File No. 120279

Committee Item No. 9
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee **Date:** May 2, 2012

Board of Supervisors Meeting **Date** _____

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OTHER **(Use back side if additional space is needed)**

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Completed by: Victor Young **Date:** April 27, 2012
Completed by: Victor Young **Date:** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

[Lease of Real Property - Golden Bear Restaurant Company III, dba Mission Rock Resort - 817 Terry A. Francois Boulevard]

Resolution approving Port Commission Lease No. L-15108 with Golden Bear Restaurant Company III, dba Mission Rock Resort, for restaurant building, deck, and land of approximately 7,924 square feet located at 817 Terry A. Francois Boulevard in the Central Waterfront with a 15 year term and one five year option.

WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and the San Francisco Charter Section 4.114 and B3.581 empower the San Francisco Port Commission ("Port Commission") with the power and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction; and

WHEREAS, In December 2011, Golden Bear Restaurant Company III, dba Mission Rock Resort, ("GBRCIII") purchased the existing lease for the restaurant in a bankruptcy auction from the prior tenant Kelly's Mission Rock, LLC; and

WHEREAS, GBRCIII wishes to make substantial tenant improvements of about One Million Dollars ($1,000,000.00) that will benefit the Port, but cannot be amortized over the remainder of the term of the existing lease; and

WHEREAS, GBRCIII is a tenant in good standing; and

WHEREAS, for these and other reasons, the Port Commission approved direct negotiations with GBRCIII on February 28, 2012 Port Commission Resolution 12-20 pursuant to the Port's Retail Leasing Policy; and

WHEREAS, Proposed Lease L-15108 has an initial monthly rent of the higher of: $15,820.00 or 7% of all gross sales; and

WHEREAS, The proposed lease includes an unreimbursed increase in minimum base rent, requires an investment in tenant improvements to the premises of at least $1,000,000,

incorporates all City requirements and requires GBRC III to perform certain maintenance activities and to make an investment in the adjacent park in the amount of $25,000; and provides an extension of approximately nine years over the existing term for purposes of amortization; and

WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisors approval of real property leases with terms of ten (10) or more years, including extension options, or having anticipated revenue to the City of One Million Dollars ($1,000,000.00) or more; and

WHEREAS, This Lease may have a lease term of ten (10) years and the revenue is expected to exceed One Million Dollars ($1,000,000.00); now, therefore, be it

RESOLVED, That the Board of Supervisors approves the Lease; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive Director of the Port (the "Executive Director") to execute the Lease in a form approved by the City Attorney and in substantially the form of the lease on file with the Clerk of the Board of Supervisors; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits and ancillary agreements) that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, are in the best interest of the Port, , do not materially increase the obligations or liabilities of the Port or City or materially decrease the public benefits accruing to the Port, and are necessary or advisable to complete the transactions contemplated and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents; and, be it

FURTHER RESOLVED, That the Board of Supervisors approves, and ratifies all prior actions taken by the officials, employees and agents of the Port Commission, or the City with respect to the Lease.

Item 9 File 12-0279	Department: Port

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would approve a new 15-year lease with one five-year option to extend between the Port and Golden Bear Restaurant Company III, dba Mission Rock Resort, for the restaurant building, deck and land located at 817 Terry A. Francois Boulevard in the Central Waterfront.

Key Points

- The Port had a 15-year lease with Kelly's Mission Rock, LLC (Kelly's) from April 1, 1998 through March 31, 2013 for 817 Terry A. Francois Boulevard. Kelly's declared bankruptcy in 2010, and the bankruptcy court ordered the Kelly's Lease to be sold at auction to the highest bidder. Golden Bear Restaurant Company III (Golden Bear), the highest bidder, bid $375,000 for the Kelly's Lease, which the bankruptcy court used to pay Kelly's creditors. The bankruptcy court paid the Port $90,840 for past-due rent and late fees on the Kelly's Lease.
- The initial term of the existing lease between Golden Bear and the Port expires on March 31, 2013, and has two additional 5-year options to extend the lease, or a term of approximately 10 years and 11 months. The Port is proposing a new 15-year lease with Golden Bear rather than continuing the existing lease in order to (1) provide Golden Bear with sufficient time to amortize an estimated $1,490,000 in capital investments to the leased property; and (2) revise lease provisions to conform to the Port's current leasing policies.
- The proposed new 15-year lease is for 7,924 square feet of building space, 2,888 square feet desk space and 3,044 square feet of land. Under the proposed new lease, Golden Bear would invest an estimated $1,490,000 in capital improvements to the leased premises. No rent credits would be granted by the Port for these capital improvements. The capital investment of $1,490,000 would be amortized over the new 15-year lease term. Golden Bear would also invest $25,000 in the adjacent Agua Vista Park Marina.

Fiscal Impacts

- Under the proposed new lease, the rent payable to the Port is the greater of (a) base rent of $15,841 per month in the first year, increased by 3% per year, or (b) percentage rent of 7% of all gross revenues. Base rent over the 15-year term, including annual increases of 3%, is $3,535,407. If percentage rent exceeds base rent, the Port estimates that the rent payable by Golden Bear would be $3,905,772 over the 15-year term of the lease.

Policy Consideration

- If an existing tenant agrees to make capital improvements to leased space, the Port's Retail Leasing Policy allows the Port to negotiate (a) a new lease with the existing tenant without competitively bidding the lease, and (b) a lease term that is greater than either 10 years or the number of years necessary to amortize the capital improvements. According to the April 5, 2012 memorandum from the Port Executive Director to the Port Commission, Golden Bear believes that the term remaining on the existing lease of approximately 10 years and 11 months is not sufficient to amortize the proposed capital investment costing an estimated $1,490,000.

- Under the Port's Retail Leasing Policy, in order to negotiate a sole source lease, the Port must first (1) determine whether the existing tenant is in good standing, (2) evaluate whether it is the most suitable economic tenant, and (3) receive and review a business plan and audited financial statements or tax returns. All of these conditions have been met for the proposed sole source lease award to Golden Bear.
- As noted above, the Port could alternatively exercise the two additional five-year options to extend the existing lease with Golden Bear.

Recommendation

- Approval the proposed resolution is a policy matter for the Board of Supervisors.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

In accordance with City Charter Section 9.118(c), any lease exceeding ten years and/or having anticipated revenue of $1,000,000 or more is subject to approval by the Board of Supervisors.

Background

From 1998 to 2010, Kelly's Mission Rock, LLC (Kelly's) leased space from the Port and operated a restaurant at Pier 64 ½ (more commonly known as Terry A. Francois Boulevard). The restaurant declared bankruptcy shortly after the death in 2010 of Mr. James Kelly, managing partner of Kelly's Mission Rock, LLC. On December 23, 2011, Mr. Kelly's assets, including the lease, were ordered to public auction by the bankruptcy court.

The Port consented to the sale of the Kelly's Lease (Lease No. L-12474) through the public auction to Golden Bear Restaurant III, LLC (Golden Bear). Golden Bear's bid of $375,000 for the Kelly's Lease was the highest bid at the public auction, which was used by the bankruptcy court to pay Kelly's creditors. The bankruptcy court paid the Port $90,840 for past-due rent and late fees on the Kelly's Lease.

Kelly's Lease provided for an initial term of fifteen (15) years commencing on April 1, 1998 through March 31, 2013, with two additional five year options, subject to Board of Supervisors approval. There are approximately 11 months remaining on the initial term under the existing Kelly's Lease, and two five-year options, totaling 10 years and 11 months. The proposed resolution would establish a new lease between Golden Bear and the Port, with a fifteen (15) year term and one five (5) year option to extend.

