RESOLUTION NUNC PRO TUNC NO. 20-0050

MANHATTAN BEACH CITY COUNCIL RESOLUTION NUNC PRO TUNC RATIFYING THE CORRECTION OF A CLERICAL ERROR IN RESOLUTION NO. 20-0049

THE MANHATTAN BEACH CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

SECTION 1. On May 5, 2020, the City Council held a duly noticed public hearing on an application to allow expanded hours for and the expansion of a restaurant.

SECTION 2. On May 14, 2020, the City Council adopted Resolution No. 20-0049, allowing expanded hours for and the expansion of the restaurant, subject to conditions. Due to logistical issues created by California and Los Angeles County Stay at Home Orders, the following underscored language was inadvertently omitted from subsection G.14 of Section 6 of the Resolution:

14. The Project is consistent with the following General Plan Policies:

LU-6: Maintain the viability of the commercial areas of Manhattan Beach. The Project contributes to the viability of the Downtown commercial area.

LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach. By approving the Project, the City continues to support and encourage the viability of the Downtown area.

Such language was in the draft resolution prepared by staff. However, the language was inadvertently omitted during the process of electronic transmission necessitated by the COVID-19 pandemic, and the wrong version of the resolution was included in the agenda packet. The City Clerk has subsequently corrected the clerical error.

SECTION 3. Based upon the foregoing, the City Council hereby ratifies the correction *nunc pro tunc* of Resolution 20-0049. The correct Resolution 20-0049 is attached hereto as Exhibit A.

SECTION 4. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED on May 28, 2020

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
RICHARD MONTGOMERY
Mayor

ATTEST:

_____
LIZA TAMURA
City Clerk

EXHIBIT A

RESOLUTION NO. 20-0049

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL APPROVING A USE PERMIT AMENDMENT FOR AN EXISTING RESTAURANT WITH FULL ALCOHOL SERVICE (MANHATTAN BEACH POST) TO ALLOW AN EXPANSION OF THE USE INTO AN ADJACENT VACANT RESTAURANT SPACE (FORMERLY SUBWAY) AND AN EXTENSION OF OPERATING HOURS AT 1142 AND 1144 MANHATTAN AVENUE; AND MAKING AN ENVIRONMENTAL DETERMINATION IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (SIMMS RESTAURANT GROUP/SIMMS)

THE MANHATTAN BEACH CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

SECTION 1. The Simms Restaurant Group ("Applicant") has submitted an application for a Use Permit Amendment to expand the floor space of its existing restaurant ("Manhattan Beach Post" or "MB Post") located at 1142 Manhattan Avenue into the adjacent space formerly occupied by a Subway Restaurant located at 1144 Manhattan Avenue (collectively the "property"); and to expand the restaurant's operating hours (the "Project"). The property is designated commercial in the City's General Plan and is zoned Downtown Commercial (CD). The surrounding properties are zoned CD to the North, CD to the South (across Center Place), CD to the East (across Bayview Drive), and CD to the West (across Manhattan Avenue).

SECTION 2. On March 11, 2020, the Planning Commission conducted a duly noticed public hearing to consider the Project. After the public hearing was closed, the Commission adopted Resolution No. PC 20-01 by a 5-0 vote to approve the Project, with conditions of approval that were modified in response to public input.

SECTION 3. Pursuant to Municipal Code Section 10.100.020, two Councilmembers requested that the Council review the Planning Commission's decision.

SECTION 4. On March 24, 2020, Donald McPherson and James Quilliam submitted an appeal of the Planning Commission's decision on behalf of Coastal Defender ("Appellant" herein). The appeal states that the Project would create noise in excess of Municipal Code limits, did not receive proper environmental review, and violates California Department of Alcoholic Beverage Control regulations. In addition, the appeal requests that the City Council impose five additional conditions of approval. Subsequently, the Appellant submitted additional material in support of its appeal. The materials indicate that Appellant's primary concern is the additional hour of operation for Thursday, Friday, and Saturday night. Appellant reduced to four its proposed conditions of approval which, according to Appellant, are necessary to mitigate noise caused by the Project.

