

**PLANNING COMMISSION
AGENDA REPORT**



**CITY OF MILLBRAE
621 Magnolia Avenue
Millbrae, CA 94030**

SUBJECT: Public hearing on the extension of a CONDITIONAL USE PERMIT application for a restaurant use in the Commercial (C) zoning district (Public Hearing). ATTACHMENTS: <ol style="list-style-type: none">1. Resolution with Exhibit A, Conditions of Approval2. March 20, 2017 Staff Report and Conditions of Approval3. Application Materials: Parking Plan, Parking Table, Wayfinding Map, Floor Plans, and previously approved lease terms for off-site parking	Report No. 4a
	For Agenda of: February 23, 2022
	Address: 300 El Camino Real
	Department: Community Development
	Originator: Nestor Guevara Associate Planner
	Approved: Roscoe Mata, Planning Manager
	Property Owner: Chung Ko Fong
	Applicant: Chung Ko Fung
Application submittal date: January 22, 2020 Prior Planning Commission meeting date(s): December 19, 2011; July 21, 2014; November 7, 2016; March 20, 2017	

REPORT TYPE: <input checked="" type="checkbox"/> ACTION	<input type="checkbox"/> INFORMATIONAL		
ITEM TYPE: <input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> EXISTING BUSINESS	<input type="checkbox"/> NEW BUSINESS

RECOMMENDATION

Staff recommends that the Planning Commission review the project, consider the public testimony and the findings, as presented, and consider adopting the attached resolution approving the application for the Conditional Use Permit (“CUP”) extension to allow for the continuation of a restaurant use and related off-site parking, subject to the attached conditions of approval.

BACKGROUND

The proposed project is for the extension of an existing CUP to allow for the continuation of a restaurant use. The subject property is located at 300 El Camino Real near the southeast corner of El Camino Real and Hillcrest Blvd. zoned “C” (Commercial) and currently developed with an 11,370 sq. ft., three-story “Tai Wu” restaurant. The CUP was originally approved by the Planning Commission on December 19, 2011. The Planning Commission approved CUP extensions and modifications on July 21, 2014, November 7, 2016 and March 20, 2017. The originally approved restaurant contained 276 seats. The Millbrae Municipal Code Section 10.05.2100 stipulates that a

restaurant in the commercial zone requires one (1) parking space for each two-and-a-half (2.5) seats. Therefore, the required parking for the 276-seat restaurant was 110. The project site contains only seven (7) off-street parking spaces. To supplement the on-site spaces, in the original approval, the CUP included a condition of approval allowing the project to fulfill the City Zoning Code parking requirements for the use by securing leases for four (4) off-site parking areas near the project site.

These off-site parking lots provide a total of at least 120 spaces, including these locations:

- At least 10 self-parking spaces at Speedee Oil Change (390 El Camino Real);
- At least 30 self-parking spaces at Burger King (420 El Camino Real);
- At least 69 self-parking spaces at Universal Electric Supply (460 El Camino Real); and,
- At least 14 self-parking spaces at Taco Bell

The original CUP in 2011 provided five (5)-year leases for the off-site parking lots. A modification to the CUP in 2014 provided two (2)-year leases, while a later extension in 2017 provided extensions to the leases for off-site parking effective until the expiration of the CUP extension approval at the end of 2019. CUP Special Condition E required the applicant to provide documentation to the Community Development Department that parking nearby is secured to meet the parking regulations of 1 space per 2.5 seats or seating capacity shall be reduced if Tai Wu was unable to find suitable replacement parking nearby.

The original CUP included a condition of approval that stated that the CUP was valid for five years, with the Planning Commission authorized to approve extensions with a written request submitted by the property owner and a notice of a public hearing being made.

A summary of the timeline for this CUP is provided below:

- December 19, 2011- Original CUP approved for a period of 5 years with 88 off-site parking spaces to be maintained with five (5)-year lease for the off-site parking lots.
- July 21, 2014 – The Planning Commission approved a modification to the approved CUP to address construction and operational issues. The off-site parking was modified, and two (2)-year leases were provided. The modified CUP was approved to run through the remainder of the initial approval period. The CUP expiration date was December 19, 2016.
- November 7, 2016 – The Planning Commission approved a limited-term extension of the CUP from December 19, 2016 to March 31, 2017 to allow the applicant time to address issues of debris on site and to install new directional signage.
- March 20, 2017- The Planning Commission approved the extension of the CUP effective for three (3) years from the expiration date of the original CUP (December 19, 2016) through December 19, 2019. The approval included off-site lease agreements to meet the required parking per the provided seating extended until December 31, 2019.

The applicant submitted the required planning application for the CUP extension (“CUP Extension Application”). However, due to the COVID-19 pandemic the City allowed the restaurant to continue operations during this time, based on the declaration of a "local emergency," pursuant the California Emergency Services Act (Gov. Code §§ 8550 et seq.) ("Act") and an "emergency" pursuant to Millbrae Municipal Code Chapter 2.25 Emergency Organization and Functions ("Chapter 2.25"). For much of the pandemic, indoor seating was limited by State and County

orders.

On March 19, 2021, the applicant submitted a planning application to renovate and expand the property into a mixed-use building. The City reviewed the planning application, provided comments on the project, and deemed the project incomplete pursuant to the Permit Streaming Act. The applicant has not resubmitted any of the required material, and therefore the application remains incomplete.

The current application under consideration includes a substantial change to the off-site parking proposal. The application proposes to reduce the restaurant seating capacity from 276 to 225 seats. Of the four original locations for off-site parking listed above, only one is currently leased, and only on a month-to-month basis. This location is the Universal Electric Supply business located at 460 El Camino Real). All the other leases have been terminated. As a matter of background, in 2011, the Planning Commission decided to reduce the amount of parking required for Universal Supply by 50% (as provided for by ordinance) from 28 spaces to 14 spaces in order to leave more parking area available for Tai Wu. This approval allowed Tai Wu to utilize a total of 69 parking spaces at Universal Supply continuously (with City approved 50% reduction in Universal's parking to 14 spaces). After the close of business of Universal Supply, a total of 83 spaces were made available for Tai Wu's dinner customers.

The City prepared a comment letter on the CUP extension application requesting additional application materials and information. The City requested a parking plan, a table with the amount of parking spaces provided by off-site lot, an agreement with the off-site property owners, details on the wayfinding signage program, a floor plan showing the seating, and information regarding any scheduled special events. The applicant provided some of these requested materials on December 7, 2021, which included a parking plan, the proposed parking on- and off-site, and a previous lease agreement for the use of the parking stalls at 460 El Camino Real. These documents can be found as Attachment 2. The City then sent a letter to the property owner on December 16, 2021, requesting a copy of an executed lease with 460 El Camino Real with a timeframe of at least two years, location and details of the wayfinding signage and maps for the off-site parking, and a larger parking plan. The City did not receive the requested documents. Taking into account the timeframe for the CUP, the City decided to schedule this for Planning Commission review and present the information that has been submitted to date.

ANALYSIS

The project includes a modification to the seating arrangement of the restaurant, reducing the seating capacity from 276 to 225 seats. This would, in turn, reduce the parking requirement to 90 off-street parking spaces. The site contains seven (7) off-street parking spaces. The remaining 83 required parking spaces are proposed to be met through a parking stall lease agreement with 460 El Camino Real (Universal Supply) on a month-to-month basis. However, these stalls are only approved to be available during the dinner hours. During the lunchtime when Universal Supply is open and needs parking for its customers, the City has only authorized Tai Wu to utilize a total of 69 parking spaces at Universal Supply.

The proposal would otherwise make no changes to the design or use of the building.

Parking Requirements

Per Millbrae City Code Section 10.05.2100, a restaurant in the Commercial zone requires one (1) off-street parking space per each 2.5 seats. The proposed 225 seating capacity for the restaurant would require 90 parking stalls. The project site contains seven (7) off-street parking spaces. The applicant is proposing to meet the required parking by leasing the parking lot at 460 El Camino Real (Universal Supply) to provide the remaining 83 parking spaces. Currently, the applicant has only secured this on a month-to-month basis. The proposed off-site lot is found one block northwest of the project site.

The following condition is proposed to address the parking requirement:

Restaurant Seating Capacity and Parking Requirements: The permittee shall not exceed 225 seats within the entire restaurant at any time, but actual capacity will be determined by the number of parking spaces provided. The calculation of the number of permitted restaurant seats shall be determined by the amount of vehicular parking spaces ("Available Parking") provided by the permittee at a rate of one (1) parking space for every 2.5 seats. All Available Parking shall be available for the exclusive use by restaurant customers and employees. Available Parking shall be provided either on-site or off-site. If off-site, a minimum two-year lease agreement is required. The lease agreement shall be provided to the City Planning Division for review, and shall be subject to review and verification of adequacy, by the Community Development Director.

If at any point for the duration of the CUP, the Available Parking is reduced, the restaurant seating shall be proportionally reduced at a rate of one (1) parking space for every 2.5 seats.

For the duration of the CUP, the permittee shall allow City staff to enter the premises during any business hours to monitor the seating capacity with or without prior notification.

For Special Events of limited duration, the permittee may exceed the number of permitted restaurant seats, provided they submit proposals for additional Available Parking with less than a two-year lease term to the City Planning Division for review at minimum of ninety (90) days prior to the event date, and shall be subject to review and verification of adequacy, by the Community Development Director. The Available Parking may be provided by valet parking, directing diners to off-site parking within three hundred (300) feet of the restaurant, or a combination of these.

This condition of approval stipulates that the applicant will be required to limit restaurant seating to an amount that does not exceed the amount of Available Parking provided. Off-site parking may be permitted to be utilized by the restaurant, upon obtaining satisfactory minimum two-year lease(s) for any off-site parking stalls. The condition of approval mandates a minimum two-year lease term for off-site parking. This is consistent with the current CUP. If the permittee cannot secure off-site parking with minimum two-year lease(s), the existing seven (7) on-site parking spaces would allow for eighteen (18) restaurant seats.

The requirements of the condition of approval serve to ensure the restaurant secures the necessary parking to continuously operate without disruption. The month-to-month nature of the current

leases are not sufficient as this short duration has the potential to be more transitory and uncertain, and therefore create a burden on the City to enforce the project approval conditions. For example, enforcement issues could arise if the property owner at 460 El Camino Real decided to end the agreement at any point after a CUP extension is granted without notifying city staff. Additionally, regular monthly reviews of the lease agreement and inspections of the seating capacity would have to be scheduled, which would require City resources.

Additionally, the applicant will be required via a condition of approval to install wayfinding signage that directs customers to any proposed off-site parking areas, subject to City review and approval.