The Port is proposing a new 15-year lease with Golden Bear rather than continuing the existing lease, which has a remaining term of up to 10 years and 11 months, in order to (1) provide Golden Bear with sufficient time to amortize an estimated $1,490,000 in capital investments to the leased property; and (2) revise lease provisions to conform to the Port's current leasing policies[1].

[1] The Port's current leasing policies include compliance with City programs to reduce discharge of fats, oil and degrease into the sewer system, acknowledgement of the impact of the 34th America's Cup on the waterfront, and conformance with environmental and hazardous materials regulations.

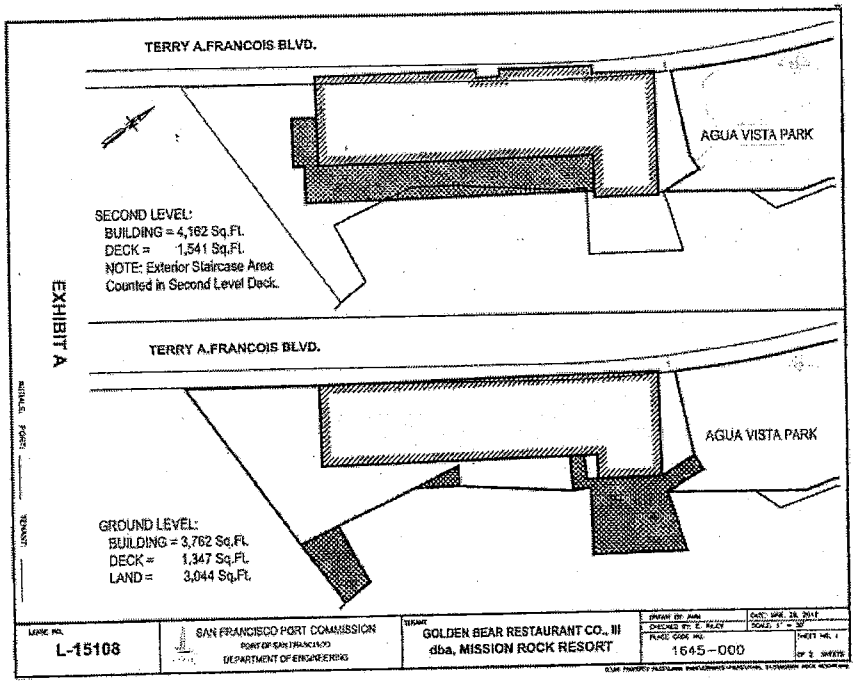
DETAILS OF PROPOSED LEGISLATION

The resolution would approve a new 15-year lease, with one five (5) year option, between the Port Commission (Lease No. L-15108)and Golden Bear Restaurant Company III, dba Mission Rock Resort, for the restaurant building, deck and land located at 817 Terry A. Francois Boulevard in the Central Waterfront.

Proposed Lease Space

As shown in Chart 1 below, the proposed lease contains (a) 7,924 square feet of building space (3,762 square feet on the ground level and 4,162 square feet on the second level), (b) 2,888 square feet of deck space (1,347 square feet on the ground level and 1,541 square feet on the second level), and (c) 3,044 square feet of land.

Chart 1.
Golden Bear Restaurant Company III, dba Mission Rock Resort



The Kelly's Lease did not include square footage for the second level. The proposed new lease incorporates 4,162 square feet of building space as shown above in Chart 1.

Tenant Improvements

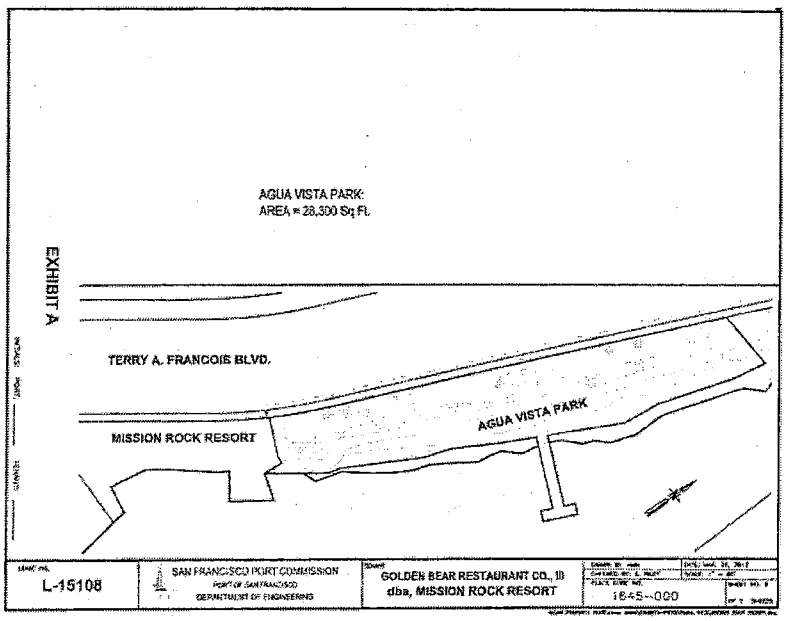
Under the proposed new lease, Golden Bear would invest an estimated $1,490,000 in capital improvements to the leased premises. No rent credits would be granted by the Port for such capital improvements.

The Attachment, provided by Mr. Elliott Riley, Port Senior Property Manager, lists the capital improvements proposed by Golden Bear, estimated to cost $1,490,000. The proposed lease requires Golden Bear to post a performance bond equal to 100% of the costs of constructing the tenant improvements. According to Mr. Riley, Golden Bear has posted a performance bond of $1,537,661, exceeding estimated costs of $1,490,000. The restaurant has a target opening date of July 2012.

According to Mr. Riley, the proposed 15-year lease would provide Golden Bear sufficient time to amortize the $1,490,000 investment in Golden Bear Restaurant. According to Port Commission policy, an existing retail tenant can receive a lease extension to allow amortization of capital improvements.

The proposed lease grants Golden Bear a non-exclusive, non-possessory revocable license to the Agua Vista Park Marina. The proposed new lease requires the tenant to spend $25,000 on landscape improvements to the Agua Vista Park Marina to satisfy requirements of the San Francisco Bay Conservation and Development Commission. Golden Bear Restaurant will also perform daily trash pick-ups and remove graffiti at the Agua Vista Park Marina. As shown in Chart 2 below, Agua Vista Park Marina is immediately adjacent to Golden Bear Restaurant.

Chart 2.
Agua Vista Park Marina



FISCAL IMPACTS

The rent under the existing Kelly's Lease is the greater of (a) base rent of $13,934 per month ($167,208 annually), or (b) percentage rent of 7% of full service dining revenues, plus 9% of casual dining and other retails sales. According to Mr. Riley, the Kelly's Lease has never paid percentage rent since the base rent has always exceeded the percentage rent.

Under the proposed new lease, rent is the greater of (a) base rent of $15,841 per month ($190,087 annually) in the first year, as shown in the Table below, increased by 3% per year, or (b) percentage rent of 7% of all gross revenues.

Base Rent	Square Feet	Rent per Square Foot per Month	Rent per Month
Building	7,924	$1.74	$13,788
Deck	2,888	$0.50	1,444
Land	3,044	$0.20	609
Total	13,856		$15,841

The base rent of $190,097 in the first year of the lease is $22,879, or 13.7%, more than base rent under the existing lease of $167,208.

Table 1, provided by the Port, provides a summary of the estimated revenues payable by Golden Bear to the Port for the 15-year term of the proposed new lease.Ba se rent over the 15-year term, including annual rent increases of 3%, is $3,535,407. If percentage rent exceeds base rent over the 15-year term,re nt payable to the Port is estimated at $3,905,772 over the 15-year term of the lease.

