

Lisa Volpe

From: curtis winter [curtiswinter@hotmail.com]
Sent: Monday, February 16, 2009 9:26 PM
To: hpruette@neptune-beach.com; epardee@neptune-beach.com; ktucker@neptune-beach.com; flee@neptune-beach.com; jweldon@neptune-beach.com
Subject: SunDog smoking

Hello Council,
I have talked to many of my customers and employees of other restaurants that frequent here. They are very happy with how things stand with the patio. I am sorry if there was an inconvenience to any of you or the City Manager, but I am going to ask you to leave things as be for the patio lease. Again I apologize if this was an inconvenience. If you have any questions please contact me on my cell phone anytime. 591-4899.

Sincerely,
Curtis Winter

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SIDEWALK LEASE AGREEMENT

This lease Agreement is made February 27, 2009 between the City of Neptune Beach, a municipal corporation, as Lessor, and Sundog Steak & Seafood, as lessee,

WITNESSETH:

1. Lessor leases to Lessee a portion of the Lessor's right-of-way, more particularly described and designated in Exhibit A attached hereto and incorporated hereto, contained in the sidewalk area immediately in front of and adjacent to the Lessee's business premises known as Sundog Steak & Seafood.

2. This Lease Agreement and Lessee shall be governed by all terms and conditions contained in Section 27-479 of the Code of Ordinances of the City of Neptune Beach, Florida as enacted by Ordinance No. 2004-02. All terms and conditions contained in that section are incorporated herein and made a part hereof. A copy of Section 27-479 is attached hereto and marked as Exhibit B.

3. The term of this Lease Agreement shall be for a period of one (1) year from the above date.

4. This Lease Agreement may be renewed on the anniversary dates hereof for additional one (1) year periods, upon the mutual consent of Lessor and Lessee to said renewal, including any revisions, additions or deletions that are a part of said renewal. The renewal shall be agreed to no later than thirty (30) days prior to the expiration of the original term of this Lease Agreement and, in the event that no renewal is agreed to, this Lease Agreement shall be terminated. At the discretion of the City Manager this may be month to month.

5. The City Manager may revoke or suspend any outdoor dining permit associated with this Lease Agreement if it is found that:

a. Any necessary business or health permit has been suspended, revoked or cancelled;

b. The Lessee does not have insurance which is correct and effective in the minimum amount described in Section 27-479;

c. Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of the sidewalk dining;

d. Such decision shall be based upon findings of the City Manager that there is a danger to the health, safety or general welfare of pedestrians or vehicular traffic or the public in general;

e. The Lessee has failed to correct violations of Section 27-479, or conditions of

this lease Agreement or dining permit; or

f. For any other reason that the City Manager deems necessary for the protection, health, safety and welfare of the public.

6. In the event of any such revocation or suspension by the City Manager, the Lessee shall have the right to initiate an appeal to the City Council by filing a written notice of appeal with the City Manager within ten (10) days of any such revocation or suspension.

7. The above revocation and suspension provisions are supplemental to the revocation provisions contained in Section 27-479 d.(16).

8. Under this Lease Agreement, the Lessee is authorized to place no more than ten (9) tables with 28 seats in the designated outdoor dining area as described on the Exhibit A attached hereto. The Lessee shall assure the boundaries of the dining area are fixed so the area cannot be expanded. The fixed boundary must be approved by the City Manager. Failure to secure said boundaries, within ten (10) days of signing this lease will, in the sole discretion of the City Manager, result in the termination of the Lease.

9. Lessee shall not sublet the outdoor dining premises, nor any part thereof, nor assign this Lease Agreement.

10. All dining or other activities will cease no later than 12:00 am each evening.

11. The Lessee further agrees as follows:

a. To pay Lessor, as rent for the described premises, the sum of \$239.95 per month for the full term of this Lease Agreement ($\$11.08 \times 259.87 \text{ sq. ft.} = 2,879.36/12 \text{ months} = \239.95). Said payments shall be paid on the first day of each month commencing August 1, 2007 and continue throughout the term of this Lease Agreement. Failure on the part of the Lessee to pay the monthly payment by the tenth of each month will place the Lease in default. The Lessor will not provide notices of payments due.

b. To be responsible for paying all taxes and fees required by local, state or federal law, including but not limited to sales taxes.

