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- Replacement of a deli/bakery service counter with a “food counter” with 14 seats, and decrease in the formerly identified ‘patio’ area south of the front door from 30 to 24 seats.
- The operable windows in the formerly identified ‘patio’ dining area south of the front door on the approved plans will be converted to operable garage-style doors creating an ‘open air dining area’. The barrier between the formerly identified ‘patio area’ and the remainder of the restaurant on the approved plans is proposed to be eliminated. Windows on the façade north of the front door will also be converted to operable garage-style doors creating an ‘open air dining area’ encompassing bench seats adjacent to the garage-style doors.
- The kitchen will be enclosed so that doors and windows of the establishment may remain open, without screens, during operation.
- Other minor changes to seating configuration are proposed.

3. The site is zoned C-2, Restricted Commercial, which allows on-sale general alcoholic beverages and outdoor dining with approval of a Conditional Use Permit.

4. The restaurant occupies 4,365 square feet on the ground floor of an existing 6,383 square foot two-story commercial building constructed pursuant to a precise development plan approved per Planning Commission Resolution 96-13.

5. The subject space was most recently occupied by ‘Ken and Kent’s New York Style Deli’ which operated pursuant to Planning Commission Resolutions 08-26 and 96-13, although improvements for the approved ‘patio’ dining with enlarged operable windows and barrier segregating the ‘patio’ area from adjoining seating were never constructed, and Ken and Kent’s vacated the premises in 2009.

6. A Conditional Use Permit and Precise Development Plan was approved in 1996 per Planning Commission Resolution 96-13 to allow construction of the building and on-sale alcoholic beverages in conjunction with a restaurant. The CUP was revoked per Planning Commission Resolution 07-15 because the use permit for alcohol service expired after the closure of the former restaurant. A CUP for a new restaurant with on-sale beer and wine and ‘patio’

dining was granted by Planning Commission Resolution 08-26, incorporating relevant conditions in Resolution PC 96-13 as the governing entitlement for the overall building improvement.

7. The changes to the interior are significant and the amendment is therefore required by Condition 1 of Planning Commission Resolution 08-26. The proposal is consistent with all findings and all conditions of Planning Commission Resolution 96-13, except as amended or clarified by this proposal and approval.

**SECTION 3.** The project is categorically exempt from the provisions of the California Environmental Quality Act per CEQA Guidelines, Section 15301(a), Class 1, Existing Facilities, because the proposal involves a change to floor plan to a commercial use within an existing building for essentially the same use, with slightly decreased seating, all services are available, and no significant impacts are identified.

**SECTION 4.** Based on the foregoing factual findings the City Council makes the following findings substantiating that the Conditional Use Permit Amendment will be compatible with and not adversely affect the surrounding area pursuant to Section 17.40.020 of the Hermosa Beach Municipal Code:

1. The deli/bakery service counter in the 2008 approved plan will be replaced with a “food counter with alcohol” with 14 seats. Concerns associated with food counters or ‘bar-type’ settings, relating to increased potential for disturbances that may be associated with a bar/sports bar atmosphere, are minimal because the operation will continue to operate as a restaurant, close by 10:00 p.m. on all days (except approved holidays), live entertainment is not allowed and the project is appropriately conditioned regarding security, and a condition has been included that televisions be limited to two maximum located at least ten (10) feet east of the front of the building.

2. Conversion of windows to operable garage-style doors both south and north of the front door will create an open air dining area which will contribute to a vibrant pedestrian environment. The potential for noise impacts is reduced since live entertainment is not allowed, and a limit on the number of televisions and similar media within the establishment is made a condition of approval, in addition to the prohibition on TVs within the first ten (10) feet of the

front of the building. The condition in PC Resolution 96-13 requiring rear doors to be closed during operating hours to reduce noise impacts is incorporated into this Resolution. The staff report prepared in 2008 also addressed noise concerns from the dining 'patio' which faces Hermosa Avenue, noting that the closest residential uses to the patio on Hermosa Avenue are at 10<sup>th</sup> Street (a nonconforming use) to the north and at 8<sup>th</sup> Street (R-3) to the south with the closest about 250 feet away. Regulating alcohol service and the closing hour, as well as prohibiting live entertainment was deemed adequate to reduce noise impacts, and this finding continues to be valid.

3. To address safety impacts and pass-through of alcoholic beverages to people on the sidewalk, railings are required along the window openings and non-disposable beverage ware is required.

4. Since the barrier that delimited the 'patio' area on the 2008 approved plan, which related to the prohibition on televisions and similar media, will be eliminated, and open air dining will be created, the project is conditioned upon a maximum of two televisions, to be located at least 10 feet east of the front of the building.

5. The kitchen will be enclosed so that the doors and windows may be opened without screens. Other seating will also be rearranged although the open floor plan will be maintained. The area devoted to dining and seating will not increase, and other than the counter/bar area noted above, the remainder of seating is a mix of benches and movable chairs.