Table 1
Total Rent under the Proposed Lease

Year	Estimated Gross Sales	7% of Sales	Base Rent
1	$3,000,000	$210,000	$190,087
2	3,090,000	216,300	195,789
3	3,182,700	222,789	201,663
4	3,278,181	229,473	207,713
5	3,376,526	236,357	213,944
6	3,477,822	243,448	220,363
7	3,582,157	250,751	226,973
8	3,689,622	258,274	233,783
9	3,800,310	266,022	240,796
10	3,914,320	274,002	248,020
11	4,031,749	282,222	255,461
12	4,152,702	290,410	263,124
13	4,277,283	299,410	271,018
14	4,405,601	308,392	279,149
15	4,537,769	317,644	287,523
Total	**$55,796,742**	**$3,905,772**	**$3,535,407**

Source: Port

The Port hired a consultant, the Conley Consulting Group (CCG), to review the proposed lease in the context of market rent and lease terms for restaurant spaces in San Francisco. In their final report, CCG found that (1) the proposed lease terms are in line with typical market lease terms, and (2) the proposed lease is at the low end of the range established by the market, but that the location experiences low foot traffic compared to more desirable locations like Fisherman's Wharf.

POLICY CONSIDERATION

If an existing tenant agrees to make capital improvements to leased space, the Port's Retail Leasing Policy allows the Port to negotiate (a) a new lease with the existing tenant without competitively bidding the lease, and (b) a lease term that is greater than either 10 years or the number of years necessary to amortize the capital improvements. According to the April 5, 2012 memorandum from the Port Executive Director to the Port Commission, Golden Bear believes that the term remaining on the existing lease of approximately 10 years and 11 months is not sufficient to amortize the proposed capital investment costing an estimated $1,490,000.

Under the Port's Retail Leasing Policy, in order to negotiate a sole source lease, the Port must first (1) determine whether the existing tenant is in good standing, (2) evaluate whether it is the most suitable economic tenant, and (3) receive and review a business plan and audited financial statements or tax returns. All of these conditions have been met for the proposed sole source lease award to Golden Bear.

As noted above, the Port could alternatively exercise the two additional five-year options to extend the existing lease with Golden Bear.

RECOMMENDATION

Approval the proposed resolution is a policy matter for the Board of Supervisors.

Attachment

Scope of Development
Mission Rock Resort
817 Terry A Francois Boulevard, San Francisco, CA

Current estimates for capital costs are below. Budget will be updated with lease approval and completion of design and bid process.

Architectural Services	90,000
Kitchen Improvements	250,000
Bar Improvements	200,000
Landscaping On Site	50,000
Landscaping Aqua Vista	25,000
Electrical Exterior	80,000
Electrical Interior	100,000
Plumbing	175,000
Life Safety	30,000
Building Conditioning	150,000
Architectural Construction	200,000
Updated Code Requirements	100,000
Subtotal	$1,450,000
Permits	40,000
Total	$1,490,000

Name: Peter W. Osborne

Date: April 4, 2012

Firm: Golden Bear Restaurant Company III LLC

PORT OF SAN FRANCISCO

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2012 APR 16 AM 11:07

File 120279

April 17, 2012

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Subject: Golden Bear Restaurant Company III, a Limited Liability Company, dba Mission Rock Resort, Lease No. L-15108 Agreement

Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed resolution for Board of Supervisors approval, authorizing and directing the Port Executive Director to execute Lease No. L-15108 between Golden Bear Restaurant Company III, a Limited Liability Company, dba Mission Rock Resort and the City and County of San Francisco operating by and through the San Francisco Port Commission ("Agreement") for a new fifteen year (plus one five year extension option) restaurant lease for premises located at 817 Terry A. Francois Boulevard.

Attached you will also find the following supporting documents:

1. Four copies of the Port Commission Staff Report and companion Resolution No. 12-31 (approving the Lease Agreement subject to Board of Supervisors approval);
2. Four copies of the Golden Bear Restaurant Company III, a Limited Liability Company, dba Mission Rock Resort, Lease No. L-15108 subject to Board of Supervisors approval.
3. Four copies of Port Commission Staff Report and companion Resolution No. 12-20 authorizing approval of direct negotiation with Golden Bear Restaurant Company III, LLC under the Port's Retail Leasing Policy
4. Four copies of the Port of San Francisco's Leasing Policy for Retail Sites.

The following Port staff may be contacted regarding the matter: Brad Benson, Special Projects Manager (819-1738) and Trisha Prashad, Special Projects (274-0421). Thank you for your consideration.

Sincerely,

Trisha Prashad
Port of San Francisco

PORT OF SAN FRANCISCO

MEMORANDUM

February 23, 2012

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Francis X. Crowley
Hon. Leslie Katz
Hon. Ann Lazarus

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of direct negotiation with Golden Bear Restaurant Company III, LLC (Golden Bear) under the Port's Retail Leasing Policy

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

I. Background

As the result of a competitive bid process in 1996, Kelly's Mission Rock, LLC (Kelly's) constructed and operated a restaurant of the same name. Kelly's is located at Pier 64½ more commonly known as 817 Terry Francois Boulevard (see Attachment A). Kelly's restaurant consisted of approximately 3,500 sq. ft. of building, 2,500 sq. ft. of deck, and 4,000 sq. ft. of paved land adjacent to the building. The lease for this restaurant provided for an initial term of fifteen (15) years with two five (5) year options commencing on April 1, 1998 (Lease No. L-12474 or the "Kelly's Lease"). The initial expiration date of the Kelly's Lease is March 31, 2013.

In April 2010, James Kelly, the managing partner of Kelly's died. Shortly afterward, the business began to suffer and became arrears in rent, resulting in the Port's issuance of a three day notice to pay or quit. The trustee of Mr. Kelly's estate then filed for Chapter 11 bankruptcy protection for Kelly's. Once the previous tenant declared bankruptcy, the bankruptcy court took full and exclusive control of the resolution of the tenancy under the lease. The Port filed a proof of claim for $124,000 which included funds owed to other City agencies (utilities and taxes) and covered the insurance default, plus $28,572 which represented the security deposit. Lease claims are neither secured nor priority claims, however if the lease is assumed, which in this case it was, then the Port is entitled to be paid in full The bankruptcy was handled by outside counsel Mike McQuaid of Carr, McClellan, Ingersoll, Thompson & Horn.

THIS PRINT COVERS CALENDAR ITEM NO. 12B

After a failed attempt by a related party to assume the Kelly's Lease, the bankruptcy court ordered that the Kelly's assets be sold at public auction. On November 21, 2011, Kelly's noticed the sale of its assets including the lease and that sale was set for December 19, 2011. It was noticed with the opportunity to present overbids and Mr. Osborne submitted the highest quantified bid on December 19, 2011. The court approved the sale subject to the close of sale (pending the liquor license approval). On December 23, 2011 as the result of the public bid process, the bankruptcy court ordered Kelly's to sell all of its assets, including the Kelly's Lease, to Mr. Peter Osborne. Mr. Osborne is a successful San Francisco restaurateur and the owner of MoMo's Restaurant, Pete's Tavern and Pedro's Cantina. Pursuant to bankruptcy court practices, the Port consented to the sale as Mr. Osborne was the only bidder to submit all required documents for the Port's due diligence and is a proven local business operator. The Port's due diligence consisted of a review of Mr. Osborne's application, proforma financial statements, tax returns and a credit report. Mr. Osborne also submitted a business plan with the scope of his improvements.

