

- FACT SHEET

La Serena Properties (landlord)
Steve Yates (property owner)
831 818 7844

CITY OF CAPITOLA
CITY CLERK

MAR 7 2023

Steve Barber (attorney for La Serena Properties)
831 754 2444

Michelle & Lasalle Strong (tenant)
Drew Sanchez (attorney for CBG)
510 842 3553

THE LEASE (copy upon request)

Section 1.09

Permitted Use/Exclusive Use:

"Tenant shall use the Premises for a restaurant, as defined in the City of Capitola Use permit existing at the time of execution of this Lease, and for no other purpose."

Section 4.02

Manner of Use:

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

Section 11.03

Arbitration of Disputes:

"EXCEPT WITH RESPECT TO AN UNLAWFUL DETAINER BASED ON NONPAYMENT OF RENT, IF ANY DISPUTE BETWEEN THE PARTIES ARISING OUT OF THIS LEASE IS NOT RESOLVED THROUGH MEDIATION, SUCH DISPUTE SHALL BE RESOLVED BY ARBITRATION GOVERNED BY CALIFORNIA LAW AND, TO THE EXTENT NOT INCONSISTANT WITH THAT STATUTE, CONDUCTED IN ACCORDANCE WITH THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. ("JAMS"). "

- END FACT SHEET

To:
Jamie Goldstein, Capitola City Manager
Richard Manning, Capitola City Attorney

From:
Steve Yates for La Serena Properties
283 Canyon Oaks,
Santa Cruz, California 95065

Dear Sirs,

I have recently been made aware that the Strongs of Capitola Bar and Grill have appealed the Police decision to NOT reissue an Entertainment Permit to Capitola Bar & Grill. This issue is among several others that is part of an upcoming Arbitration among the parties. As the property owner, I must clarify that the lease agreement between the Landlord and the Tenant at 231 Esplanade unit 201, "Capitola Bar and Grill" contains specific provisions regarding the permitted use and manner of use of the premises.

Section 1.09 of the lease clearly states that the Tenant is only allowed to use the premises for a restaurant, as defined in the City of Capitola Use permit that existed at the time of the execution of the lease. This means that any other use of the premises, including live bands and dancing, is not permitted under the lease.

The Strongs (Capitola Bar and Grill) although have publicly stated they want to change the intent of both the lease and the Permit to Operate a Restaurant.

"We want to bring live bands and dancing to the village."

Their intent is not to have "live music" incidental to the primary business, rather as the focus.

Furthermore, Section 4.02 of the lease prohibits the Tenant from using the premises in any way that violates any law, ordinance, or governmental regulation or order, unreasonably annoys or interferes with the rights of other tenants of Landlord's Property or constitutes a nuisance or waste.

The parties have also agreed to mediate and arbitrate all disputes under Section 11.03 of the lease. This means that any disputes arising out of the lease must first be resolved through mediation, followed by arbitration conducted in accordance with the rules of practice and procedure for the arbitration of commercial disputes of Judicial Arbitration and Mediation Services, Inc. ("JAMS").

In light of the ongoing arbitration between the parties, the city should not intervene or circumvent the parties' agreement to arbitrate all disputes. The order of the Tryer of Fact will become the order of the Court, and only then may the appeal move forward to determine whether the permit was unfairly denied.

Therefore, the City should allow the parties to resolve their issues through the agreed method of arbitration and continue to enforce the law as it stands, unpermitted music is strictly forbidden.

Please feel free to contact either party's attorney, including Mr. Barber, should you wish to discuss California Law or the arbitration process as it pertains to the City.

You have my permission to contact Mr. Barber.

Thank you for your attention to this matter.

Sincerely,

Steve Yates