequent anniversary of the Commencement Date during any option periods of the Lease Term, including the first option period and successive option periods, referred to hereafter as the "Adjustment Date," as follows:

5.12.1 Computation. The base for computing the adjustment is the Consumer Price Index-All Urban Consumers (Los Angeles - Long Beach - Anaheim) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index") which is most recently published twelve months prior to the Adjustment Date (the "Beginning Index"). If the Index most recently published prior to the Adjustment Date (the "Adjustment Index") has increased over the Beginning Index, the Minimum Monthly Rent for the months of the following year (until the next rent adjustment) shall be set by multiplying each of the payments of Minimum Monthly Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no event, however, shall the Minimum Monthly Rent be reduced below the amounts previously set.

5.12.2 Changed Index. If the Index is changed so that the base year differs from that used as of the month prior to the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Lease Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

ARTICLE 6 - DEFINITION OF "ADJUSTED GROSS SALES"

6.1 Inclusions. "Adjusted Gross Sales" shall include:

6.1.1 The actual sale or lease price of all goods, wares, merchandise or products (including those held for sale on consignment) sold, leased, or delivered on or from the Premises, whether sold, leased, or delivered,

{107700-01/000/00789494-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT B

including exchange or barter transactions, by Tenant, its agents, subtenants, concessionaires, or licensees before deducting trade-in allowances, and regardless of whether for cash or on credit, and, in case of sales on credit, of whether payment is actually made or not. For the purpose of the foregoing, each transaction on credit or in installments shall be treated as a transaction for the full price in the month in which the sales are made, irrespective of whether paid for within that month.

6.1.2 Gross receipts from all charges made by Tenant, its agents, subtenants, concessionaires or licensees for the sale, lease, or rendition of services on or from the Premises of any nature or kind whatsoever, whether for cash or on credit and, in the case of credit, whether payment is actually made or not.

6.1.3 Gross receipts from all rent, admission, entry and other fees and charges relating to use of or activity on the Premises of any nature or kind charged to others on the Premises by Tenant, its agents, subtenants, concessionaires and licensees, or charged by Tenant to its agents, subtenants, concessionaires, and licensees, except percentage rent paid by them to Tenant.

6.1.4 All non-refundable and forfeited deposits received by Tenant, its agents, subtenants, concessionaires, or licensees in connection with any transaction conducted or occurring in, at, upon, or from the Premises.

6.1.5 Gross receipts from all coin-operated or other vending devices on the Premises, including telephones, video games, etc.

6.1.6 The amount received under any rental insurance policy maintained by Tenant, its agent, subtenants, concessionaires, or licensees.

6.1.7 The fair market value of all consideration passing to Tenant from its agents, subtenants, concessionaires, and licensees, except percentage rent paid by them to Tenant.

6.1.8 All gross income or gross receipts of Tenant, its agents, subtenants, concessionaires, or licensees from any operation, in, at, upon, from or connected to the Premises which are neither specifically included in nor excluded from the definition of Adjusted Gross Sales pursuant to other provisions of this Lease; provided, however, notwithstanding the foregoing, Tenant shall not purposefully direct any sales to any online shop other than the internet site(s) associated with the Premise of which Tenant has previously informed Landlord in writing or any other off-site location.

6.1.9 All gross income or gross receipts from internet sales, which include any and all commercial transactions completed online, whether through a website operated by Tenant or through third party e-commerce websites, of any and all goods, wares, merchandise, products or services that are related to Tenant's business or would be attributable to or connected with Tenant's business on the Premises in the customary course of Tenant's operation.

6.1.10 Gross receipts from all fees and charges for catering services, banquet supplies, and related activities, whether or not conducted on the Premises or elsewhere.

6.2 Exclusions. Excluded from "Adjusted Gross Sales", or subtracted if previously included, shall be:

6.2.1 All sums collected and paid out for sales taxes, luxury taxes, excise taxes, and similar taxes required by law (whether now or hereafter in force) to be added to the total purchase price, collected from customers, and paid over to the applicable taxing authority by Tenant, its agents, subtenants, concessionaires, or licensees.

6.2.2 Merchandise returned to shippers or manufacturers.

6.2.3 All credits, and cash refunds, and refundable deposits made on any sale that took place on or from the Premises, provided that the sale price was previously included in Adjusted Gross Sales.

6.2.4 All cash credit received in settlement of any claims for loss of or damage to merchandise or insurance proceeds received on account of damages to the Premises.

6.2.5 Any refundable deposit received by Tenant, its agents, subtenants, concessionaires, or licensees; provided, however, that in the event that Tenant, its agents, subtenants, concessionaires, or licensees

{107700-01/000/00789494-2 }

-7-

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

VENTURA PORT DISTRICT
RESTAURANT LEASE

EXHIBIT B

become entitled to any or all of said deposits by reason of any act of the depositor, the amounts to which Tenant, its agents, subtenants, concessionaires, or licensees become entitled shall be included in gross income.

6.2.6 Merchandise transferred or exchanged between their stores or warehouses owned by or affiliated with Tenant, its agents, subtenants, concessionaires, or licensees, if those transfers or exchanges are made solely for convenient operation of such business and not for the purpose of consummating a sale previously made on or from the Premises or for the purpose of depriving Landlord of the benefit of a sale that otherwise would be on or from the Premises.

6.2.7 Bulk sales made by Tenant, its agents, subtenants, concessionaires, or licensees not in the ordinary course of business.

6.2.8 Any income, revenue, or receipts that, under generally accepted accounting principles, are derived from the sale or disposal of any capital assets, or from the retirement of any indebtedness, or from the investment by Tenant or its agents, subtenants, concessionaires, or licensees of any funds invested in (i) the Premises or (ii) the operation of Tenant's business or the business of its agents, subtenants, concessionaires, or licensees within the Premises.

6.2.9 That portion of the gross income of all coin-operated devices including pay telephones, video games, and other similar devices, that Tenant, must, by contract concerning them, turn over to a person, firm, or corporation in which they have no direct or indirect financial interest.

6.2.10 Any charges or monies received by Tenant from any of its agents, subtenants, concessionaires, or licensees, as and for rentals to be paid by them to Tenant, except with respect to any such persons who conduct no business activity resulting in gross income for which percentage rent is payable.

6.2.11 The amounts of tips or gratuities included in credit charges made by Tenant, its agents, subtenants, concessionaires, or licensees to customers of any permitted restaurant and bar.

6.3 No Deductions. There shall be no deduction from gross receipts for any overhead or similar costs or expenses of operation, such as, but without limitation, salaries, wages, costs of goods, interest, debt amortization, discount, collection, credit card and bad debt charges, insurance and taxes except as provided for in this Lease.

6.4 Transactions Related to Premises. As used in this Article 6, the term "gross receipts" shall also include all orders secured or received by telephone, mail, house to house, or other canvass by personnel operating from, reporting to or under the supervision of any employee or representative located at or operating out of the Premises, or which Tenant, in the customary course of Tenant's operation would be attributable to or connected with Tenant's business on the Premises whether or not sold or delivered elsewhere.

ARTICLE 7 - RECORDS AND ACCOUNTING

7.1 Basic Records. Tenant shall keep, or cause to be kept, full, complete, and proper books, records, and accounts of the gross sales both for cash and on credit, of each separate business of Tenant, its agents, subtenants, concessionaires, or licensees, at any time operated on the Premises. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents. Said books, records, and accounts shall include any income tax returns and sales tax reports that Tenant, its agents, subtenants, concessionaires or licensees may be required to furnish to any government or governmental agency. Tenant will also, at Tenant's expense, record in its books and records an inventory of all merchandise to be sold on the Premises by it.

7.2 Cash Registers. All sales shall be recorded by means of cash registers of a type which publicly display the amount of each sale and automatically issue a customer's receipt (e.g. POS, Shop Keep, Square). Said cash register shall in all cases have locked-in sales totals and transaction counters which are consistently accumulating and which cannot, in any case, be reset and, in addition thereto, a tape located within the register on which the transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a

{107700-01/000/00789494-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT B

matter of daily record. As a condition of this Lease, Tenant agrees to record all transactions encompassed within the definition of Adjusted Gross Sales contained in Article 6 of this Lease by means of a cash register.

ARTICLE 8 - POSSESSION AND USE

8.1 Permitted Use. Possession of the Premises shall be delivered to Tenant free of liens and encumbrances, except those as may be specified in Article 11 hereof. Tenant shall use the Premises solely for the purposes and under the trade names specified on Exhibit "B". Tenant shall not use or permit the Premises to be used for any other purposes or under any other trade name whatsoever without the written consent of Landlord first had and obtained. The parties recognize and acknowledge that the manner in which the Premises is used and operated is of critical concern to Landlord, and to the Ventura Port District by reason of (a) the prominence of the location of the Premises and (b) the impact which the Tenant's operation is expected to have upon surrounding properties and upon the operation of the Ventura Port District. Notwithstanding the permitted uses of the Premises outlined in Exhibit "B," Tenant shall not use or permit the Premises to be used in any manner that is harmful to, out of harmony with, or objectionable to the development, operation, or reputation of the Ventura Port District or the Complex. Such prohibited conduct includes, but is not limited to the sale, display, or promotion of any merchandise, performances, or other materials that are lewd, obscene, vulgar, indecent, or defamatory. Tenant shall not, without the prior written consent of Landlord, sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Tenant shall not use or suffer or permit any person or persons to use the Premises or any part thereof for conducting therein a second-hand store, auction, distress or fire sale, or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the state, county, and city where the Complex is situated, or other lawful authorities including Landlord. Tenant shall not reside or sleep in the Premises, nor shall Tenant suffer or permit any person or persons to reside or sleep in the Premises. During the Lease Term, the Premises and every part thereof, shall be kept by the Tenant in a clean and wholesome condition, free of any objectionable noises, odors, or nuisances; and all health and police regulations shall, in all respects and at all times, be fully complied with by Tenant.

8.2 Restrictions Outside of Premises. Tenant shall not, without first obtaining, in each instance, the advance written consent of Landlord, display, sell merchandise, allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls and permanent doorways of the Premises. In addition, Tenant shall not solicit in any manner in any of the automobile parking and common areas or the enclosed mall of the Complex. No aerial or antenna shall be erected on the roof or exterior walls of the Premises without first obtaining, in each instance, the advance written consent of Landlord. Any aerial or antenna so installed without such consent shall be subject to removal without notice at any time. Tenant shall not engage in harassing or threatening conduct that interferes with the business operations of other tenants in the Complex.

8.3 Deliveries. Tenant shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading, and provision of services to the Premises prior to 10:00 A.M. of each day. Tenant shall not permit delivery trucks or other vehicles servicing the Premises to park or stand in front of, or at the rear of, the Premises from 10:00 A.M. to 5:00 P.M. of each day. Landlord reserves the right to further regulate the activities of the Tenant in regard to deliveries and servicing of the Premises, and Tenant agrees to abide by such further non-discriminatory regulations of Landlord.

8.4 Failure to Conduct Business. The parties covenant and agree that because of the difficulty in determining Landlord's damages by way of loss of anticipated percentage rent from Tenant as well as other tenants or occupants in the Complex, or by way of loss of value in the property because of adverse publicity or appearances due to Tenant's delay in promptly opening, should Tenant fail to take possession of the Premises and/or fail to open for business promptly after the date when Minimum Monthly Rent shall be due under Article 5 or thereafter vacate the Premises or cease operating its business, then, if Landlord does not terminate this Lease, in addition to all other remedies available to Landlord, Tenant agrees to pay to Landlord not only the Minimum Monthly Rent and additional sums, but also additional payments at the rate of Two Hundred Fifty Dollars (\$250.00) per day for each and every occurrence by tenant in violation of this lease or any provision herein or for each and every day the Premises are not opened and/or Tenant's business therein is not continuously operated by Tenant; and said per occurrence or per diem

{107700-01/000/00789494-2 }

EXHIBIT B

amount shall be deemed to be liquidated damages and in lieu of percentage rents that might have been earned by Landlord during such period; and Landlord shall have the right to treat any of the events set forth above as a default under this Lease.

8.5 Prohibitions on Smoking. In accordance with the governing laws and ordinances, smoking is prohibited inside the buildings and other indoor areas of the Complex, including the Premises and within 25 feet of any occupied building. Tenant shall enforce these prohibitions on smoking inside the Premises and shall familiarize itself with the outdoor areas where smoking is permitted within the Complex so Tenant is able to monitor and enforce the smoking prohibitions with respect to its employees, customers, patrons, and suppliers. Tenant shall hold Landlord harmless from any civil or criminal penalties for violations of the smoking prohibition by its employees, customers, patrons, and suppliers.

ARTICLE 9 - UTILITIES SERVICES

9.1 Facilities Provided. Landlord shall initially and to the extent shown on the mutually approved plans and specifications, cause to be made available to Tenant facilities for the delivery to the Premises of water, removal of sewage, electricity, telephones, and other like common utilities. Tenant shall use such utilities with respect to the Premises. Landlord will supply electric power to the main distribution center which may be located outside of the Premises.

9.2 Payment for Utilities. Tenant shall, at its own expense, pay for all services, water, gas, electricity, sewer, telephone and all other similar utilities furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Premises or any part thereof from and after the delivery of possession thereof by Landlord. Landlord, at its sole discretion, may arrange for separate meters to monitor the consumption of utilities on the Premises. If separate utility meters are provided for Tenant, Tenant shall pay for those meters and shall pay to the utilities their shares shown due by reason of such meters.

9.3 Landlord's Utility Charge. In addition to the Minimum Monthly Rent specified in Articles 1 and 5, Tenant shall pay periodically an additional sum, in advance, as a utility charge to reimburse Landlord for the utilities furnished by Landlord, if any, to the Premises. Said utility charge is additional rent under this Lease and shall be determined from time to time by Landlord and shall be initially based on a typical restaurant layout comparable to Tenant's proposed use of the Premises, but the utility charge shall be subject to adjustment at the end of each calendar quarter or partial calendar quarter during the Lease Term based upon an equitable formula determined by Landlord in its sole but reasonable discretion. Landlord agrees, however, that the utility charge to Tenant for utilities furnished by Landlord shall not exceed those which the applicable local public utility company would charge if its services were furnished directly to Tenant. In the event that Tenant fails to pay any such amount to Landlord within ten (10) days after receipt by Tenant from Landlord of a bill therefore, or upon failure of Tenant to pay any other sums required under this Lease within ten (10) days from the date such payments are due, and until such amounts are paid in full, Landlord may terminate, without further notice to Tenant, any such utility service furnished to the Premises by Landlord.

9.4 Landlord's Exemption from Liability. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Premises, and no such failure or interruption shall entitle Tenant to withhold any sum or terminate this Lease. Tenant hereby expressly waives any and all claims against Landlord for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by Tenant by reason of any defect, deficiency, failure or impairment of whatever kind or nature in any service or utility furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Premises or any part thereof. In the event that Landlord elects to discontinue furnishing any such utility service to the Premises for reasons other than the non-payment by Tenant of any utility charge or other rent payment required hereunder, Tenant shall have the right to use appropriate existing conduits and facilities situated in the Premises to obtain proper utility services from the suppliers.

9.5 Tenant's Use of Power Systems. Tenant shall not install any equipment or make an alteration in the electrical, heating, or air conditioning systems for the Premises which will cause their capacities to be exceeded or to otherwise overload the electrical circuits and equipment providing power for the Premises.

{107700-01/000/00789494-2 }

-10-

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

VENTURA PORT DISTRICT
RESTAURANT LEASE

EXHIBIT B

9.6 Internet Services. Landlord has made available equipment and wiring for fiber optic internet services to the Premises. If Tenant desires to utilize other equipment and wiring for internet or satellite service, then Tenant shall (i) submit to Landlord written plans for the proposed installation for Landlord's advance written approval; (ii) pay all of the costs for such installation; and (iii) at the expiration of the Lease Term or its earlier termination, promptly remove the wiring and equipment and make any necessary repairs to restore the Premises to its condition prior to such installation, all at the expense of Tenant.

ARTICLE 10 - INDEMNITY – INSURANCE – WAIVER OF SUBROGATION

10.1 Indemnity for Landlord. Except for Landlord's sole and active negligence, Tenant shall indemnify, protect, defend, and hold harmless the Premises, the Complex, Landlord and its officers, elected officials, agents, attorneys, and employees from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, loss of permits, attorneys' and consultants' fees, expenses and/or liabilities (each a "Claim" or collectively the "Claims") arising out of, involving, or in connection with, the occupancy and/or use of the Premises by Tenant, the conduct of Tenant's business, both on and outside the Premises, any act, omission or neglect of Tenant, its agents, contractors, employees or invitees, or any Default or Breach by Tenant in the performance of any obligation, condition, or covenant on Tenant's part to be performed under this Lease. Notwithstanding anything contained in the foregoing to the contrary, Tenant's obligations under this Section 10.1 shall extend to any and all Claims made against Landlord, its officers, elected officials, agents, attorneys, and employees that the Premises and/or the improvements thereon violate or do not comply with the Americans with Disabilities Act of 1990 and/or any corresponding laws of the State of California. Tenant's obligations under this Section 10.1 shall include, but not be limited to, the defense or pursuit of any Claims or any action or proceeding involved therein, and whether or not (in the case of Claims made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding be brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such Claim in order to be so indemnified.

10.2 Waiver of Subrogation. Landlord and Tenant waive any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises, or its contents, or to other portions of the Complex, arising from any risk generally covered by fire and extended coverage insurance, vandalism, malicious mischief and sprinkler leakage; and the parties each, on the behalf of their respective insurance companies insuring the property of the Landlord or Tenant against any such loss, waive any right of subrogation that it may have against Landlord or Tenant, as the case may be, if such waiver of subrogation is available, Tenant, on behalf of its insurance companies insuring the Premises, its contents, Tenant's other property or other portions of the Complex, waives any right of subrogation which such insurer or insurers may have against any of the other tenants located in the Complex. The effect of such waivers of subrogation shall not be limited by the amount of insurance carried or required or by any deductible applicable thereto. Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any right of subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance is not invalidated thereby.

10.3 Tenant's Insurance. Tenant further covenants and agrees that from and after the date of delivery of the Premises from Landlord to Tenant, Tenant shall carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified, and in the form hereinafter provided for:

10.3.1 Public Liability and Property Damage. Tenant shall procure and maintain in full force and effect bodily injury liability and property damage insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence insuring against any and all liability of the insured with respect to the Premises or arising out of the maintenance, use, or occupancy thereof, and One Million Dollars (\$1,000,000) combined single limit coverage. All such bodily injury liability insurance and property damage liability insurance shall specifically include, in addition to the above, contractual liability insurance covering the insuring provisions of this Lease, the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property contained in this Article 10. Landlord shall be added as named insured to Tenant's liability policy described in this Paragraph 10.3.1.

{107700-01/000/00789494-2 }

-11-

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

VENTURA PORT DISTRICT
RESTAURANT LEASE

EXHIBIT B

10.3.2 Plate Glass. Tenant shall be responsible for the maintenance of the plate glass on the Premises but shall have the option either to insure the risk or to self-insure. Tenant agrees to immediately replace any broken or cracked, or otherwise damaged plate glass.