Mr. Osborne took possession of Kelly's pursuant to the court order on January 3, 2012. Mr. Osborne paid $50,000 at the time the order was issued with another $325,000 to be paid upon closing. Port staff has been advised that Mr. Osborne has formed a new corporate entity, Golden Bear Restaurant Company III LLC ("Golden Bear") and is proceeding with closing of the sale pending the issuance of a permit from the state Alcohol and Beverage Control Board. The sale is expected to close in March 2012.

Currently the outstanding amount owed by Kelly's on the existing lease totals $94,486.76. Upon closing of the sale to Mr. Osborne, the Port will be paid its back rent from the sale proceeds. The remaining proceeds will go to the debtor's other creditors with bankruptcy court approval. Should the sale fail to close, the Kelly's Lease would return to control of the bankruptcy court and the Port would again have to pursue its outstanding claims against the former tenant.

II. Terms of the Existing Lease

The existing Lease No. L-12474, now assumed by Golden Bear II, LLC, contains the following terms:

Tenant:	Golden Bear II, LLC (purchased from bankruptcy estate of Kelly's Mission Rock, LLC)
Premises:	approximately 3500 square feet of space in the building located at Pier 64½ more commonly referred to as 817 Terry Francois Blvd; approximately 2500 square feet of deck areas adjacent thereto; and approximately 4000 square feet of paved land adjacent to the building as shown on Attachment B hereto

Term:	Fifteen (15) years through March 31, 2013 plus two 5-year options for a final term of March 31, 2023. Tenant has unilateral right to execute the options provided the Tenant is not in default.
Use:	Operation of a public restaurant and banquet facility, catering sales and other uses directly related or necessary thereto including but not limited to full service dining, casual dining, take-out and take-away dining, off-sale of alcoholic and other beverages and food items, service of alcoholic beverages, dancing and live entertainment, and not more than 400 square feet of space for the sale of souvenir items, in-house signature items and convenience merchandise for users of the adjacent marina and park.
Monthly Base Rent:	$13,934.17
Security Deposit:	will be equal to two months of the base rent once that amount has been determined and will be collected as a part of the lease execution.

Mr. Osborne purchased the Kelly's Lease out of bankruptcy at public auction with the intention of turning the failed restaurant into an iconic destination for dining on the Port's southern waterfront. Mr. Osborne has determined that the restaurant will require a significant investment of cash (estimated to be approximately $1 million) if he is to succeed in his goal. Meanwhile, Port staff has determined that there are a number of conditions in the Kelly's Lease that should be updated so that it will meet the Port's current policies, laws and ordinances. Additionally, the condition of the facility requires a large financial investment including the adjacent park that Mr. Osborne has agreed to improve. Therefore, both Golden Bear and the Port are interested in entering into a new lease that addresses these issues

II. Retail Leasing Policy

The Port's Retail Leasing Policy allows for direct sole source negotiations of leases if a bid would be impractical or infeasible and the benefits of direct negotiations exceed the benefits of a public offering. Under the Retail Leasing Policy, Port staff would first determine whether (1) the existing tenant is in good standing, (2) evaluate whether it is the most suitable economic tenant, and (3) receive and review a business plan and historic audited financial statements and/or tax returns.

Pursuant to the Retail Leasing Policy, Port staff would then seek the Port Commission's approval to begin lease negotiations on a sole source basis. If sole source negotiations are approved, the proposed lease would be executed under the Port's current standard form lease for retail businesses and would contain all of the terms, conditions and requirements listed in the Retail Leasing Policy. If the Port successfully negotiates a lease under the Retail Leasing Policy, it would be subject to Port Commission approval

and likely Board of Supervisors approval.

In making this recommendation to the Port Commission for a sole source waiver for Golden Bear, Port staff has determined that Golden Bear is a tenant-in-good standing (although Golden Bear has only been paying rent on the Kelly's Lease since January 2012). Should the Port Commission approve this sole source waiver, Port staff will review Golden Bear's business plan and historic audited financial statements and/or tax returns. Additionally, Port staff will be working with one of the Port's real estate advisors to evaluate whether Golden Bear is the most suitable economic tenant. Should all of the above prove positive, Port staff will then negotiate appropriate terms and conditions with Golden Bear and recommend the new lease to the Port Commission, and the Board of Supervisors, for approval. Port staff anticipates that it will come back to the Port Commission for approval of the lease in April 2012.

III. ANALYSIS

Mr. Osborne is purchasing the Kelly's Lease out of bankruptcy at a cost of $375,000. Mr. Osborne is a tenant-in-good standing and the sale by the bankruptcy court of the Kelly's Lease extinguished all defaults thereunder.

Mr. Osborne proposes to invest approximately $1 million dollars to make improvements to the leasehold. There are approximately thirteen months with two five (5) year options of term remaining on the Kelly's Lease, for a total of 11 years and 3 months. Mr. Osborne does not believe this is sufficient time to amortize such a sizeable investment. Therefore, Mr. Osborne has requested an extension of term beyond March 31, 2023.

In preliminary conversations with Port staff, Mr. Osborne has proposed the following terms for a new lease for a restaurant equivalent in size to Kelly's:

- a 180 day rent-free period during construction with no other rent credits;
- a 10 year lease term with two five-year options to be exercised by tenant for a final term of 2032;
- base rent at the current rate with a 2% annual adjustment and market reset for option periods; and
- percentage rent payable to the Port of 7% of gross revenues.

Mr. Osborne has reviewed the Port's standard lease terms for retail tenants and has agreed to all of the terms and conditions of Port's standard restaurant lease. Port staff will consider these minimum starting points for negotiations. As stated above, Port staff will be assisted by one of the Port's real estate advisory consultants.

With respect to the bidding requirements of the Port's Retail Leasing Policy, Port staff has reviewed Mr. Osborne's proposal and has determined that it is impractical and infeasible to bid this opportunity out for the following reasons:

1. Mr. Osborne has already invested $50,000 to secure the Kelly's Lease at a public auction open to other bidders.

2. Before negotiations are initiated for a new lease, Mr. Osborne will pay to the bankruptcy court an additional $325,000 as the final purchase price for the Kelly's Lease.
3. Mr. Osborne has provided the Port with a sound business plan which commits him to a capital investment of approximately $1million for improvement to the Kelly's leasehold.
4. Mr. Osborne has control over the Kelly's Lease based on the bankruptcy award for the remaining term and option periods.
5. Mr. Osborne has a proven track record of performance with three other successful restaurants and is able to bring investors to projects to ensure performance.
6. An RFP for this location would take approximately six months with another 8-12 months in start-up time. Mr. Osborne is currently paying rent and anticipates a July, 2012 opening that will bring steady revenue to the Port.
7. Mr. Osborne has committed to improving the surrounding park area which normally would not be a part of an RFP and is not currently a part of the Kelly's Lease.
8. Mr. Osborne's estimated total start-up investment is $2.5 million, which Port staff does not believe another bidder could easily match.

Mr. Osborne is in a unique position to enter into sole source negotiations with the Port for a new lease with an extended term which will allow him to amortize his substantial investment. Port staff's assessment is that timing and certainty of the motivated tenant will yield a favorable financial result to the Port and that the benefit of direct negotiation now outweighs the unknown benefits of a potential future RFP.

Should the Port Commission determine that it does not wish to offer a sole source waiver to Mr. Osborne, then Mr. Osborne must operate under the existing lease.

IV. Staff Recommendation

Port Staff recommends that the Port Commission adopt the attached resolution authorizing Port Staff to enter direct negotiations with Golden Bear for a sole source lease for the former Kelly's Mission Rock Restaurant located at 817 Terry Francois Boulevard as described above because it is otherwise impractical and infeasible to bid this opportunity.