6. The proposal will continue the same use approved in 2008, and will not add floor area or intensify the use, and therefore parking is adequately provided in conformity with H.B.M.C. Section 17.52.035.D., "Requirements for buildings nonconforming to parking requirements."

**SECTION 5.** Based on the foregoing, the City Council hereby approves Conditional Use Permit amendment (CUP 10-7) in conjunction with a restaurant with on-sale beer and wine with outdoor dining subject to the following Conditions of Approval, which replaces and supersedes Planning Commission Resolution 10-13.

1. The use of the restaurant shall be consistent with plans submitted and approved

1 by the Planning Commission on August 17, 2010. Minor modifications to the plan shall be  
2 reviewed and may be approved by the Community Development Director. Any substantial  
3 deviation must be reviewed and approved by the Planning Commission.

4 2. All applicable conditions of P.C. Resolution 96-13 are incorporated in this  
5 approval by reference, and include "Specific Conditions of Approval", numbers 2 through 9  
6 which relate to: rear building door closure, roll-up door, trash storage area and deliveries, rear  
7 parking area and prohibition of live entertainment and "General operating and standard  
8 conditions" numbers 1 through 8, and 10.

9 3. General condition 9 of P.C. Resolution 96-13 is amended to allow the windows in  
10 the front building wall north and south of the front door to be modified to large roll-up windows  
11 or 'garage style doors' to create an open air dining area. A railing 42-inches in height minimum  
12 shall be installed within the window openings south and north of the front door. In addition,  
13 seating throughout the restaurant shall be used strictly for seating and dining, and shall not be  
14 used for other purposes such as a standing or smoking area.

15 4. The Conditional Use Permit applies exclusively to on-sale beer and wine in  
16 conjunction with a restaurant. For clarification, Specific Condition 9 of Resolution PC 96-13 is  
17 revised as follows: Live entertainment (including amplified music, disc jockeys, live music  
18 whether acoustic or amplified, and live performances of all kinds) and customer dancing is  
19 prohibited. Televisions and amplified music, including speakers shall be prohibited within the  
20 first ten (10) feet of the front of the building. A maximum of two (2) televisions or similar  
21 displays shall be permitted in the remainder of the restaurant. The audio on all televisions or  
22 similar displays shall be turned off between 7:00 a.m. and 9:00 a.m.

23 5. The permitted hours of operation shall be 7:00 a.m. to 10:00 p.m. daily for all  
24 operations of the restaurant, including the dining patio, with the exception of Federal and State  
25 holidays, Cinco de Mayo, and St. Patrick's Day. All customers shall vacate the premises by not  
26 later than 10:00 pm (12:00 Midnight on holidays as stated) and the doors shall be locked.

27 6. The business shall be operated as a bona fide restaurant: the kitchen shall be  
28 equipped to prepare food from its component ingredients whenever the restaurant is open and it

1 shall offer a full-service lunch and/or dinner menu; food service from the menu shall be available  
2 during all hours that the establishment is open for business; food shall constitute at least 65% of  
3 total receipts computed on a monthly basis.

4 7. To reduce pass-through of alcoholic beverages to people on the sidewalk, non-  
5 disposable beverage ware shall at all times be used to serve alcoholic beverages.

6 8. The restaurant with on-sale alcoholic beverage service shall be subject to annual  
7 review by the Planning Commission to verify conformance with the Conditions of Approval.

8 9. The project shall be in conformance with all other applicable City of Hermosa  
9 Beach and regulatory agency requirements and standards, including but not limited to: California  
10 Department of Alcoholic Beverage Control, Los Angeles County Health Department, California  
11 Disabled Access Standards (Government Code Title 24), and Los Angeles County National  
12 Pollutant Discharge Elimination System Permit (NPDES). The runoff from washing and/or  
13 rinsing of restaurant equipment, including floor mats, food preparation utensils and other  
14 coverings, shall drain internally to the sewer system only; under no circumstances shall site run-  
15 off drain to the stormwater system.

16 10. The improvements and their operation shall comply with all requirements of the  
17 Building, and Fire Departments. The applicant shall submit a plan for occupant load calculation  
18 prior to issuance of the Certificate of Final Occupancy.

19 11. The business shall comply in all other respects with Municipal Code Chapter 8.24  
20 (Noise Control) and noise from the premises shall not constitute a public nuisance.

21 12. This Conditional Use Permit Amendment encompasses conditions applied to  
22 approval of the establishment in 2008, and Planning Commission Resolution 08-26 is hereby  
23 rescinded and is of no further force and effect.

24 13. The subject property shall be developed, maintained and operated in full  
25 compliance with the conditions of this grant and any law, statute, Ordinance or other regulation  
26 hereafter adopted that is applicable to any development or activity on the subject property.  
27 Failure of the permittee to cease any development or activity not in full compliance shall be a  
28 violation of these conditions.

1           14.     The Planning Commission may review this Conditional Use Permit and may  
2 amend the subject conditions or impose any new conditions if deemed necessary to mitigate  
3 detrimental effects on the neighborhood resulting from the subject use.