10.3.3 Fixtures. Tenant shall procure and maintain in full force and effect insurance covering all Tenant's trade fixtures, merchandise, and personal property in, on or upon the Premises, in an amount not less than eighty percent (80%) of their full replacement cost during the term of this Lease, providing protection against perils included with the classification "fire and extended coverage," together with insurance against sprinkler leakage, vandalism, and malicious mischief. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 19 hereof.

10.3.4 Workers' Compensation Insurance. Tenant shall procure, at its own expense, and shall keep in force during the Lease Term, adequate insurance against liability arising on account of injuries or death to workers or employees on the Premises or any installation or other improvement of Tenant. Such workers' compensation insurance shall be in amounts at least equal to the maximum liability of Tenant and its agents and contractors under the Workers' Compensation Insurance and Safety Act of the State of California.

10.4 Insurance Policies. Tenant shall deposit with Landlord, at or before the times at which they are required to be in effect, copies of each policy or policies necessary to satisfy the insurance requirements of the Lease and to keep such policies on deposit with Landlord during the entire Lease Term. Insurance policies required hereunder shall be issued by companies licensed to do business in the State of California maintaining a "General Policyholder Rating" of at least A- and a financial rating of not less than Class VII in accordance with the most recent Best's Insurance Guide, or if Best's is no longer published, comparable ratings from a service acceptable to Landlord. Such insurance, in addition to the multiple additional named insured endorsements set forth above, shall be commercial general liability insurance in the amounts set forth above, and shall contain additional endorsements as follows: (i) Providing blanket contractual liability coverage for Tenant's indemnification obligations to Landlord and others pursuant to the Lease; (ii) Providing that the insurance may not be canceled or reduced until thirty (30) days after Landlord has actually received written notice of such cancellation or reduction; (iii) Providing that any other insurance maintained by Landlord or any other named insured is excess insurance, and not contributing insurance with the insurance required herein of Tenant. Nothing contained in the insurance requirements shall be construed as limiting the extent of Tenant's responsibility for payment of greater damages resulting from its occupancy and use of the Premises.

10.5 Adjacent Premises. Since the Premises are part of a group of buildings owned by Landlord which are adjacent to the Premises, Tenant shall pay for any increase in the premiums for the property insurance for such buildings if said increase is caused by Tenant's acts, omissions, use, or occupancy of the Premises.

10.6 Exemption of Landlord from Liability. Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, subtenants, licensees, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, rain, or mold, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air-conditioning or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Landlord shall not be liable for any damages arising from any act or neglect of any other tenants of Landlord. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business or for any loss of income or profit therefrom, or any other form of consequential damages.

ARTICLE 11 - TITLE OF LANDLORD

Landlord covenants that as of the date hereof there are no liens upon its ownership of the Complex other than (i) the effect of covenants, conditions, restrictions, easements, trust deeds, and rights of way of record; (ii) the effect of any zoning or other land use laws of Landlord, City of San Buenaventura, California Coastal Commission, and State of California, and (iii) general special taxes not delinquent. Tenant agrees that, as to its leasehold estate, it and all persons

{107700-01/000/00789494-2 }

EXHIBIT B

in possession or holding under it, shall conform to and will not violate the terms of the matters referred to in the preceding sentence.

ARTICLE 12 - TENANT'S RIGHT TO MAKE ALTERATIONS

12.1 Allowed Alterations. Tenant may, at its own expense and after giving Landlord advance notice in writing of its intention to do so, from time to time during the Lease Term, make alterations, additions, and changes in and to the interior of the Premises (except those of a structural nature) as it may find necessary or convenient for its purposes, provided that the value of the Premises is not thereby diminished. Approval of Landlord does not constitute a permit from those governmental agencies having jurisdiction; and Tenant shall obtain all necessary permits and inspections as may be required by those agencies.

12.1.1 Alterations Costing Less than \$2,000. Tenant may make any alterations, additions, or changes, including the Tenant Improvements identified or described in Exhibit "C," for which the cost is estimated to be less than Two Thousand Dollars (\$2,000.00) without first procuring the approval of Landlord in writing.

12.1.2 Alterations Costing Between \$2,000 and \$25,000. For any alterations, additions, or changes, including the Tenant Improvements identified or described in Exhibit "C," for which the cost is estimated to be more than Two Thousand Dollars (\$2,000.00), but less than Twenty-Five Thousand Dollars (\$25,000.00), Tenant shall first procure the approval of Landlord for such alterations, additions, or changes in writing, but shall not be required to provide Landlord with a Faithful Performance Bond or a Payment Bond.

12.1.3 Alterations Costing More than \$25,000. For any alterations, additions, or changes, including the Tenant Improvements identified or described in Exhibit "C," for which the cost is estimated to exceed Twenty-Five Thousand Dollars (\$25,000.00), Tenant shall first procure the approval of Landlord and the City of San Buenaventura for such alterations, additions, or changes in writing, and shall provide Landlord with a Faithful Performance Bond and a Payment Bond, unless expressly waived by written instrument signed by Landlord. Such Faithful Performance Bond and Payment Bond shall be in the forms as set forth in Exhibit "K" and in an amount not less than One Hundred Twenty-Five Percent (125%) of the estimated cost of constructing said alterations, additions, or changes.

12.2 Destruction. No alterations, additions or changes shall be made by Tenant to any storefront, the exterior walls or roof of the Premises; nor shall Tenant erect any mezzanine or increase the size of same, if one has been initially constructed, unless and until the written consent and approval of Landlord shall first have been obtained. In no event shall Tenant make or cause to be made any penetration through the roof of the Premises without the prior written approval of Landlord. Tenant shall be directly responsible for any and all damages resulting from any violation of the provisions of this Article 12. All alterations, additions, or changes to be made to the Premises which require the approval of Landlord shall be under the supervision of a competent architect or competent licensed structural engineer and made in accordance with plans and specifications with respect thereto, approved in writing by Landlord and the City of San Buenaventura before the commencement of work where such approval is required pursuant to the provisions of this Article 12.

12.3 Quality of Work. All work with respect to any alterations, additions, and change by Tenant must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. Any such changes, alterations and improvements shall be performed and done strictly in accordance with all applicable codes, ordinances, regulations and requirements, including but not limited to the requirements of Landlord, relating thereto. Tenant shall obtain all necessary permits for the work from the appropriate government bodies. In performing the work of any such alterations, additions, or changes, Tenant shall have the work performed in such a manner as not to obstruct the access to the Premises of any other tenant in the Complex. Tenant agrees to immediately record a notice of completion in the Recorder's Office of the County of Ventura upon completion of any alteration, addition, or change to the Premises. In the event that Tenant shall make any permitted alterations, additions, or improvements to the Premises under the terms and provisions of this Article 12, Tenant agrees to furnish Landlord such cost figures as may be required to reasonably determine insurable value on any such alterations, additions or improvements.

{107700-01/000/00789494-2 }

EXHIBIT B

12.4 Ownership. Such alterations, additions, or changes shall be considered as permanent improvements and shall not be removed by Tenant but shall immediately become a part of the Premises, subject to the provisions of Section 18.4.

ARTICLE 13 - MECHANICS' LIENS

13.1 Lien Protection. Tenant shall pay or cause to be paid all costs for work done by it or caused to be done by it on the Premises, and Tenant shall keep the Premises free and clear of all mechanics' liens and other liens on account of work done for Tenant or persons claiming under it. Tenant shall indemnify and hold Landlord free and harmless against liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or material men or others for work performed or materials or supplies furnished for Tenant or persons claiming under Tenant.

13.2 Contests. If Tenant shall desire to contest any claim of lien, it shall first furnish Landlord adequate security having a value in the amount of the claim, plus estimated costs and interest, or a bond from a responsible corporate surety in such amount conditioned on the discharge of the lien (including attorney's fees and related litigation expenses). If a final judgment establishing the validity or existence of a lien for any amount is entered, Tenant shall pay and satisfy the same at once.

13.3 Landlord Action. If Tenant shall be in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien shall have been filed, and Tenant shall not have given Landlord security or bond to protect the property and Landlord against such claim of lien, then Landlord may (but shall not be so required to) pay the said claim and any costs; and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord and Tenant shall pay the same to Landlord with interest at the maximum legal rate from the dates of Landlord's payments.

13.4 Notice of Claims. Should any claims of lien be filed against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

13.5 Landlord Inspections and Notices. Landlord or its representatives shall have the right to go upon and inspect the Premises, at all reasonable times, and shall have the right to post and keep posted thereon notices of non-responsibility, or other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in any such lien, give to Landlord written notice of its intention to do so in sufficient time to enable Landlord to file and record such notices.

ARTICLE 14 - ADVERTISING SIGNS

14.1 Landlord Approval. All signs shall be designed, constructed, and located in accordance with the criteria established by Landlord set forth in "Exhibit F" and rules currently in effect, and shall be subject to approval of Landlord. Tenant shall not affix or maintain upon the glass panes and supports of the show windows [and within twenty-four inches (24") of any window], doors, roof, and the exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material, or any other such like item or items except as shall have first received the written approval of Landlord as to type, color, location, copy, nature, and display qualities.

14.2 Prohibited Advertising. No advertising medium, noise, or sound shall be utilized by Tenant which can be heard or experienced outside Tenant's Premises, including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, phonographs, radios, or television. Tenant shall not display, paint, or place or cause to be displayed, painted, or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Complex, whether belonging to Tenant, or to Tenant's agents or employees, or to any other person, nor shall Tenant distribute, or cause to be distributed in the Complex, any handbills or other advertising devices.

ARTICLE 15 - FIXTURES AND PERSONAL PROPERTY

{107700-01/000/00789494-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT B

15.1 Ownership and Removal. Any trade fixtures, signs and other personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant and Tenant shall have the right, provided that Tenant shall not be in default under the terms of this Lease, at any time, and from time to time, to remove any and all of its trade fixtures, signs, and other personal property which it may have stored or installed in the Premises, including but not limiting the same to counters, shelving, showcases, mirrors, and other movable personal property. Nothing in this Article 15 contained shall be deemed or construed to permit or allow Tenant to remove so much personal property, without the immediate replacement thereof with similar personal property of comparable or better quality, so as to render the Premises unsuitable for conducting the type of business specified in Article 1 and Exhibit "B" attached hereto.

15.2 Repairs. Tenant, at its own expense, shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures, signs, and other personal property, and, upon the expiration or earlier termination of this Lease, shall leave the Premises in a neat and clean condition, free of debris.

15.3 New Fixtures. All trade fixtures, signs, and other personal property installed in or attached to the Premises by Tenant must be new when so installed or attached.

15.4 Improvements to Premises. All improvements to the Premises made by Tenant, including but not limited to light fixtures, floor coverings, and partitions, but excluding trade fixtures and signs, shall be deemed the property of Landlord upon installation thereof. Unless otherwise agreed in writing, Landlord may require that improvements made by Tenant be removed by the expiration or on the earlier termination of this Lease, notwithstanding that their installation may have been consented to by Landlord; and Tenant shall pay the costs of such removal of the improvements.

15.5 Taxes. Tenant shall pay before delinquency all taxes, assessments, license fees, and public charges levied, assessed, or imposed upon its business operation, as well as upon its trade fixtures, merchandise, and other personal property in, on or upon the Premises. In the event any such items of property are assessed with property of Landlord, then, and in such event, such assessment shall be equitably divided between Landlord and Tenant to the end that Tenant shall pay only its equitable proportion of such assessment. Landlord shall determine the basis of prorating any such assessments and such determination shall be binding upon both Landlord and Tenant. No taxes, assessments, fees, or charges, referred to in this Section 15.5 shall be considered as taxes under provisions of Article 5 hereof.

15.6 Expiration of Lease Term. Not less than ninety (90) days prior to the expiration of the Lease Term, Landlord and Tenant shall jointly prepare in writing and sign an agreement as to which trade fixtures, signs, and personal property described in Section 15.1 and which improvements described in Section 15.4 are to be removed by Tenant at its own cost and expense or are to be surrendered to Landlord at no cost to it upon such expiration of the Lease Term. The agreement shall also contain an estimate of the costs of removing the items described in Sections 15.1 and 15.4 which Tenant has been required under the agreement to remove, at its own cost and expense; and Tenant shall deposit that amount in cash with Landlord as security for Tenant's agreed obligations for such removal. Any amount of the deposit not expended by Landlord to effect the removal which has not been completed by Tenant itself shall be returned to Tenant within thirty (30) days after the expiration of the Lease Term. In the event that Landlord and Tenant are unable to reach the agreement required under this Section 15.6, then Tenant agrees that Landlord shall have the authority, acting reasonably, to make the determinations under this Section 15.6, including the amount of the deposit required of Tenant.

ARTICLE 16 - ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN CORPORATE OWNERSHIP

16.1 Landlord Consent. Tenant shall not transfer, assign, sublet, enter into license or concession agreements, change ownership, or hypothecate this Lease or Tenant's interest in and to the Premises without first procuring the written consent of Landlord (however, Landlord shall not withhold consent unreasonably). Any attempted transfer, assignment, subletting, license or concession agreement, change of ownership or hypothecation without Landlord's written consent shall be void and confer no rights upon any third person. Without in any way limiting Landlord's right to refuse to give such consent for any other reason or reasons, Landlord reserves the right to refuse to give such consent unless Tenant remains fully liable during the unexpired term of the Lease and Landlord further

{107700-01/000/00789494-2 }

EXHIBIT B

reserves the right to refuse to give such consent if, in Landlord's sole discretion and opinion, the quality of merchandising operations of the Complex are in any way adversely affected by the proposed new tenant during the Lease Term or the financial worth of the proposed new tenant is less than that of Tenant who executed this Lease. Tenant agrees to reimburse Landlord for Landlord's reasonable attorneys' fees incurred in conjunction with considering, processing, and documenting any such requested transfer, assignment, subletting, licensing, or concession agreement, change of ownership of hypothecation of this Lease or Tenant's interest in and to the Premises.

16.2 Documentation. Each transfer, assignment, subletting, license, concession agreement, and hypothecation to which there has been consent by Landlord shall be effected by an instrument in writing in form satisfactory to Landlord, and shall be executed by the transferor, assignor, sublessor, licensor, concessionaire, hypothecator, or mortgagor and the transferee, assignee, sublessee, licensee, concessionaire or mortgagee in each instance, as the case may be; and each transferee, assignee, sublessee, licensee, concessionaire, or mortgagee shall agree in writing for the benefit of Landlord herein to assume, to be bound by, and to perform the terms, covenants, and conditions of this Lease to be done, kept, and performed by Tenant. One (1) executed copy of such written instruments shall be delivered to Landlord. Failure to first obtain in writing Landlord's consent or failure to comply with the provisions of this Article 16 shall serve to prevent any such transfer, assignment, subletting, license, concession agreement or hypothecation from becoming effective.

16.3 Entity Changes. If Tenant hereunder is a corporation which, under the then current guidelines published by the Commissioner of Corporations of the State of California, is not deemed a public corporation, or is an unincorporated association, limited liability company or partnership, the transfer, assignment or hypothecation of any stock or interest in any such entity in the aggregate in excess of twenty-five percent (25%) shall be deemed an assignment requiring Landlord's consent within the meaning and provisions of this Article 16.

16.4 Landlord's Costs. Tenant shall pay in advance Five Hundred Dollars (\$500.00) to Landlord for its evaluation of any proposed transfer in order to cover its processing expenses and, in addition, Tenant shall pay Landlord's out-of-pocket costs, including legal review, whether or not Landlord shall give its consent to the proposed transfer.

16.5 Death of Tenant. Upon the death of Tenant, Landlord shall have the right to terminate this Lease upon thirty (30) days' written notice to Tenant's executor, administrator, trustee, surviving spouse, or other legal representative of the deceased Tenant's estate. If Tenant hereunder is a corporation which, under the then current guidelines published by the Commissioner of Corporations of the State of California, is not deemed a public corporation, or is an unincorporated association, limited liability company, partnership or sole proprietorship, the death of any person that controls such entity shall be deemed to be the death of Tenant. For purposes of this Section 16.5, "controls" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract, or otherwise. If Tenant hereunder is more than one person or entity, the death of any such person or person that controls such entity shall be deemed to be the death of Tenant and shall trigger Landlord's right to terminate this Lease pursuant to this Section 16.5.

16.6 Assignment Premium. If Landlord consents to an assignment, Tenant shall pay to Landlord Three Percent (3%) of any Transfer Premium received by Tenant. "Transfer Premium" shall mean (a) all rent, additional rent or other consideration payable by such assignee in excess of the Minimum Monthly Rent payable by Tenant under this Lease; and (b) all key money and bonus money paid by assignee. The "Transfer Premium" shall (i) be reduced by all out-of-pocket expenses incurred by Tenant in connection with the assignment, such as customary brokerage commissions and reasonable attorneys' fees; and (ii) shall not include reasonable compensation for the sale of Tenant's business that is not attributable to the value of Tenant's leasehold interest hereunder (including, but not limited to, saleable food, beverages, and merchandise). Tenant shall pay the Transfer Premium to Landlord within five (5) days following receipt by Tenant. Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant, setting forth in detail the computation of any Transfer Premium. Within one (1) year following the date of the Transfer, Landlord, at Landlord's sole cost and expense, shall have the right at all reasonable times and upon reasonably advance notice to audit the books, records and papers of Tenant relating to any Transfer as necessary to confirm the calculation of the Transfer Premium; provided, however, notwithstanding the preceding, such an audit shall only occur one (1) time. If the Transfer Premium shall be found

{107700-01/000/00789494-2 }

EXHIBIT B

understated in an amount greater than five percent (5%), Tenant shall, within thirty (30) days after demand, pay the deficiency, together with interest thereon at the lesser of Ten Percent (10%) per annum, or the highest rate allowed by law, and Landlord's costs of such audit. The Transfer Premium shall be in addition to, and not in lieu of, any other amounts due hereunder (including reasonable attorneys' fees pursuant to Section 16.1 above, and Landlord's cost for evaluating the assignment pursuant to Section 16.4 above.

ARTICLE 17 - TENANT'S CONDUCT OF BUSINESS

17.1 Continuous Operation. Tenant shall continuously and uninterruptedly from and after its initial opening for business, operate and conduct within the Premises the business which it is permitted to operate and conduct under the provisions of this Lease, except while the Premises are untenable by reason of fire or other casualty. At all times during the Lease Term, Tenant shall maintain a first-class business with a level of quality and character of operation which is at least comparable to other locations in the area with the same use and/or equal to that of Tenant's other locations, if any. Tenant shall at all times keep and maintain within and upon the Premises an adequate stock of merchandise and trade fixtures to service and supply the usual and ordinary demands and requirements of its customers.

17.2 Maintain Premises. Recognizing that it is in the interest of both Tenant and Landlord to have and maintain a welcoming, clean, and safe environment at the Complex, Tenant agrees to keep its Premises in a neat, clean, safe, and orderly condition, free of objectionable odors and nuisances. Tenant also agrees not to cause or allow any unreasonable levels of noise in the Premises that interfere with the business operations of other tenants in the Complex. If Tenant fails to maintain the Premises as required under this Section 17.2, Tenant shall pay a sum of Fifty Dollars (\$50.00) for its first violation, Seventy-Five Dollars (\$75.00) for its second violation, and One Hundred Dollars (\$100.00) for each violation thereafter, which such sum(s) shall be considered additional rent and due and payable within seven (7) days after written notice to Tenant from Landlord.