Prepared by: Elliott Riley
Senior Property Manager

For: Susan Reynolds
Deputy Director of Real Estate

Attachments
A: Map of Kelly's Mission Rock location
B: Schematic of Kelly's Mission Rock premises

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 12-20

WHEREAS, Charter Section B3.581 grants to the Port Commission the authority and duty to use, conduct, operate, maintain, regulate and control the lands within the Port jurisdiction; and

WHEREAS, pursuant to Port Commission Resolution No. 93-52 Amended by Resolution No. 11-15, it is the policy of the Port Commission to competitively bid retail leasing opportunities; and

WHEREAS, the Port Commission provides for an exception to bidding retail leasing opportunities under the Retail Leasing Policy when a bid would be impractical or impossible and the benefits of direct negotiation outweigh the benefits of competitive bidding; and

WHEREAS, Mr. Peter Osborne bought Kelly's Mission Rock (Kelly's) Lease L-12474 (the Kelly's Lease) out of bankruptcy at public auction open to other bidders and has formed Golden Bear Restaurant Company III, LLC (Golden Bear) to operate and manage the restaurant; and

WHEREAS, Golden Bear has determined, and Port staff agree, that is it necessary to make a substantial investment in the infrastructure of the restaurant to maximize revenue opportunities; and

WHEREAS, Golden Bear and Port staff have determined that there is not sufficient remaining term under the Kelly's Lease to support Golden Bear's anticipated sizeable investment to support a robust business plan; and

WHEREAS, Port staff has reviewed Golden Bear's proposal and determined that a new lease is in the best economic interest of the Port, Golden Bear is the best economic tenant and the benefits of direct negotiation outweigh the benefits of competitive bidding; and

WHEREAS, Port staff will retain one of its real estate advisory consultants to confirm the determinations required by the Port's Retail Leasing Policy and, if confirmed, to assist Port staff in negotiations with Golden Bear; and

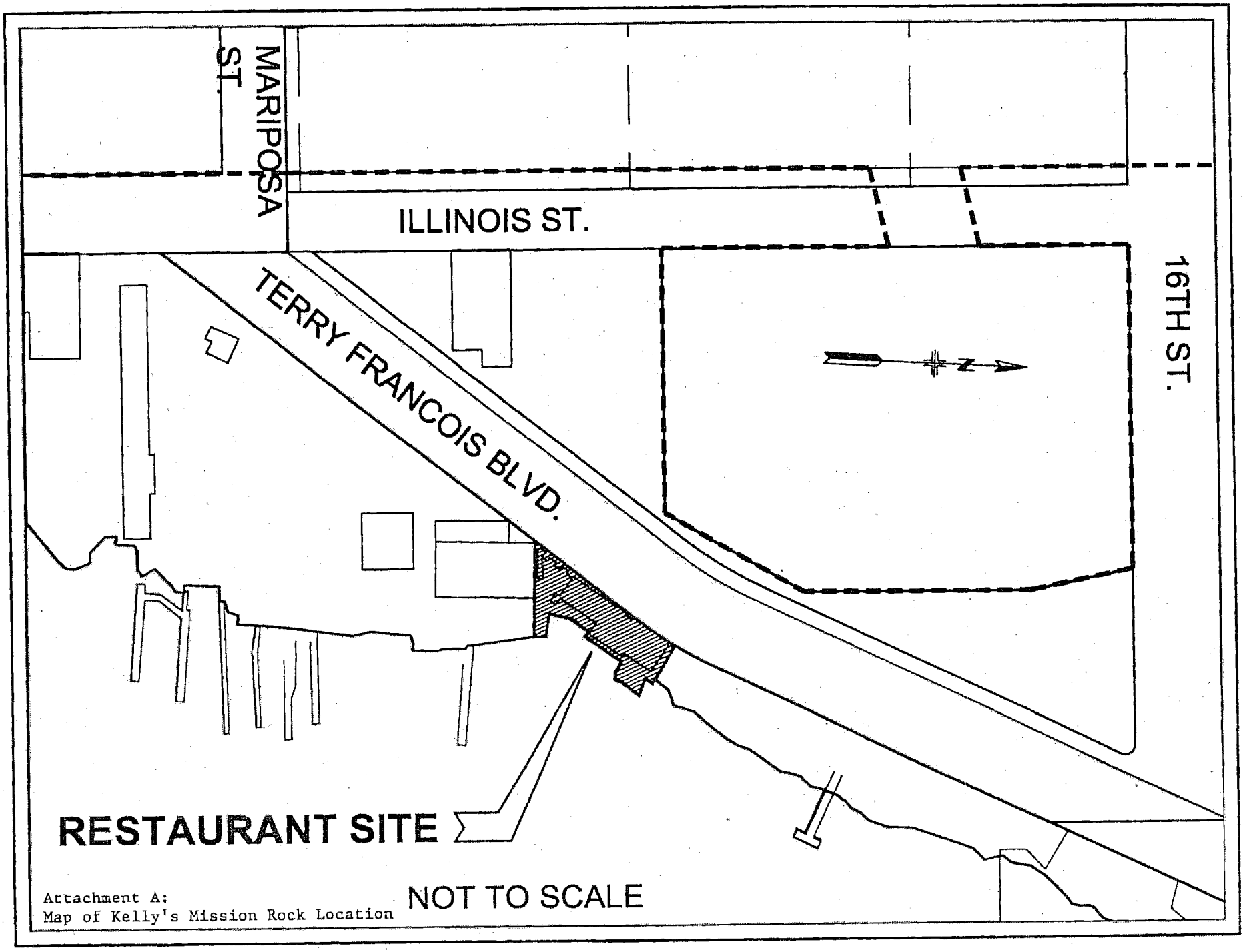
WHEREAS, Port staff has determined that certain of the terms contained in the Kelly's Lease are out of date and should be made current; and

WHEREAS, Port staff recommends that, based on these circumstances as more fully described in the Memorandum to the Port Commission dated February 23, 2012, Golden Bear should qualify for a direct sole source negotiation under the Port's Retail Leasing Policy; and now, be it