REQUIRED FINDINGS

Conditional Use Permit

The following findings are required under Section 10.05.2520 of the Millbrae Municipal Code in order for the Planning Commission to approve the requested CUP:

- 1. The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use;**

The Conditional Use Permit application is to allow for the continuation of a restaurant in the Commercial zoning district at 300 El Camino Real. A restaurant use in the Commercial zone requires minimum off-street parking requirement of 1 parking space per each 2.5 seats. The restaurant currently proposes to have a maximum capacity of 225 seats which would require a total of 90 off-street parking spaces. There are only seven (7) on-site off-street parking spaces at 300 El Camino Real. As a condition of approval, the applicant is required to limit seating to an amount that does not exceed the amount of available parking provided. Off-site parking may be permitted to be utilized by the restaurant, upon obtaining satisfactory minimum two-year lease(s) for any off-site parking stalls. Additionally, the applicant will be required to install wayfinding signage that directs customers to any proposed off-site parking areas. Therefore as conditioned, the use will not interfere with adjacent uses, cause traffic congestion or parking problems in the vicinity, or otherwise be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood.

- 2. The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to property and improvements in the neighborhood of such proposed use.**

The request for the time extension of an approved Conditional Use Permit for a restaurant in an existing commercial building and related off-site parking would not require any changes to the design or use of the building other than restaurant seating capacity. The restaurant seating capacity will be regulated by the amount of parking provided by the applicant through a combination of existing on-site parking (seven parking spaces) and off-site parking areas leased with a minimum two-year term. Any proposed off-site parking

will be required to include proper wayfinding signage that directs customers to the parking areas, which would potentially reduce impacts to the adjacent residential streets created by spillover parking.

PUBLIC NOTICE REQUIREMENT

The City of Millbrae Community Development Department follows legally required public noticing requirements outlined in the municipal code section 10.05.2900 including publishing the Planning Commission meeting date not less than ten days prior to the hearing, in a newspaper of general circulation in the city and mailing notice cards to property owners within a 300-foot radius of the subject property. In addition, ten days prior to the hearing, staff posts notices in at least three public places along the street and stakes a notice placard on the subject property. At least three days before the meeting, staff posts the project meeting date on the City website Planning Commission calendar; and on the bulletin boards at City Hall and the Millbrae Public Library.

ENVIRONMENTAL REVIEW

The project is categorically exempt pursuant to CEQA Guidelines Section 15301 Existing Facilities (Class 1) because the project involves negligible or no expansion of the existing use.

PLANNING COMMISSION ACTION:

Staff recommends that the Planning Commission review the project, consider the public testimony and the Findings, as presented, and consider adopting the attached Resolution approving the application for the Conditional Use Permit (“CUP”) extension to allow for the continuation of a restaurant use and related off-site parking, subject to the attached conditions of approval.

RESOLUTION NO. 22- __**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILLBRAE
APPROVING AN APPLICATION FOR AN EXTENSION OF A CONDITIONAL USE
PERMIT TO ALLOW FOR THE CONTINUATION OF A RESTAURANT AND
RELATED OFF-SITE PARKING (PUBLIC HEARING).**

WHEREAS, the applicant filed PA 2020-5 to request the extension of a Conditional Use Permit to allow a restaurant in the Commercial (C) Zoning District at 300 El Camino Real, subject to the attached Conditions of Approval; and

WHEREAS, the project consists of an extension to an existing Conditional Use Permit (CUP) to allow the continuation of an existing restaurant use in the Commercial zoning district; and

WHEREAS, the Planning Commission conducted a duly-noticed public hearing on February 23, 2022 at which time all interested person were given an opportunity to be heard; and

WHEREAS, the Planning Commission has reviewed and considered the information contained in the staff report as well as oral and written testimony on the proposed project; and

WHEREAS, the Planning Commission has reviewed and considered the project, supplemental materials, and staff's recommendation of approval; and

WHEREAS, staff recommends approval of the CUP due to the restaurant providing the required off-street parking through the use of off-site parking areas; and

WHEREAS, the Planning Commission found that this project is categorically exempt per Section 15301 Class 1 of the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, the seating capacity for the restaurant will be determined by the provided on-site parking spaces; and

WHEREAS, the seating in the restaurant may be increased with the use of off-site parking areas by a ratio of one (1) parking space for each two and a half (2.5) seats, if at least two (2) year terms are provided; and

WHEREAS, this Planning Commission, having considered the evidence received at the public hearing duly noticed, desires to recommend approval of the project in the manner proposed and referenced above and in accordance with the following findings;

Conditional Use Permit:

- a. **The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use;**

The Conditional Use Permit application is to allow for the continuation of a restaurant in the Commercial zoning district at 300 El Camino Real. A restaurant use in the Commercial zone requires minimum off-street parking requirement of 1 parking space per each 2.5 seats. The restaurant currently proposes to have a maximum capacity of 225 seats which would require a total of 90 off-street parking spaces. There are only seven (7) on-site off-street parking spaces at 300 El Camino Real. As a condition of approval, the applicant is required to limit seating to an amount that does not exceed the amount of available parking provided. Off-site parking may be permitted to be utilized by the restaurant, upon obtaining satisfactory minimum two-year lease(s) for any off-site parking stalls. Additionally, the applicant will be required to install wayfinding signage that directs customers to any proposed off-site parking areas. Therefore, as conditioned, the use will not interfere with adjacent uses, cause traffic congestion or parking problems in the vicinity, or otherwise be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood.

- b. The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to property and improvements in the neighborhood of such proposed use;**

The request for the time extension of an approved Conditional Use Permit for a restaurant in an existing commercial building and related off-site parking would not require any changes to the design or use of the building other than restaurant seating capacity. The restaurant seating capacity will be regulated by the amount of parking provided by the applicant through a combination of existing on-site parking (seven parking spaces) and off-site parking areas leased with a minimum two-year term. Any proposed off-site parking will be required to include proper wayfinding signage that directs customers to the parking areas, which would potentially reduce impacts to the adjacent residential streets created by spillover parking.

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED BY THE PLANNING COMMISSION THAT:

1. The recitals set forth above are true and correct and are hereby incorporated herein by this reference and full set forth in their entirety.
2. The adoption of the Conditional Use Permit will not be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use
3. The adoption of the Conditional Use Permit will not be detrimental to property and improvements in the neighborhood of such proposed use
4. Application No. PA 2020-5 is hereby approved.
5. This resolution shall be effective immediately.

PASSED AND ADOPTED as a Resolution of the City of Millbrae Planning Commission at the public meeting held on the 23rd day of February 2022, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

JEAN JOH
CHAIR

ATTEST:

ROSCOE MATA
SECRETARY

Exhibit A: Conditions of Approval

**CITY OF MILLBRAE PLANNING APPLICATION
PROJECT CONDITIONS OF APPROVAL**

As Approved by the Planning Commission on February 23, 2022

Project: Tai Wu Restaurant CUP, 300 El Camino Real, (APN: 024-154-240) (Planning Application #2020-05)

The following conditions of approval apply to the project referenced above. Additional language within a condition may further define the timing of required compliance.

GENERAL REQUIREMENTS:

1. This approval and all rights hereunder shall be effective for a period of two (2) year from the date of approval. The Planning Commission may extend this approval period, not to exceed three years, if a written request is made and submitted by the property owner prior to the expiration of the approval period (Section 10.05.2550) and a notice of a public hearing has been made pursuant to Section 10.05.2900 (D) of the Millbrae Municipal Code.
2. Violation of any of the conditions of this permit shall be cause for the issuance of an infraction or citation, prosecution, and/or revocation and termination of all rights under the permit, by the City of Millbrae.
3. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the use and development of said property as set forth by this permit together with all conditions, which are a part thereof. These specific requirements must be recorded with all title conveyance documents at time of closing escrow.
4. All new site development associated with this Modification, including landscaping, equipment, equipment screening and soundproofing, and off-site parking and signage, shall conform to the approved plans, date stamped September 28, 2016, on file in the City of Millbrae Community Development Department. No significant changes shall be made to the approved plans without prior review and approval by the Planning Commission.
5. All landscaped areas must be maintained in a neat, healthy, and growing condition, including public parkways and street trees.
6. The property shall be developed and maintained in a neat, quiet, and orderly condition and in a manner so as not to be detrimental to adjacent properties and occupants. This shall encompass the maintenance of the exterior facades of the building and all landscaping surrounding the building.

7. City staff shall enforce all zoning, building, and fire code requirements applicable to this project and shall interpret and apply all landscaping, signage, infrastructure, and other land development related policies and guidelines in keeping with the spirit and intent of this Planning Commission approval.
8. All structures shall conform to California Building Code requirements and all required permits from the City of Millbrae Building Division must be secured prior to initiating development under the terms of this permit.
9. Any off-site improvements found to be damaged shall be repaired and/or replaced as required by the City of Millbrae Director of Public Works.
10. All required utility easements shall be provided as indicated by the department or agency having jurisdiction.
11. The project shall comply with all applicable "City of Millbrae Public Works General Conditions of Approval" (copy provided to applicant). This condition includes project compliance with the Public Works Construction and Demolition Reuse and Recycling Requirements, including submittal of planning forms to the City's Recycling Coordinator prior to issuance of a Building Permit.
12. As a condition of this approval, and to the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project including the City's related California Environmental Quality Act determinations. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition. If the applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City.

SPECIAL CONDITIONS:

13. Prior to issuance of any building permits, all new construction shall comply with all applicable building and fire safety codes. This condition shall also apply to the alteration of existing construction in the event that such existing construction is not already fully code compliant.

14. All restaurant building and utility building doors shall be kept closed and all trash bins shall be stored in the utility building when not awaiting pick-up.
15. Non-performance on any condition of approval or unauthorized deviation from any feature depicted on the approved plans shall be grounds for possible revocation of this Conditional Use Permit and any subsequently approved Modification and Extensions to it.
16. Restaurant Seating Capacity and Parking Requirements: The permittee shall not exceed 225 seats within the entire restaurant at any time, but actual capacity will be determined by the number of parking spaces provided. The calculation of the number of permitted restaurant seats shall be determined by the amount of vehicular parking spaces ("Available Parking") provided by the permittee at a rate of one (1) parking space for every 2.5 seats. All Available Parking shall be available for the exclusive use by restaurant customers and employees. Available Parking shall be provided either on-site or off-site. If off-site, a minimum two-year lease agreement is required. The lease agreement shall be provided to the City Planning Division for review, and shall be subject to review and verification of adequacy, by the Community Development Director.