17.3 Trash. Tenant agrees that it will not permit undue accumulations of garbage, trash, rubbish, or any other refuse in or around the Premises. Tenant agrees that all trash and rubbish of Tenant shall be deposited within receptacles and that there shall be no trash receptacles permitted to remain outside of the building. Landlord agrees to cause such receptacles to be emptied and trash removed at Tenant's cost and expense. Tenant's share of the trash removal expense shall be included in its share of Common Area Expenses unless there is an amount greater than zero specified in Section 1.12 for trash removal. If there is an amount greater than zero specified in Section 1.12, then Tenant shall pay to Landlord on the first day of each calendar month of the Lease Term the amount specified in Section 1.12 for Tenant's share of the trash removal expenses. The trash removal expense shall be subject to escalation each calendar year, on a pro rata basis, based on rate changes implemented by trash collection service provider.

17.3.1 The dumping of large bulky items such as pallets, display cases, and furniture in the trash receptacles is prohibited. Tenant shall be responsible for arranging the pickup and disposal of such items and for the cost of such services. If Tenant fails to arrange for such services, Landlord shall have the right, upon giving Tenant reasonable written notice of its intention to do so, to arrange for such pickup and disposal services. In such event, the cost of such services shall be considered additional rent and shall be paid for by Tenant immediately upon receipt of a bill therefor from Landlord.

17.4 Employee Conduct. Tenant shall use its best efforts to retain active, qualified, competent, and experienced personnel to supervise Tenant's operation and to represent and act for Tenant. Tenant shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. Tenant shall not employ any persons in or about the Premises who shall use offensive language or act in a loud, boisterous, or otherwise improper manner. Tenant shall maintain a close check over attendants and employees to ensure the maintenance of a high standard of service to the public. Tenant shall replace any employee whose conduct is detrimental to the best interests of the public.

17.5 Hours of Operation. Recognizing that it is in the interest of both Tenant and Landlord to have regulated hours of business for the Complex, Tenant agrees that commencing with the opening for business by Tenant in the Premises and for the remainder of the Lease Term, Tenant shall be open for business during the hours of

{107700-01/000/00789494-2 }

EXHIBIT B

operation of the Complex as determined by Landlord and as set forth in Exhibit "B". Tenant shall further have its window displays, exterior signs, and exterior advertising displays adequately illuminated continuously during all times that Landlord designates. It is agreed, however, that in regard to any business controlled by governmental regulations or labor union contracts in its hours of operation, the foregoing provision shall be subject to the hours of operation so prescribed by such governmental regulations or labor union contracts, as the case may be. If Tenant fails to conduct business on or from the Premises as required under this Section 17.5, Tenant shall pay a sum of Fifty Dollars (\$50.00) for its first violation, Seventy-Five Dollars (\$75.00) for its second violation, and One Hundred Dollars (\$100.00) for each violation thereafter, which such sum(s) shall be considered additional rent and due and payable within seven (7) days after written notice to Tenant from Landlord.

17.6 Tenant's Other Operations. Tenant shall not, during the Lease Term, directly or indirectly, operate nor own any similar business except those already approved by Landlord within a radius of three (3) miles from the location of the Premises. Without limiting Landlord's remedies, in the event Tenant should violate this covenant, Landlord may, at its option, include the "Adjusted Gross Sales" of such other business in "Adjusted Gross Sales" transacted from the Premises for the purpose of computing the percentage rent due hereunder. Tenant agrees to deliver to Landlord a certified statement of such Adjusted Gross Sales from such other business, certified as correct by a Certified Public Accountant licensed to practice in the State of California. Article 5 is incorporated herein by reference as though set forth in full as to Landlord's rights and Tenant's duties in regard to the Adjusted Gross Sales of such other business. Adjusted Gross Sales of such other business shall be as defined in Article 6 which is incorporated herein by reference as though set forth in full.

17.7 Lighting. The Premises shall be lighted for security purposes during hours of darkness in a manner at least equivalent to the security lighting provided in similar properties on Spinnaker Drive, unless Landlord consents to a lesser amount of lighting in writing or unless to do so is contrary to any law, statute, ordinance or final judgment of any court having jurisdiction then in effect, in which event, the standards so prescribed shall be adhered to while in effect.

ARTICLE 18 - REPAIRS AND MAINTENANCE

18.1 Tenant's Obligations. Subject to Landlord's obligations set forth in Section 18.2, below, Tenant shall, at its sole cost and expense, keep and maintain the Premises and every part thereof (excluding the roof, exterior walls, structural parts of the Premises and structural floor), and all improvements of whatever kind that may be now or hereafter erected, installed or otherwise made thereon, including without limitation, the utility meters, lines, pipes, ducts, and conduits, all fixtures, air-conditioning and heating equipment serving the Premises, and other equipment therein, the store front or store fronts, all Tenant's signs, locks and closing devices, and all window sash, casement, or frames, doors and door frames, and all such other items of repair, maintenance, and improvement or reconstruction as may at any time or from time to time be required by any governmental agency having jurisdiction thereof, including keeping equipment, and buildings, in good and safe condition and repair and sanitary conditions acceptable to Landlord, and in accordance with all applicable laws, rules, ordinances, orders and regulations, including, but not limited to, the Americans with Disabilities Act of 1990 and any corresponding laws of the State of California, relating to any part of the Premises or the improvements thereon, and shall make all necessary repairs and alterations thereto.

The repair and maintenance of water and sewer pipes shall include those pipes installed in walls and under floors, including those which extend beyond the Premises in order to provide water or sewage service to the Premises. Tenant shall contract with a service company for the maintenance of the heating and air-conditioning equipment, with a copy of the service contract to be furnished to Landlord within ten (10) days after opening for business, and a copy of any subsequent contract to be furnished from time to time during the Lease Term. If Tenant is conducting a food service business, then Tenant shall have its grease pits serviced at least two (2) times during each calendar year or more frequently as needed; and Tenant shall promptly provide Landlord with written verification that such servicing has been timely and fully completed. If part of the Premises includes outdoor patios, then the obligations of Tenant under this Section 18.1 shall extend to and include the patio walls, flooring, ceiling, awnings, sun shields, heaters, and other appurtenants for the use of the patio. All glass, both exterior and interior, shall be at the sole risk of Tenant, and any glass broken or damaged shall be promptly replaced by Tenant with glass of the same kind, size, and quality. Any floor

{107700-01/000/00789494-2 }

-18-

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

VENTURA PORT DISTRICT
RESTAURANT LEASE

EXHIBIT B

covering, including carpeting, terrazzo, or other special flooring installed by or at the request of Tenant, shall be maintained by Tenant. Landlord shall be under no obligation to make any repairs, alterations, renewals, replacements, or improvements to and upon the Premises or the mechanical equipment exclusively serving the Premises at any time except as in this Lease expressly provided.

Tenant shall keep, maintain and repair the Premises and improvements such that they will remain in a condition free from any defects or maintenance deficiencies (excluding reasonable wear and tear) and of most pleasing appearance to the public and to the patrons and invitees making use of and being accommodated by the improvements, facilities and amenities. Tenant shall keep the Premises clean, sanitary, and functional at all times. No offensive materials, sand or refuse matter nor any substance constituting any unnecessary, unreasonable or unlawful fire hazard or material detrimental to the public health shall be permitted on the Premises. Landlord shall have no duty, obligation or liability whatsoever to cure, correct, repair, remediate, or rectify any violation of, or claims of noncompliance with, the Americans with Disabilities Act of 1990 or any corresponding laws of the State of California, with respect to the Premises and any improvement or equipment situated thereon or therein, it being the intent of the parties that Tenant shall have the sole responsibility, at its sole cost and expense, for curing, correcting, repairing, remediating, and rectifying any such violations or claims of noncompliance.

All Tenant's construction, alteration or repair work permitted under this Lease shall be accomplished expeditiously and diligently. Tenant shall take all necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. Tenant shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the area upon which such work is performed to a condition, which is equal to or better than the condition which existed prior to the beginning of such work. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated therewith and shall indemnify and hold Landlord harmless from all damages, losses or claims attributable to the performance of such work. Dust, noise and other effects of such work shall be controlled using the best accepted methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area.

18.2 Landlord's Obligations. Subject to the foregoing provisions hereof, Landlord shall keep and maintain in good and tenantable condition and repair, the roof, exterior walls, structural parts of the Premises and structural floor, and pipes and conduits outside the Premises for the furnishing to the Premises of various utilities (except to the extent that the same are the obligation of the appropriate public utility company); provided, however, that Landlord shall not be required to make repairs necessitated by reason of the negligence of Tenant, any patrons of Tenant, or anyone claiming under Tenant, or by reason of the failure of Tenant to perform or observe any conditions or agreements in this Lease contained, or caused by alterations, additions, or improvements made by Tenant or anyone claiming under Tenant. As used in this Article 18, the phrase "exterior walls" shall not be deemed to include storefronts, plate glass, window cases, or window frames, doors or doorframes. Anything to the contrary notwithstanding contained in this Lease, Landlord shall not in any way be liable to Tenant for failure to make repairs as herein specifically required of Landlord unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete said repairs within a reasonable period of time following receipt of Tenant's written notification.

18.3 Repairs on Behalf of Tenant. If Tenant refuses or neglects to make repairs and/or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, or to provide the aforementioned heating and air-conditioning service contract, Landlord shall have the right, upon giving Tenant reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event, the cost of such work shall be considered additional rent and shall be paid for by Tenant immediately upon receipt of a bill therefore from Landlord.

18.4 Surrender of Premises. Tenant shall surrender the Premises by the end of the last day of the Lease Term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice or by Tenant's performing all of its obligations under this Lease. Except as otherwise agreed or specified herein, the Premises, as surrendered, shall include the improvements which

{107700-01/000/00789494-2 }

EXHIBIT B

Landlord has not required to be removed by Tenant. The obligations of Tenant shall include the repair of any damage occasioned by the installation, maintenance, or removal of Tenant's trade fixtures, furnishings, equipment, and improvements required to be removed. Tenant's trade fixtures shall remain the property of Tenant and shall be removed by Tenant subject to its obligation to repair and restore the Premises as required by this Lease.

18.5 Inspections. Tenant shall permit Landlord and its authorized representatives to enter the Premises at all times during usual business hours for the purpose of inspecting the same. Tenant further covenants and agrees that Landlord may enter the Premises and make any necessary repairs to the Premises and perform any work therein which may be necessary to comply with any laws, ordinances, rules, or regulations of any public authority or of the Pacific Fire Rating Bureau, or of any similar body, or that Landlord may deem necessary to prevent waste or deterioration in connection with the Premises if Tenant does not make or cause such repairs to be made or performed on its own responsibility or promptly after receipt of written demand from Landlord. In addition, if Landlord determines Tenant has failed to maintain the Premises or Tenant has failed to conduct business during the Mandatory Minimum Hours as required by Sections 17.2 and 17.5, Landlord reserves the right to issue written notices and fines to Tenant as described in Sections 17.2 and 17.5. Nothing herein contained shall imply any duty on the part of Landlord to do any such work which under any provision of this Lease Tenant may be required to do, nor shall it constitute a waiver of Tenant's default in failing to do the same. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby nor to any abatement of rent. In the event that Landlord makes or causes any such repairs to be made or performed, as provided for herein, Tenant shall pay the cost thereof to Landlord, forthwith, as additional rent upon receipt of a bill from Landlord.

18.6 Mold. If Tenant discovers that mold is present in the Premises, its heating system, ventilation or air conditioning system, or other adjacent buildings or structures, or that there is a condition of water intrusion or moisture, Tenant shall promptly provide Landlord with this information in writing; and Tenant shall make the Premises available to Landlord or its agents for an appropriate inspection and assessment. Tenant shall promptly correct the condition insofar as they arise from the operations of Tenant on the Premises or from its repair and maintenance obligations pursuant to Section 18.1; and Tenant shall provide Landlord with written verification that such correction has been promptly and fully completed. Landlord shall not be liable for any loss of business by Tenant or any damage to Tenant's trade fixtures, signs, other personal property, and files and other business records arising from the conditions described in this Section 18.6.

ARTICLE 19 - RECONSTRUCTION

19.1 Insured Damage. In the event the Premises are damaged by fire or other perils covered by Landlord's fire and extended coverage insurance, then Landlord shall within a period of ninety (90) days thereafter, commence repair, reconstruction, and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect. However, in the event of a partial or total destruction of the Premises during the last three (3) years of the Lease Term, Landlord and Tenant shall both have the option to terminate this Lease upon giving written notice to the other of the exercise thereof within thirty (30) days after such destruction. For purposes of this Section 19.1, "partial destruction" shall be deemed a destruction to an extent that the costs of repair shall equal or exceed twenty percent (20%) of the then full replacement cost of the Premises as of the date of the destruction.

19.2 Uninsured Damages. In the event that the Premises shall be damaged as a result of any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Landlord's fire and extended coverage insurance, then Landlord may within ninety (90) days following the date of such damage, commence repair, reconstruction, or restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or, within said ninety (90) day period, Landlord may elect not to so repair, reconstruct, or restore the Premises, in which event this Lease shall cease and terminate. In either such event, Landlord shall give the Tenant written notice of its intention within said ninety (90) day period.

19.3 Tenant's Reconstruction. In the event of the reconstruction of the Premises by Landlord in accordance with the provisions of this Article 19, Tenant shall, at its sole cost, restore its trade fixtures, leasehold

{107700-01/000/00789494-2 }

EXHIBIT B

improvements, furniture, equipment, merchandise, and other personal property maintained on the Premises to the condition which existed immediately prior to the damage or destruction.

19.4 Complex Damage. In the event that thirty-three and one-third percent (33 1/3%) or more of the gross leasable area of the Complex shall be damaged or destroyed by fire or other cause, notwithstanding that the Premises may be unaffected by such fire or other cause, Landlord shall have the right to terminate this Lease and the tenancy hereby created by giving to Tenant thirty (30) days prior written notice of Landlord's election so to do, which notice shall be given, if at all, within the sixty (60) days following the date of said occurrence. Rent shall be adjusted as of the date of such termination.

19.5 Surrender of Possession. Upon any termination of the Lease under any of the provisions of this Article 19, the parties shall be released thereby without further obligation to the other party coincident with the surrender of possession of the Premises to Landlord, except for the items which have theretofore accrued and are then unpaid; and the remaining balance of any security deposit made by Tenant pursuant to the provisions of Article 34 hereof shall be returned to Tenant.

19.6 Abatement of Rent. In the event of repair, reconstruction, and restoration as herein provided, the Minimum Monthly Rent provided to be paid under Articles 1 and 5 hereof shall be abated proportionately with the degree in which Tenant's use of the Premises is impaired commencing from the date of destruction and continuing during the period of such repair, reconstruction, or restoration. Tenant shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management; and the obligation of Tenant hereunder to pay percentage rent and additional rent shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss in the use of the whole or any part of the Premises, Tenant's trade fixtures, improvements, furniture, equipment, merchandise, or other personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration.

19.7 Waiver of Code Provisions. As to any partial or total destruction which Landlord is obligated to restore or may at its discretion restore the Premises under any of the provisions of this Lease, the provisions of Sections 1932 and 1933 of the Civil Code of California are hereby waived by Tenant.

ARTICLE 20 - AUTOMOBILE PARKING AND COMMON AREAS

20.1 General Tenant Use. Tenant and its employees, agents, customers, patrons, suppliers, and other invitees are, except as otherwise specifically provided and limited in this Article 20 and "Exhibit G" attached hereto, authorized, empowered, and privileged to use the parking and common areas in the Complex of which the Premises are a part in common and on a non-exclusive basis with other persons during the term of this Lease. Tenant must obtain Landlord's prior written consent for use of any portion of the common areas for advertising, sales, display, or any other activity related to Tenant's business. Such consent shall be at the sole and absolute discretion of Landlord.

20.2 Landlord Maintenance. Landlord shall maintain and operate, or cause to be maintained and operated (except as hereinafter provided with reference to cost of maintenance) said common areas at all times for the benefit and use of the customers and patrons of Tenant and of other tenants and occupants of the Complex. Landlord shall keep or cause to be kept said common areas in a neat, clean, and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof.

20.3 Common Area Expenses. All expenses in connection with said common areas shall be charged and prorated to Tenant and other tenants and occupants of the Complex in the manner hereinafter set forth. The phrase "expenses in connection with said common areas" as used herein shall be construed to include, but not limited to the following: all sums expended in connection with said common areas for all general maintenance and repairs, resurfacing, or painting, re-stripping, cleaning, sweeping, trash removal, and janitorial services; maintenance and repair of sidewalks, curbs, elevated walkways, and stairways, revetted slopes, and Complex signs, sprinkler systems, planting and landscaping; lighting and other utilities, directional signs and other markers and bumpers; maintenance and repair of any fire protection systems, lighting systems, storm drainage systems and any other utility systems; personnel to implement such services including, if Landlord deems necessary, the cost of security guards; real and personal property

{107700-01/000/00789494-2 }

EXHIBIT B

taxes and assessments on the improvements and land comprising said common areas, including possessory interest taxes; any governmental imposition or surcharge imposed upon Landlord or assessed against the automobile parking area or any other portion of the common areas; all costs and expense pertaining to a security alarm system for the tenants in the Complex; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); adequate public liability and property damage insurance on the Complex; general and administrative expenses incurred in the management and supervision of the common area by Landlord whether directly or through an independent contractor or agent, including but not limited to costs of accounting, bookkeeping, and collection of the expenses in connection with said common areas; payroll taxes; materials; supplies; all other costs of operating, repairing the lighting, heating and ventilation and air-conditioning in the common areas ("Common Area Expenses"). Landlord may cause any or all of said services including management, and supervision and administration to be provided by an independent contractor or contractors. Should Landlord acquire or make available additional land not shown as part of the Complex on Exhibit "A" and make the same available for parking or other common area purposes, then said expenses in connection with said common areas shall also include all of the aforementioned expenses incurred and paid in connection with said additional land.

20.4 Tenant's Share. Tenant shall pay to Landlord Tenant's share of such Common Area Expenses in the following manner:

20.4.1 Initial Charge. Tenant shall pay to Landlord on the first day of each calendar month of the Lease Term the amount calculated and specified in Section 1.14 for such Common Area Expenses. This payment amount is computed by multiplying the Common Area Expenses rate per square foot specified in Section 1.13 by the number of gross square feet leased by Tenant specified in Section 1.5 (Exhibit "B"). This payment amount is subject to adjustment as hereinafter provided in Paragraph 20.4.2. Landlord may also adjust this Initial Charge payment amount at the end of any calendar quarter or, at Landlord's option, each calendar year, by adjusting the amount of the Common Area Expense rate per square foot specified in Section 1.13 on the basis of Landlord's experience and reasonably anticipated costs.