4           15.     Approval of this permit shall expire twenty-four (24) months from the date of  
5 approval by the Planning Commission, unless significant construction or improvements or the  
6 use authorized hereby has commenced. One or more extensions of time may be requested. No  
7 extension shall be considered unless requested, in writing to the Community Development  
8 Director including the reason therefore, at least 60 days prior to the expiration date. No  
9 additional notice of expiration will be provided.

10           **SECTION 6.** This grant shall not be effective for any purposes until the permittee and the  
11 owners of the property involved have filed at the office of the Planning Division of the  
12 Community Development Department their affidavits stating that they are aware of, and agree to  
13 accept, all of the conditions of this grant.

14           The Conditional Use Permit Amendment shall be recorded, and proof of recordation shall  
15 be submitted to the Community Development Department prior to the issuance of a building  
16 permit or change of operation.

17           Each of the above conditions is separately enforced, and if one of the conditions of approval  
18 is found to be invalid by a court of law, all the other conditions shall remain valid and enforceable.

19           Permittee shall defend, indemnify and hold harmless the City, its agents, officers, and  
20 employees from any claim, action, or proceeding against the City or its agents, officers, or  
21 employee to attack, set aside, void or annul this permit approval, which action is brought within  
22 the applicable time period of the State Government Code. The City shall promptly notify the  
23 permittee of any claim, action, or proceeding and the City shall cooperate fully in the defense. If  
24 the City fails to promptly notify the permittee of any claim, action or proceeding, or if the City  
25 fails to cooperate fully in the defense, the permittee shall not thereafter be responsible to defend,  
26 indemnify, or hold harmless the City.

27           The permittee shall reimburse the City for any court and attorney's fees which the City may  
28 be required to pay as a result of any claim or action brought against the City because of this grant.

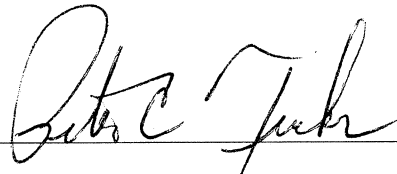
1 Although the permittee is the real party in interest in an action, the City may, at its sole discretion,  
2 participate at its own expense in the defense of the action, but such participation shall not relieve  
3 the permittee of any obligation under this condition.

4 The subject property shall be developed, maintained and operated in full compliance with  
5 the conditions of this grant and any law, statute, Ordinance or other regulation applicable to any  
6 development or activity on the subject property. Failure of the permittee to cease any development  
7 or activity not in full compliance shall be a violation of these conditions.

8 The Planning Commission may review this Conditional Use Permit and may amend the  
9 subject conditions or impose any new conditions if deemed necessary to mitigate detrimental  
10 effects on the neighborhood resulting from the subject use.

11 **SECTION 7.** Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge  
12 to the decision City Council must be made within 90 days after the final decision by the City  
13 Council.

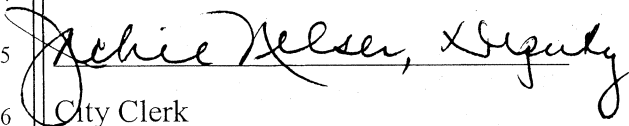
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15 **PASSED, APPROVED and ADOPTED** this 26th day of October, 2010.

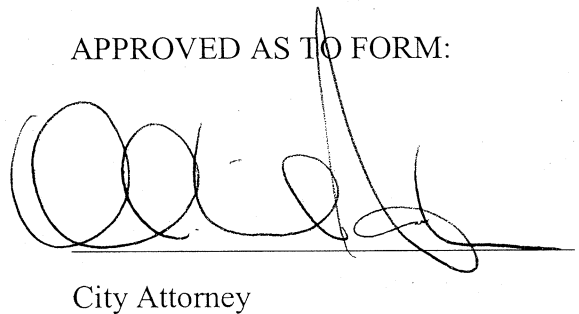
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19 **PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

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22 ATTEST:

23 APPROVED AS TO FORM:

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26 City Clerk

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City Attorney

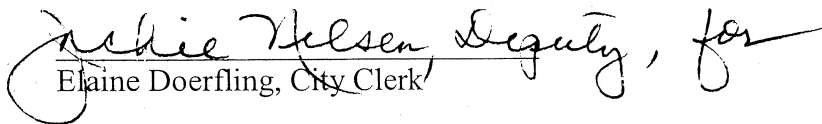
STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CITY OF HERMOSA BEACH

I, Elaine Doerfling, City Clerk of the City of Hermosa Beach, California, do hereby certify that the foregoing Resolution No.10-6723 as duly and regularly passed, approved and adopted by the City Council of the City of Hermosa Beach at a Regular Meeting of said Council at the regular place thereof on October 26, 2010.

The vote was as follows:

AYES:	Bobko, DiVirgilio, Duclos, Fishman, Mayor Tucker
NOES:	None
ABSTAIN:	None
ABSENT:	None

Dated: November 9, 2010

  
Elaine Doerfling, City Clerk