If at any point for the duration of the CUP, the Available Parking is reduced, the restaurant seating shall be proportionally reduced at a rate of one (1) parking space for every 2.5 seats.

For the duration of the CUP, the permittee shall allow City staff to enter the premises during any business hours to monitor the seating capacity with or without prior notification.

17. For Special Events of limited duration, the permittee may exceed the number of permitted restaurant seats, provided they submit proposals for additional Available Parking with less than a two-year lease term to the City Planning Division for review at minimum of ninety (90) days prior to the event date, and shall be subject to review and verification of adequacy, by the Community Development Director. The Available Parking may be provided by valet parking, directing diners to off-site parking within three hundred (300) feet of the restaurant, or a combination of these.
18. Wayfinding Signage: The permittee shall submit designs for directional sign(s) at each off-site parking lot location for review and approval by City staff. These signs shall be submitted for the review and approval by the Planning Division no later than 14 days after the approval of this CUP Extension. The signs shall be installed within 30 days of the approval of this CUP Extension.
19. The applicant shall install occupancy signage at the site depicting accurate seating capacity for inspection purposes by Fire and Community Development Department staff.

**PLANNING COMMISSION
AGENDA REPORT**



**CITY OF MILLBRAE
621 Magnolia Avenue
Millbrae, CA 94030**

SUBJECT: EXTENSION OF AN APPROVED CONDITIONAL USE PERMIT for a restaurant, “Tai Wu”, in an existing commercial building and related off-site parking. ATTACHMENTS: 1. Draft Resolution 2. Conditions of Approval 3. Plan Set (Previously Distributed) 4. Conditional Use Permit Extension Addendum, dated September 27, 2016 (Previously Distributed)	Report No. 7d
	For Agenda of: March 20, 2017
	Address: 300 El Camino Real
	Property Owner: Chung Ko Fong
	Applicant: Chung Ko Fong
	Originator: Tonya Ward, Community Development Director
	Application submittal date: June 6, 2016 Application deemed complete date: July 6, 2016
	Prior Planning Commission Study Session date(s): August 15, 2016 and October 3, 2016 Prior Planning Commission Public Hearing Date date(s): November 7, 2016

REPORT TYPE: ACTION ☒ INFORMATIONAL _____

ITEM TYPE: CONSENT _____ PUBLIC HEARING ☒ EXISTING BUSINESS _____ NEW
BUSINESS _____

RECOMMENDATION:

Staff recommends that the Planning Commission review the project, consider the public testimony and the Findings as presented and consider adopting the attached Resolution approving the application for the time extension of an approved Conditional Use Permit for a restaurant “Tai Wu”, in an existing commercial building and related off-site parking, subject to the attached Conditions of Approval.

BACKGROUND & PROPOSAL

The subject property is located near the southeast corner of El Camino Real and Hillcrest Blvd. zoned “C” (Commercial) and currently developed with an 11,370 sq. ft., three-story “Tai Wu” restaurant. The Planning Commission on July 21, 2014 approved a modification to the approved Conditional Use Permit (CUP), originally granted on December 19, 2011. The modification of the CUP addressed operational uses identified after the business opened in March 2014. These items included: privacy intrusion, a utility enclosure, signage, landscape installation, fire apparatus screening, restaurant occupancy and the discontinuance of valet parking.

Conditions of Approval from the 2014 approval, specifically, Special Condition “H”, states “Six (6) months prior to the December 19, 2016 expiration date of the CUP, the permittee shall prepare and present a long-term parking plan to the Planning Commission for review. Said plan shall provide for the minimum number of off-site parking spaces required by the City at that time and shall include striping plans, directional signage, and draft leases for all proposed off-site parking locations.”

On June 6, 2016, staff received an application to extend the Conditional Use Permit (CUP) for the Tai Wu restaurant that will expire on December 19, 2016. The request will allow for an extension of 3 years identified various lease agreements listed below that attempt to satisfy the required parking.

Location:	Lease Expiration:
210 El Camino Real (Taco Bell)	March 31, 2019
390 El Camino Real (Speedee)	December 31, 2019
420 El Camino Real (Burger King)	July 1, 2017
460 El Camino Real (Universal Supply)	December 31, 2019

Two separate Study Sessions were held on August 15, 2016 and October 3, 2016 in which the Planning Commission considered the time extension request in conjunction with applicable lease agreements and parking availability, accepted public testimony and possible long-term parking strategies and reviewed staff’s site assessment of parking space striping, lighting and directional signage. On November 7, 2016, a public hearing was held that considered the time extension request along with public testimony. The Planning Commission approved a limited-term extension from December 19, 2016 to March 31, 2017 to allow the applicant time to address issues of debris on site and to install new directional signage by January 1, 2017. This time frame was also considered adequate for the public, Planning Commission and staff to evaluate if the new signage was effective.

The applicant worked with staff to design and install new wall and directional signage depicting parking options. These signs are larger than previous signs and are reflective at evening hours. Additionally, the applicant coordinated with Code Enforcement staff to maintain housekeeping measures on the site for debris, removed three (3) unsolicited donation boxes at the Burger King site as well as managing the hedge height for improved sight distance by pedestrians and vehicles. Parking availability is provided to existing patrons at the table in a hand-out form whereas new patrons are made aware via the restaurant’s website found <https://www.taiwurestaurants.com/parking-info>. As of the date of this report, no violations have been reported to the Community Development Department or Code Enforcement staff during this evaluation period.

ANALYSIS

The Conditions of Approval in 2014 identified that the 276 seating capacity was affected by evidence to secure parking spaces. If parking availability dropped or not secured, the seating

capacity would be affected. According to the applicant's submittal, the lease for 420 El Camino (Burger King) is valid through July 1, 2017 which entitles Tai Wu the use of 30 parking spaces. In the event the lease is not renewed or Tai Wu is unable to find suitable replacement parking nearby, equaling at least 30 spaces, the seating capacity would be reduced to 260. In addition and as proposed as Special Condition E, the applicant shall provide documentation to the Community Development Department that parking nearby is secured to meet the parking regulations of 1 space per 2.5 seats or seating capacity shall be reduced to a maximum of 260.

Conditional Use Permit

The following findings are required under Section 10.05.2520 of the Millbrae Municipal Code in order for the Planning Commission to approve the requested CUP:

- The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use;

Adequate parking is available in a combination of on-street spaces in front of and within walking distance of the site as well as off-street spaces identified in various lease agreements. Deliveries, trash pick-up, and drive-through access would continue unimpeded. Also, an approximately 9-foot wide strip of land along the entire length of the rear property line will remain undeveloped in its natural vegetated and sloped state as a buffer along the rear yards of the abutting single-family residential homes. All signage will comply with the Millbrae Sign Ordinance and provide adequate visibility and direction to parking areas. Therefore, the use will not interfere with adjacent uses, cause traffic congestion or parking problems in the vicinity, or otherwise be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood.

- The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to property and improvements in the neighborhood of such proposed use.

The existing restaurant use will not require significant interior and exterior alterations to the building, but any improvements deemed required shall comply with applicable building and fire code requirements. Therefore, the use will not be detrimental to property or improvements in the neighborhood.

ENVIRONMENTAL REVIEW

The project qualifies for a Categorical Exemption (Class 1) pursuant to State CEQA Guidelines Section 15301 because the requested time extension of an existing commercial building is considered to be negligible.

RECOMMENDATION

Staff recommends that the Planning Commission review the project, consider the public testimony and the Findings, as presented, and consider adopting the attached Resolution approving the application for the time extension of an approved Conditional Use Permit for a restaurant “Tai Wu”, in an existing commercial building and related off-site parking, subject to the attached Conditions of Approval

ATTACHMENT 1

**RESOLUTION NO.
RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILLBRAE
APPROVING EXTENSION OF AN APPROVED CONDITIONAL USE PERMIT FOR A
RESTAURANT, “TAI WU”, IN AN EXISTING COMMERCIAL BUILDING AND
RELATED OFF-STREET PARKING.
CITY OF MILLBRAE**

WHEREAS, the applicant has filed PA 1606-001 to request a three (3) year time extension of an approved Conditional Use Permit for a restaurant, “Tai Wu”, in an existing commercial building and related off-street parking located in the C (Commercial) Zoning District at 300 El Camino Real; and

WHEREAS, on November 7, 2016 considered the evidence and public testimony received at the duly-noticed public hearing recommended a time extension from the original expiration date of December 19, 2016 through March 31, 2017 to address on-site debris and evaluate directional sign installation in accordance with the following; and

WHEREAS, this Planning Commission, having considered the evidence and public testimony received at the duly-noticed public hearing on March 20, 2017, desires to recommend a time extension from the original expiration date of December 19, 2016 through December 31, 2019; and

WHEREAS, the Planning Commission found that this project is consistent with the City’s General Plan, Zoning Ordinance, and has determined that the project is categorically exempt per Section 15301 of the California Environmental Quality Act (CEQA) Guidelines; and

Conditional Use Permit:

The following findings are required under Section 10.05.2520 of the Millbrae Municipal Code in order for the Planning Commission to approve the requested CUP:

The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use;

Adequate parking is available in a combination of on-street spaces in front of and within walking distance of the site as well as off-street spaces identified in various lease agreements. Deliveries, trash pick-up, and drive-through access would continue unimpeded. Also, an approximately 9-foot wide strip of land along the entire length of the rear property line will remain undeveloped in its natural vegetated and sloped state as a buffer along the rear yards of the abutting single-family residential homes. All signage will comply with the Millbrae Sign Ordinance and provide adequate visibility and direction to parking areas. Therefore, the use will not interfere with adjacent uses, cause traffic congestion or parking problems in the vicinity, or otherwise be

detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood.

- The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to property and improvements in the neighborhood of such proposed use.

The existing restaurant use will not require significant interior and exterior alterations to the building, but any improvements deemed required shall comply with applicable building and fire code requirements. Therefore, the use will not be detrimental to property or improvements in the neighborhood.

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED BY THE PLANNING COMMISSION THAT:

1. The recitals set forth above are true and correct and are hereby incorporated herein by this reference and full set forth in their entirety.
2. The adoption of the Use Permit time extension (March 31, 2017 through December 31, 2019) will not be detrimental to the public health, safety, and general welfare.
3. This resolution shall be effective immediately.