SECTION 5. On May 5, 2020 the City Council conducted a duly noticed public hearing *de novo* to consider the Project in accordance with Municipal Code Chapter 10.100. Evidence, both written and oral, was presented to the Council. All persons wishing to address the Council regarding the Project before and during the hearing were

provided an opportunity to do so in full compliance with the Brown Act, as modified by Governor Gavin Newsom's Executive Order N-29-20 for public hearings occurring during the COVID-19 emergency. The City provided the Applicant and the Appellant with ample opportunity to submit material in advance of the meeting, and provided the Applicant and Appellant, and their respective officers and representatives, an opportunity to speak during the public hearing. The Appellant's officers and representatives provided written materials to the City Council on several occasions, including shortly before the public hearing. At the public hearing, the Applicant spoke for 11 minutes, and Appellant's officers and representatives (including its attorney and acoustical noise consultant) spoke for 20 minutes. In addition, numerous people provided comments prior to and at the public hearing. Over 30 persons, including many Downtown residents, expressed full support for the Project. Approximately 12 persons expressed concerns about the proposed one hour later closing time on Thursday, Friday, and Saturday. Many of the persons expressing concerns indicated that they supported or otherwise did not object to the expansion, but were concerned about or opposed to the additional operating hour requested for Thursday, Friday, and Saturday nights.

SECTION 6. The record of the public hearing indicates:

A. The proposed Project consists of: (1) expanding MB Post into an adjacent space located in the same structure, formerly occupied by another restaurant (Subway); (2) enclosing an existing 148 square-foot patio; and (3) increasing its hours to begin 6:00 a.m. every day, and close at 1:00 a.m. Thursday, Friday, and Saturday. Pursuant to the existing Use Permit, the closing hour for Thursday, Friday, and Saturday is 12:00 a.m. (midnight). The Applicant proposes to use the expanded floor space to add seating and bar area in a rearranged floorplan that will also include additional bathrooms and storage area. The Applicant has offered to close windows along the Manhattan Avenue frontage at 10:00 p.m. each night, stop serving alcohol at midnight on Thursday, Friday, and Saturday, and relinquish its ability to have entertainment.

B. The property is: located in Area District III; designated for commercial use in the City's General Plan; and zoned Downtown Commercial (CD). The properties to the north, east (across Bayview Drive), south (across Center Place), and west (across Manhattan Avenue) are all designated in the General Plan for commercial use and are zoned Downtown Commercial (CD).

C. The Land Use Element in the City's General Plan designates the Downtown commercial zone as an area for the provision of a mix of commercial uses, including restaurants. Restaurants that serve alcohol are permitted in the CD zone subject to a Use Permit. MB Post has been operating as a restaurant with a California Department of Alcoholic Beverage Control ("ABC") Type 47 "On-premises" license (general liquor license allowing the service of beer, wine, liquor and spirits for on-property consumption) since 2011 pursuant to a Use Permit. ABC has not received any complaints about MB Post. The City has not received any complaints about MB Post, with the exception of a noise complaint in 2011 regarding noise in the alley from a "loud compressor" in the early morning.

D. The proposed expansion area is also in the CD zone and has had a restaurant use since the 1980s.

E. The Project is located on Manhattan Avenue in Downtown Manhattan Beach. That area contains a number of restaurants with similar operating characteristics. Significant buffers exist between the property and residents in nearby blocks, with Manhattan Avenue, Bayview Drive, Center Place, City Parking Lot 2 (between Bayview Drive and Highland Avenue), and other businesses providing barriers that help minimize any impacts on residents living in or near the CD zone.

F. The existing Use Permit authorizes: (1) full alcohol service in conjunction with food service; (2) limited entertainment; and (3) the following operating hours: 11:00 a.m. to 11:00 p.m. Monday through Wednesday, 11:00 a.m. to 12:00 a.m. Thursday through Friday, 7:00 a.m. – 12:00 a.m. on Saturdays, and 7:00 a.m. to 11:00 p.m. on Sundays. The adjacent vacant restaurant space operated under Board of Zoning Adjustment Resolution No. 82-41, which allows "a restaurant, juice bar and deli service" with on-site dining. Approval of the Project would supersede Board of Zoning Adjustment Resolution No. 82-41.