20.4.2 Adjustments. Within thirty (30) days following the end of each calendar quarter or, at Landlord's option, each calendar year, Landlord shall furnish to Tenant, if requested by Tenant in writing, a statement covering the calendar quarter or year just expired, certified as correct by a certified public accountant or an authorized representative of Landlord, showing the total operating expenses for the common areas, the amount of Tenant's pro rata share of such common area expense for such calendar quarter or year, and the payments made by Tenant with respect to such period as set forth in Paragraph 20.4.1. If Tenant's pro rata share of such Common Area Expenses exceeds Tenant's payments so made, Tenant shall pay Landlord the deficiency within ten (10) days after receipt of such statement. If said payments exceed Tenant's pro rata share of such Common Area Expenses, Tenant shall be entitled to offset the excess against payments next thereafter to become due to Landlord as set forth in Paragraph 20.4.1. Tenant's pro rata share of the total Common Area Expenses for the previous calendar quarter or year shall be computed pursuant to Paragraph 20.4.4. There shall be appropriate adjustment for any partial quarter or year for Tenant's share of the Common Area Expenses as of the expiration of the Lease Term.

20.4.3 Default in Payment. Failure of Tenant to pay any of the charges as provided in this Article 20 shall constitute a default under the terms hereof in like manner as failure to pay rent when due.

20.4.4 Tenant's Share. A particular tenant's share of the total Common Area Expenses for a previous calendar quarter or year shall be computed by multiplying the total Common Area Expenses incurred during the previous calendar quarter or year by a fraction, the numerator of which is the gross square feet leased by the particular tenant, as specified in Section 1.5, and the denominator of which is the gross leasable area of the Complex, not including leasable office space.

20.5 Changes in Common Area. Landlord shall at all times have the right and power to determine the nature and extent of the common areas, whether the same shall be on the surface, underground, or multiple-deck, and to make such changes therein and thereto from time to time which in its opinion are deemed to be desirable and for the best interests of all persons using said common areas, including the location and relocation of driveways, entrances, exits, and automobile parking spaces, direction and flow of traffic, installation of prohibited areas, landscaped areas, and all other facilities thereof.

{107700-01/000/00789494-2 }

EXHIBIT B

20.6 Limitation on Liability. Nothing contained in these provisions shall be deemed to create any liability of Landlord for any damage to motor vehicles of Tenant or its employees, agents, customers, patrons, suppliers, or other invitees for loss of property from within such motor vehicles, unless caused by the sole active negligence of Landlord, its agents or employees.

20.7 Rules. Landlord shall also have the right to establish, and from time to time to change, alter, and amend, and to enforce against Tenant and the other users of the common areas such reasonable rules and regulations (including the exclusion of employees' parking therefrom) as may be deemed necessary or advisable for the proper and efficient operation and maintenance of the common areas. The rules and regulations herein provided may include, without limitation, the hours during which the common areas shall be open for use. Landlord may, if in its opinion the same is advisable, establish a system or systems of validation or other type of controlled operation, including a system of charges against non-validated parking checks for users, and Tenant shall conform to and abide by all such rules and regulations in its use and the use of its customers and patrons with respect to the automobile parking area, provided, however, that all such rules and regulations and such types of controlled operation or validation of parking checks and other matters affecting the customers and patrons of Tenant shall apply equally and without discrimination to all persons entitled to the use of the automobile parking facilities.

20.8 Landlord Control. Landlord shall at all times during the term of this Lease have the sole and exclusive control of the automobile parking spaces in the Complex, driveways, entrances, and exits and the sidewalks and pedestrian passageways and other common areas, and may at any time and from time to time during the term hereof, exclude and restrain any person from use or occupancy thereof, excepting, however, bona fide customers, patrons, and suppliers of Tenant, and other tenants of Landlord who make use of said areas in accordance with the rules and regulations established by Landlord from time to time with respect thereto. The rights of Tenant hereunder in and to the other areas referred to in this Article 20 shall at all times be subject to the rights of Landlord and the other tenants of Landlord to use the same in common with Tenant; and Tenant shall keep all of said areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operation, and Tenant shall allow the use of any said areas only for normal parking and ingress and egress by customers, patrons, and suppliers to and from buildings occupied by Tenant and the other tenants of Landlord.

20.9 Unauthorized Use. If in the opinion of Landlord unauthorized persons are using any of the areas referred to in this Article 20 by reason of the presence of Tenant in the Premises, then Tenant, upon demand of Landlord, shall enforce the rules and regulations against all such unauthorized persons by appropriate proceedings. Nothing herein shall affect the rights of Landlord at any time to remove any such unauthorized persons from said areas or to restrain the use of any of said areas by unauthorized persons.

20.10 Employee Parking. The employees of Tenant and the other tenants of Landlord within the Complex shall not be permitted to park their automobiles in the automobile parking areas which may from time to time be designated for customers and patrons of the Complex. Landlord agrees to furnish and/or cause to be furnished either within the Complex parking area or other areas in Ventura Harbor, space for employee parking. Landlord at all times shall have the right to designate the particular area to be used by any or all of such employees, and any such designation may be changed from time to time. Tenant and its employees shall park their cars only in those portions of the parking areas, if any, designated for that purpose by Landlord.

20.11 Violations of Employee Parking Rules. If Tenant or its employees fail to park their cars in designated parking areas, then Landlord may charge Tenant or Employee Sixty Dollars (\$60.00) per day or partial day per car parked in any areas other than those so designated; provided, however, Landlord agrees to give Tenant written notice of the first violation of this provision and Tenant shall have two (2) days thereafter within which to cause the violation to be discontinued; and, if the violation is not so discontinued within said two (2) day period, then the Sixty Dollars (\$60.00) per day fines shall commence. After notice of such first violation, no prior notice of any subsequent violation shall be required. All amounts due under the provisions of this Section 20.11 shall be payable by Tenant within ten (10) days after demand therefore as additional rent hereunder. Tenant hereby acknowledges Landlord has the right to tow away from the Complex any car or cars belonging to Tenant or Tenant's employees who have failed to park cars in the designated areas for their use, and/or to attach violation stickers or notices to such cars.

{107700-01/000/00789494-2 }

EXHIBIT B

ARTICLE 21 - HAZARDOUS SUBSTANCES AND ENVIRONMENTAL INDEMNITY

21.1 Definition. The term "Hazardous Substances" shall mean any substance, the presence of which on the Premises is: (i) potentially injurious to the public health, safety, or welfare, the environment or the Premises, or (ii) regulated or monitored by any governmental authority, or (iii) a potential basis for liability of Landlord to any governmental agency or third party, or (iv) a potential basis for cancellation of any insurance policy covering the Premises. Hazardous Substances shall include, without limitation, petroleum and petroleum products and fractions thereof. Tenant shall not engage in any use of Hazardous Substances in, on or about the Premises without Landlord's prior written consent. Landlord may condition its consent upon Tenant's giving Landlord such additional assurances as Landlord, in its sole and reasonable discretion, deems necessary to protect Landlord, the public, the Premises, the Complex, and the environment against damage, contamination, injury or liability, including, without limitation, the deposit of additional security under Article 34 below.

21.2 Notice. If Tenant knows, or has reasonable cause to believe, that Hazardous Substances, or a condition involving or resulting from Hazardous Substances is present on, under, or about the Premises, other than as previously consented to by Landlord, Tenant shall immediately give written notice of such fact to Landlord, together with copies of all reports or notifications to or from governmental agencies or private parties concerning the same.

21.3 Indemnity. Tenant shall indemnify, protect, defend and hold harmless Landlord, its officers, elected officials, agents, attorneys, and employees, against any losses, liabilities, damages, demands, actions, judgments, causes of action, assessments, penalties, costs and expenses (including, without limitation, the reasonable fees and disbursements of legal counsel and accountants) and all foreseeable and unforeseeable actual, special, incidental, or consequential damages which might arise or be asserted against Landlord as a result of a claimed violation of any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), including, without limitation, the Americans with Disabilities Act of 1990, and any corresponding laws of the State of California, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the applicable provisions of the California Health and Safety Code and the California Water Code, relating to the environment or to any Hazardous Substance, activity or material connected with the condition of the Premises, or Tenant's use and occupancy of the Premises. If any such action or proceeding is brought against Landlord, its officers, elected officials, agents, attorneys, or employees, Tenant, upon notice from Landlord, shall defend the claim at Tenant's sole expense with counsel reasonably satisfactory to Landlord. Tenant's obligations under this Section 21.3 shall include, without limitation, loss of rents to Landlord, the effects of any contamination or injury to person, property or the environment, the cost of investigation, remediation, restoration and abatement. Further, Tenant's obligations hereunder shall survive the expiration or termination of this Lease. No termination, cancellation, or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Section 21.3, unless specifically stated in writing in the agreement and signed by Landlord.

21.4 Law Compliance. Tenant shall, at its sole cost and expense, comply with (i) any and all requirements necessary for the maintenance of reasonable fire, extended coverage, and public liability insurance covering the Premises; and (ii) any and all rules, regulations, requirements and mandates of those federal, state and local public agencies now existing or as may hereafter be established or modified, with jurisdiction, power, and authority to monitor, enforce, and administer matters relating to air and water quality and waste management and disposal.

21.5 Inspection. Landlord shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all applicable laws and regulations. The cost of the inspection shall be borne by Landlord unless a default under this Lease, violation of law, or a contamination caused or contributed to by Tenant, is found to exist, in which case Tenant shall reimburse Landlord on demand for all costs of inspection, investigation, remediation, restoration, or abatement, including all legal, accounting, and other professional consulting fees and expenses incurred or paid by Landlord and the value of services provided by employees of Landlord, its officers, elected officials, agents, attorneys, and employees. Such payment shall be made to Landlord as additional rent within ten (10) calendar days after Tenant receives Landlord's written demand therefore.

ARTICLE 22 - DEFAULT AND BREACH BY TENANT - REMEDIES

{107700-01/000/00789494-2 }

-24-

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

VENTURA PORT DISTRICT
RESTAURANT LEASE

EXHIBIT B

22.1 Defaults - Breach. Landlord and Tenant agree that if an attorney is consulted by Landlord in connection with a Tenant Default or Breach (as hereinafter defined), One Thousand Dollars (\$1,000.00) is a reasonable minimum sum per such occurrence for legal services and costs in the preparation and service of a notice of Default, and that Landlord may include the cost of such services and costs in said notice as rent due and payable to cure said default. A "Default" by Tenant is defined as a failure by Tenant to observe, comply with or perform any of the terms, covenants, conditions, or rules and regulations applicable to Tenant under this Lease. A "Breach" by Tenant is defined as the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure by Tenant to cure such Default prior to the expiration of the applicable grace period, and shall entitle Landlord to pursue the remedies set forth in Section 22.2:

22.1.1 The vacating of the Premises without the intention to reoccupy same, or the abandonment of the Premises.

22.1.2 Except as expressly otherwise provided in this Lease, the failure by Tenant to make any payment of Minimum Monthly Rent, or any other monetary payment required to be made by Tenant hereunder as and when due, the failure by Tenant to provide Landlord with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Tenant to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Landlord to Tenant.

22.1.3 Except as expressly otherwise provided in this Lease, the failure by Tenant to provide Landlord with reasonable written evidence (in duly executed original form, if applicable) of (i) maintenance and service contracts required under Section 18.1; (ii) the rescission of an unauthorized assignment or subletting under Article 16; (iii) the subordination or non-subordination of this Lease per Article 27; (iv) a Tenant's certificate per Section 4.5; (v) the guaranty of the performance of Tenant's obligations under this Lease if required under Article 2; or (vi) any other documentation or information which Landlord may reasonably require of Tenant under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of Landlord to Tenant.

22.1.4 A Default by Tenant as to the terms, covenants, conditions, or provisions of this Lease, or of the rules and regulations adopted under Article 20 hereof that are to be observed, complied with or performed by Tenant, other than those described in Paragraphs 22.1.1, 22.1.2, and 22.1.3, above, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of Landlord to Tenant; provided, however, that if the nature of Tenant's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by Tenant if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

22.1.5 The occurrence of any of the following events: (i) the making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant's becoming a "debtor" as defined in the United States Bankruptcy Code or any successor statute thereto [unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days]; (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in the Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this Paragraph 22.1.5 is contrary to any applicable law, such provision shall be of no force or effect, and shall not affect the validity of the remaining provisions.

22.1.6 The discovery by Landlord that any financial statement of Tenant or of any guarantor, given to Landlord by Tenant or any guarantor, was materially false.

22.1.7 If the performance of Tenant's obligations under this Lease is guaranteed: (i) the death of a guarantor; (ii) the termination of a guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty; (iii) a guarantor's becoming insolvent or the subject of a bankruptcy filing; (iv) a guarantor's refusal to honor the guaranty; or (v) a guarantor's breach of its guaranty obligation on an anticipatory breach basis, and Tenant's failure, within sixty (60) days following written notice by or on behalf of Landlord to Tenant of any such event, to provide Landlord

{107700-01/000/00789494-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT B

with written alternative assurances of security, which, when coupled with the then existing resources of Tenant, equals or exceeds the combined financial resources of Tenant and the guarantors that existed at the time of execution of this Lease.

22.1.8 Failure to keep and maintain the Premises and any improvements thereon in compliance with all requirements and regulations of the Americans with Disabilities Act of 1990 and/or any corresponding laws of the State of California.

22.1.9 Failure to cure, correct, repair, remediate, or rectify any violations of, or claims of noncompliance with, the Americans with Disabilities Act of 1990 and/or any corresponding laws of the State of California, or make any improvements, alterations, or remediation changes required to complete agreed or mandated modifications in connection with such violations or claims of noncompliance, with respect to the Premises and any improvement located thereon, within the time required under applicable law, by a court of competent jurisdiction or governmental agency with jurisdiction, or as agreed between Landlord, Tenant, and/or any third parties.

22.2 Remedies. If Tenant fails to perform any affirmative duty or obligation of Tenant under this Lease, within ten (10) days after written notice to Tenant (or in case of an emergency, without notice), Landlord may at its option (but without obligation to do so), perform such duty or obligation on Tenant's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits, or approvals. The costs and expenses of any such performance by Landlord shall be due and payable by Tenant to Landlord as additional rent upon invoice therefore. If any check given to Landlord by Tenant shall not be honored by the bank upon which it is drawn, Tenant shall pay Thirty-Five Dollars (\$35.00) to Landlord to cover costs (such as processing expenses and account charges) incurred by Landlord due to the bank not honoring the check, and Landlord, at its own option, may require all future payments to be made under the Lease by Tenant to be made only by cashier's check. In the event of a Breach of this Lease by Tenant (as defined in Section 22.1), with or without further notice or demand, and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such Breach, Landlord may:

22.2.1 Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of re-letting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Landlord in connection with the Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). Efforts by Landlord to mitigate damages caused by Tenant's Default or Breach of this Lease shall not waive Landlord's right to recover damages under this Section 22.2. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or Landlord may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under Paragraphs 22.1.2, 22.1.3, or 22.1.4 was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Tenant under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by Paragraphs 22.1.2, 22.1.3, or 22.1.4. In such case, the applicable grace period under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Tenant to cure the Default within the greater of the two (2) such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Landlord to the remedies provided for in this Lease and/or by said statute.

{107700-01/000/00789494-2 }

EXHIBIT B

22.2.2 Continue the Lease and Tenant's right to possession in effect under California Civil Code Section 1951.4, or any successor statute thereto, after Tenant's Breach and recover the rent as it becomes due, provided Tenant has the right to sublet or assign, subject only to reasonable limitations. Landlord and Tenant agree that the limitations on assignment and subletting in this Lease are reasonable. Acts of maintenance, preservation, or renovation, efforts to re-let the Premises, or the appointment of a receiver to protect Landlord's interest under this Lease, shall not constitute a termination of Tenant's right to possession.

22.2.3 Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of California.

22.2.4 The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Tenant's occupancy of the Premises.

22.3 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and account charges and late charges which may be imposed upon Landlord. Accordingly, if any installment of rent or other sum due from Tenant shall not be received by Landlord or its designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to six percent (6%) of such overdue amount, which late charge shall be due and payable as additional rent. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's Default or Breach with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Minimum Monthly Rent, then notwithstanding any other provision of this Lease to the contrary, Minimum Monthly Rent shall, at Landlord's option, become due and payable quarterly in advance.

22.4 Definitions. The phrase "rent and other payments" as used in this Article 22, shall be deemed to be and to mean the Minimum Monthly Rent, the Common Area Assessment, and all other sums payable pursuant to Article 5 hereof and all other sums required to be paid by Tenant pursuant to the terms of this Lease. All such sums, other than the Minimum Monthly Rent, shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twelve (12) month period prior to the Default, except that if it becomes necessary to compute such sums before such period has occurred than on the basis of the average monthly amount accruing during such shorter period.

ARTICLE 23 - BREACH BY LANDLORD

Landlord shall not be deemed in breach of this Lease unless Landlord fails within a reasonable time to perform an obligation required to be performed by Landlord. For purposes of this Article 23, a reasonable time shall in no event be less than thirty (30) days after receipt by Landlord of written notice specifying wherein such obligation of Landlord has not been performed and what specific provision of this Lease has been so violated by Landlord referring to the exact article, section, or paragraph involved; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, then Landlord shall not be in breach of this Lease if performance is commenced within such 30-day period and thereafter diligently pursued to completion. If Landlord fails to remedy its breach in accordance with this Article 23, Landlord shall be responsible for the damages actually sustained by Tenant as a result thereof; provided, however, that Landlord shall under no circumstance be liable for injury to Tenant's business or for any loss of income or profit therefore, or for any other form of consequential damages. Tenant shall have no right to terminate this Lease by reason of any breach by Landlord.

ARTICLE 24 - CONDEMNATION

If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "Condemnation"), this Lease shall terminate as to the part so

{107700-01/000/00789494-2 }

EXHIBIT B

taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than twenty-five percent (25%) of the floor area of the Premises is taken by Condemnation, Landlord or Tenant, at the option of either of them, to be exercised in writing within ten (10) days after Landlord shall have given Tenant written notice of such taking [or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession] terminate this Lease as of the date the condemning authority takes such possession. If the Lease is so terminated pursuant to this Article 24 during the middle of a month, then the Minimum Monthly Rent and other payments due by Tenant shall be equitably prorated for the time of Tenant's loss of possession of the Premises. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Minimum Monthly Rent shall be reduced in the same proportion as the floor area of the remaining portion bears to the total floor area of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord whether such award shall be made as compensation for diminution of value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any compensation, separately awarded to Tenant for Tenant's relocation expenses and/or loss of Tenant's trade fixtures. Tenant shall not be entitled to any award, or portion of an award, attributable to any excess of the market value of the Premises over the present value at the taking of the Minimum Monthly Rent for the remainder of the Lease Term (bonus value), and Tenant assigns to Landlord the right to receive any bonus value, whether awarded directly or as a part of Tenant's loss of goodwill. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall to the extent of its net severance damages received, repair any damage to the Premises caused by such condemnation authority. Tenant shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair. Tenant and Landlord waive the provisions of Code of Civil Procedure Section 1265.130 allowing either of them to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises.

ARTICLE 25 - DISPUTE RESOLUTION

25.1 Mediation. All actions, disputes, claims or controversies of any type or nature whatsoever which arise out of or which relates to this Lease, or to the interpretation or breach thereof that cannot be resolved between the parties within thirty (30) days of such dispute or claim, shall first be submitted to a mediator jointly selected by the parties. If the action, dispute, claim or controversy cannot be resolved by the mediator within thirty (30) days following the end of the aforesaid thirty (30) day period, then the action, dispute, claim or controversy shall be resolved by binding arbitration pursuant to Section 25.2 below.