PASSED AND ADOPTED as a Resolution of the City of Millbrae Planning Commission at the public meeting held on the 20th day of March, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CHAIR

ATTEST:

SECRETARY

ATTACHMENT 2

CONDITIONS OF APPROVAL

Address: 300 El Camino Real

Date: July 21, 2014

GENERAL REQUIREMENTS:

1. Approval of this Modification and all rights hereunder shall be effective from its approval date through the remainder of the initial five (5) years approval period that began on December 19, 2011 when the Conditional Use Permit was originally approved. The Planning Commission may extend this approval period if a written request is made and submitted by the property owner prior to the expiration of the approval period and a notice of a public hearing has been made pursuant to Section 10.05.1150 (D) of the Millbrae Municipal Code.
2. Violation of any of the conditions of this permit shall be cause for the issuance of an infraction or citation, prosecution, and/or revocation and termination of all rights under the permit, by the City of Millbrae.
3. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the use and development of said property as set forth by this permit together with all conditions, which are a part thereof. These specific requirements must be recorded with all title conveyance documents at time of closing escrow.
4. All new site development associated with this Modification, including landscaping, equipment, equipment screening and soundproofing, and off-site parking and signage, shall conform to the approved plans, date stamped June 16, 2014, on file in the City of Millbrae Community Development Department. No significant changes shall be made to the approved plans without prior review and approval by the Planning Commission.
5. All landscaped areas must be maintained in a neat, healthy, and growing condition, including public parkways and street trees.
6. The property shall be developed and maintained in a neat, quiet, and orderly condition and in a manner so as not to be detrimental to adjacent properties and occupants. This shall encompass the maintenance of the exterior facades of the building and all landscaping surrounding the building.
7. City staff shall enforce all zoning, building, and fire code requirements applicable to this project and shall interpret and apply all landscaping, signage, infrastructure, and other land development related policies and guidelines in keeping with the spirit and intent of this Planning Commission approval.

8. All structures shall conform to California Building Code requirements and all required permits from the City of Millbrae Building Division must be secured prior to initiating development under the terms of this permit.
9. Any off-site improvements found to be damaged shall be repaired and/or replaced as required by the City of Millbrae Director of Public Works.
10. All required utility easements shall be provided as indicated by the department or agency having jurisdiction.
11. The project shall comply with all applicable "City of Millbrae Public Works General Conditions of Approval" (copy provided to applicant). This condition includes project compliance with the Public Works Construction and Demolition Reuse and Recycling Requirements, including submittal of planning forms to the City's Recycling Coordinator prior to issuance of a Building Permit.
12. As a condition of this approval, and to the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project including the City's related California Environmental Quality Act determinations. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition. If the applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City.

SPECIAL CONDITIONS:

- A. Prior to issuance of a Final Certificate of Occupancy, all on-site and leased off-site parking areas shall be striped and operated as shown on the approved plans. Provided parking shall include: at least 7 self-parking spaces, 5 of which shall be handicap accessible, on-site; at least 10 self-parking spaces at Speedee Oil Change (390 El Camino Real), at least 30 self-parking spaces at Burger King (420 El Camino Real), at least 69 self-parking spaces at Universal Electric Supply (460 El Camino Real), and at least 14 self-parking spaces at Taco Bell, for a total of at least 120 spaces. Copies of signed leases shall be submitted for all off-site parking locations. No parking area shall be used for storage and all parking areas shall be kept clean.

- B. Prior to issuance of any building permits, all new construction shall comply with all applicable building and fire safety codes. This condition shall also apply to the alteration of existing construction in the event that such existing construction is not already fully code compliant.
- C. All restaurant building and utility building doors shall be kept closed and all trash bins shall be stored in the utility building when not awaiting pick-up.
- D. A heavy-duty, commercial-grade garbage disposal system with a power rating of at least 5 horsepower shall be installed in the restaurant kitchen and utilized on daily basis as a way of reducing the amount of food waste placed in the trash. This equipment shall be included in the construction documents submitted for building permit approval.
- E. All rooftop equipment shall be effectively screened from view. A design for such screening shall be submitted to City staff for review and approval prior to submittal of construction documents for building permit approval.
- F. An effective means of controlling the emission of cooking odors from the restaurant kitchen shall be designed and submitted to City staff for review and approval prior to issuance of a Final Certificate of Occupancy.
- G. Non-performance on any condition of approval or unauthorized deviation from any feature depicted on the approved plans shall be grounds for possible revocation of this Conditional Use Permit and any subsequently approved Modification to it.
- H. Six (6) months prior to the December 19, 2016 expiration date of the CUP, the permittee shall prepare and present a long-term parking plan to the Planning Commission for review. Said plan shall provide for the minimum number of off-site parking spaces required by the City at that time and shall include striping plans, directional signage, and draft leases for all proposed off-site parking locations.
- I. The permittee shall maintain a maximum of 276 seats within the entire restaurant at all times unless and until that maximum may be changed by the City. For the duration of the CUP, the permittee shall allow City staff to enter the premises during any business hours to monitor the seating capacity with or without prior notification.
- J. If, for any reason at any time for the duration of the CUP, the total available parking falls below the minimum parking required in Special Condition A above, there shall be a proportional reduction in total available restaurant seating below the 276-seat maximum allowed in Special Condition I above. All such reductions shall be calculated utilizing the City's restaurant parking standard of 1 space per 2.5 seats and shall be in effect until such time that replacement parking is approved by the Planning Commission.
- K. The permittee shall submit designs for a slightly larger directional sign at each off-site parking lot location for review and approval by City staff. The larger signs shall be

reasonably sized for better functionality and uniformly designed. All said signs shall be installed prior to issuance of a Final Certificate of Occupancy.

- L. In light of permittee's failure to comply with all the terms and conditions of the 2011 Conditional Use Permit as well as more recent non-performance associated with the renovation of the subject site and the opening of the restaurant use upon it, and the costs incurred by the City resulting from the City's necessary response to said non-compliance and non-performance, permittee shall reimburse the City in the amount of approximately \$14,000 (subject to final cost accounting by the City). Full payment, or a payment arrangement acceptable to the City, shall occur prior to issuance of a Final Certificate of Occupancy.
- M. The permittee shall submit a design for screening the outdoor fire apparatus located at the right front corner of the restaurant building for review and approval by City staff. Installation of said screening shall occur prior to issuance of a Final Certificate of Occupancy.

CONDITIONS OF APPROVAL

Address: 300 El Camino Real

Date: March 20, 2017

GENERAL REQUIREMENTS:

1. Approval of this Extension and all rights hereunder shall be effective for a period of three (3) years from the expiration date of the original July 21, 2014 approval; therefore, from December 19, 2016 through December 19, 2019. The Planning Commission may extend this approval period if a written request is made and submitted by the property owner prior to the expiration of the approval period and a notice of a public hearing has been made pursuant to Section 10.05.1150 (D) of the Millbrae Municipal Code.
2. Violation of any of the conditions of this permit shall be cause for the issuance of an infraction or citation, prosecution, and/or revocation and termination of all rights under the permit, by the City of Millbrae.
3. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the use and development of said property as set forth by this permit together with all conditions, which are a part thereof. These specific requirements must be recorded with all title conveyance documents at time of closing escrow.
4. All new site development associated with this Modification, including landscaping, equipment, equipment screening and soundproofing, and off-site parking and signage, shall conform to the approved plans, date stamped September 28, 2016, on file in the City of Millbrae Community Development Department. No significant changes shall be made to the approved plans without prior review and approval by the Planning Commission.
5. All landscaped areas must be maintained in a neat, healthy, and growing condition, including public parkways and street trees.
6. The property shall be developed and maintained in a neat, quiet, and orderly condition and in a manner so as not to be detrimental to adjacent properties and occupants. This shall encompass the maintenance of the exterior facades of the building and all landscaping surrounding the building.
7. City staff shall enforce all zoning, building, and fire code requirements applicable to this project and shall interpret and apply all landscaping, signage, infrastructure, and other land development related policies and guidelines in keeping with the spirit and intent of this Planning Commission approval.
8. All structures shall conform to California Building Code requirements and all required permits from the City of Millbrae Building Division must be secured prior to initiating development under the terms of this permit.
9. Any off-site improvements found to be damaged shall be repaired and/or replaced as required by the City of Millbrae Director of Public Works.

10. All required utility easements shall be provided as indicated by the department or agency having jurisdiction.

11. The project shall comply with all applicable "City of Millbrae Public Works General Conditions of Approval" (copy provided to applicant). This condition includes project compliance with the Public Works Construction and Demolition Reuse and Recycling Requirements, including submittal of planning forms to the City's Recycling Coordinator prior to issuance of a Building Permit.

12. As a condition of this approval, and to the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project including the City's related California Environmental Quality Act determinations. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition. If the applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City.

SPECIAL CONDITIONS:

A. Prior to issuance of any building permits, all new construction shall comply with all applicable building and fire safety codes. This condition shall also apply to the alteration of existing construction in the event that such existing construction is not already fully code compliant.

B. All restaurant building and utility building doors shall be kept closed and all trash bins shall be stored in the utility building when not awaiting pick-up.

C. Non-performance on any condition of approval or unauthorized deviation from any feature depicted on the approved plans shall be grounds for possible revocation of this Conditional Use Permit and any subsequently approved Modification and Extensions to it.

D. The permittee shall maintain a maximum of 276 seats within the entire restaurant at all times unless and until that maximum may be changed by the City. For the duration of the CUP, the permittee shall allow City staff to enter the premises during any business hours to monitor the seating capacity with or without prior notification.

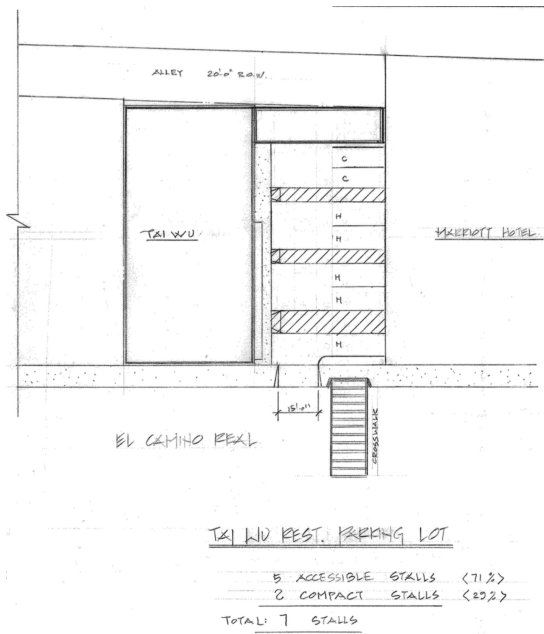
E. If for any reason at any time for the duration of the CUP, the total available parking falls below the minimum parking required in Special Condition D above, all such reductions shall be calculated utilizing the City's restaurant parking standard of 1 space per 2.5. Additionally, on

July 2, 2017, the applicant shall provide documentation to the Community Development Department that parking nearby is secured to meet the parking regulations of 1 space per 2.5 seats or the seating capacity, identified as 276 seats in Special Condition D above, shall be reduced to a maximum of 260.