G. The following evidence and testimony was submitted at the public hearing:

1. The Project is consistent with the General Plan and Zoning Code.
2. For nine years, the Applicant has been an exemplar of operating a business in a congested, beach community with no negative impact on residents who live in or near the downtown commercial district.
3. During its operation, MB Post has operated with minimal impact on the surrounding neighborhood and residents who live there.
4. MB Post has a Type 47 full liquor license issued by the California Department of Alcoholic Beverage Control ("ABC"). ABC's website has a "License Lookup" service which indicates that MB Post has operated without any ABC disciplinary action.
5. The Police Department has not received any complaints about MB Post.
6. The expansion of MB Post into the adjacent vacant space will eliminate a vacancy that could impair the vitality of Downtown.
7. The Project will increase residents' access to quality "late night" dining.
8. Multiple restaurants in Manhattan Beach stay open until 1:00 a.m. on one or more nights.
9. The Police Department has reviewed the Project and has no concerns or objections about the expansion or the increased operating hours. The Police Department has not requested any additional conditions of approval.
10. The City has received one complaint about noise related to MB Post. In 2011, a complaint was filed about a loud compressor in the early morning. There have been no complaints about noises generated at night or by customers disturbing the peace and quiet of the neighborhood while dining or leaving the premises.

11. MB Post has French doors that open onto Manhattan Avenue. Evidence was introduced by City staff that such doors have been open on a regular basis for years, and the City has not received any complaints about noise coming from the restaurant. The French doors will be replaced by windows.
12. Due to rising rents and other factors, MB Post's expansion and expanded hours are consistent with beach community trends indicating that conversions to upscale restaurants are not only common but contribute to the vitality of a downtown area.
13. The proposed expansion and expanded hours are compatible with surrounding uses and the neighborhood.
14. The Project is consistent with the following General Plan Policies:

    LU-6: Maintain the viability of the commercial areas of Manhattan Beach. The Project contributes to the viability of the Downtown commercial area.

    LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach. By approving the Project, the City continues to support and encourage the viability of the Downtown area.

H. Appellant submitted a letter from its attorney and a "Noise Analysis" prepared by its consultant. The consultant and the attorney assert that future noise levels "predicted" by the consultant "are in significant breach of the City Noise Ordinance."

SECTION 7. Based upon substantial evidence in the record presented at the public hearing before the City Council, and pursuant to Municipal Code Section 10.84.060 and California Planning and Land Use Laws, the City Council hereby finds:

1. **The proposed location of the expanded use is in accord with the objectives of the City's Zoning Code and the purposes of the district in which the property is located.**

Manhattan Beach Post is a commercial use located in the CD Downtown Commercial zone, and its expansion into the space located in the same structure vacated by another restaurant is likewise appropriate for its zoning classification. The surrounding properties – which are also zoned for Downtown Commercial uses – consist of restaurant and office uses to the north, an office use to the south, City-owned public parking to the east, and restaurant and retail uses to the west. The proposed location of the Project is in accord with the objectives of the Zoning Code and the district in which the property is located because the Downtown area is one of the City's main commercial districts where an expanded restaurant use will complement a full range of restaurants, shops, and other uses suitable for that district.

2. **The proposed location of the expanded use and the proposed conditions under which it would be operated or maintained will be consistent with the**

General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project property or in or adjacent to the neighborhood of such use; and will be compatible with and not be detrimental to properties or improvements in the vicinity or to the general welfare of the city.

The Project is consistent with the City's General Plan's Downtown Commercial land use designation. The Land Use Element in the City's General Plan is the City's comprehensive, long-term planning blueprint for the physical development of the City. The Downtown Commercial category provides locations for a mix of commercial businesses, with a focus on pedestrian-oriented commercial businesses, such as restaurants. The Project is compatible with neighboring commercial uses, including pedestrian-oriented restaurants that serve food and alcohol into the late night and early morning, and offices and retail shops that close in the early evening. The proposed location of the expanded use and the proposed conditions under which MB Post would be operated and maintained will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood. The Applicant has demonstrated a long track record of conducting a restaurant with a Type 47 liquor license within the same building that encompasses both the existing MB Post and the proposed expansion area without any detriment to the public health, safety or welfare of persons residing or working on the site or in or adjacent to the neighborhood. The Applicant has operated a restaurant at the same location without any ABC disciplinary actions or complaints about noise originating from the restaurant or its patrons. Further, Municipal Code requirements and conditions of approval address security, safety, aesthetics, and hours of operation. Specific conditions are designed to address concerns expressed at the public hearing, including conditions requiring that the Applicant close windows every night at 10:00 p.m. and not serve alcohol in the additional hour of operation permitted for Thursday, Friday, and Saturday. The expanded use will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City, in that the area already supports commercial uses, and public parking resources adequately meet the need generated by both the existing restaurant and the increased capacity created by the expansion. Significant buffers exist between MB Post, as expanded, and residents in nearby blocks, with Manhattan Avenue, Bayview Drive, Center Place, City Parking Lot 2 (between Bayview Drive and Highland Avenue), and other businesses providing buffers that will minimize any impacts associated with the use, including noise. Staggered closing times for Downtown businesses will reduce the sidewalk congestion that may result at the end of the night when restaurants, bars, and comparable establishments close at the same time, and will reduce cumulative noise. The General Plan encourages a "vibrant downtown" that offers "services and activities for residents and visitors," and MB Post is an integral part of the downtown commercial mix of businesses contemplated by the General Plan. Manhattan Beach Post's expansion will enhance the services provided to residents and visitors. In addition, the project helps further General Plan Policies by providing a commercial tenant space that is more conducive to the operational needs of modern restaurants.