25.2 Arbitration. All actions, disputes, claims or controversies of any type or nature whatsoever arising from this Lease will be subject to and resolved by binding arbitration before a single arbitrator, but only after first being submitted to mediation pursuant to Section 25.1 above. The parties confirm that by agreeing to this alternate dispute resolution process, they intend to give up their right to have any dispute decided in court by a judge or jury. Pursuant to the Federal Arbitration Act 9 U.S.C Section 1 et. seq., any and all disputes, claims, or controversies between the parties ("parties" specifically including, but not being limited to, any assignee of a party) arising out of or relating to this Lease that are not resolved by their mutual agreement shall be submitted to final and binding arbitration before a single arbitrator who shall be an attorney who has been practicing law in the State of California with at least 15 years of full-time experience in contract law, and preferably with experience with commercial real property in Ventura County, or a retired California Superior Court judge authorized to practice law in the State of California, selected by mutual agreement of the parties, or in the absence of such agreement appointed upon application of a party to a Superior Court Judge of Superior Court of California, County of Ventura. The arbitration proceedings shall be governed by the Commercial Arbitration Rules of the American Arbitration Association but shall not be administered by it. To the extent applicable in civil actions in California courts, the following shall apply and be observed: all rules of pleading (including the right to demurrer); all rules of evidence; and all rights to resolution of the dispute by means of motions for summary judgment, judgment on the pleadings, and judgment under Code of Civil Procedure Section 631.8. The Arbitration shall take place in Ventura County. Unless otherwise determined by the Arbitrator each of the parties shall bear one-half of the fees and expenses of the arbitration. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis other than such controlling law. Awards shall include the arbitrator's written reasoned opinion.

{107700-01/000/00789494-2 }

EXHIBIT B

The provisions of this paragraph are specifically enforceable by any court with subject matter jurisdiction sitting in Ventura County.

ARTICLE 26 - SALE OF PREMISES BY LANDLORD

In the event of any sale or exchange of the Premises by Landlord, assignment by Landlord of this Lease, or the creation of a ground lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence, or omission relating to the Premises occurring after the consummation of such sale, exchange, assignment, or ground lease.

ARTICLE 27 - SUBORDINATION, ATTORNMENT

27.1 Subordination. Upon written request of Landlord, any mortgagee or beneficiary of a deed of trust made by Landlord, Tenant will in writing subordinate its rights hereunder to the lien of any mortgage or deed of trust, now or hereafter in force against the land and building of which the Premises are a part, and to all advances made or hereafter to be made upon the security thereof. The provisions of this Article 27 to the contrary notwithstanding, and so long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof without regard to the subordination consented to by Tenant.

27.2 Attornment. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

27.3 Statements from Tenant. Within ten (10) days after written request therefore by Landlord, or in the event that upon any sale, assignment, or hypothecation of the Premises or the land thereunder by Landlord, an offset statement shall be required from Tenant, Tenant agrees to deliver in recordable form a certificate addressed to any such proposed mortgagee or purchaser or to Landlord certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto or stating those claimed by Tenant.

ARTICLE 28 - QUIET POSSESSION

Tenant upon paying the rent and performing the covenants and conditions of this Lease may quietly have, hold, and enjoy the Premises during the term hereof or any extension thereof; subject, however, to the provisions of Article 11 of this Lease.

ARTICLE 29 - MARKETING AND PROMOTION FUND

29.1 Purpose. The Marketing and Promotion Fund shall be utilized to market, advertise, and promote "The Ventura Harbor Village" in accordance with long-range marketing plans which may include public relations programs, special events and promotions, and acquisition of props and decorative materials. Landlord shall maintain same as a separate fund, the proceeds of which shall be expended solely for Complex-wide promotion, advertising, and public relations costs and expenses, to be undertaken at such times and in such manner as Landlord deems appropriate in its sole discretion, and for administrative expenses related to the foregoing.

29.2 Tenant Payments. Tenant shall pay into the Marketing and Promotion Fund in equal monthly payments, in advance, on the first day of each calendar month, by checks sent to Landlord and made payable to "Ventura Port District," the monthly amount specified in Section 1.15 during the Lease Term. This amount shall be adjusted annually as per Section 1.15 during the Lease Term.

ARTICLE 30 - CAPTIONS AND TERMS

30.1 Captions. The captions of Articles and Sections of this Lease are for convenience in reference only, are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease. Except as

{107700-01/000/00789494-2 }

EXHIBIT B

otherwise specifically stated in this Lease, "the Lease Term" shall include the original term and any extension, or renewal thereof.

30.2 Multiple Tenants. If more than one person or corporation is named as Tenant in this Lease and executes the same as such, then and in such event, the word "Tenant" wherever used in this Lease is intended to refer to all such persons or corporations, and the liability of such persons or corporations for compliance with and performance of all terms, covenants, and provisions of this Lease shall be joint and several.

30.3 Gender - Plural. The masculine pronoun used herein shall include the feminine or the neuter, as the case may be, and the use of the singular shall include the plural.

ARTICLE 31 - NOTICES

31.1 Mailed Notices. Wherever in this Lease notice or demand shall be required or permitted to be given or served by either party to this Lease to or on the other, such notice or demand shall be given or served, and shall not be deemed to have been duly given or served unless, in writing and forwarded by certified or registered mail, return receipt requested, addressed to the addresses of the parties specified in Article 1 hereof. Either party may change such address by written notice by certified or registered mail to the other.

31.2 Effective Date. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or, if no delivery date is shown, the postmark thereon. If notice is received on a Saturday, or a Sunday, or a legal holiday, it shall be deemed received on the next business day.

31.3 Delivered Notices. Notwithstanding anything to the contrary contained within this Article 31, any notices which Landlord is required or authorized to deliver to Tenant in order to advise Tenant of alleged violations of Tenant's covenants contained in Articles 14 (with respect to improper advertising medium and/or signs), 18 (failure of Tenant to properly repair and/or maintain the Premises), 20 (improper parking of Tenant's and Tenant's employees automobiles), and/or failure to properly operate the heating, ventilating, and air-conditioning equipment serving the Premises, must be in writing but shall be deemed to have been duly given or served upon Tenant by delivering a copy of such notice to one of Tenant's managing employees at the Premises or by mailing a copy of such notice to Tenant in the manner specified in this Article 31.

ARTICLE 32 - SUCCESSORS - COVENANTS

The parties hereto agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate provision hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legatees, legal representatives, successors, and assigns, provided, however, that any transfer of Tenant's interest under this Lease shall be governed by Article 16.

ARTICLE 33 - CONSENT OF LANDLORD AND TENANT

Wherever in this Lease Landlord or Tenant is required to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld. In the event of failure of Landlord or Tenant to give any such reasonable consent, the other party hereto shall be entitled to seek a court determination whether specific performance will be granted and shall have such other remedies as are available to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for such failure to give consent unless said consent is withheld maliciously or in bad faith.

ARTICLE 34 - SECURITY DEPOSIT

Tenant shall deposit with Landlord upon Tenant's execution hereof the Security Deposit set forth in Section 1.11 as security for Tenant's faithful performance of Tenant's obligations under this Lease. Notwithstanding the foregoing, Tenant shall deposit with Landlord one thousand three hundred eighty-eight and 59/100 dollars (\$1,388.59) in a single

{107700-01/000/00789494-2 }

EXHIBIT B

payment on or before the Date of Lease, which will be added to two thousand three hundred sixty-nine and 41/100 dollars (\$2,369.41) already deposited by Tenant with Landlord as the security deposit under the current lease and collectively shall be the Security Deposit under this Lease. If Tenant fails to pay Minimum Monthly Rent or other rent or charges due hereunder, or otherwise Defaults under this Lease (as defined in Section 22.1), Landlord may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Landlord or to reimburse or compensate Landlord for any liability, cost, expense, loss, or damage (including attorneys' fees) which Landlord may suffer or incur by reason thereof. If Landlord uses or applies all or any portion of said Security Deposit, Tenant shall within ten (10) days after written request therefore deposit monies with Landlord sufficient to restore said Security Deposit to the full amount required by this Lease. Any time the Minimum Monthly Rent increases during the term of this Lease, Tenant shall, upon written request from Landlord, deposit additional monies with Landlord as an addition to the Security Deposit so that the total amount of the Security Deposit shall at all times bear the same proportion to the then current Minimum Monthly Rent as the initial Security Deposit bears to the initial Minimum Monthly Rent set forth in Article 1. Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Landlord shall, at the expiration or earlier termination of the Lease Term hereof and after Tenant has vacated the Premises, return to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest herein), that portion of the Security Deposit not used or applied by Landlord. Unless otherwise expressly agreed in writing by Landlord, no part of the Security Deposit shall be considered to be held in trust, to bear interest for its use, or to be the prepayment of any monies to be paid by Tenant under this Lease. Upon any sale or transfer by Landlord of its interest in the Premises, Landlord may transfer the Security Deposit to its successor in interest and, thereupon, Landlord shall be released from any obligation with respect thereto. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, such Security Deposit shall be deemed to be applied first to the payment of rent and other charges due to Landlord for all periods prior to the filing of such proceedings.

ARTICLE 35 - COMPLIANCE WITH PERMITS AND APPROVALS

Tenant shall at all times comply with all applicable codes, ordinances, regulations, and requirements for licenses, permits and approvals from the various governmental agencies and bodies having jurisdiction of the Premises, including, but not limited to Landlord, now or hereinafter in effect. Tenant shall provide Landlord a copy of its City of Ventura business license each year no later than the first of August. Furthermore, Tenant shall provide Landlord a copy of any other required license, permit or approval, or other evidence of compliance with applicable codes, ordinances and regulations that Landlord may reasonably request from time to time, within ten (10) days of Landlord's written request for such.

ARTICLE 36 - MISCELLANEOUS

36.1 No Partnership. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant, or any other party.

36.2 Severability. If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. If any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

36.3 Corporate Status. In the event Tenant hereunder is a corporation, limited liability company, or limited liability partnership, the parties executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly qualified entity and all steps have been taken prior to the date hereof to qualify Tenant to do business in California; that all franchise and corporate taxes have been paid to date; and that all future forms, tax returns, reports, fees, and other documents necessary to comply with applicable laws will be filed when due.

36.4 Entire Agreement. There are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter

{107700-01/000/00789494-2 }

EXHIBIT B

thereof, and none thereof shall be used to interpret or construe this Lease. This Lease is and shall be considered to be the only agreement between the parties hereto and their representatives or agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this Lease.

36.5 Other Tenants. Landlord reserves the absolute right to effect such other tenancies in the Complex as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the Complex. Tenant does not rely on the fact, nor does Landlord represent that any specific tenant or number of tenants shall during the term of this Lease occupy any space in the Complex.

36.6 Governing Law. The laws of the State of California shall govern the validity, performance, and enforcement of this Lease. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be, at the option of the Landlord, in Ventura County, California, and Tenant expressly consents to Landlord's designating the venue of any such suit or action. Although the printed provisions of this Lease were drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant, but this Lease shall be interpreted in accordance with the fair meaning of the language in an effort to reach an equitable result.

36.7 Waiver. A waiver of any Breach or Default shall not be a waiver of any other Breach or Default. Landlord's consent to, or approval of, any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

36.8 Impossibility of Performance. Any prevention, delay, or stoppage due to strike, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile government action, civil commotion, fire, or other casualty, and other causes beyond the reasonable control of the party obligated to perform, which renders performance impossible by that party, shall excuse the performance by such party for a period equal to any such prevention, delay, or stoppage, except the obligations imposed on Tenant with regard to the payment of Minimum Monthly Rent and other rent under Article 5 and the other provisions of this Lease.

36.9 Harbor Conditions. Landlord and Tenant acknowledge that the waters of the harbor areas adjacent to the Complex may be subject to shoaling caused by the discharge of silt and other debris through storm drains emptying into the harbor. Landlord agrees to take action at its sole cost and in its discretion as may be reasonably necessary to maintain the harbor, taking into account the costs of such action, Landlord's fiscal limitations, government requirements and weather conditions. Such maintenance operations by Landlord, such as dredging, shall not be deemed to have disturbed or interfered with Tenant's possession and use of the Premises, and shall not be considered as an eviction of Tenant, either actually or constructively, from the Premises. Neither Tenant nor any persons claiming through Tenant shall be entitled to any actual or consequential damages on account of Landlord's maintenance of the harbor.

36.10 Waiver of Redemption. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant's being evicted or dispossessed for any cause, or in the event of Landlord's obtaining possession of the Premises by reason of the violation of Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

36.11 Complex Name. Landlord reserves the right to change the name of the Complex from time to time during the term of this Lease (as well as the name of the marketing fund under Article 29).

36.12 Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the parties under this Lease.

36.13 Holding Over. If Tenant remains in possession of the Premises after expiration or earlier termination of this Lease with Landlord's consent, Tenant's occupancy will be a month-to-month tenancy at a Minimum Monthly Rent of one hundred ten percent (110%) of the Minimum Monthly Rent payable under this Lease during the last full

{107700-01/000/00789494-2 }

EXHIBIT B

month before the date of expiration or earlier termination of this Lease, plus Additional Percentage Rent under Sections 1.8 and 5.6 of this Lease. Landlord will be deemed to have consented to the holding over unless Landlord has delivered to Tenant a demand that Tenant surrender the Premises. The month-to-month tenancy will be on the terms and conditions of this Lease except as provided in (i) this Section 36.13; (ii) Section 1.6 (Lease Term); and (iii) Exhibit "H" (Options to Extend) which shall not be effective for a Hold Over Tenant. Landlord's acceptance of rent after such holding over with Landlord's consent will not result in any other tenancy or in a renewal of the original term of this Lease. If Tenant remains in possession of the Premises after expiration or earlier termination of this Lease without Landlord's consent, then Tenant's continued possession will be on the basis of a tenancy at sufferance and tenant will pay as Minimum Monthly Rent during the holdover period one hundred twenty-five percent (125%) of the Minimum Monthly Rent payable under this Lease during the last full month before the date of expiration or earlier termination of this Lease, disregarding any temporary abatement of rent that may then have been in effect. The provisions of this Section 36.13 will survive the expiration or sooner termination of this Lease.

36.14 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall, whenever possible, be cumulative with all other remedies at law or equity.

36.15 Guaranty. If there is to be any guarantors of the Lease, the form of the guaranty to be executed by each such guarantor shall be in the form attached as Exhibit "E", and each such guarantor shall have the same obligation as Tenant under this Lease, including but not limited to the obligation to provide certificates and other information under Section 4.5.

36.16 Amendments. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the Minimum Monthly Rent or other rent payable under this Lease.

36.17 Non-Discrimination. Tenant shall not discriminate against any person or class of persons by reason of gender, race, color, creed, national origin, age, marital status, sexual orientation, or physical condition. Tenant shall make its accommodations and services available to all persons on an equal basis.

36.18 Non-Defamation & Mutual Respect. Each Party agrees to take reasonable steps to refrain from either directly or indirectly, hereafter making any defaming, disparaging, derogatory, misleading or false statement to anyone about the other party (and in the case of the Vendor, its employees, officers, directors, agents, consultants, affiliates, investors or business partners) in any private or public forum.

36.19 Offers. The submission of this Lease by Landlord, its agents or representatives for examination or execution by Tenant does not constitute an option or offer to lease the Premises upon the terms and conditions contained herein or a reservation of the Premises in favor of Tenant. This Lease shall only become effective upon the execution thereof by Landlord and delivery of a fully executed counterpart to Tenant.

36.20 Exhibits. All exhibits referred to are attached to this Lease and incorporated by reference. In the event of any apparent inconsistency or conflict between the Lease provisions and the exhibits, the exhibits shall control.

36.21 Landlord's Attorney in Fact. Landlord appoints Tenant the attorney-in-fact of Landlord for the purpose of making all payments to be made by Tenant pursuant to any of the provisions of this Lease to persons or entities other than Landlord. Tenant shall provide Landlord with satisfactory evidence of payment. In case any person or entity to whom any sum is directly payable by Tenant under any of the provisions of this Lease shall refuse to accept payment of such sum from Tenant, Tenant shall thereupon give written notice of such fact to Landlord and shall pay such sum directly to Landlord, and Landlord shall thereupon pay such sum to such person or entity.

[Signature Page Follows]

EXHIBIT B

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

LANDLORD:


VENTURA PORT DISTRICT
doing business as
"Ventura Harbor Village"

By: _____
Brian D. Pendleton
General Manager

Date: _____

TENANT:

Coastal Cone, Inc.
doing business as:
Coastal Cone and The Parlor

By: _____
Alex Hong, President

Date: 06/29/23

If Tenant is a corporation the authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice president and the secretary or assistant secretary, unless the bylaws or a resolution of the Board of Directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished. Also, the appropriate corporate seal must be affixed. If Tenant is a limited liability company or limited liability partnership, this Lease must be executed by a managing member or managing partner.