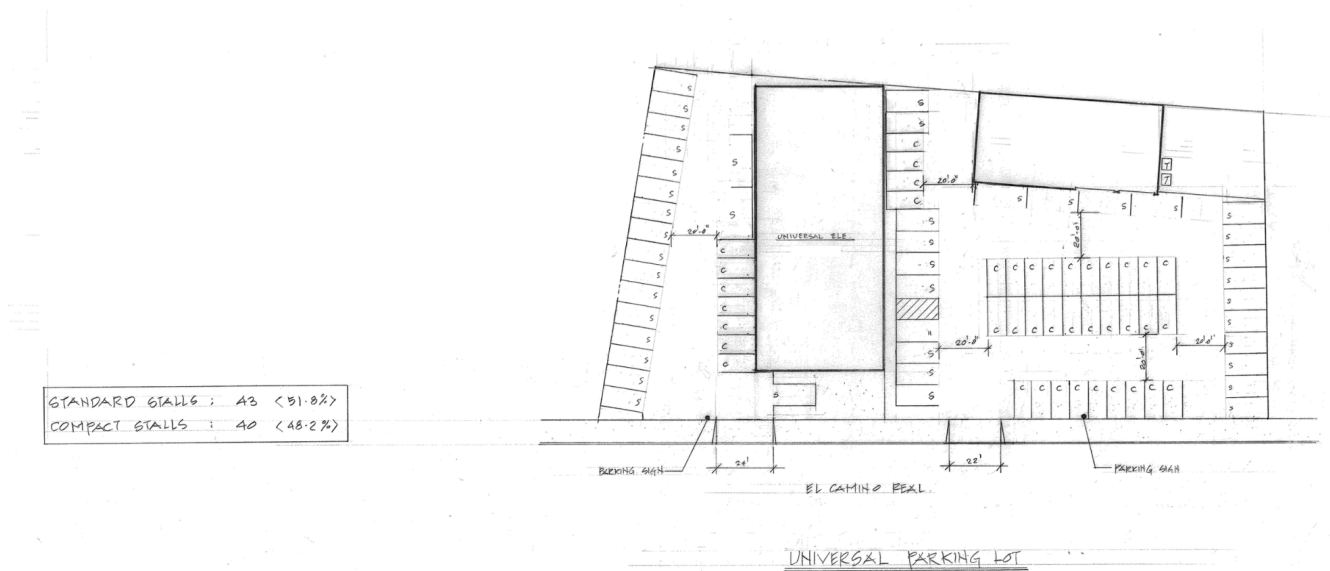
F. The applicant shall install occupancy signage at the site depicting accurate seating capacity for inspection purposes by Fire and Community Development Department staff.

1) Parking Plan

Location #1 - Restaurant Adjacent Parking Lot
- Distance from restaurant: On-site



Location #2 - Universal Supply
- Distance from restaurant: Approximately 100 feet (less than 0.2 miles)



2) Parking Table

The 2016 approvals authorized a seating capacity of 276 at all times. It should be noted this capacity is less than allowed per building and fire codes, but was established based, in part, on the number of available parking spaces. Due to the reduction in Parking, as agreed upon in the CUP, we shall subsequently reduce our seating capacity from 276 to 225 (based on the stalls offered).

The parking plan submitted illustrates the following available parking:

<u>Location</u>	<u>Parking Stalls</u>
300 El Camino Real (on-site)	7
460 El Camino Real (Universal Supply)	83
Total Parking Stalls	90

3) Lease

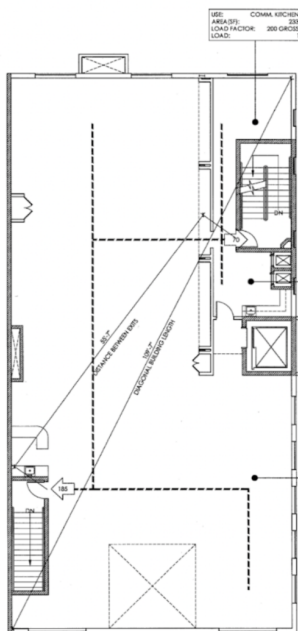
Please see attached via email for the Lease. It is now a month-to-month lease.

4) Wayfinding Map

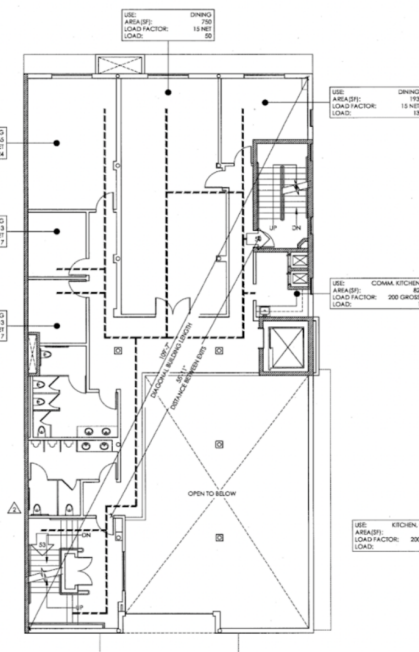


5) Floor Plans with proposed seating occupancy

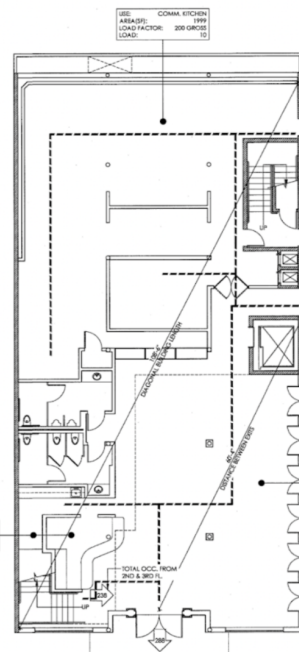
△



03 3RD FLOOR PLAN
1/8" = 1'-0"
126 OCCUPANTS



02 2ND FLOOR PLAN
1/8" = 1'-0"
39 OCCUPANTS



01 1ST FLOOR PLAN
1/8" = 1'-0"
60 OCCUPANTS



CALIFORNIA
ASSOCIATION
OF REALTORS®

COMMERCIAL LEASE AGREEMENT

(C.A.R. Form CL, Revised 4/13)

Date (For reference only): May 15, 2014

450-460 El Camnino Real LLC

Tai Wu Restaurant

("Landlord") and

____ ("Tenant") agree as follows:

1. **PROPERTY:** Landlord rents to Tenant rent at _____ ("Premises"), which comprise approximately 50.000 % of the total square footage of rentable space in the entire property. See exhibit 1 for a further description of the Premises.
2. **TERM:** The term begins on (date) April 1, 2014 ("Commencement Date").
(Check A or B):
- ☒ **A. Lease:** and shall terminate on (date) December 31, 2016 at _____ ☐ AM ☐ PM. Any holding over after the term of this agreement expires, with Landlord's consent, shall create a month-to-month tenancy that either party may terminate as specified in paragraph 2B. Rent shall be at a rate equal to the rent for the immediately preceding month, payable in advance. All other terms and conditions of this agreement shall remain in full force and effect.
- ☐ **B. Month-to-month:** and continues as a month-to-month tenancy. Either party may terminate the tenancy by giving written notice to the other at least 30 days prior to the intended termination date, subject to any applicable laws. Such notice may be given on any date.
- ☐ **C. RENEWAL OR EXTENSION TERMS:** See attached addendum _____.
3. **BASE RENT:**
- A.** Tenant agrees to pay Base Rent at the rate of (CHECK ONE ONLY:)
- ☐ (1) \$ _____ per month, for the term of the agreement.
- ☐ (2) \$ _____ per month, for the first 12 months of the agreement. Commencing with the 13th month, and upon expiration of each 12 months thereafter, rent shall be adjusted according to any increase in the U.S. Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers ("CPI") for _____ (the city nearest the location of the Premises), based on the following formula: Base Rent will be multiplied by the most current CPI preceding the first calendar month during which the adjustment is to take effect, and divided by the most recent CPI preceding the Commencement Date. In no event shall any adjusted Base Rent be less than the Base Rent for the month immediately preceding the adjustment. If the CPI is no longer published, then the adjustment to Base Rent shall be based on an alternate index that most closely reflects the CPI.
- ☒ (3) \$ 3,000.00 per month for the period commencing April 1, 2014 and ending March 31, 2015 and
\$ 3,600.00 per month for the period commencing April 1, 2015 and ending March 31, 2016 and
\$ 4,320.00 per month for the period commencing April 1, 2016 and ending December 31, 2016.
- ☐ (4) In accordance with the attached rent schedule.
- ☐ (5) Other: _____.
- B.** Base Rent is payable in advance on the **1st** (or ☐ _____) day of each calendar month, and is delinquent on the next day.
- C.** If the Commencement Date falls on any day other than the first day of the month, Base Rent for the first calendar month shall be prorated based on a 30-day period. If Tenant has paid one full month's Base Rent in advance of Commencement Date, Base Rent for the second calendar month shall be prorated based on a 30-day period.
4. **RENT:**
- A.** Definition: ("Rent") shall mean all monetary obligations of Tenant to Landlord under the terms of this agreement, except security deposit.
- B.** Payment: Rent shall be paid to (Name) 450-460 El Camino Real LLC at (address) 460 El Camino Real Millbrae CA 94030, or at any other location specified by Landlord in writing to Tenant.
- C.** Timing: Base Rent shall be paid as specified in paragraph 3. All other Rent shall be paid within 30 days after Tenant is billed by Landlord.
5. **EARLY POSSESSION:** Tenant is entitled to possession of the Premises on April 1, 2014.
If Tenant is in possession prior to the Commencement Date, during this time **(i)** Tenant is not obligated to pay Base Rent, and **(ii)** Tenant ☐ is ☐ is not obligated to pay Rent other than Base Rent. Whether or not Tenant is obligated to pay Rent prior to Commencement Date, Tenant is obligated to comply with all other terms of this agreement.
6. **SECURITY DEPOSIT:**
- A.** Tenant agrees to pay Landlord \$ 3,000.00 as a security deposit. Tenant agrees not to hold Broker responsible for its return.
(IF CHECKED:) ☒ If Base Rent increases during the term of this agreement, Tenant agrees to increase security deposit by the same proportion as the increase in Base Rent.
- B.** All or any portion of the security deposit may be used, as reasonably necessary, to: **(i)** cure Tenant's default in payment of Rent, late charges, non-sufficient funds ("NSF") fees, or other sums due; **(ii)** repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of Tenant; **(iii)** broom clean the Premises, if necessary, upon termination of tenancy; and **(iv)** cover any other unfulfilled obligation of Tenant. **SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT.** If all or any portion of the security deposit is used during tenancy, Tenant agrees to reinstate the total security deposit within 5 days after written notice is delivered to Tenant. Within 30 days after Landlord receives possession of the Premises, Landlord shall: **(i)** furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition, and **(ii)** return any remaining portion of security deposit to Tenant. However, if the Landlord's only claim upon the security deposit is for unpaid Rent, then the remaining portion of the security deposit, after deduction of unpaid Rent, shall be returned within 14 days after the Landlord receives possession.
- C.** No interest will be paid on security deposit, unless required by local ordinance.