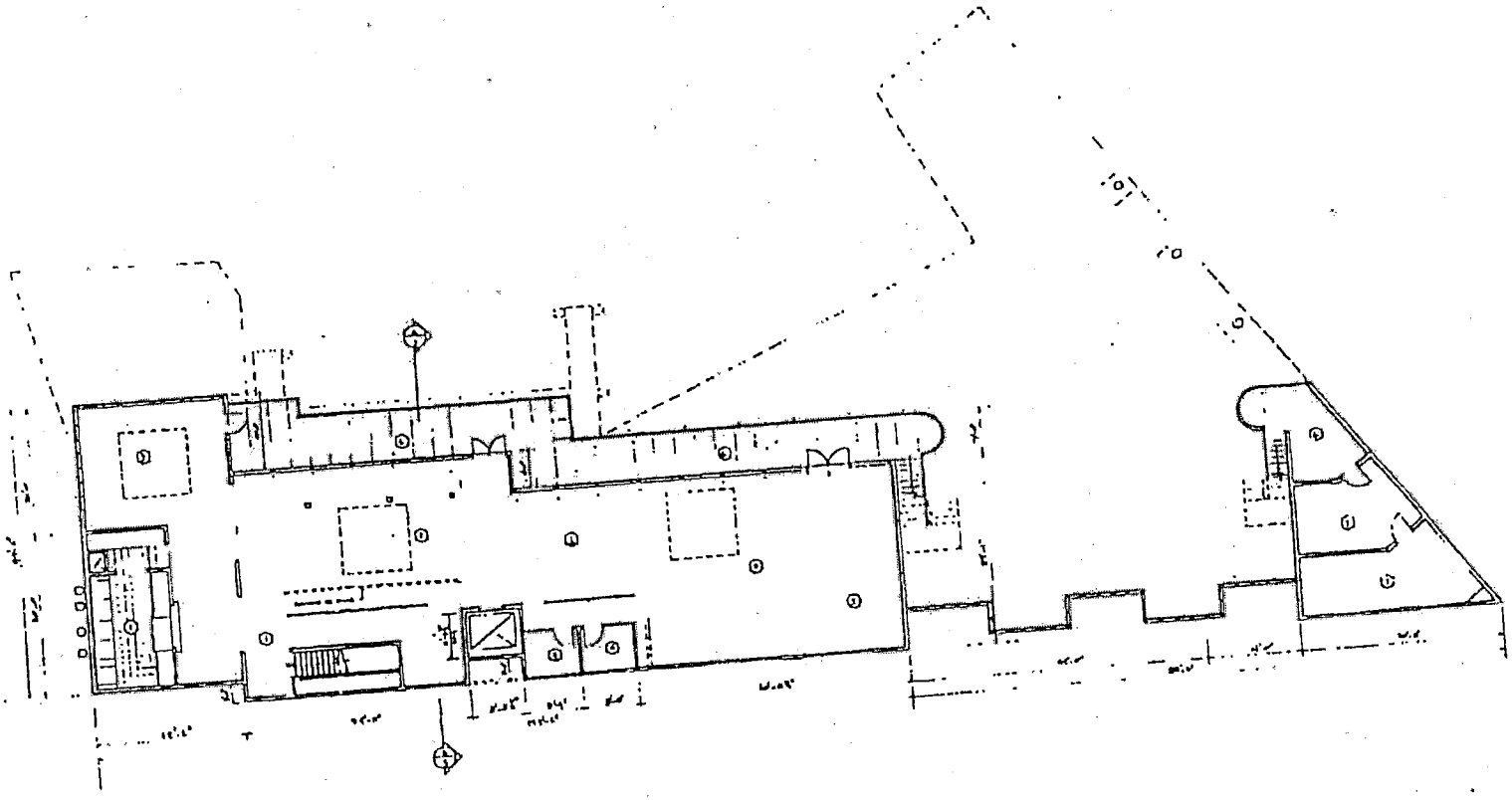
RESOLVED, that the Port Commission authorizes Port staff to enter into direct negotiations with Golden Bear for a sole source lease for the former Kelly's Mission Rock Restaurant located at 817 Terry Francois Boulevard under the terms and conditions of the Port's Retail Leasing Policy (Resolution No. 11-15) and as further described in the Memorandum to the Port Commission dated February 23, 2012.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 28, 2012.