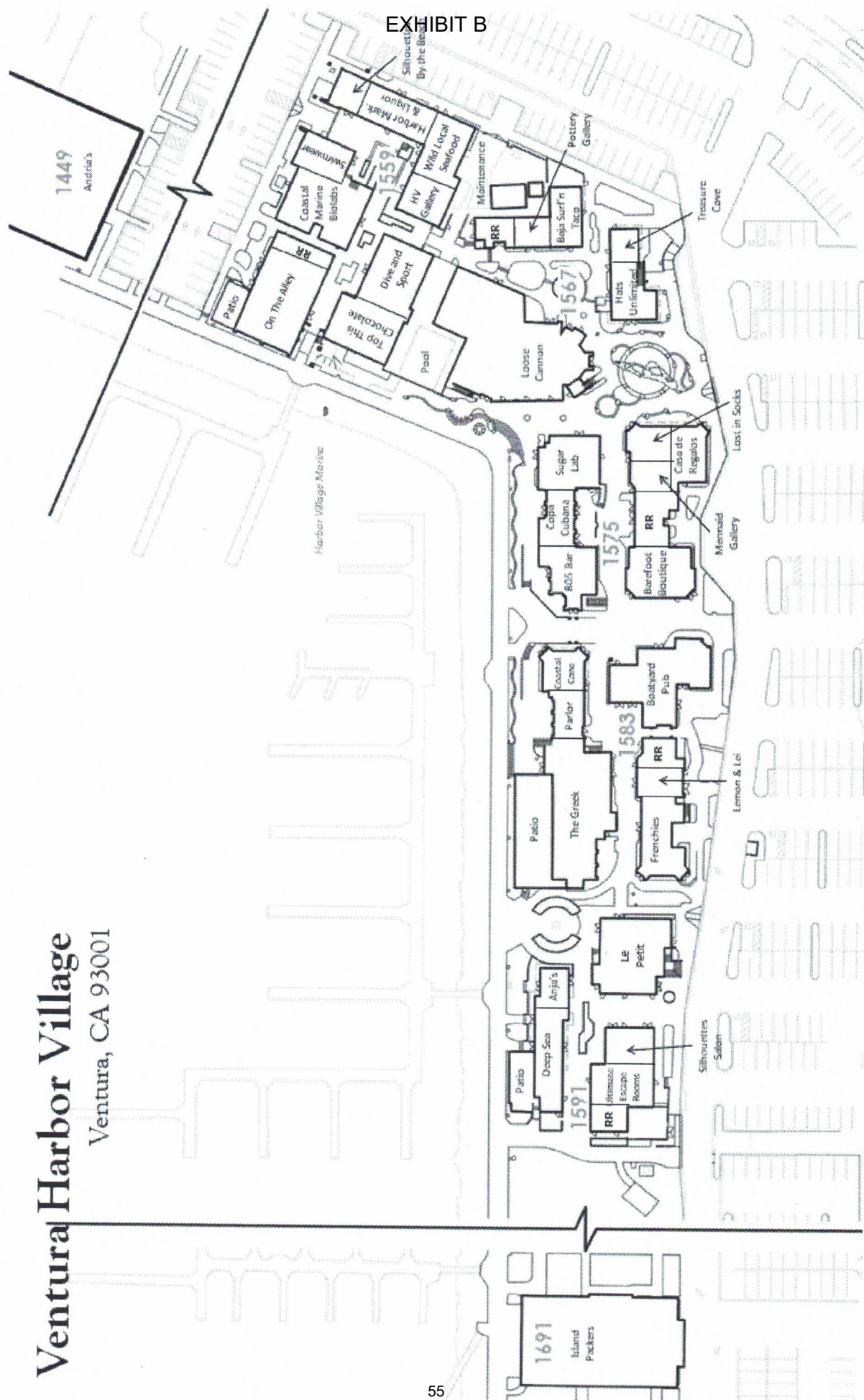


Exhibit A-1

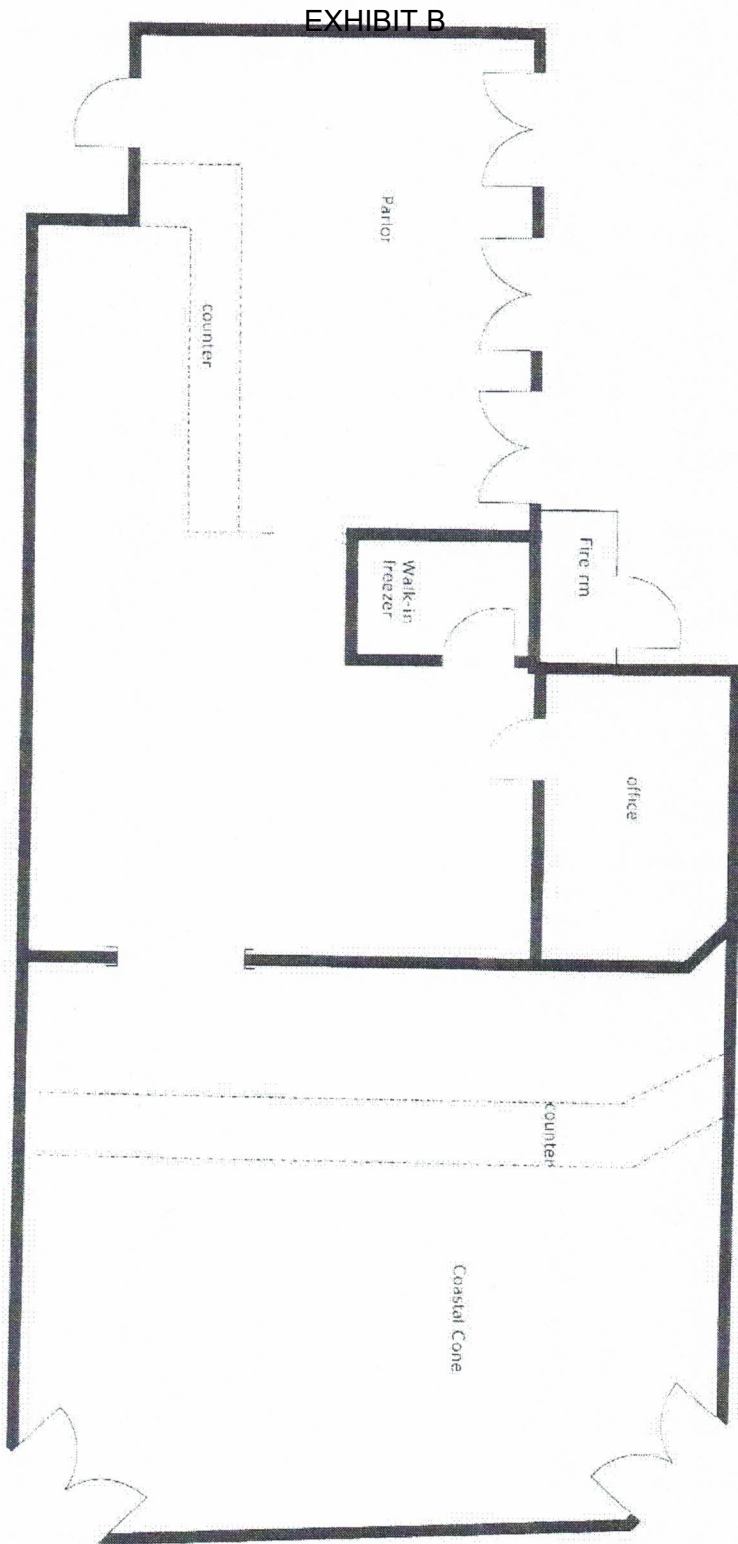


EXHIBIT B

1583 Suite 102 & 104
1,663 SQ. FT.

NOT TO SCALE
04/30/2015

EXHIBIT B

EXHIBIT "B"

DESCRIPTION OF PREMISES

A restaurant within the Ventura Harbor Village, in the City of San Buenaventura, County of Ventura, State of California, containing approximately 1,663 square feet of floor area, 1,186 square feet of patio space, and ~~xx~~ square feet of storage space. The approximate location of the Premises is crosshatched on Exhibit "A". The approximate configuration and dimensions on the Premises are outlined on Exhibit "A-1."

NONEXCLUSIVE USE OF PREMISES

Use Clause:

Tenant shall use the Premises only for a quick-service casual dining restaurant that serves ice cream, desserts, breakfast, lunch, and dinner with the sale of non-alcoholic beverages. In addition to food and beverages, tenant shall use the premises for the retail sale of restaurant related items. Tenant shall use the Premises only for retail component with non-exclusive manufacture and sale of custom items such as: Coastal Cone's/The Parlor's branding items such as (t-shirts, hats, glassware, and mugs, etc.). No inappropriate or offensive merchandise shall be allowed.

The Landlord (through its General Manager) may grant its approval, in a writing obtained in advance by Tenant, for other uses incidental to the permitted use set forth above.

Landlord approved menu (see attached).

Permitted Use OPTION

The Tenant shall have the option at its discretion to alter the permitted use to add the sale of alcoholic beverages to The Parlor portion of the suite. In the event that the Tenant exercises this option, all sales from The Parlor portion of the suite (only) shall be subject to 4% percentage rent of all gross sales for food and beverages. Tenant must notify the Landlord in writing and obtain all necessary permits and licenses to sell alcohol, and furnish the Landlord evidence of such, prior to doing so.

Hours of Operation

Tenant agrees to be open for business seven (7) days per week and minimum hours of operation shall be 11:00 a.m. to 6:00 p.m. daily, or as Landlord shall determine in the reasonable exercise of its discretion.

Tenant shall abide by seasonal and or holiday hours and special marketing and promotional hours as determined by Landlord.

Control of Level of Noise: In its operation of business on the Premises Tenant shall not violate the acceptable level of noise as determined by Landlord in Landlord's sole and absolute discretion for the Complex. Tenant's violation of this covenant shall be deemed to be a material Default under the Lease and shall entitle the Landlord to all remedies provided in this Lease. If Tenant's business operations, entertainment activities, or other activities at the Premises require a special entertainment or any other permit from the City of San Buenaventura or other governmental agency having jurisdiction over the Premises, Tenant shall obtain and at all times comply with any and all such permit(s). Tenant shall provide a copy of such permit(s) to Landlord.

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "B"
DESCRIPTION OF PREMISES

EXHIBIT B

TRADE NAMES OF TENANT

Tenant shall operate the Premises under the trade names of Coastal Cone and The Parlor.

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBT "B"
DESCRIPTION OF PREMISES

EXHIBIT B

EXHIBIT "C"

PROVISIONS RELATING TO CONSTRUCTION OF TENANT'S IMPROVEMENTS

DESCRIPTION OF LANDLORD'S WORK

The following is a description of the construction, and limitations of the same, which will be provided by Landlord. Where more than one type of materials or structures is indicated, the selection will be made by Landlord, in its sole discretion.

- Repair/replace concrete on patio within **18** months of lease execution and prior to tenant installation of new patio awning. Landlord shall install footings in the concrete for patio awning, if required.
- Replacement of (door protection) awning at southwest corner of suite.
- Replacement of 8 storefront windows within **18** months of lease execution.

Except the improvements described above, Tenant accepts the Premises "AS IS."

DESCRIPTION OF TENANT'S WORK

The work to be done by Landlord in satisfying its obligation to construct Tenant's Premises under the Lease shall be limited to that described in the foregoing paragraphs. All other items of work shall be provided by Tenant at Tenant's expense. This work by Tenant shall include, but not necessarily be limited to the purchase and/or installation and/or performance of the work listed below including all of the architectural and engineering fees for the preparation of the plans and specifications for such work, and any non-recurring tax that might be levied upon or measured by the amount of funds expended by Tenant on Leasehold improvements to Landlord's building. All work undertaken by Tenant shall be at Tenant's expense and shall not damage the Premises or any part thereof. Work undertaken by Tenant at Tenant's own expense during the general construction shall be awarded to Tenant's contractor unless Tenant and Landlord shall otherwise agree in writing. The design of and plans for all work and installations to be undertaken by Tenant shall be subject to the advance written approval of Landlord. The designs and plans may be modified and changed only with the written approval of Landlord obtained in advance.

Tenant Improvements

- Submit plans of the patio to Port District within **90** days of lease execution. If required, submit landlord approved awning design to the City of Ventura Plans for permit approval within **180** days of lease execution.
- Install new signage in courtyard and in front of business (as per District design criteria specifications and applicable regulations) within **12** months of lease execution.
- Installation of new doors within **12** months of lease execution.
- Install new awning over patio within **20** months of lease execution.
- Modernization of kitchen within **5** years of lease execution.

Landlord shall contribute **50%** of the cost up to and **not to exceed \$20,000.00** towards the improvement listed below (the "Tenant Improvement Allowance"), which will be performed by the Tenant:

- Installation of new doors within **12** months of lease execution.

In order to receive any of the Tenant Improvement Allowance, Tenant must submit a reimbursement request, no more than one (1) time per month, together with receipts and other documentation evidencing compliance with the plans and substantiating such amounts (together with all applicable lien releases) for Landlord's approval, such approval not to be unreasonably withheld. Landlord shall deliver the reimbursement amount within thirty (30) days of Landlord's receipt of requisite documentation. Tenant shall utilize the Tenant Improvement Allowance, if at all, on or before the twelve (12) month anniversary of the execution of the Lease (the "Outside TI Completion Date"), such utilization to be evidenced by performance of the work and delivery of the documents required above prior to the Outside TI Completion Date. Tenant shall not be entitled to any credit, offset, or payment from Landlord for any portion of the Tenant Improvement Allowance for which Tenant has not properly submitted the requisite paperwork under the above.

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "C"
PROVISIONS RELATING TO CONSTRUCTION
OF TENANT'S IMPROVEMENTS

EXHIBIT B

Tenant to accept premises in the present "AS IS" condition, except as provided listed above.

DESCRIPTION OF TENANT'S WORK (TENANT'S USE OF ITS OWN CONTRACTOR)

1. Anything to the contrary notwithstanding in this Exhibit "C" and the Lease to which it is attached, Tenant shall utilize only duly licensed contractors for any of the work to be done by Tenant pursuant to this Exhibit "C". Said contractor shall obtain all permits required by the City of San Buenaventura and other governmental authorities having jurisdiction and shall provide copies thereof to Landlord. This shall include permits for any signage to be installed by Tenant. Landlord's approval of Tenant's work does not constitute a permit required by the City of San Buenaventura or other governmental agencies.
2. Prior to the start of Tenant's work, Tenant's contractor shall provide Landlord with a construction schedule in "bar graph" form indicating the completion dates of the phases of Tenant's construction work.
3. Landlord and Tenant shall cooperate in good faith to schedule, coordinate, and perform their respective construction activities in an orderly manner, and Tenant and its contractor shall comply with reasonable rules and regulations promulgated by Landlord for the construction of leasehold improvements.
4. Tenant's contractor shall perform said work in a manner and at times which do not impede or delay Landlord's contractor in the completion of the Premises and/or the commencement of the Minimum Monthly Rent, and any damages caused by Tenant's contractor to any work shall be at the sole cost and expense of Tenant.
5. Tenant shall cause the leasehold improvements to be constructed by well-trained, adequately supervised workers, in good and workmanlike manner free from design, material, and workmanship defects in accordance with the plan approved by Landlord and all applicable laws, ordinances, rules, and regulations.
6. Tenant's contractor shall be responsible for the repair, replacement, or clean-up of any damage done by it to other contractor's work which specifically includes access ways to Tenant's space, which may be concurrently used by others.
7. Any rework of sub-base or compaction required shall be done by Tenant's contractor.
8. Tenant's contractor shall confine its storage of materials and its operations within Tenant's space and such other space as it may be assigned by Landlord. Should the contractor be assigned space outside of Tenant's space, it shall move to such other space as Landlord shall direct from time to time to avoid interference or delays with other work.
9. All trash and surplus construction materials shall be stored within Tenant's space and shall be promptly removed from the project site following completion or as Landlord may otherwise direct. All trash and construction debris shall be disposed of by Tenant's contractors in their own receptacles; and Landlord's dumpsters and other trash containers shall not be used by Tenant's contractor.
10. Tenant's contractor shall provide temporary utilities, portable toilet facilities, and portable drinking water, as required for its work within Tenant's space, and Tenant shall pay to Landlord the cost of any temporary utilities and facilities provided by Landlord at Tenant's contractor's request.
11. Tenant's contractor shall notify Landlord of any planned work to be done on weekends or other than normal job hours.
12. Tenant and Tenant's contractor are responsible for compliance with all applicable laws, ordinances, regulations, and rules of all duly constituted authorities having jurisdiction insofar as the performance of the work and completed improvements are concerned, including but not limited to Landlord, for all work performed by Tenant or Tenant's contractor and all applicable safety regulations established by Landlord. Tenant further agrees to save and hold Landlord harmless for said work as provided in Article 10 of this Lease.
13. Tenant or Tenant's contractor shall arrange for the installation of a closure to separate the Premises from the Complex prior to the opening of the Premises and during the construction of the improvements of the Premises.

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "C"
PROVISIONS RELATING TO CONSTRUCTION
OF TENANT'S IMPROVEMENTS

EXHIBIT B

14. Tenant's contractor shall carry liability and completed operations insurance in the form and amounts acceptable to Landlord.
15. Landlord shall have the right to inspect the improvements and approve the quality of the work of Tenant's contractor under the standards set in Paragraph 5 above prior to Tenant's submitting the work for final inspection by the governmental authorities having jurisdiction. If the work of Tenant's contractor fails to meet the standard set in Paragraph 5 above, then Tenant, at its sole cost, shall correct the work before obtaining the final inspection.
16. Tenant shall record a notice of completion in the Recorder's Office of the County of Ventura upon completion of its work.
17. Tenant shall provide, upon completion of its work, a complete set of "as built" drawings and specifications.
18. For all Tenant Improvements described above, Tenant shall provide a Faithful Performance Bond and a Payment Bond, in the forms as set forth in Exhibit "K," in an amount not less than One Hundred Twenty-Five Percent (125%) of the estimated cost of constructing said Tenant Improvements.

TIMELINE FOR COMPLETION OF TENANT'S WORK

To ensure the prompt and diligent completion of Tenant's work as provided herein, Landlord and Tenant agree:


1. Tenant shall complete preparation of the plans, specifications and all other architectural and engineering design work related to Tenant's work by January 31, 2024;
2. Tenant shall obtain all necessary permits and approvals from any and all governmental agencies with authority or jurisdiction over Tenant's work by August 1, 2025;
3. Tenant shall commence construction on Tenant's work by January 31, 2025, and thereafter diligently pursue the same to completion; and

Tenant's failure to meet each of the foregoing timeline dates shall, unless otherwise agreed in writing by Landlord, give Landlord the right and option to terminate the Lease by giving Tenant written notice pursuant to Article 31 of this Lease.

LANDLORD:
Ventura Port District
doing business as
"Ventura Harbor Village"

TENANT:
Coastal Cone, Inc.
doing business as:
Coastal Cone and The Parlor

By: _____
Brian D. Pendleton, General Manager

By: _____
Alex Hong, President

Date: _____

Date: 06/29/23

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "C"
PROVISIONS RELATING TO CONSTRUCTION
OF TENANT'S IMPROVEMENTS

EXHIBIT B

EXHIBIT "D"

TENANT'S CERTIFICATE

The undersigned, as Tenant under that certain Lease ("Lease"), dated August 1, 2023, made with Ventura Port District, doing business as "Ventura Harbor Village," certifies as follows:

- (1) The undersigned has entered into occupancy of the Premises described in the Lease;
- (2) The undersigned is authorized and has the requisite power and authority to sign as, or on behalf of, Tenant;
- (3) The Lease represents the entire agreement between the parties as to the Premises;
- (4) The commencement date of rent under the lease is August 1, 2023;
- (5) The term of the Lease expires on July 31, 2028;
- (6) All conditions of the Lease to be performed by Landlord and necessary to the enforceability of the Lease have been satisfied;
- (7) There are no defaults by either Tenant or Landlord hereunder;
- (8) No rents have been prepaid, other than as provided in the Lease;
- (9) At the date hereof there are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by Landlord; and
- (10) The overall square footage of the Premises is described in Exhibit "B".

Executed on this 6/29/23

TENANT:
Coastal Cone, Inc.
doing business as:
Coastal Cone and The Parlor

By: 
Alex Hong, President

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "D"
TENANT'S CERTIFICATE

EXHIBIT B

EXHIBIT "E"

GUARANTY OF LEASE

WHEREAS, a certain Lease dated August 1, 2023 has been, or will be, executed by and between VENTURA PORT DISTRICT doing business as "Ventura Harbor Village," herein referred to as "Landlord," and COASTAL CONE, INC. doing business as "Coastal Cone" and "The Parlor," herein referred to as "Tenant," covering the Premises known as 1583 Spinnaker Drive, #102 and #104, Ventura Harbor Village, Ventura, California 93001;

WHEREAS, Alex Hong, herein referred to as "Guarantors" have a financial interest in Tenant;

WHEREAS, Landlord would not execute this Lease if Guarantors did not execute and deliver to Landlord this Guaranty.