Landlord's Initials (JK) ()

Tenant's Initials (C) (D)



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Reviewed by _____ Date _____

CL REVISED 4/13 (PAGE 1 of 6)

COMMERCIAL LEASE AGREEMENT (CL PAGE 1 OF 6)

Agent: Jonathan Ng
Broker: RE/MAX Westlake, 345 Gellert Blvd.

Phone: 650.991.2800
Daly City

Fax: 650.997.3000

Prepared using zipForm® software

Premises: 460 El Camino Real Millbrae CA 94030Date May 15, 2014**7. PAYMENTS:**

	TOTAL DUE	PAYMENT RECEIVED	BALANCE DUE	DUE DATE
A. Rent: From <u>04/01/2014</u> To <u>05/31/2014</u> Date Date	\$ <u>6,000.00</u>	\$ _____	\$ <u>6,000.00</u>	<u>05/31/2014</u>
B. Security Deposit	\$ <u>3,000.00</u>	\$ _____	\$ <u>3,000.00</u>	<u>05/31/2014</u>
C. Other: _____ Category	\$ _____	\$ _____	\$ _____	_____
D. Other: _____ Category	\$ _____	\$ _____	\$ _____	_____
E. Total:	\$ <u>9,000.00</u>	\$ _____	\$ <u>9,000.00</u>	_____

8. PARKING: Tenant is entitled to See Addendum 1 unreserved and See Addendum 1 reserved vehicle parking spaces. The right to parking ☒ is ☐ is not included in the Base Rent charged pursuant to paragraph 3. If not included in the Base Rent, the parking rental fee shall be an additional \$ _____ per month. Parking space(s) are to be used for parking operable motor vehicles, except for trailers, boats, campers, buses or trucks (other than pick-up trucks). Tenant shall park in assigned space(s) only. Parking space(s) are to be kept clean. Vehicles leaking oil, gas or other motor vehicle fluids shall not be parked in parking spaces or on the Premises. Mechanical work or storage of inoperable vehicles is not allowed in parking space(s) or elsewhere on the Premises. No overnight parking is permitted.

9. ADDITIONAL STORAGE: Storage is permitted as follows: Not applicable. The right to additional storage space ☐ is ☒ is not included in the Base Rent charged pursuant to paragraph 3. If not included in Base Rent, storage space shall be an additional \$ _____ per month. Tenant shall store only personal property that Tenant owns, and shall not store property that is claimed by another, or in which another has any right, title, or interest. Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, or other dangerous or hazardous material. Tenant shall pay for, and be responsible for, the clean-up of any contamination caused by Tenant's use of the storage area.

10. LATE CHARGE; INTEREST; NSF CHECKS: Tenant acknowledges that either late payment of Rent or issuance of a NSF check may cause Landlord to incur costs and expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of Rent due from Tenant is not received by Landlord within **5 calendar days** after date due, or if a check is returned NSF, Tenant shall pay to Landlord, respectively, \$ 300.00 as late charge, plus 10% interest per annum on the delinquent amount and \$25.00 as a NSF fee, any of which shall be deemed additional Rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any late charge, delinquent interest, or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any late charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due under paragraph 4, or prevent Landlord from exercising any other rights and remedies under this agreement, and as provided by law.

11. CONDITION OF PREMISES: Tenant has examined the Premises and acknowledges that Premise is clean and in operative condition, with the following exceptions: _____
Items listed as exceptions shall be dealt with in the following manner: _____

12. ZONING AND LAND USE: Tenant accepts the Premises subject to all local, state and federal laws, regulations and ordinances ("Laws"). Landlord makes no representation or warranty that Premises are now or in the future will be suitable for Tenant's use. Tenant has made its own investigation regarding all applicable Laws.

13. TENANT OPERATING EXPENSES: Tenant agrees to pay for all utilities and services directly billed to Tenant _____

14. PROPERTY OPERATING EXPENSES:

A. Tenant agrees to pay its proportionate share of Landlord's estimated monthly property operating expenses, including but not limited to, common area maintenance, consolidated utility and service bills, insurance, and real property taxes, based on the ratio of the square footage of the Premises to the total square footage of the rentable space in the entire property. _____

OR B. ☒ (If checked) Paragraph 14 does not apply.

15. USE: The Premises are for the sole use as Parking lot. No other use is permitted without Landlord's prior written consent. If any use by Tenant causes an increase in the premium on Landlord's existing property insurance, Tenant shall pay for the increased cost. Tenant will comply with all Laws affecting its use of the Premises.

16. RULES/REGULATIONS: Tenant agrees to comply with all rules and regulations of Landlord (and, if applicable, Owner's Association) that are at any time posted on the Premises or delivered to Tenant. Tenant shall not, and shall ensure that guests and licensees of Tenant do not, disturb, annoy, endanger, or interfere with other tenants of the building or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing, or transporting illicit drugs or other contraband, or violate any law or ordinance, or committing a waste or nuisance on or about the Premises.

17. MAINTENANCE:

A. Tenant **OR** ☐ **(If checked, Landlord)** shall professionally maintain the Premises including heating, air conditioning, electrical, plumbing and water systems, if any, and keep glass, windows and doors in operable and safe condition. Unless Landlord is checked, if Tenant fails to maintain the Premises, Landlord may contract for or perform such maintenance, and charge Tenant for Landlord's cost.

B. Landlord **OR** ☐ **(If checked, Tenant)** shall maintain the roof, foundation, exterior walls, common areas and not applicable.

Landlord's Initials (DS) (_____)

Tenant's Initials (AK) (_____)

Reviewed by _____ Date _____



Premises: **460 El Camino Real Millbrae CA 94030**Date **May 15, 2014**

- 18. ALTERATIONS:** Tenant shall not make any alterations in or about the Premises, including installation of trade fixtures and signs, without Landlord's prior written consent, which shall not be unreasonably withheld. Any alterations to the Premises shall be done according to Law and with required permits. Tenant shall give Landlord advance notice of the commencement date of any planned alteration, so that Landlord, at its option, may post a Notice of Non-Responsibility to prevent potential liens against Landlord's interest in the Premises. Landlord may also require Tenant to provide Landlord with lien releases from any contractor performing work on the Premises.
- 19. GOVERNMENT IMPOSED ALTERATIONS:** Any alterations required by Law as a result of Tenant's use shall be Tenant's responsibility. Landlord shall be responsible for any other alterations required by Law.
- 20. ENTRY:** Tenant shall make Premises available to Landlord or Landlord's agent for the purpose of entering to make inspections, necessary or agreed repairs, alterations, or improvements, or to supply necessary or agreed services, or to show Premises to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers, or contractors. Landlord and Tenant agree that 24 hours notice (oral or written) shall be reasonable and sufficient notice. In an emergency, Landlord or Landlord's representative may enter Premises at any time without prior notice.
- 21. SIGNS:** Tenant authorizes Landlord to place a FOR SALE sign on the Premises at any time, and a FOR LEASE sign on the Premises within the 90 (or ☐ _____) day period preceding the termination of the agreement.
- 22. SUBLETTING/ASSIGNMENT:** Tenant shall not sublet or encumber all or any part of Premises, or assign or transfer this agreement or any interest in it, without the prior written consent of Landlord, which shall not be unreasonably withheld. Unless such consent is obtained, any subletting, assignment, transfer, or encumbrance of the Premises, agreement, or tenancy, by voluntary act of Tenant, operation of law, or otherwise, shall be null and void, and, at the option of Landlord, terminate this agreement. Any proposed sublessee, assignee, or transferee shall submit to Landlord an application and credit information for Landlord's approval, and, if approved, sign a separate written agreement with Landlord and Tenant. Landlord's consent to any one sublease, assignment, or transfer, shall not be construed as consent to any subsequent sublease, assignment, or transfer, and does not release Tenant of Tenant's obligation under this agreement.
- 23. POSSESSION:** If Landlord is unable to deliver possession of Premises on Commencement Date, such date shall be extended to the date on which possession is made available to Tenant. However, the expiration date shall remain the same as specified in paragraph 2. If Landlord is unable to deliver possession within **60** (or ☐ _____) calendar days after the agreed Commencement Date, Tenant may terminate this agreement by giving written notice to Landlord, and shall be refunded all Rent and security deposit paid.
- 24. TENANT'S OBLIGATIONS UPON VACATING PREMISES:** Upon termination of agreement, Tenant shall: (i) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (ii) vacate Premises and surrender it to Landlord empty of all persons and personal property; (iii) vacate all parking and storage spaces; (iv) deliver Premises to Landlord in the same condition as referenced in paragraph 11; (v) clean Premises; (vi) give written notice to Landlord of Tenant's forwarding address; and (vii) _____

All improvements installed by Tenant, with or without Landlord's consent, become the property of Landlord upon termination. Landlord may nevertheless require Tenant to remove any such improvement that did not exist at the time possession was made available to Tenant.