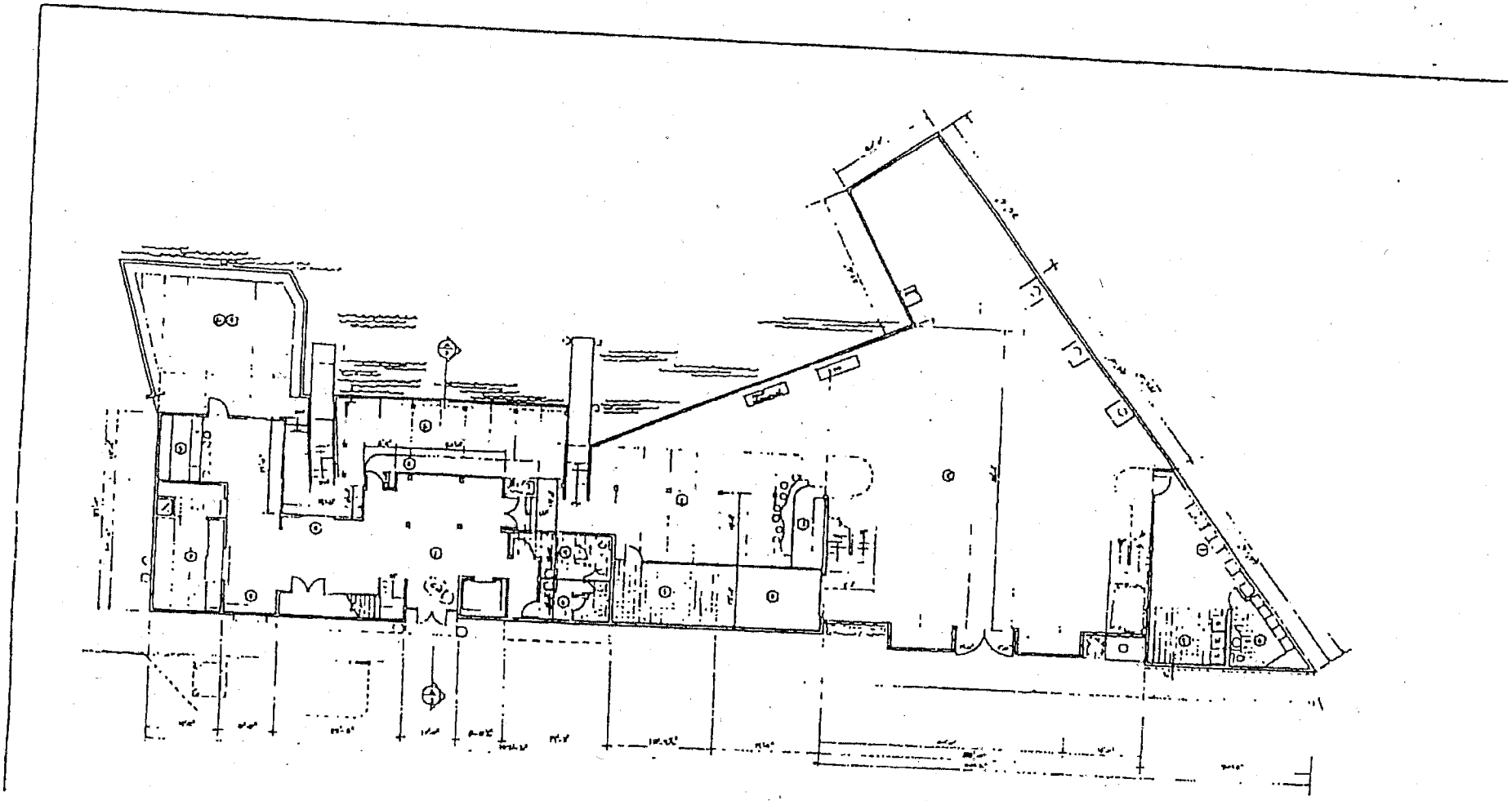
Secretary



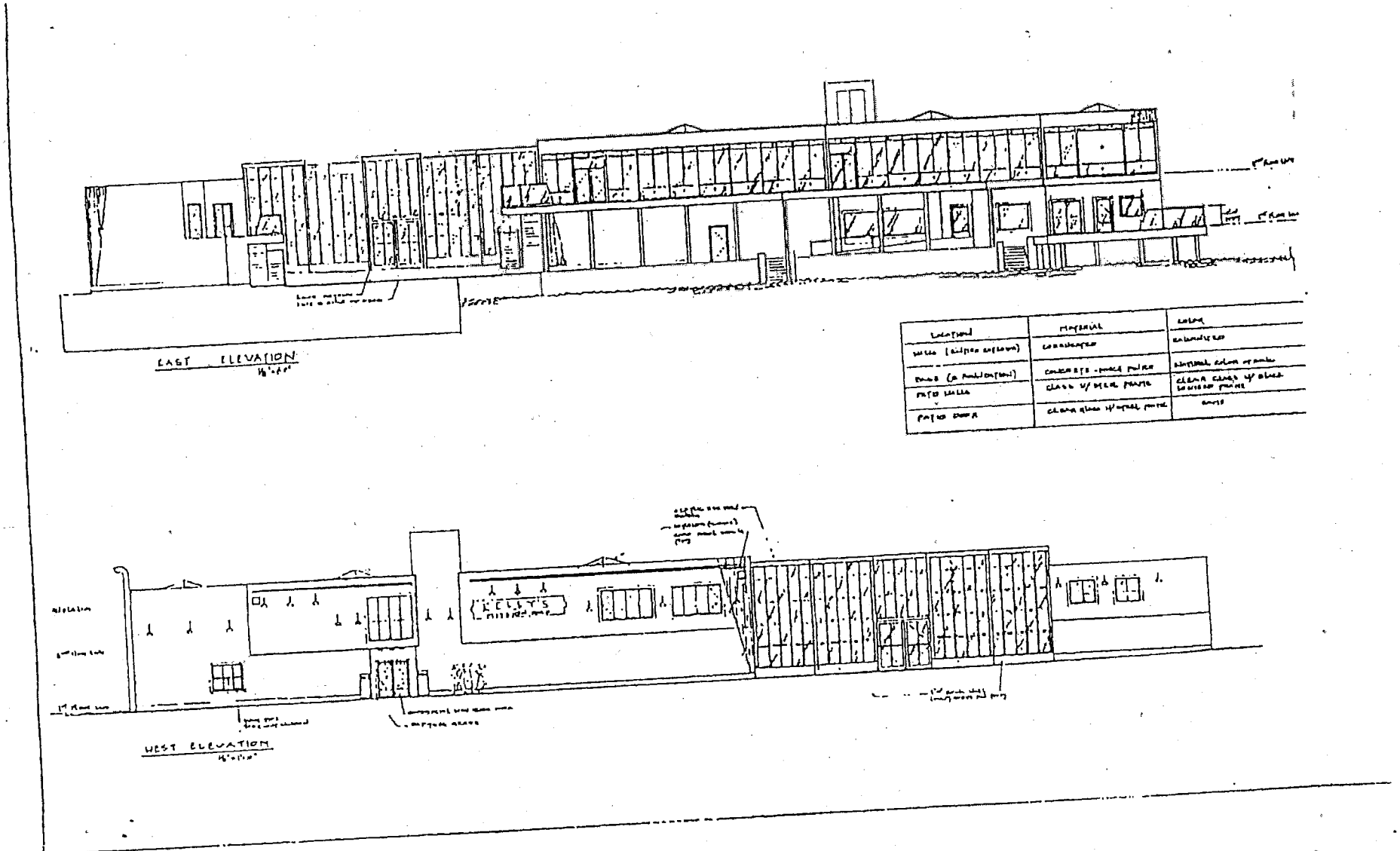
Attachment A:
Map of Kelly's Mission Rock Location



Attachment B:
Schematic of Kelly's Mission Rock Premises



Attachment B:
Schematic of Kelly's Mission Rock Premises



Attachment B:
Schematic of Kelly's Mission Rock Premises

PORT OF SAN FRANCISCO

MEMORANDUM

April 5, 2012

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Francis X. Crowley
Hon. Leslie Katz
Hon. Ann Lazarus

FROM: Monique Moyer
Executive Director

Dan Reynolds for

SUBJECT: Request approval of Lease No. L-15108 with Golden Bear Restaurant Company III, dba Mission Rock Resort, for a fifteen (15) year (plus one five-year extension option) restaurant lease for premises located at 817 Terry A. Francois Boulevard subject to Board of Supervisors' approval

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

I. Background

As the result of a competitive bid process in 1996, Kelly's Mission Rock, LLC (Kelly's) constructed and operated a restaurant of the same name. Kelly's is located at Pier 64½ more commonly known as 817 Terry A. Francois Boulevard (see Attachment A). Kelly's restaurant consisted of approximately 7,924 sq. ft. of building, 2,500 sq. ft. of deck, and 3,044 sq. ft. of paved land adjacent to the building. The lease for this restaurant provided for an initial term of fifteen (15) years commencing on April 1, 1998 with two five (5) year options (Lease No. L-12474 or the "Kelly's Lease"). The initial expiration date of the Kelly's Lease is March 31, 2013.

In April 2010, James Kelly, the managing partner of Kelly's died. Shortly afterward, the business began to suffer and became arrears in rent, resulting in the Port's issuance of a three day notice to pay or quit. The trustee of Mr. Kelly's estate then filed for Chapter 11 bankruptcy protection for Kelly's. Once the previous tenant declared bankruptcy, the bankruptcy court took full and exclusive control of the resolution of the tenancy under the lease. After a failed attempt by a related party to assume the Kelly's Lease, the bankruptcy court ordered that the Kelly's assets be sold at public auction. On November 21, 2011,

THIS PRINT COVERS CALENDAR ITEM NO. 10A

Kelly's noticed the sale of its assets including the lease and that sale was set for December 19, 2011. It was noticed with the opportunity to present overbids and Mr. Peter Osborne submitted the highest quantified bid on December 19, 2011.

The court approved the sale subject to the close of sale (pending the liquor license approval). On December 23, 2011 as the result of the public bid process, the bankruptcy court ordered Kelly's to sell all of its assets, including the Kelly's Lease, to Mr. Osborne. Mr. Osborne is a successful San Francisco restaurateur and the owner of MoMo's Restaurant, Pete's Tavern and Pedro's Cantina. Pursuant to bankruptcy court practices, the Port consented to the sale as Mr. Osborne was the only bidder to submit all required documents for the Port's due diligence and is a proven local business operator. The Port's due diligence consisted of a review of Mr. Osborne's Lease application, proforma financial statements, tax returns and a credit report

Mr. Osborne took possession of Kelly's pursuant to the court order on January 3, 2012. Mr. Osborne paid $50,000 at the time the order was issued with another $325,000 to be paid upon closing.

The bankruptcy court ordered payment to the Port of $90,840.32 out of the sale proceeds which represents the full amount of delinquent pre and post-petition rent, late fees and late fees for percentage rent reports due to the Port. The sale of the lease extinguished all other lease defaults.

Mr. Osborne has formed a new corporate entity, Golden Bear Restaurant Company III, LLC ("GBRCIII") and is proceeding with closing of the sale pending the issuance of a permit from the state Alcohol and Beverage Control Board. Upon completion of the close of the sale the Port will be paid its back rent from the sale proceeds. The remaining proceeds will go to the debtor's other creditors with bankruptcy court approval.

II. Terms of the Existing Lease

The existing Lease No. L-12474, now assumed by GBRCIII, contains the following terms:

Tenant:	GBRCIII (purchased from bankruptcy estate of Kelly's Mission Rock, LLC).
Premises:	Approximately 3,500 square feet of space in the building located at Pier 64½ more commonly referred to as 817 Terry A. Francois Blvd; approximately 2,500 square feet of deck area adjacent thereto; and approximately 4,000 square feet of paved land adjacent to the building as shown on Attachment A hereto.
Term:	Fifteen (15) years through March 31, 2013 plus two 5-year options for a final term of March 31, 2023. Tenant has unilateral right to execute the options provided the Tenant is not in default.

Use: Operation of a public restaurant and banquet facility, catering sales and other uses directly related or necessary thereto including but not limited to full service dining, casual dining, take-out and take-away dining, off-site sale of alcoholic and other beverages and food items, service of alcoholic beverages, dancing and live entertainment, and not more than 400 square feet of space for the sale of souvenir items, in-house signature items and convenience merchandise for users of the adjacent marina and park.