NOW, THEREFORE, for and in consideration of the execution of said Lease by Landlord, and as a material inducement to Landlord to execute said Lease, Guarantors, jointly, severally, unconditionally, and irrevocably guarantee the prompt payment by Tenant of all rent and all other sums payable by Tenant under said Lease and the faithful and prompt performance by Tenant of each and every one of the terms, covenants, and conditions of said Lease to be kept and performed by Tenant. Guarantors further agree as follows:

1. The covenants and agreements on Guarantors' part contained in this Guaranty shall continue in favor of Landlord notwithstanding any extension, modification, or alteration of said Lease entered into by and between the parties thereto, or their successors or assigns, or notwithstanding any assignment of said Lease, with or without the consent of Landlord; and no extension, modification, alteration, or assignment of said Lease shall in any manner release or discharge Guarantors and they hereby consent thereto.
2. This Guaranty will continue unchanged by any bankruptcy, reorganization, or insolvency of Tenant or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Tenant.
3. Landlord may, without notice, assign this Guaranty in whole or in part and no assignment or transfer of said Lease shall operate to extinguish or diminish the liability of Guarantors hereunder.
4. The liability of Guarantors under this Guaranty shall be primary and, in case of any right of action which shall accrue to Landlord under said Lease, Landlord may, at its option, proceed against Guarantors without having commenced any action, or having obtained any judgment against Tenant.
5. This Guaranty shall not be released, modified, or affected by failure or delay on the part of Landlord to enforce any of the rights or remedies of Landlord under said Lease, whether pursuant to the terms thereof or at law or in equity.
6. No notice of default need be given to Guarantors, it being specifically agreed and understood that the guarantee of Guarantors is a continuing guarantee under which Landlord may proceed forthwith and immediately against Tenant or against Guarantors following any breach or default by Tenant or for the enforcement of any rights which Landlord may have as against Tenant pursuant to or under the terms of said Lease or at law or in equity.
7. Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations as to or relating to this Guaranty and said Lease, (d) any right to require the Landlord to proceed against Tenant or any other Guarantor or any other person or entity liable to Landlord, (e) any right to require Landlord to apply to any default any security deposit or other security it may hold under said Lease, (f) any right to require Landlord to proceed under any other remedy Landlord may have before proceeding against Guarantors, and (g) any right of subrogation.
8. Guarantors do hereby subordinate all existing or future indebtedness of Tenant to Guarantors to the obligations owed to Landlord under said Lease and this Guaranty.
9. Any married person who signs this Guaranty expressly agrees that recourse may be had against his or her separate property for all of his or her obligations hereunder.

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "E"
GUARANTY OF LEASE

EXHIBIT B

10. The obligations of Tenant under said Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require Guarantors hereunder to do and provide the same relative to Guarantors.

11. If an action against the other party arising out of this Guaranty, the prevailing party will be entitled to have and recover from the other party reasonable attorneys' fees and all costs and other expenses incurred in any court action, or attempted collection proceeding, or in any negotiations relative to the obligations hereby guaranteed or enforcing this Guaranty.

12. Landlord may settle or compromise with Tenant and/or any other party or parties liable with respect to said Lease, all or any part of Tenant's liability or obligations thereunder, may exchange, release or surrender any security which it may hold, and may waive compliance with any of the terms or provisions contained in said Lease, all without in any way affecting Guarantors' obligation under this Guaranty.

13. The use of the plural herein shall include the singular. The obligation of two or more parties shall be joint and several. The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of the respective personal representatives, legatees, heirs, successors, and assigns of the parties herein named.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be executed as of the date set forth in said Lease.

GUARANTOR
Signature(s)



Alex Hong

Date: 06/29/23

Printed Name(s) and Home Address(es):

Alex S. Hong

Social Security Number

GUARANTOR
Signature(s)



James Hong

Date: 06/29/23

Printed Name(s) and Home Address(es):

JAMES K. HONG

Social Security Number

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "E"
GUARANTY OF LEASE

EXHIBIT B

EXHIBIT "F"

SIGN CRITERIA

All new Tenant signage must be in compliance with the then applicable Master Sign Program & Tenant Guidelines in effect throughout the Lease Term. These criteria have been established for the purpose of assuring an outstanding retail complex, and for the mutual benefit of all tenants. Conformance will be strictly enforced, and any installed non-conforming or unapproved signs must be removed or brought into conformance at the expense of Tenant. Landlord reserves the right to change, alter, or amend these criteria from time to time.

A. General Requirements

1. At least 30 days prior to fabrication, Tenant shall submit or cause to be submitted to Landlord for approval a drawing of its preliminary sign design, including colors and dimension, and after preliminary approval, detailed shop drawings indicating the location, size layout, design and color of the proposed signs, awnings and banners, including all lettering and graphics.
2. All City permits, if required, for signs and their installation shall be obtained by the Tenant or its representative, at Tenant's expense.
3. All signs shall be constructed and installed at Tenant's expense.
4. Tenant shall be responsible for the fulfillment of all requirements of these criteria.
5. Signs installed without prior approval in writing from the Landlord will be removed by the Landlord. All costs for removal, including but not limited to patch and repair of the building, will be at Tenant's expense.
6. Each restaurant tenant is required to have a minimum of two and a maximum of four signs per tenant.
7. Maintenance of signage, including cleaning, is the responsibility of the Tenant.

B. General Specifications

1. At the time of lease execution, the City of Ventura approved Ventura Port District – Master Sign Program & Tenant Guidelines (REV Oct 6, 2020) (Program) are in effect.
2. The program generally requires:
 - a. Primary signage: dimensional letters, externally illuminated with external features. Number of primary signs is based on business location:
 - i. Inline tenants: one primary sign
 - ii. Corner tenants: two primary signs
 - iii. Freestanding tenants: three primary signs
 - b. Secondary signage: blade sign (external illumination on case-by-case basis)
 - c. Optional signage (up to two) can include wall mounted plaques, applied window graphics, awning sign, corner treatments, and/or vertical marquee sign (applicable at specific locations only)
3. In addition to the specifications in this Program, the following general specifications shall apply:
 - a. All electrically connected signs shall bear the UL label and all installations shall comply with all local building and electrical codes.
 - b. No exposed raceways, crossovers or conduits will be permitted.
 - c. All cabinets, conductors, transformers and other equipment shall be concealed. Visible fasteners will not be permitted.
 - d. Electrical service to all signs shall be on Tenant's meter.
 - e. Painted lettering will not be permitted.
4. Prohibited sign types:
 - a. Illuminated sign boxes/can signs
 - b. Handwritten or handmade signage of any type
 - c. Oscillating, moving, or flashing LED or Neon type window signs

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "F"
SIGN CRITERIA

EXHIBIT B

- d. Product advertisements or banners
- e. Signs with tag lines, slogans, service descriptions, or advertising of products
- f. Monument style signage
- g. Temporary signage with the exception of "Grand Opening" signs for the first 60 days after opening
- h. Illuminated canopies
- i. Rotating, flashing, or animated signs
- j. Pennant, banners, or flags identifying individual tenants
- k. A-frame sandwich boards with the exception of temporary special events or "Grand Opening" as approved by the Landlord
- l. Balloons and inflatable signs
- m. Signs made with acrylic, plastic, lexan – translucent or opaque
- n. Back plates behind signage are only allowed when reasonable proportions are maintained subject to landlord discretion.

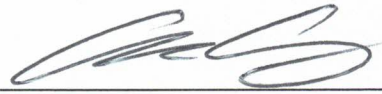
C. Construction Requirements

- 1. All exterior signs, bolts, fastenings and clips shall be of enameling iron with porcelain enamel finish, stainless steel, aluminum, brass or bronze. No black iron materials of any type shall be permitted.
- 2. All exterior letters or signs exposed to the weather shall be mounted at least 3/4" from the building wall to permit proper dirt and water drainage.
- 3. All metal letters shall be fabricated using full-welded construction.
- 4. Location of all openings for conduit and sleeves in sign panels of building walls shall be indicated by the sign contractor on drawings submitted to Landlord's architect.
- 5. All penetrations of the building structure required for sign installation shall be neatly watertight sealed.
- 6. No labels will be permitted on the exposed surface of signs except those required by local ordinances which shall be applied in an inconspicuous location.
- 7. Tenant's sign contractor shall repair any damage caused by Tenant's sign contractor. Tenant shall be fully responsible for the operations of Tenant's sign contractor.
- 8. Threaded rods or anchor bolts shall be used to mount sign letters which are spaced out from the background panel. Angle clips attached to letter sides shall not be permitted.

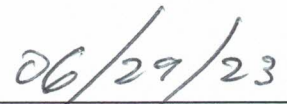
LANDLORD:
Ventura Port District
doing business as
"Ventura Harbor Village"

TENANT:
Coastal Cone, Inc.
doing business as:
Coastal Cone and The Parlor

By: _____
Brian D. Pendleton, General Manager

By: _____
Alex Hong, President

Date: _____

Date: _____
06/29/23

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "F"
SIGN CRITERIA

EXHIBIT B

EXHIBIT "G"

PARKING RULES AND REGULATIONS

1. Tenant is subject to District approved parking rules in effect during the lease term.
2. Landlord reserves the right to change these Parking Rules and Regulations from time to time.
3. There is absolutely no long term parking in the Ventura Harbor Village parking lot.
4. Landlord may require that Tenant and its employees park outside of the Complex at other areas in Ventura Harbor that are furnished and/or designated for employee parking by Landlord.
5. Tenant and its employees may only park their vehicles in those areas of the Complex parking area or other areas in Ventura Harbor that Landlord has designated for employee parking. The location of these "designated areas" may be changed from time to time by Landlord by written notice.
6. Business owners, managers and employees may temporarily park in other Complex parking areas that are not designated for employee parking in the event that loading and unloading is necessary. Twenty (20) minute time periods are considered the maximum period for such temporary loading and unloading parking.
7. The "designated area" is not a reserved parking area or exclusive for any assigned vehicle. All vehicles shall be parked in an orderly manner within the painted lines defining the individual parking spaces.
8. Vehicles parked in the Complex parking area longer than seventy-two (72) hours may be cited and towed away at owner's expense unless management has been properly notified and has agreed, in writing.
9. All vehicles shall have current registration and license plates.
10. No trailer, net or container storage is allowed within the Complex parking area. This area is specifically designated for short-term parking.
11. No mechanical work may be done in the parking lots.
12. Vehicles parked in the Complex parking area may not be used as storage containers.

By signing below, Tenant acknowledges that it has read these Parking Rules and Regulations and understands its obligation to comply with such.

LANDLORD:
Ventura Port District
doing business as
"Ventura Harbor Village"

TENANT:
Coastal Cone, Inc.
doing business as:
Coastal Cone and The Parlor

By: _____
Brian D. Pendleton, General Manager

By: 
Alex Hong, President

Date: _____

Date: 06/29/23

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBT "G"
PARKING RULES & REGULATIONS

EXHIBIT B

EXHIBIT "H"

OPTIONS TO EXTEND

Landlord hereby grants to Tenant the following successive options to extend the term of this Lease ("Options") for the periods and at the rents indicated;

Condition of first Five (5) year extension option: In order to exercise the option, Tenant shall have:

- 1) Generated Adjusted Gross Sales in excess **\$1,650,000** annually in the last full calendar year prior to the Option.
- 2) Completed a District approved modernization project.

Condition of second Five (5) year extension option: In order to exercise the option, Tenant shall have generated Adjusted Gross Sales in excess **\$1,800,000** annually in the last full calendar year prior to the Option.

Condition of third Five (5) year extension option: In order to exercise the option, Tenant shall have generated Adjusted Gross Sales in excess **\$2,000,000** annually in the last full calendar year prior to the Option.

Such extensions of the Lease shall be subject to each and all of the following terms and conditions:

The Minimum Monthly Base Rent shall adjust at the beginning of any Option period and annually thereafter per Section 5.12 of the Lease.

A. Options Personal to Original Tenant. Each Option granted to Tenant in this Lease is personal to the original Tenant named in Article 1 and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than the original Tenant. The Options are not assignable, either as a part of an assignment of this Lease or separately or apart therefrom, and no Option may be separated from this Lease in any manner, by reservation or otherwise.

B. Multiple Options. In the event that Tenant has any multiple Options to extend this Lease, a latter option cannot be exercised unless the prior Options to extend this Lease have been validly exercised.

C. Effect of Default on Options.

(a) Tenant shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default under Article 22 of the Lease and continuing until the noticed Default is cured, or (ii) during the period of time any monetary obligation due Landlord from Tenant is unpaid (without regard to whether notice thereof is given to Tenant), or (iii) during the time Tenant is in Breach of this Lease, or (iv) in the event that Landlord has given to Tenant three (3) or more notices of separate Defaults under Article 22 during the twelve (12) month period immediately preceding the exercise of the Option, whether or not the Defaults are cured.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise an Option because of the provisions of Subparagraph (a) above.

(c) All rights of Tenant under the provision of an Option shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Tenant fails to pay to Landlord a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due (without any necessity of Landlord to give notice thereof to Tenant), or (ii) Landlord gives to Tenant three (3) or more notices of separate Defaults under Article 22 during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Tenant commits a Breach of the Lease.

D. Exercise of Options. Tenant shall give to Landlord and Landlord must receive written notice of the exercise of the Option to extend this Lease for an additional term no earlier than one hundred twenty (120) days prior to the time when the particular period of this Option would commence and no later than sixty (60) days prior to the time when such period would commence if the Option were exercised, time being of the essence. If said notification of the exercise of an Option is not so given and received, the Option shall automatically expire.

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "H"
OPTIONS TO EXTEND

EXHIBIT B


E. Governing Laws. All of the terms and conditions of the Lease, except where specifically modified by these Options, shall remain in full force and effect in the successive Option periods when the Options have been properly exercised.

F. Impossibility of Performance. Any prevention, delay, or stoppage due acts of God, governmental restrictions, governmental regulations, governmental controls, enemy or hostile government action, health pandemic, civil commotion, fire, or other casualty, and other causes (The Event) that take place during the calendar year in which gross sales are used to determine eligibility for the option are beyond the reasonable control of the party obligated to perform, which renders achieving performance impossible by that party, shall excuse the performance by such party for achieving the minimum required sales in order to exercise the option. In such case, the gross sales from the most recent full calendar year preceding The Event shall be used. No other requirements to exercise an Option hereunder are affected by this provision.

LANDLORD:
Ventura Port District
doing business as
"Ventura Harbor Village"

TENANT:
Coastal Cone, Inc.
doing business as:
Coastal Cone and The Parlor

By: _____
Brian D. Pendleton, General Manager

By:  _____
Alex Hong, President

Date: _____

Date: 06/29/23

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "H"
OPTIONS TO EXTEND

EXHIBIT B

EXHIBIT "I"

RELOCATION OF PREMISES

Right to Relocate Premises. Landlord shall have the right to relocate the Premises to another part of the Complex in which the Premises are located in accordance with the following:

- (a) The new Premises shall be substantially the same in size, dimensions, configuration, and nature as the Premises described in this Lease, and shall be placed in that condition by Landlord at its cost.
- (b) The physical relocation of the Premises shall be accomplished by Landlord at its cost.
- (c) Landlord shall give Tenant at least one hundred and twenty (120) days' notice of Landlord's intention to relocate the Premises.
- (d) All costs reasonably incurred by Tenant as a result of the relocation, including, without limitation, costs incurred in changing addresses on stationery, business cards, directories, advertising, and other such items, shall be paid by Landlord, in a sum not to exceed Twenty-Thousand Dollars (\$20,000).
- (e) Landlord shall not have the right to relocate the Premises more than two (2) times during the Lease Term.
- (f) If the relocated Premises are smaller than the Premises as they existed before the relocation, rent shall be reduced to a sum computed by multiplying the Minimum Monthly Rent specified in Section 1.7 of Article 1 by a fraction, the numerator of which shall be the total number of square feet in the relocated Premises, and the denominator of which shall be the total number of square feet in the Premises before relocation.
- (g) The Parties shall immediately execute an amendment to this Lease stating the relocation of the Premises and the reduction of rent, if any.

LANDLORD:
Ventura Port District
doing business as
"Ventura Harbor Village"

TENANT:
Coastal Cone, Inc.
doing business as:
Coastal Cone and The Parlor

By: _____
Brian D. Pendleton, General Manager

By: 
Alex Hong, President

Date: _____

Date: 06/29/23

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "I"
RELOCATION OF PREMISES

EXHIBIT B

EXHIBIT "J"

GREASE TRAP

Tenant shall be responsible for the installation, servicing, maintenance, and replacement (when necessary) of a grease trap system of sufficient size and design for Tenant's needs and as may be necessary to comply with any applicable laws or regulations. All grease trap systems shall be constructed, installed, replaced, or altered in accordance with the terms of the Lease, including those in Article 12 and Exhibit "C".

If there is an existing grease trap system serving the Premises, Landlord makes no representation or warranty (and hereby disclaims any such representations or warranties, express or implied) with respect to such existing grease trap system, or that the existing grease trap system is adequate for Tenant's use, or that the existing grease trap system is in compliance with all applicable laws and regulations.

A. Maintenance and Service

1. Tenant shall inspect the grease trap system serving the Premises as needed, but in no event less than quarterly, to determine that all operational parts inside the system are in good operating condition.
2. To ensure the grease trap system serving the Premises remains clean and operational at all times, Tenant shall regularly service the system by hydro-jetting the sewer lines from inside the Premises to not less than ten (10) feet beyond the exterior wall of the building in which the Premises are located.
3. Tenant shall keep records of all maintenance and service performed on the grease trap system serving the Premises and shall make such records available for inspection by Landlord upon Landlord's request.
4. Should a sewer line blockage occur because of the discharge of fats, oils, grease, or other foods or liquids ("FOG") from the Premises, Tenant shall be responsible for all costs to clean and clear the sewer line and for all costs of repair, restoration or replacement of property damaged by such blockage.

B. FOG Expense Charge

1. Landlord, at least yearly, removes, or causes to be removed, any FOG in the sewer lines of the Complex by hydro-jetting the sewer lines from ten (10) feet beyond the exterior wall of the building in which the Premises are located to the City of San Buenaventura's main sewer line. All expenses in connection with this FOG removal service and maintenance ("FOG Expenses") shall be paid by those tenants generating FOG.
2. Each year, on the first day of August, Tenant shall pay to Landlord, as additional rent, Tenant's share of FOG Expenses, which shall be proportional and based on the actual cost incurred. Tenant's share of FOG Expenses shall be prorated for any partial calendar year Tenant leases the Premises.
3. Landlord shall notify Tenant in writing of Tenant's share of FOG Expenses, and/or any change to Tenant's share of FOG Expenses no later than thirty (30) days before such payment is due.

LANDLORD:
Ventura Port District
doing business as
"Ventura Harbor Village"

TENANT:
Coastal Cone, Inc.
doing business as:
Coastal Cone and The Parlor

By: _____
Brian D. Pendleton, General Manager

By:  _____
Alex Hong, President

Date: _____

Date: 06/29/23

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "J"
GREASE TRAP

EXHIBIT B

EXHIBIT "K"

FORM OF
FAITHFUL PERFORMANCE BOND

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____, hereinafter referred to as "Tenant," as principal, and _____, as surety, are held and firmly bound unto Ventura Port District, hereinafter referred to as "Owner," in the sum of _____ Dollars (\$_____), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and/or assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, said Tenant has entered into a lease with Owner dated _____, for the improvement, upgrading and operation of a restaurant and/or bar located at _____ Spinnaker Drive, #_____, Ventura California 93001, in Ventura Harbor Village ("Lease"). Under the Lease, Tenant is to design and build certain improvements to the leased premises as described and set forth in Exhibit C of the Lease ("Work"), and is required under the terms of the Lease to give this bond in connection with the execution of said Lease:

NOW THEREFORE, if said Tenant shall well and truly do and perform all of the covenants and obligations of said Lease on its part to be done and performed at the times and in the manner specified herein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect;

PROVIDED, that any alterations in the work to be done, or the material to be furnished, which may be made pursuant to the terms of said Lease, shall not in any way release either the Tenant or the surety thereunder, nor shall any extensions of time granted under the provisions of said Lease release either the Tenant or the surety, and notice of such alterations or extensions of the contract is hereby waived by the surety.