- 25. BREACH OF CONTRACT/EARLY TERMINATION:** In event Tenant, prior to expiration of this agreement, breaches any obligation in this agreement, abandons the premises, or gives notice of tenant's intent to terminate this tenancy prior to its expiration, in addition to any obligations established by paragraph 24, Tenant shall also be responsible for lost rent, rental commissions, advertising expenses, and painting costs necessary to ready Premises for re-rental. Landlord may also recover from Tenant: (i) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination; (ii) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after expiration until the time of award exceeds the amount of such rental loss the Tenant proves could have been reasonably avoided; and (iii) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided. Landlord may elect to continue the tenancy in effect for so long as Landlord does not terminate Tenant's right to possession, by either written notice of termination of possession or by reletting the Premises to another who takes possession, and Landlord may enforce all Landlord's rights and remedies under this agreement, including the right to recover the Rent as it becomes due.
- 26. DAMAGE TO PREMISES:** If, by no fault of Tenant, Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty, Landlord shall have the right to restore the Premises by repair or rebuilding. If Landlord elects to repair or rebuild, and is able to complete such restoration within 90 days from the date of damage, subject to the terms of this paragraph, this agreement shall remain in full force and effect. If Landlord is unable to restore the Premises within this time, or if Landlord elects not to restore, then either Landlord or Tenant may terminate this agreement by giving the other written notice. Rent shall be abated as of the date of damage. The abated amount shall be the current monthly Base Rent prorated on a 30-day basis. If this agreement is not terminated, and the damage is not repaired, then Rent shall be reduced based on the extent to which the damage interferes with Tenant's reasonable use of Premises. If damage occurs as a result of an act of Tenant or Tenant's guests, (i) only Landlord shall have the right, at Landlord's sole discretion, within 30 days after such total or partial destruction or damage to treat the lease as terminated by Tenant, and (ii) Landlord shall have the right to recover damages from Tenant.
- 27. HAZARDOUS MATERIALS:** Tenant shall not use, store, generate, release or dispose of any hazardous material on the Premises or the property of which the Premises are part. However, Tenant is permitted to make use of such materials that are required to be used in the normal course of Tenant's business provided that Tenant complies with all applicable Laws related to the hazardous materials. Tenant is responsible for the cost of removal and remediation, or any clean-up of any contamination caused by Tenant.
- 28. CONDEMNATION:** If all or part of the Premises is condemned for public use, either party may terminate this agreement as of the date possession is given to the condemner. All condemnation proceeds, exclusive of those allocated by the condemner to Tenant's relocation costs and trade fixtures, belong to Landlord.
- 29. INSURANCE:** Tenant's personal property, fixtures, equipment, inventory and vehicles are not insured by Landlord against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Tenant is to carry Tenant's own property insurance to protect Tenant from any such loss. In addition, Tenant shall carry liability insurance in an amount of not less than \$ **3,000,000.00**. Tenant's liability insurance shall name Landlord and Landlord's agent as additional insured. Tenant, upon Landlord's request, shall provide Landlord with a certificate of insurance establishing Tenant's compliance. Landlord shall maintain liability insurance insuring Landlord, but not Tenant, in an amount of at least \$ **2,000,000.00**, plus property insurance in an amount sufficient to cover the replacement cost of the property. Tenant is advised to carry business interruption insurance in an amount at least sufficient to cover Tenant's complete rental obligation to Landlord. Landlord is advised to obtain a policy of rental loss insurance. Both Landlord and Tenant release each other, and waive their respective rights to subrogation against each other, for loss or damage covered by insurance.


Landlord's Initials (DS) (_____)Tenant's Initials (AK) (_____)

Reviewed by _____ Date _____



Premises: 460 El Camino Real Millbrae CA 94030Date May 15, 2014

- 30. TENANCY STATEMENT (ESTOPPEL CERTIFICATE):** Tenant shall execute and return a tenancy statement (estoppel certificate), delivered to Tenant by Landlord or Landlord's agent, within 3 days after its receipt. The tenancy statement shall acknowledge that this agreement is unmodified and in full force, or in full force as modified, and state the modifications. Failure to comply with this requirement: (i) shall be deemed Tenant's acknowledgment that the tenancy statement is true and correct, and may be relied upon by a prospective lender or purchaser; and (ii) may be treated by Landlord as a material breach of this agreement. Tenant shall also prepare, execute, and deliver to Landlord any financial statement (which will be held in confidence) reasonably requested by a prospective lender or buyer.
- 31. LANDLORD'S TRANSFER:** Tenant agrees that the transferee of Landlord's interest shall be substituted as Landlord under this agreement. Landlord will be released of any further obligation to Tenant regarding the security deposit, only if the security deposit is returned to Tenant upon such transfer, or if the security deposit is actually transferred to the transferee. For all other obligations under this agreement, Landlord is released of any further liability to Tenant, upon Landlord's transfer.
- 32. SUBORDINATION:** This agreement shall be subordinate to all existing liens and, at Landlord's option, the lien of any first deed of trust or first mortgage subsequently placed upon the real property of which the Premises are a part, and to any advances made on the security of the Premises, and to all renewals, modifications, consolidations, replacements, and extensions. However, as to the lien of any deed of trust or mortgage entered into after execution of this agreement, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant pays the Rent and observes and performs all of the provisions of this agreement, unless this agreement is otherwise terminated pursuant to its terms. If any mortgagee, trustee, or ground lessor elects to have this agreement placed in a security position prior to the lien of a mortgage, deed of trust, or ground lease, and gives written notice to Tenant, this agreement shall be deemed prior to that mortgage, deed of trust, or ground lease, or the date of recording.
- 33. TENANT REPRESENTATIONS; CREDIT:** Tenant warrants that all statements in Tenant's financial documents and rental application are accurate. Tenant authorizes Landlord and Broker(s) to obtain Tenant's credit report at time of application and periodically during tenancy in connection with approval, modification, or enforcement of this agreement. Landlord may cancel this agreement: (i) before occupancy begins, upon disapproval of the credit report(s); or (ii) at any time, upon discovering that information in Tenant's application is false. A negative credit report reflecting on Tenant's record may be submitted to a credit reporting agency, if Tenant fails to pay Rent or comply with any other obligation under this agreement.
- 34. CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS:** Landlord states that the Premises ☐ has, or ☒ has not been inspected by a Certified Access Specialist. If so, Landlord states that the Premises ☐ has, or ☒ has not been determined to meet all applicable construction-related accessibility standards pursuant to Civil Code Section 55.53.
- 35. ENERGY DISCLOSURE:** If this is a lease of the entire building, Landlord shall provide Tenant, at least 24 hours prior to execution of this Agreement, the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and the Facility Summary for the building as required by Public Resources Code Section 25402.10 and California Code of Regulations, Title 20, Sections 1680 through 1685. This requirement is effective for a building with total gross floor area square footage as follows: more than 50,000 square feet, July 1, 2013; more than 10,000 square feet and up to 50,000 square feet, January 1, 2014; and at least 5,000 square feet up to 10,000 square feet, July 1, 2014. For more information, see <http://www.energy.ca.gov/ab1103/index.html>.
- 36. DISPUTE RESOLUTION:**
- A. MEDIATION:** Tenant and Landlord agree to mediate any dispute or claim arising between them out of this agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 36B(2) below. Paragraphs 36B(2) and (3) apply whether or not the arbitration provision is initialed. Mediation fees, if any, shall be divided equally among the parties involved. If for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.
- B. ARBITRATION OF DISPUTES:** (1) Tenant and Landlord agree that any dispute or claim in Law or equity arising between them out of this agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraphs 36B(2) and (3) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of real estate transactional law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.
- (2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from Mediation and Arbitration hereunder: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or for latent or patent defects to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions.
- (3) **BROKERS:** Tenant and Landlord agree to mediate and arbitrate disputes or claims involving either or both Brokers, provided either or both Brokers shall have agreed to such mediation or arbitration, prior to, or within a reasonable time after the dispute or claim is presented to Brokers. Any election by either or both Brokers to participate in mediation or arbitration shall not result in Brokers being deemed parties to the agreement.
- "NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO**

Landlord's Initials () (_____)Tenant's Initials () (_____)

Reviewed by _____ Date _____



Premises: 460 El Camino Real Millbrae CA 94030Date May 15, 2014

ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Landlord's Initials JSTenant's Initials RF

37. JOINT AND INDIVIDUAL OBLIGATIONS: If there is more than one Tenant, each one shall be individually and completely responsible for the performance of all obligations of Tenant under this agreement, jointly with every other Tenant, and individually, whether or not in possession.

38. NOTICE: Notices may be served by mail, facsimile, or courier at the following address or location, or at any other location subsequently designated:

Landlord: 450-460 El Camino Real LLCTenant: Tai Wu RestaurantATTN: Jonathan T. Ng300 El Camino Real345 Gellert Blvd. Suite AMillbrae, CA 94030Daly City, CA 94015ATTN: Robert Fong

Notice is deemed effective upon the earliest of the following: (i) personal receipt by either party or their agent; (ii) written acknowledgement of notice; or (iii) 5 days after mailing notice to such location by first class mail, postage pre-paid.

39. WAIVER: The waiver of any breach shall not be construed as a continuing waiver of the same breach or a waiver of any subsequent breach.

40. INDEMNIFICATION: Tenant shall indemnify, defend and hold Landlord harmless from all claims, disputes, litigation, judgments and attorney fees arising out of Tenant's use of the Premises.

41. OTHER TERMS AND CONDITIONS/SUPPLEMENTS: Addendum 1 and addendum 2 to be incorporated to this agreement.

The following ATTACHED supplements/exhibits are incorporated in this agreement: ☐ Option Agreement (C.A.R. Form OA)

42. ATTORNEY FEES: In any action or proceeding arising out of this agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs from the non-prevailing Landlord or Tenant, except as provided in paragraph 36A.

43. ENTIRE CONTRACT: Time is of the essence. All prior agreements between Landlord and Tenant are incorporated in this agreement, which constitutes the entire contract. It is intended as a final expression of the parties' agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving this agreement. Any provision of this agreement that is held to be invalid shall not affect the validity or enforceability of any other provision in this agreement. This agreement shall be binding upon, and inure to the benefit of, the heirs, assignees and successors to the parties.

44. BROKERAGE: Landlord and Tenant shall each pay to Broker(s) the fee agreed to, if any, in a separate written agreement. Neither Tenant nor Landlord has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as named in this agreement, in connection with any act relating to the Premises, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this agreement. Tenant and Landlord each agree to indemnify, defend and hold harmless the other, and the Brokers specified herein, and their agents, from and against any costs, expenses, or liability for compensation claimed inconsistent with the warranty and representation in this paragraph 42.

45. AGENCY CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:

Listing Agent: Remax Westlake Investments (Print Firm Name) is the agent of (check one):

☒ the Landlord exclusively; or ☐ both the Tenant and Landlord.

Selling Agent: _____ (Print Firm Name) (if not same as Listing Agent) is the agent of (check one):

☐ the Tenant exclusively; or ☐ the Landlord exclusively; or ☐ both the Tenant and Landlord.

Real Estate Brokers are not parties to the agreement between Tenant and Landlord.

Landlord's Initials (JS) (____)Tenant's Initials (RF) (____)

Reviewed by _____ Date _____



Premises: 460 El Camino Real Millbrae CA 94030Date May 15, 2014

Landlord and Tenant acknowledge and agree that Brokers: (i) do not guarantee the condition of the Premises; (ii) cannot verify representations made by others; (iii) will not verify zoning and land use restrictions; (iv) cannot provide legal or tax advice; (v) will not provide other advice or information that exceeds the knowledge, education or experience required to obtain a real estate license. Furthermore, if Brokers are not also acting as Landlord in this agreement, Brokers: (vi) do not decide what rental rate a Tenant should pay or Landlord should accept; and (vii) do not decide upon the length or other terms of tenancy. Landlord and Tenant agree that they will seek legal, tax, insurance, and other desired assistance from appropriate professionals.

