

CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE AGREEMENT is entered into this _____ day of _____, by and between _____, hereinafter referred to as TENANT, and _____, dba, _____ hereinafter referred to as SUBTENANT and approved by the City of Morro Bay, California, hereinafter referred to as CITY.

RECITALS

WHEREAS, a Master Lease was executed on _____ for the premises known as Lease Site _____ and;

WHEREAS, TENANT desires to sublease a portion of the premises to SUBTENANT, and:

WHEREAS, the Master Lease requires CITY consent of any sublease in the following form of agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. TENANT and SUBTENANT jointly and severally guaranty TENANT will pay to City all of the sums required of TENANT and any sums due by reason of SUBTENANT's activities under the terms of the Master Lease dated _____ hereinafter known as "Master Lease". In the event TENANT fails to make such payment, SUBTENANT agrees to promptly make such payment to CITY for TENANT. Failure to pay the rent shall constitute a violation of the Master Lease and CITY shall, after three (3) days written notice to TENANT, have the following options:

(a) CITY may elect to pursue all legal remedies against TENANT alone or against both TENANT and SUBTENANT or against SUBTENANT alone. CITY'S election to pursue one instead of both of the parties shall not preclude a later action against the other party to recover any amounts not paid and both TENANT and SUBTENANT agree that they are to be jointly and severally liable for any breach by the SUBTENANT.

(b) CITY shall have all other legal remedies provided for in the lease and allowed by law, including the right to bring an action for unlawful detainer against SUBTENANT, TENANT or both for non-payment of rent by TENANT of SUBTENANT'S portion of rent due to CITY.

2. SUBTENANT acknowledges receipt of a complete copy of the Master Lease and all amendments thereto and specifically agrees to comply with each and all of the terms and conditions of the Master Lease. TENANT guarantees SUBTENANT's compliance with each and all of the terms and conditions of the Master Lease, as each pertains to the portion of the Lease Site subject to the subject sublease (attached as Exhibit A hereto) (the "Sublease"), and all of the parties agree a violation by SUBTENANT of the terms of the Master Lease, as each pertains to the portion of the Lease Site subject to the sublease, shall constitute a violation of the Master Lease by TENANT. TENANT agrees to take whatever action is required to secure SUBTENANT's compliance with each and all of the terms of the Master Lease, and agrees to indemnify CITY, as Landlord, from any and all claims, loss, cost or expense resulting from SUBTENANT's failure to comply with the terms of the Master Lease.

3. The initial term of the Sublease shall be _____ years, commencing upon execution of the Sublease; provided, that TENANT may extend the term of the Sublease with the SUBTENANT without obtaining a new Consent to Sublease Agreement from CITY's City Council under the following conditions: (1) Tenant receives prior written authorization from the Harbor Director to extend the term of the Sublease, (2) the extended term of the Sublease does not exceed the term of the Master Lease, (3) the extended Sublease shall not modify any other terms of the Master lease or the Sublease, except its term, (4) TENANT provides CITY with a fully executed copy of the extended Sublease within five business days after the extended Sublease has been fully executed. The extended Sublease shall be added to Exhibit "A" of this Consent to Sublease Agreement. The Harbor Director's authorization of any extension in the term of the Sublease does not serve to waive any rights of CITY set forth in the Master Lease or in this Consent to Sublease Agreement, including any claims for breach of the Master Lease or of this Consent to Sublease Agreement. The Sublease shall, in all events, terminate upon termination of the Master Lease for any reason, including, but not limited to, a termination which occurs as a result of court judgment.

4. Pursuant to the provision in the Master Lease requiring TENANT to pay rental based on percentage of gross sales, SUBTENANT agrees to and shall keep full, complete, and accurate records, and books of account in accordance with accepted accounting practices as showing the total amount of gross sales, as defined in the Master Lease, made each calendar month in, on or from the subleased premises. SUBTENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Said records, books of account and all cash register tapes, including any sales tax reports that SUBTENANT may be required to furnish any government or governmental agency, including but not limited to those items listed in Exhibit B attached hereto and incorporated herein, shall at all reasonable times be open to the inspection of TENANT, CITY, CITY'S auditor, or other authorized representative or agent of TENANT or CITY.

5. The proposed use by SUBTENANT is as follows:

Percentage of Gross Rental Applicable to Permitted Use: _____

Said designated use shall not be changed without the prior written consent of CITY. SUBTENANT acknowledges that the percentage of gross payment required for the proposed use under the terms of the Master Lease is as set forth hereinabove. SUBTENANT agrees that any use by SUBTENANT of the subleased premises for a purpose other than that specified in this paragraph, whether or not permitted under the terms of the Master Lease, shall constitute an unauthorized use subject to those penalties set forth in the Master Lease. The location and size of the proposed use shall not be altered without the prior written consent of the CITY. Specifically, and in addition to any other terms and provisions of the lease, all parties agree that if SUBTENANT makes a use of the subleased premises which is not included within or permitted under the terms of the Master Lease, TENANT shall be liable for and shall pay to CITY, 10% of the gross revenue from such unpermitted use.

6. SUBTENANT shall not alter or improve the premises or any part thereof without first obtaining the prior written consent of CITY.

7. SUBTENANT agrees to submit a statement of previous business experience and agrees to submit current personal and business financial statements upon request and further agrees too submit such documents as part of the CITY's consideration of the consent to Sublease Agreement. SUBTENANT shall not assign, mortgage, or encumber the subleased premises in whole or in part without the prior written consent of CITY.

8. Unless SUBTENANT is included as an additional insured under the terms of TENANT's liability insurance, SUBTENANT agrees to maintain adequate liability insurance in the manner and form required under the Master Lease in an amount of not less than \$1,000,000 per occurrence and agrees to name the CITY OF MORRO BAY as an additional primary insured without offset against the CITY's insurance. SUBTENANT agrees to provide the certificates of insurance and copies of the actual insurance policies to the CITY as required under the Master Lease and otherwise comply with the insurance requirements set forth in the Master Lease. CITY reserves the right to require reasonable increases in the liability insurance coverage from time to time.

9. SUBTENANT and TENANT agree to indemnify and save CITY free and harmless from and against any and all claims, including reasonable attorney's fees and court costs arising from SUBTENANT's failure to comply with any of the terms of this Consent and Sublease Agreement.

10. This Agreement cannot be modified except by a written document mutually approved by the parties hereto. A waiver of any of the conditions or terms of this Consent or of the Master Lease shall not constitute a waiver of any future breach of any terms or conditions of this Consent or the Master Lease.

11. To the extent that the terms of the proposed Sublease are inconsistent with the terms of this Agreement or Master Lease with the CITY OF MORRO BAY, this Agreement or Master Lease shall supersede and be the controlling document. To the extent that this Consent to Sublease Agreement is inconsistent with the terms of the Master Lease, the Master Lease shall supersede and be the controlling document.

IN WITNESS WHEREOF, the parties hereto have executed this Consent to Sublease Agreement as of the day and year first above written at Morro Bay, California.

TENANT:

SUBTENANT:

CITY OF MORRO BAY:

Eric Endersby, Harbor Director

EXHIBIT "B"

CONSENT TO SUBLEASE AGREEMENT

At a minimum, certain books and records shall be kept by TENANT and SUBTENANT such as:

1. Pre-numbered and dated guest checks;
2. Pre-numbered sales invoices or daily cash register tapes;
3. Bank Statements;
4. Sales Tax Returns;
5. Sales Journals;
6. Cash Disbursement Journals; and
7. General Ledger