The Project's conditions of approval will minimize noise generated by the restaurant by requiring the restaurant's windows facing Manhattan Avenue to be closed no later than 10:00 p.m. every day. In addition, the conditions prohibit live music and require restaurant management – rather than patrons or any other party – to control the volume of any background music. Finally, the conditions require that sound emanating from the

property not exceed the limitations prescribed by the City Noise Ordinance. There is no evidence that MB Post has violated the City's Noise Ordinance in the past, and any allegation that it will violate the Noise Ordinance in the future is pure speculation without any evidentiary basis.

3. The proposed expanded use and expanded hours will comply with the provisions of the City's Planning and Zoning Code, including any specific condition required for the proposed use in the district in which it would be located.

MB Post is an eating and drinking establishment use that complies with all provisions of Municipal Code Title 10 Planning and Zoning. MB Post has fully complied with all specific conditions of approval imposed previously in connection with the Use Permit. Likewise, MB Post will be required to comply with all specific conditions of approval imposed herein in connection with the expansion and additional hours of operation, as well as provisions within the Planning and Zoning Code. Based upon past performance, the City Council anticipates that MB Post will continue to comply with all conditions of approval and provisions within the Planning and Zoning Code. Any suggestion to the contrary is based upon pure conjecture and is not supported by any substantial evidence.

4. The expansion of the use and hours will not adversely impact or be adversely impacted by nearby properties.

MB Post has been operating at its current location since April 2011, serving meals, craft beer, small-production wine, and craft cocktails revolving around an artisan menu of shared plates. The use is located on the commercial portion of Manhattan Avenue in the heart of Downtown Manhattan Beach, with some of the surrounding businesses having similar operating characteristics. The expansion and additional hours of operation will not create demands exceeding the capacity of public services or facilities. Significant buffers exist between the Project and residents in nearby blocks, with Manhattan Avenue, Bayview Drive, Center Place, City Parking Lot 2, and other commercial uses providing barriers that help eliminate or minimize any impacts on residents attributable to the use. Further, any potential impacts arising from the expanded space and hours related to traffic, parking demand, noise, vibration, odors, resident security and personal safety, and aesthetics, are either negligible, minimal or mitigated by conditions of approval contained herein. No evidence was presented that the Project will be adversely impacted by nearby properties.

SECTION 8. CEQA Finding. Staff has determined, and the City Council in its independent judgment finds, in light of the whole record before it, that the Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines (14 Cal. Code Regs.) Section 15301 (Existing Facilities), for, *inter alia*, the following reasons:

a. The Project is, at most, a negligible expansion within the meaning of CEQA. The Project consists of an expansion of an existing 3,283 square-foot restaurant into an adjacent existing restaurant space in the same structure, the enclosure of a 148 square-foot patio, and an increase in operating hours. The total expanded restaurant area for the Project will be 4,878 square feet. The additional 1,595 square feet [4,878 -

3,283 = 1,595] of expanded area thus represents an increase of 48.5% in the square footage: [1,595 ÷ 3,283 = 48.5%]. State CEQA Guidelines Section 15301 provides that Class 1 categorical exemptions for existing facilities are appropriate for projects such as "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." As defined in CEQA, examples of negligible expansion include:

- Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances; and
- Additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less.

The expansion is less than 50 percent of the floor area of the current restaurant and is less than 2,500 square feet. Moreover, other than the enclosure of an existing 148 square-foot patio, there is no addition to the existing structure. The Project consists of interior and exterior renovations.