c. At its own expense, to remove and relocate, to a place designated by Lessor, the individually named bricks located within the described leased area and replace them with similar type bricks if needed.

d. To maintain and keep the described premises in good repair and a clean state at the Lessee's expense. The Lessor shall have the sole discretion, through the City Manager, to direct any necessary maintenance or repair to be required of and performed by the Lessee during the term of this Lease Agreement. Maintenance will include pressure washing of the outside dining area every six (6) weeks from April through September and at other times as deemed needed by the City Manager.

e. To leave the described premises, on termination of this Lease Agreement, in the same condition and state of repair as it was at the commencement of this Lease Agreement.

12. Upon termination of this Lease Agreement or upon revocation or suspension of any outdoor dining permit associated with this Lease Agreement, in the event the Lessee does not immediately, upon demand by the Lessor, remove all tables, chairs, fixtures and other accessories from the described area, the Lessor shall have the absolute right to enter the described area and remove all such items and dispose of said items in its sole discretion.

13. If any default by Lessee occurs, Lessor may eject to immediately terminate Lessee's right of possession under this Lease Agreement without notice to lessee.

14. In the event of a default by the Lessee of any of the terms and conditions of this lease Agreement, including all incorporated terms and conditions hereof, the Lessor shall have the absolute right, with no notice to Lessee, to declare due all sums under this Lease Agreement and to accelerate and demand total payment thereof.

15. Upon any default by the Lessee, and in the event the Lessee does not immediately, upon demand by the Lessor, remove all tables, chairs, fixtures and other accessories from the described area, the Lessor shall have the absolute right to enter the described area and remove all such items and dispose of said items in its sole discretion.

16. The Lessee shall not be entitled to make any improvements or to add furnishings, tables, seats or other accessories to the described area without the consent of the Lessor.

17. In the event that any dispute arises concerning the terms of this Lease Agreement, this Lease Agreement shall be interpreted and governed by the laws of the State of Florida. In the event that any litigation is initiated relating to this Lease Agreement, venue for any such litigation shall be in Jacksonville, Duval County, Florida.

18. Lessor shall not be liable for any loss, damage or injury of any kind or character to any person or property arising from any use of the described leased area or improvements, or caused by any defect in any building, structure, equipment, facility, or other sidewalk or other improvement on the described leased area, or caused by or arising from any act or omission of lessee, or any of its agents or employees, licensees or invitees, or by or from any accident, fire or other casualty on the premises of the Lessee or the described leased area or occasioned by the failure of Lessee to maintain the premises in safe condition. Lessee waives all claims and demands on its behalf against Lessor for any loss, damage or injury, and agrees to indemnify and hold Lessor entirely free and harmless from all liability for any loss, damage, cost or injury of other persons, and from all costs, including attorney's fees, and expenses arising from any claims or demands of other persons concerning any loss, damage or injury caused other than by the negligent or intentional act or omission of Lessor.

19. Lessee expressly agrees to pay all expenses that Lessor may incur for reasonable

attorney's fees and any and all other costs paid or incurred by Lessor for enforcing the terms and provisions of this Lease Agreement.

20. The City Manager, in consultation with the City Attorney, will be responsible for any needed interpretations of this Lease Agreement.

21. For the purposes of any interpretation of this Lease Agreement, this Lease Agreement shall be considered as having been authored, drawn and written by both Lessor and Lessee and, in the interpretation of this Lease Agreement, there shall be no presumption of vagueness, ambiguity or unfairness against the Lessor.

22. The parties hereto agree and understand that time is of the essence as to the performance of all terms and conditions of this Lease.

23. All notices, pursuant to this Lease Agreement, shall be sent to Lessor c/o James R. Jarboe, City Manager, City of Neptune Beach, 116 First Street, Neptune Beach, FL 32266 and to Lessee c/o Curtis Winter, Sundog Steak & Seafood, 207 Atlantic Blvd., Neptune Beach, FL 32266.

Dated this _____ day of _____, 2009.

_____, Witness James R. Jarboe,
City Manager, on behalf of City of Neptune Beach, Lessor

_____, Witness Curtis Winter,
on behalf of Sundog Steak & Seafood, Lessee

_____, Witness,
on behalf of Sundog Steak & Seafood