Tenant Chung Ko Fong Date 05 / 19 / 2014

(Print name)

Address 300 El Camino Real City Millbrae State CA Zip 94404

Tenant _____ Date _____

(Print name)

Address _____ City _____ State _____ Zip _____

☒ **GUARANTEE:** In consideration of the execution of this Agreement by and between Landlord and Tenant and for valuable consideration, receipt of which is hereby acknowledged, the undersigned ("Guarantor") does hereby: (i) guarantee unconditionally to Landlord and Landlord's agents, successors and assigns, the prompt payment of Rent or other sums that become due pursuant to this Agreement, including any and all court costs and attorney fees included in enforcing the Agreement; (ii) consent to any changes, modifications or alterations of any term in this Agreement agreed to by Landlord and Tenant; and (iii) waive any right to require Landlord and/or Landlord's agents to proceed against Tenant for any default occurring under this Agreement before seeking to enforce this Guarantee.

Guarantor (Print Name) _____

Guarantor _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Landlord agrees to rent the Premises on the above terms and conditions.

Landlord Jonathan Ng Date 5/19/2014

(owner or agent with authority to enter into this agreement) 450-460 El Camino Real LLC

Address _____ City _____ State _____ Zip _____

Landlord _____ Date _____

(owner or agent with authority to enter into this agreement)

Address _____ City _____ State _____ Zip _____

Agency relationships are confirmed as above. Real estate brokers who are not also Landlord in this agreement are not a party to the agreement between Landlord and Tenant.

Real Estate Broker (Leasing Firm) _____ BRE Lic. # _____

By (Agent) _____ BRE Lic. # _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Listing Firm) Remax Westlake Investments BRE Lic. # _____

By (Agent) Jonathan Ng BRE Lic. # 01390988 Date 04/29/2014

Jonathan T. Ng BRE Lic. # 01390988 Date 04/29/2014

Address 345 Gellert Blvd. Suite A City Daly City State CA Zip 94015

Telephone (650) 991-2800 Fax (650) 997-3000 E-mail JNg@Remax.net

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Reviewed by _____ Date _____





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OF REALTORS®

ADDENDUM
(C.A.R. Form ADM, Revised 4/12)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Residential Purchase Agreement, ☐ Manufactured Home Purchase Agreement, ☐ Business Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Vacant Land Purchase Agreement, ☐ Residential Income Property Purchase Agreement, ☐ Commercial Property Purchase Agreement, ☒ Other Commercial Lease Agreement C.A.R. form CL Revised 4/2013

dated April 28, 2014, on property known as 460 El Camino Real
Millbrae, CA 94030

in which _____ is referred to as ("Buyer/Tenant")
and 450-460 El Camino Real LLC is referred to as ("Seller/Landlord").

1. The referenced commercial lease agreement is subject landlord's unilateral revision rights. The landlord shall have the right, at landlord's the sole discretion, to unilaterally revise the terms and conditions of this agreement. Landlord shall also have the right to require tenant to exercise specific performances during the term of this agreement in which tenant shall comply with. Landlord shall provide tenant a 60 day written notice of intent to revise when exercising this right.

2. Tenant shall maintain the premises free of debris and garbage caused by tenant's usage. Landlord shall keep a written and/or visual record of the premises' condition on a periodic basis to ensure that the premises is in the same condition as the current as-is condition.

3. The use of the premises is subject to the approval of any and all governing entities. Tenant shall abide by and comply with any regulations and/or compliances regarding the use of the premises at tenant's sole cost.

4. Tenant shall provide plans, architect rendered drawings or equivalent regarding the division of the premises to confirm how the parking lot will be used. These plans, architect rendered drawings or equivalent will be subject to the approval of landlord and any governing entity. In the event of any disapproval by landlord or governing entity, landlord reserves the right to unilaterally cancel this agreement.

5. In the event that the landlord or any governing entity requires any improvements to be made on the premises, tenant will pay the cost of any and all improvements mandated by the governing entity or by the landlord.


6. Addendum #2 to be attached to this agreement.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date 05 / 19 / 2014

Date 5/19/2014

Buyer/Tenant 

Seller/Landlord  DocuSigned by:
Jonathan Ng
450-460 El Camino Real LLC
ID3611BCF4424E1...


Buyer/Tenant _____

Seller/Landlord _____

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ADM REVISED 4/12 (PAGE 1 OF 1)

Reviewed by _____ Date _____



ADDENDUM (ADM PAGE 1 OF 1)

Agent: Jonathan Ng	Phone: 650.991.2800	Fax: 650.997.3000	Prepared using zipForm® software
Broker: RE/MAX Westlake, 345 Gellert Blvd.	Daly City	, CA 94015	



CALIFORNIA
ASSOCIATION
OF REALTORS®

ADDENDUM
(C.A.R. Form ADM, Revised 4/12)

No. 2

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Residential Purchase Agreement, ☐ Manufactured Home Purchase Agreement, ☐ Business Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Vacant Land Purchase Agreement, ☐ Residential Income Property Purchase Agreement, ☐ Commercial Property Purchase Agreement, ☐ Other _____

dated _____, on property known as 460 El Camino Real
Millbrae, CA 94030

in which _____ is referred to as ("Buyer/Tenant")
and 450-460 El Camino Real LLC is referred to as ("Seller/Landlord").

7. Tenant shall carry a liability insurance policy in the amount of \$3,000,000 naming the landlord as additional insured. The policy coverage shall include, but not limited to burglaries, any sort of vandalism and fire hazards.

8. Landlord and tenant agree to share the cost of constructing a chain linked fence on the northside of the property line to establish the boundary between the landlord's property and the adjacent neighboring land-owner. Landlord and tenant also agree to share the cost of constructing a second chain linked fence to safeguard landlord's supplies located on the northside of the second building currently used as storage buildings. The landlord will contribute 50% of the cost of constructing the chain linked fences up to the maximum of \$1000.00.

9. This agreement shall terminate as specified on the commercial lease agreement and tenant has no option the renew the lease.


10. All other terms and conditions of the referenced commercial lease agreement to remain the same.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date 05 / 19 / 2014

Date 5/19/2014

Buyer/Tenant 

Seller/Landlord  Jonathan Ng
450-460 El Camino Real LLC

Buyer/Tenant _____

Seller/Landlord _____

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ADM REVISED 4/12 (PAGE 1 OF 1)

Reviewed by _____ Date _____



ADDENDUM (ADM PAGE 1 OF 1)

Agent: **Jonathan Ng** Phone: **650.991.2800** Fax: **650.997.3000** Prepared using zipForm® software
Broker: **RE/MAX Westlake, 345 Gellert Blvd.** Daly City, CA 94015



Audit Trail

Unique document ID: deecac8c895a11d5a8853fa415598f993967f3d6

Document name: 450 Lease Agreement

Status: Signed and closed

05/19/2014

16:15:49 UTC Document (450 El_Camino_Com... Agreement[2].pdf)
uploaded by robertfong34@gmail.com
IP: 24.5.170.213

16:28:15 UTC Document signed by robertfong34@gmail.com
IP: 24.5.170.213

16:28:15 UTC Document sent for signature to: Chung Ko Fong
(chungkofong@gmail.com)
IP: 24.5.170.213

16:36:37 UTC Document viewed by Chung Ko Fong
(chungkofong@gmail.com)
IP: 24.5.170.213

16:38:47 UTC Document signed by Chung Ko Fong
(chungkofong@gmail.com)
IP: 24.5.170.213

16:38:47 UTC The document has been signed and is now closed.



CALIFORNIA
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EXTENSION OF LEASE
(C.A.R. Form EL 11/11)

The following terms and conditions are hereby incorporated in and made a part of the Residential Lease or ☒ other **Commercial Lease Agreement CAR form CL** ("Lease"), dated May 15, 2014, on property known as 460 El Camino Real Millbrae, CA 94030 ("Premises"), in which Tai Wu Restaurant is referred to as ("Tenant") and 450-460 El Camino Real LLC is referred to as ("Landlord").

The terms of the tenancy are changed as follows. Unless otherwise provided, the change shall take effect on the date the Lease was scheduled to terminate.


1. **EXTENSION OF TERM:** The scheduled termination date is extended to December 31, 2019 (Date).

2. Rent shall be \$ _____ per month.

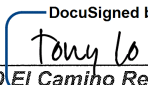
3. Security deposit shall be increased by \$ _____.

4. **ADDITIONAL TERMS:** Please refer to Extension of Lease Attachment #1

By signing below, Tenant and Landlord acknowledge that each has read, understands, and received a copy of and agrees to the terms of this Extension of Lease.

Tenant  Date 4-22-2016
Tai Wu Restaurant

Tenant _____ Date _____

Landlord  Date 4/28/2016
450-460 El Camino Real LLC
BFBB67ECE8BE4EC...

Landlord _____ Date _____

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EL 11/11 (PAGE 1 OF 1)


EXTENSION OF LEASE (EL PAGE 1 OF 1)

Extension of Lease Attachment #1

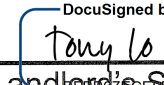
The terms and conditions set forth in this document is incorporated to the original commercial lease agreement (CAR form CL) between 450-460 El Camino LLC (Landlord) and Tai Wu Restaurant (Tenant) dated and prepared May 15, 2014 for the subject premises of 460 El Camino Real Millbrae CA 94030 – parking lot.

1. Lease shall be extended to December 31, 2019
2. The rent schedule specified in paragraph 3A(3) shall be:
 - * \$4500.00 per month for the rental term of January 1, 2017 to December 31, 2017.
 - * \$4650.00 per month for the rental term of January 1, 2018 to December 31, 2018.
 - * \$4800.00 per month for the rental term of January 1, 2019 to December 31, 2019.
3. Tenant shall also pay \$200.00 per month for the electricity utility. Landlord and tenant acknowledge and agree that this is subject to unilateral change by the landlord dependant on the tenant's usage and rate increase from the electric utility provider.
4. All other terms and conditions of the original lease agreement to remain unchanged.

Tai Wu Restaurant:

	CHUNG KO FONG	4-22-2016
Tenant's Signature	Print Name	Date

450-460 El Camino LLC:

<small>DocuSigned by:</small> 	Tony Lo	4/28/2016
Landlord's Signature	Print Name	Date