Appellant's attorney argued that the Project is not a negligible expansion of use because a Subway Restaurant is a materially different type of use than a "dining establishment with a full liquor license." However, the stated CEQA categorical exemption applies to expansion of existing uses, regardless of whether the expansion is into space occupied by the same type of use, a different use, or no use at all. Further, categorical exemptions are appropriate even for the construction of new structures, under, for example, both the "negligible expansion" exemption and the "in-fill" exemption (CEQA Guidelines Section 15332). Once again, the Project does not entail any significant addition to the existing structure; rather, it consists of expanding an existing restaurant into space occupied by another restaurant within the same structure, enclosing a small existing patio area, and expanding hours of operation.

Staff has further determined, and the City Council in its independent judgment finds, in light of the whole record before it, that future noise "predicted" by Appellant's consultant neither renders inapplicable the Class 1 categorical exemption for the Project nor makes applicable any exceptions to the categorical exemption. Expanding operating hours does not entail construction, expansion, or addition. In a document titled "MB Post Noise Analysis," dated May 3, 2020, Appellant's consultant predicts that MB Post will violate the City's Noise Ordinance. However, that report does not constitute substantial evidence to support any of Appellant's contentions, including the assertions that a categorical exemption is inappropriate here or that the Project will violate the City's Noise Ordinance. The report's conclusions are based upon assumptions that are not part of the record and upon speculative, remote, and conjectural factors. The report offers only generalizations that are not property specific, does not provide any baseline noise analysis, does not account for any noise attenuation features of the property, assumes (without any basis for doing so) that the Applicant will not comply with applicable conditions of approval, and rests its conclusions on speculative future conditions. Appellant's consultant admittedly did not measure ambient noise at the property or measure noise generated by MB Post or Subway. In his oral presentation, the consultant stated that his predictions were based upon readings he took at a property several blocks away in connection with another assignment on behalf of Appellant in 2018 or 2019 related to noise complaints at a private club/bar across a street from

residences. Such measurements do not constitute credible evidence relevant to this Project. There is no evidence that the Applicant's operations have violated the City's Noise Ordinance or any credible evidence that the Applicant will not comply with the conditions of approval. Rather, there is substantial evidence in the record that the Applicant has operated an eating and drinking establishment at the property for over nine years in full compliance with all of the conditions of approval imposed in connection with the Use Permit. The Police Department has reviewed the Project and has no concerns or objections related to noise or other adverse impacts. The sole complaint about MB Post in nine years was a complaint in 2011 about a "loud compressor" in the alley behind the restaurant. There are no complaints about noise coming from MB Post or its patrons. The Applicant has agreed to a condition of approval to close the restaurant's windows facing Manhattan Avenue no later than 10:00 p.m. every day in order to minimize any noise generated by the restaurant, and has relinquished the privilege of having live entertainment. For all of these reasons, the City Council finds that the predicted noise analysis offered by Appellant is not substantial evidence as defined in State CEQA Guidelines Section 15384.

b. Staff has further determined, and the City Council in its independent judgment finds, that there are no applicable exceptions under CEQA Guidelines Section 15300.2 that would apply and would render inapplicable a categorical exemption for the Project.

1. There is not a reasonable possibility that the expansion or increased hours will result in potential adverse cumulative impacts. Appellant and its attorney insist that the City must evaluate the cumulative impacts of allowing MB Post to stay open for an additional hour on three nights based upon the following assumptions. According to Appellant, 19 other restaurants in Manhattan Beach have closing hours before 1:00 a.m. If the City Council were to allow MB Post to operate until 1:00 a.m. on Thursdays through Saturdays, Appellant argues that the approval would set a precedent. Such an argument assumes, without any factual basis, that:

- 19 restaurants scattered through the City could apply for a use permit amendment for later hours;
- The City could not deny the requests (due to precedent);
- The City could not impose any noise mitigation conditions on those other restaurants;
- Noise would emanate from the other restaurants between 12:00 a.m. and 1:00 a.m.;
- Noise from restaurants throughout Manhattan Beach would migrate and combine with noise from MB Post.