FURTHER PROVIDED, that, should Tenant fail to complete the Work as required by the Lease and Owner exercises rights to step in and complete the Work, the Surety shall pay on demand by Owner any and all direct and indirect costs of completing the Work incurred by Owner, including but not limited to, all costs incurred by Owner arising from professional services and attorneys' fees and all cost generated to insure on bond all the work of substituted contractors or subcontractors utilized to complete the Work. Any portion of such difference not paid by Surety within thirty (30) days following the mailing of a demand for such costs by Owner shall earn interest at the rate of ten percent (10%) per annum or the maximum rate authorized by California law, whichever is lower.

If any action is brought upon this bond by said Owner and judgment is recovered (or settlement is made which is favorable to Owner), then said surety shall pay all costs incurred by said Owner in such action, including a reasonable attorney's fee.

WITNESS our hands this _ day of _____, 20____.

Tenant: _____

Surety: _____

By: _____

By: _____

Title: _____

Title: _____

Home Office Address:

{107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBT "K"
FORMS OF FAITHFUL PERFORMANCE &
PAYMENT BONDS

EXHIBIT B

Attorney-in-Fact

Address: _____

Phone: _____

NOTE: This bond must be acknowledged before a notary public, and a legally sufficient power of attorney must be attached to the bond to verify the authority of any party signing on behalf of a surety.

{ 107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "K"
FORMS OF FAITHFUL PERFORMANCE &
PAYMENT BONDS

EXHIBIT B

FORM OF
PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____, hereinafter referred to as "Tenant," as principal, and _____, as surety, are held and firmly bound unto Ventura Port District, hereinafter referred to as "Owner," in the sum of \$_____, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and/or assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, said Tenant has entered into a lease with Owner dated _____, for the improvement, upgrading and operation of a restaurant and/or bar located at _____ Spinnaker Drive, #_____, Ventura California 93001, in Ventura Harbor Village ("Lease"). Under the Lease, Tenant is to design and build certain improvements to the leased premises as described and set forth in Exhibit C of the Lease ("Work"), and is required under the terms of the Lease to give this bond in connection with the execution of said Lease:

NOW, THEREFORE, if Tenant or any of its subcontractors, fails to pay for any materials, equipment, or other supplies, or for rental of same used in connection with the performance of the Work contracted to be done or for work or labor thereon of any kind, or fails to pay any of the persons named in Section 9100 of the California Civil Code or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant or for any amounts required to be deducted, withheld and paid to the Employment Development Department from the wages of employees of the Tenant and its contractors or subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor and all other applicable laws of the state of California and rules and regulations of its agencies, then said Surety will pay for the same in an amount not exceeding the sum specified above. This bond shall inure to the benefit of any persons named in Civil Code Section 9100, so as to give a right of action to them or their assigns in any suit brought upon this bond. This bond shall be subject to and include all of the provisions of Title III of Part 6 of Division 4 of the Civil Code of the State of California relating to Payment Bond for Public Works.

PROVIDED, that any alterations in the work to be done, or the material to be furnished, which may be made pursuant to the terms of said Lease, shall not in any way release either the Tenant or the surety thereunder, nor shall any extensions of time granted under the provisions of said Lease release either the Tenant or the surety, and notice of such alteration or extensions of the contract is hereby waived by the surety.

WITNESS our hands this _ day of _____, 20____.

Tenant: _____

Surety: _____

By: _____

By: _____

Title: _____

Title: _____

Home Office Address:

Phone: _____

{ 107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBIT "K"
FORMS OF FAITHFUL PERFORMANCE &
PAYMENT BONDS

EXHIBIT B

Attorney-in-Fact

Address: _____

Phone: _____

NOTE: This bond must be acknowledged before a notary public, and a legally sufficient power of attorney must be attached to the bond to verify the authority of any party signing on behalf of a surety

{ 107700-01/000/00789495-2 }

TENANT: Coastal Cone, Inc.
Doing business as:
Coastal Cone and The Parlor

EXHIBT "K"
FORMS OF FAITHFUL PERFORMANCE &
PAYMENT BONDS



BOARD OF PORT COMMISSIONERS JULY 5, 2023

STANDARD AGENDA ITEM 2 ADOPTION OF ORDINANCE NO. 58 FOR A NEW 10-YEAR LEASE BETWEEN THE VENTURA PORT DISTRICT AND THE BOATYARD, INC DBA THE BOATYARD PUB

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 2
Meeting Date: July 5, 2023

TO: Board of Port Commissioners
FROM: Brian D. Pendleton, General Manager
Todd Mitchell, Sr. Business Operations Manager
SUBJECT: Adoption of Ordinance No. 58 for a New 10-Year Lease between the Ventura Port District and The Boatyard, Inc. dba The Boatyard Pub

RECOMMENDATION:

That the Board of Port Commissioners:

- a) Conduct a public hearing for the purpose of receiving input on proposed Ordinance No. 58.
- b) Waive reading and direct Clerk to place Ordinance No. 58 in the record of this meeting.
- c) Adopt Ordinance No. 58 authorizing execution of a new Restaurant Lease Agreement between Ventura Port District dba Ventura Harbor Village and The Boatyard, Inc. doing business as Boatyard Pub with a commencement date of August 1, 2023.

SUMMARY:

The existing tenant The Boatyard, Inc. is seeking to enter into a new Lease Agreement for its existing space commencing August 1, 2023. The District has completed the noticing requirements under the California Harbors and Navigations Code Section 6270 and is returning to the Board for adoption of Ordinance 58 for the new lease.

GUIDING PRINCIPLES:

- 3) Grow financial sustainability through a reliable, recurring revenue stream supplemented with grants and public-private partnership investment while maintaining responsible budgeting practices.
- 5) Build respectful, productive relationships with employees, tenants, residents, visitors, stakeholders, public officials, and elected representatives while promoting diversity, equity, and inclusion.

5-YEAR OBJECTIVES:

- R) Seek opportunities to grow revenues and secure grants; continue to improve the quality, efficiency, and transparency of financial reporting, monitoring, and property management.
 - 3) Leasing/Property Management

BACKGROUND:

The Boatyard Inc. (doing business as the Boatyard Pub) has been a tenant of Ventura Harbor Village since December 2016. That Lease expired on November 30, 2022, and the tenant is seeking a new Lease with the District.

Since the proposed Lease and Option together equal ten (10) years, the Board is required, pursuant to the California Harbors and Navigations Code Section 6270, to authorize and direct staff to publish a notice of its intent to adopt an Ordinance authorizing execution of the Lease. A copy of the Notice of Proposed Ordinance is attached for the Board's consideration.

On June 21, 2023, the Board adopted Resolution No. 3478 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for the new Lease in a newspaper of general circulation, which took place Sunday, June 25, 2023.

Having completed this, the Board may now adopt Ordinance 58, in which case the new Lease will go into effect August 1, 2023.

FISCAL IMPACT:

This Lease reflects regular market rate for restaurant rent at Ventura Harbor Village with annual increases. The tenant has committed to making an investment of approximately \$400,000 in improvements to the space including constructing physical improvements, furniture, fixtures, and equipment.

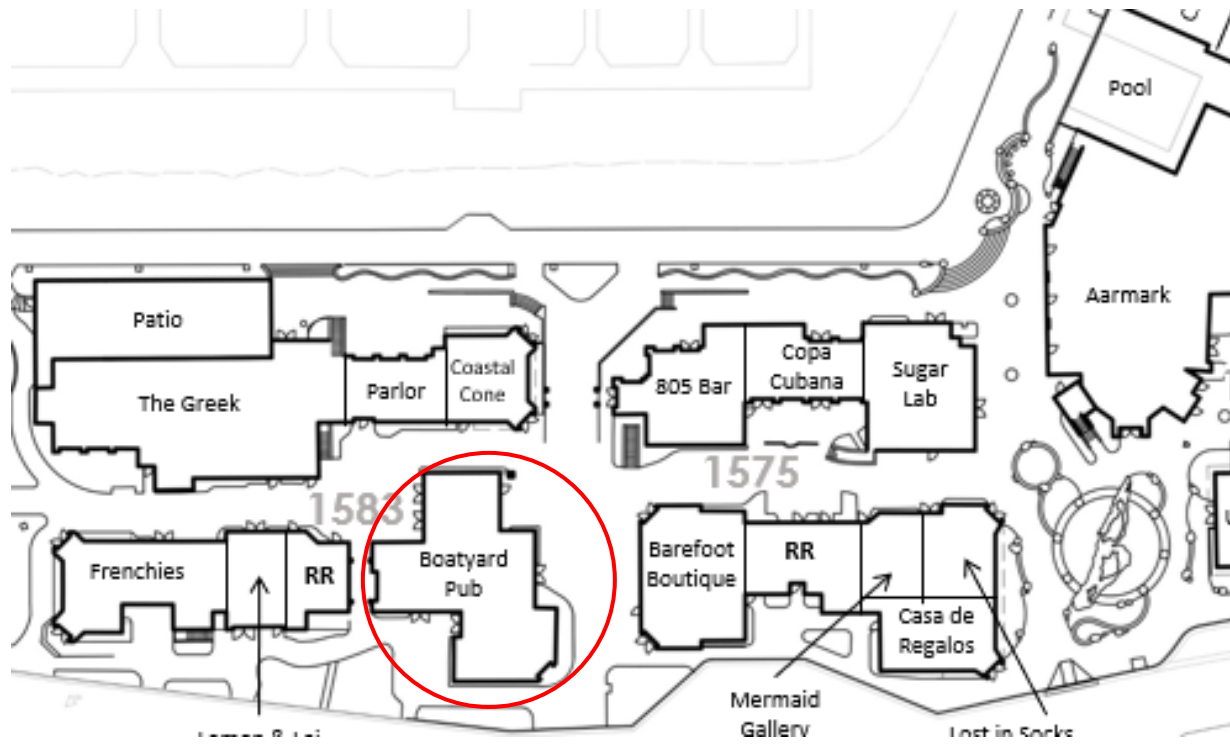
The District shall perform improvements to the concrete patio surface surrounding the restaurant in conjunction with the tenant's modernization of the patio structures and the District shall reimburse the tenant up to \$65,000 in improvements performed by the tenant limited to those that are permanent improvements to the building and patios.

ATTACHMENTS:

Attachment 1 – Location Map

Attachment 2 – Ordinance No. 58

Attachment 1 – Location Map





ORDINANCE NO. 58

**AN ORDINANCE OF THE BOARD OF PORT COMMISSIONERS
OF VENTURA PORT DISTRICT APPROVING A NEW
RESTAURANT LEASE AGREEMENT WITH OPTIONS
BETWEEN THE VENTURA PORT DISTRICT AND THE BOATYARD, INC. DBA
BOATYARD PUB
(California Harbors and Navigation Code section 6270)**

The Board of Port Commissioners of the Ventura Port District hereby ordains as follows:

The General Manager of the Ventura Port District is authorized and directed to execute the New Restaurant Lease Agreement between Ventura Port District dba Ventura Harbor Village and The Boatyard, Inc. doing business as Boatyard Pub with a commencement date of August 1, 2023.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the Board of Port Commissioners of the Ventura Port District held on July 5, 2023. This Ordinance was adopted by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

ATTEST:

Michael Blumenberg, Chair

Anthony Rainey, Secretary



BOARD OF PORT COMMISSIONERS JULY 5, 2023

STANDARD AGENDA ITEM 3 AUTHORIZE APPLICATION FOR A GRANT FROM THE NATIONAL FISH AND WILDLIFE FOUNDATION FOR THE REFUGIO BEACH OIL SPILL SETTLEMENT: SOUTH COAST SHORELINE PARKS AND OUTDOOR RECREATION GRANTS PROGRAM - 2023

VENTURA PORT DISTRICT
BOARD COMMUNICATION

STANDARD AGENDA ITEM 3

Meeting Date: July 5, 2023

TO: Board of Port Commissioners
FROM: Todd Mitchell, Sr. Business Operations Manager
Jessica Snipas, Business Operations Analyst II
SUBJECT: Authorize Application for a Grant from the National Fish and Wildlife Foundation for the Refugio Beach Oil Spill Settlement: South Coast Shoreline Parks and Outdoor Recreation Grants Program - 2023

RECOMMENDATION:

That the Board of Port Commissioners authorize the District to apply for a grant with the National Fish and Wildlife Foundation for up to \$200,000 for the Refugio Beach Oil Spill Settlement: South Coast Shoreline Parks and Outdoor Recreation Grants Program - 2023.

SUMMARY:

The National Fish and Wildlife Foundation (NFWF) received over \$1.7 million from a Refugio Oil Spill Settlement on behalf of a collective group of agencies known as the State Trustees to fund projects to compensate the public for loss of use and enjoyment. The District has submitted a preliminary application for \$200,000 in funding for a multi-component project and have been invited to submit a full proposal by July 17, 2023.

GUIDING PRINCIPLES:

- 2) Grow financial sustainability through a reliable, recurring revenue stream supplemented with grants and public-private partnership investment while maintaining responsible budgeting practices.
- 4) Establish and implement harbor-wide environmental sustainability policies and practices through collaboration with our business partners.
- 5) Build respectful, productive relationships with employees, tenants, residents, visitors, stakeholders, public officials, and elected representatives while promoting diversity, equity, and inclusion.
- 7) Provide high-quality Harbor and coastal visitor-serving amenities, services, facilities and infrastructure.

5-YEAR OBJECTIVES:

- E) Encourage public and civic engagement; maintain high levels of organizational transparency; and promote Harbor-wide diversity, equity and inclusion through District policies, procedures and programs.
- F) Seek opportunities to grow revenues and secure grants; continue to improve the quality, efficiency, and transparency of financial reporting, monitoring, and property management.
- V) Maintain and improve Harbor Village facilities, infrastructure, and amenities.

BACKGROUND:

Over 123,000 gallons of crude oil spilled on May 19, 2015 from an underground pipeline rupturing near Refugio State Beach in Santa Barbara which significantly impacted wildlife, fisheries, recreational use, research, and education along the coast from the Gaviota coast to Los Angeles County. The State Trustees conducted a Natural Resource Damage Assessment to quantify the damage and executed a settlement with the responsible parties. From the settlement the NFWF received more than \$1.7 million to fund projects to compensate the public for loss of use and enjoyment from El Capitan State Beach to Long Beach.

The grant application is a two-step process. The pre-proposal provides a brief description of the projects and answers a questionnaire; the full proposal requires Administration and Accounting to complete a more detailed application on the project descriptions, completion of a controls and capabilities questionnaire, includes biographies of the Port of Commissioners, includes the District's financial audit, and includes letters of support.

Round 1: 2021 Grant Application, Award, and Current Status

The District submitted a pre-proposal on December 6, 2021, and was then invited to submit a full proposal, which was submitted on April 1, 2022. For this application, the District identified six projects. The District was awarded a reimbursable amount of up to \$93,301.02, and it is nearly complete all of the projects that were funded through that grant (deadline for completion is August 31, 2023).

RECOMMENDED ACTION:

Round 2: 2023 Grant Application

Not all the funding available to NFWF was requested during the initial grant application round; up to \$600,000 remains available through the program. Specifically, \$200,000 remains unallocated for such projects in Ventura County. The District was invited to submit a preliminary application for these funds on February 6, 2023.

A preliminary proposal was submitted to NFWF on March 17, 2023, pursuing funding for the project: "Beach & Launch Ramp Public Restroom and Shower Facility and ADA Upgrades" (the Project) located at both Ventura Harbor beaches and the Public Launch Ramp.

With the understanding that there could be multiple agencies pursuing this funding, the application includes multiple project components which can be separated to utilize varying amounts of funding that could be made available.

- 1) Interior and façade improvements: Harbor Cove Beach Public Restrooms. (Built in 1985.) No engineering or permitting are required for this project. Project is shovel ready. The following cost includes procurement of materials and construction. Cost \$63,250; request amount \$50,000 and VPD matching amount estimate is \$13,250.
- 2) Interior and façade improvements: Surfers Knoll Beach Public Restrooms. (Built in 1990.) No engineering or permitting are required for this project. Project is shovel ready. The following cost includes procurement of materials and construction. Cost \$63,250; request amount \$50,000 and VPD matching amount estimate is \$13,250.
- 3) Interior improvements: Recreational Public Boat Launch Ramp Public Restroom. (Built in 1985.) No engineering or permitting are required for this project. Project is shovel ready. The following cost includes procurement of materials and construction. Cost \$30,000; requested amount is \$20,000 and VPD matching amount estimate is \$10,000.
- 4) ADA access improvements: Harbor Cove Beach Public Restrooms & Outdoor Showers. Engineering and City permitting will be required for this project. Engineering and design are underway. Staff intend to submit the application for City permits before July 17. Staff anticipates procurement after award of the grant and construction complete within 16 months. The following cost includes engineering, permitting, procurement, and construction.

- a. Engineering cost: \$24,125; request amount: \$0. VPD will contribute 100% to the engineering cost.
 - b. Pre-construction and demolition cost: \$30,200; request amount: \$10,000 and VPD matching amount estimate is \$20,200.
 - c. New construction cost: \$70,000; request amount: \$30,000 and VPD matching amount estimate is \$40,000.
- 5) ADA access improvements: Surfers Knoll Beach Public Restrooms & Outdoor Showers. Engineering and City permitting will be required for this project. Engineering and design are underway. Staff intend to submit the application for City permits before July 17. Staff anticipates procurement after award of the grant and construction complete within 16 months. The following cost includes engineering, permitting, procurement, and construction.
- a. Engineering cost: \$24,125; request amount: \$0. VPD will contribute 100% to the engineering cost.
 - b. Pre-construction and demolition cost: \$30,200; request amount: \$10,000 and VPD matching amount estimate is \$20,200.
 - c. New construction cost: \$70,000; request amount: \$30,000 and VPD matching amount estimate is \$40,000.

In May 2023, the District was invited to submit a Full Proposal for the Project. Staff are requesting authorization from the Board to submit the Full Proposal. NFWF has advised that grant awards will be announced approximately November 2023.

FISCAL IMPACT:

The total anticipated cost of the identified Project components is \$405,150.

The District has already successfully received grant funding from the State Lands Commission for COVID-19 impacts with up to \$175,000 available to commit to the improvements of the beach shower facilities, particularly regarding the ADA improvements. These funds are being used towards in-kind investments in the Project, as outlined and included in the approved FY23-24 5-Year Capital Improvement Project budget.

If successful in receiving all the available funding, the District will need to commit an additional \$30,150 towards completing these projects (plus any possible increases in cost beyond those anticipated). If a lesser amount is received, the District will determine which project components will move forward and which will be deferred based on the NFWF's determination of funding and any requirements in terms of project requirements.

ATTACHMENT:

None.