Based upon such assumptions, Appellant's counsel argues that the City must analyze such alleged cumulative impacts "because the cumulative impacts of similar projects over time could be significant" and, "will, over time, create significant impacts on the quiet nighttime environment." Such assumptions are not supported by any evidence in the record. There are currently no other applications pending from restaurants in the City for later operating hours. Moreover, allowing one restaurant to close one hour later on three nights does not set any precedent. Each project is considered on its own merits, based upon compatibility issues with its own neighborhood and surrounding uses. Approving expanded operating hours at the Applicant's restaurant does not

establish any precedent for a similar request at any other restaurant. If another restaurant applies for expanded operating hours, the City must consider whether the proposed operating hours would be compatible with the surrounding uses *at that location*, and, if compatible, would consider imposing noise mitigation conditions appropriate for that location. In sum, there has been no evidence presented that supports Appellant's arguments that the Project falls within the cumulative impacts exception to CEQA's categorical exemptions for negligible expansions.

2. There is no reasonable possibility that the Project will create a significant impact on the environment based on unusual circumstances. The expansion of an existing restaurant into an adjacent restaurant space in the same structure in an urbanized, commercial area is not unusual within the meaning of CEQA. The usual and ordinary interior and exterior modifications to and expansion of a restaurant into restaurant space in the same building are not unusual. Likewise, potential noise arising from an additional hour of operation on three nights does not constitute an "unusual circumstance" within the meaning of CEQA. The expanded restaurant would continue to be surrounded by compatible uses, including other restaurants, retail establishments, offices, and thus the expansion will not affect the environment in an unusual way. These negligible changes to an existing use are typical of the projects contemplated by CEQA to be exempt under Guidelines Section 15301. Indeed, the circumstances here – a restaurant expanding into an adjacent restaurant space in the same structure in a commercial zone, and closing at 1:00 a.m. on Thursday, Friday and Saturday – are not unusual in any significant way. Pursuant to ABC regulations, the standard closing time for establishments with Type 47 licenses to serve alcohol is 2:00 a.m. There are a number of establishments that serve food 24 hours a day, including at least one restaurant in the Downtown commercial zone (which also serves alcohol until 2:00 a.m.) Thus, allowing a restaurant to serve alcohol until midnight, and serve food until 1:00 a.m., is not an unusual circumstance, as that phrase is used in connection with categorical exemptions.

SECTION 9. Based upon the foregoing and substantial evidence in the record, the City Council hereby approves the Use Permit Amendment to allow the expansion and requested expanded operating hours subject to the following conditions:

1. The project shall be in substantial conformance with the plans dated May 5, 2020. The Applicant shall submit any substantial deviation from the approved plans to the Community Development Director, who may approve or require that the deviation be submitted to the Planning Commission for its consideration.

2. The Applicant may submit questions of intent or interpretation of any condition to the Community Development Director, who may require Planning Commission review and action.

3. A Construction Management and Parking Plan (CMPP) shall be submitted by the Applicant with the submittal of plans building plans to the Building Division. The CMPP shall be reviewed and approved by the City, including but not limited to, the City Traffic Engineer, Planning, Fire, Police and Public Works, prior to permit issuance. The Plan shall include, but not be limited to, provisions for the management of all construction related traffic, parking, staging, materials delivery, materials storage, and buffering of noise and other disruptions. The Plan shall

minimize construction-related impacts to the surrounding neighborhood, and shall be implemented in accordance with the requirements of the Plan.

4. All electrical, telephone, cable television system, and similar service wires and cables shall be installed underground to the appropriate utility connections in compliance with all applicable Building and Electrical Codes, safety regulations, and orders, rules of the Public Utilities Commission, the serving utility company, and specifications of the Public Works Department.

Operation

5. The restaurant's windows facing Manhattan Avenue shall be closed no later than 10:00 p.m. every day.

6. The management of the property shall police the property and all areas adjacent to the business during the hours of operation to keep it free of litter and food debris.

7. The operators of the business shall provide adequate management and supervisory techniques to prevent loitering and other security concerns outside the subject business.

8. All rooftop mechanical equipment shall be screened from the public right-of-way.

9. All mats shall be cleaned on the premises with no outside cleaning of mats permitted. If any floor mats cannot be cleaned within the premises, a service company must be contracted.

10. Hours of operation for the establishment shall be:

Sunday – Wednesday	6:00 a.m. – 11:00 p.m.
Thursday – Saturday	6:00 a.m. – 1:00 a.m.*

*No alcoholic beverages can be ordered by customers past 12:00 a.m., Thursday through Saturday. Customers who have ordered alcoholic beverages before 12:00 a.m. can still consume their alcoholic beverages between 12:00 a.m. and 1:00 a.m.

11. The Applicant shall be in substantial compliance with all restrictions imposed by the Department of Alcoholic Beverage Control (ABC).

12. Alcohol service shall be conducted only in conjunction with food service during all hours of operation.

13. Food service shall be available at all seats, and no specific bar area serving exclusively alcohol shall be permitted.

14. At all times the business shall identify itself as a "restaurant" and will not identify itself as a "bar" in public advertisements.

15. Live entertainment is prohibited.

16. Noise emanating from the property shall be within the limitations prescribed by the City Noise Ordinance and shall not create a nuisance. Noise shall not be audible beyond the premises.

17. The restaurant management shall control the volume of any background music.

18. At any time in the future, the Planning Commission or City Council may review the Use Permit Amendment for the purpose of revocation or modification in accordance with the requirements of Municipal Code Chapter 10.104. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.

19. The Community Development Department staff shall be allowed to inspect the property at any time.

Refuse

20. A trash enclosure(s) with adequate total capacity shall be provided on the property, subject to the specifications of the Public Works Department, Community Development Department, and City's waste contractor. The expanded portion of the restaurant shall not be allowed to start operations until the trash enclosure structure has been constructed.

21. The restaurant management shall arrange for special on-property pickup as often as necessary to ensure that the refuse area has adequate space to accommodate the needs of the subject business.

22. No refuse generated at the subject property shall be located in the non-alley Public Right-of-Way for storage or pickup, including the disposal of refuse in any refuse container established for public use.

Signage

23. All new signs and alterations to existing signs shall receive permits, and shall be in compliance with the City's sign code.

24. A-frame or other sidewalk signs in the public right-of-way shall be prohibited.

25. No temporary banner or other signs shall be placed on the property without City permit and approval.

Procedural

26. Within one year following the issuance of a certificate of occupancy for the expanded restaurant, the City Council shall review the Project at a duly noticed public meeting. At Applicant's expense, the City shall provide written notice to owners of all properties located within 500 feet of the expanded restaurant, and all residents residing within 500 feet of the expanded restaurant.

27. The Applicant shall apply for and obtain a right-of-way encroachment permit from the City for any projections into the public right-of-way.

28. Terms and Conditions are Perpetual; Recordation of Covenant. The provisions, terms and conditions set forth herein are perpetual, and are binding on the Applicant, its successors-in-interest, and, where applicable, all tenants and lessees of the property. Further, the Applicant shall submit the covenant, prepared and approved by the City, indicating its consent to the conditions of approval of this Resolution, to the City for recordation with the Office of the County Clerk/Recorder of Los Angeles. Applicant shall deliver the executed covenant, and all required recording and related fees, to the Department of Community Development within 30 days of the adoption of this Resolution. Notwithstanding the foregoing, the Director may, upon a request, grant an extension to the 30-day time limit. The project approval shall not become effective until recordation of the covenant.

29. Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City. The Applicant shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from and against any claims, damages, actions, causes of actions, lawsuits, suits, proceedings, losses, judgments, costs, and expenses (including, without limitation, attorneys' fees or court costs) in any manner arising out of or incident to this approval, related entitlements, or the City's environmental review thereof. The Applicant shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding. The City shall promptly notify the Applicant of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify the Applicant of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City or the Indemnitees. The City shall have the right to select counsel of its choice. The Applicant shall reimburse the City, and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this condition shall be construed to require the Applicant to indemnify Indemnitees for any claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the approval, the City shall estimate its expenses for the litigation. The Applicant shall deposit said amount with the City or, at the discretion of the City, enter into an agreement with the City to pay such expenses as they become due.

SECTION 10. The City Council's decision is based upon each of the totally independent and separate grounds stated herein, each of which stands alone as a sufficient basis for its decision.

SECTION 11. Pursuant to Municipal Code Section 10.84.090, the entitlements conferred by this Amendment may lapse unless one of the factors listed in Section 10.84.090 applies.

SECTION 12. The City Council hereby retains jurisdiction in this matter.

SECTION 13. The time within which judicial review, if available, of this decision must be sought is governed by California Code of Civil Procedure Section 1094.6, unless a shorter time is provided by other applicable law. The City Clerk shall mail by first class mail, postage prepaid, a certified copy of this Resolution and a copy of the affidavit or certificate of mailing to the Simms Restaurant Group, Coastal Defender, and any other persons or entities requesting notice of the decision.

SECTION 14. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED on May 5, 2020

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
RICHARD MONTGOMERY
Mayor

ATTEST:

_____
LIZA TAMURA
City Clerk