Monthly Base Rent: $13,934.17

Security Deposit: $28,572.28

Mr. Osborne purchased the Kelly's Lease out of bankruptcy at public auction with the intention of turning the failed restaurant into an iconic destination for dining on the Port's southern waterfront. Mr. Osborne has determined that the restaurant will require a significant investment of cash (estimated to be approximately $2.1 million) if he is to succeed in his goal. Tenant anticipates an expenditure of approximately $1 million for core and shell improvements and approximately $1.1 million in additional costs such as legal costs, architectural costs, small wares, pre-opening labor and pre-opening rent. Meanwhile, Port staff has determined that there are a number of conditions in the original Kelly's Lease that should be updated so that it will meet the Port's current policies, laws and ordinances. Additionally, a condition of the proposed new lease requires a $25,000 financial investment in the adjacent park to satisfy BCDC requirements. Therefore, both GBRCIII and the Port are interested in entering into a new lease that addresses these issues

III. Retail Leasing Policy

The Port's Retail Leasing Policy provides that an existing retail tenant, which describes GBRCIII, can receive an extension to allow amortization of Capital Improvements. Specifically the Policy states, "Where the tenant proposes to make capital improvements, a lease extension or renewal may have a term of the greater of ten (10) years or the time required to amortize planned improvements". GBRCIII is the tenant in possession of the Kelly's Lease, through purchase in Bankruptcy Court, until March 31, 2013 with options, that if exercised, will allow them to remain in possession until 2023. GBRCIII has determined, and Port staff agrees, that it must make an investment of approximately $2.1 million in order to operate the restaurant successfully. GBRCIII has indicated that the term remaining on the Kelly's Lease is not sufficient to amortize the previously referenced investment and that the investment is required to ensure the success of the restaurant. On the basis of this information Port staff made a presentation and request to the Port Commission to allow Port staff to enter into sole source negotiations with GBRCIII for a new extended lease. The Port Commission subsequently approved sole source negotiations by Port staff with GBRCIII for a lease at Mission Rock, 817 Terry A. Francois Boulevard, San Francisco, California, by Resolution Number 12-20 dated February 28, 2012.

Port staff has negotiated parameter terms and conditions with GBRCIII and is recommending the new lease to the Port Commission for approval subject to subsequent approval by the Board of Supervisors.

IV. Analysis

Mr. Osborne purchased the Kelly's Lease out of bankruptcy at a cost of $375,000 and has been in possession since January 3, 2012. Mr. Osborne is a tenant-in-good standing.

Mr. Osborne proposes to invest approximately $1 million dollars to make improvements to the leasehold (core and shell) and projects approximately $1.1 million in additional costs as previously noted. There are approximately thirteen months with two five (5) year options of term remaining on the Kelly's Lease, for a total of 11 years and 3 months. Mr. Osborne believes, and Port Staff concurs, that this is insufficient time to amortize such a sizeable investment. Therefore, Mr. Osborne has requested an extension of term beyond March 31, 2023.

Port staff contacted the Conley Consulting Group to assist us in our evaluation of Mr. Osborne's proposal. Conley Consulting Group was referred to us by the Port Planning Department and has conducted real estate consulting work for a variety of cities and public agencies such Vallejo, Richmond, the Port of Oakland and the City of San Francisco over the past twelve years. The Conley Consulting Group report concluded that, "The fifteen (15) year term (recognizing the five (5) year extension option) triple net expense structure and percentage rent provision are in line with typical market lease terms. Furthermore, Golden Bear Restaurant Company III has the experience needed to maximize the potential for successful restaurant operations at the site, particularly with regards to its emerging location."

With respect to the bidding requirements of the Port's Retail Leasing Policy, it is important to recall that the Port is not in a position to bid this lease as GBRCIII has right of possession until March 31, 2013, with extension options extending to March 31, 2023. Moreover, Port staff has reviewed Mr. Osborne's proposal and has determined that it is impractical and infeasible to bid this opportunity out for the following reasons:

1. Mr. Osborne has already invested $50,000 to secure the Kelly's Lease at a public auction open to other bidders.
2. Mr. Osborne has also paid an additional $325,000 as the final purchase price for the Kelly's Lease.
3. Mr. Osborne has provided the Port with a sound business plan which commits him to a capital investment of approximately $1million for improvements to the Kelly's leasehold. In addition to committing Mr. Osborne to an investment of $1million for tenant improvements to the Kelly's leasehold, the plan also gives careful consideration to the market opportunity provided by the developing Mission Bay area. The plan presents architecture and design improvements to the restaurant site that will create captivating atmosphere and promote both social camaraderie and relaxation while maximizing restaurant operations, and the business plan concludes with a well-supported and reasonable profit and loss statement.

4. Mr. Osborne has a proven track record of performance with three other successful restaurants and is able to bring investors to projects to ensure performance.
5. If the restaurant becomes vacant, an RFP for this location would take approximately six months with another 8-12 months in start-up time. At the proposed rent rate of $15,820/month 8-12 months equates to $126,550 - $189,840 in lost base rent to the Port. Mr. Osborne is currently paying rent and anticipates a July, 2012 opening that will continue to provide steady revenue to the Port.
6. Mr. Osborne has committed to improving the surrounding park area by investing $25,000 in landscaping, which is not currently a part of the Kelly's Lease.
7. The two previous tenant restaurants in this location have failed. Port staff anticipates that Mr. Osborne's experience and capitalization will allow him to succeed. Port Staff's opinion is supported by the Conley Consulting Group's Report (Attached).

Based on the points enumerated above it is apparent that Mr. Osborne is in a unique position to enter a new lease with an extended term which will allow him to amortize his substantial investment. Port staff's assessment is that timing and certainty of the motivated tenant will yield a favorable financial result to the Port and that the benefit of direct negotiation now outweighs the loss of rent and unknown response to a potential future RFP.

Kelly's Lease required payment of the greater of $13,934.37 per month or 7% of full service dining, plus 9% of casual dining and other retail sales. However, it is important to note that Kelly's never achieved sales that resulted in the payment of percentage rent to the Port, and in fact it went bankrupt in 2011 after approximately thirteen (13) years of operation. Under the proposed new lease with GBRCIII the minimum base rent will increase to $15,820 per month versus 7% of gross revenue, whichever is greater. There is no percentage rent provision for casual dining or other retail sales (hats, T-Shirts, mugs, etc.) as they are not separately incorporated into the new Lease. The proposed rent rate, inclusive of the 7% percentage requirement for gross revenues reflects market rent. The most recent restaurant transaction that Port staff negotiated at Fisherman's Wharf (D&G Company, operating as Lou's Blues) requires percentage rent of 6.75% of gross revenues for the first nine (9) years and 7% gross revenues thereafter. The 7% of gross revenues rent was also recognized by the Conley Group Report as being at the upper end of market rates.

The original Kelly's Lease does not include square foot calculations for the second floor of the building in the Exhibit A. The GBRCIII Lease incorporates the second floor of the building into the Exhibit A and it is included in the rental calculations.

The Kelly's Lease allows the tenant to engage in off-site sales of alcoholic beverages as well as dancing and live entertainment. The proposed GBRCIII Lease prohibits these activities with the exception of permitting the use of acoustic instruments to play soft jazz or piano bar music as a background accompaniment to meals.

The Kelly's Lease makes no reference to the planned realignment of Terry A. Francois Boulevard. The proposed GBRCIII Lease documents this planned activity.

The Kelly's Lease has no requirement for the tenant to make any improvements to the adjacent Agua Vista Park. The proposed GBRCIII Lease requires the tenant to spend $25,000 on Port approved landscape improvements to this Park, make daily trash pick ups, remove graffiti and relocate the existing restaurant trash area from the south end of the Park to a location that is inside the footprint of the restaurant.

Under the existing Lease the parties acknowledged that the marina which is immediately adjacent to the premises is in dilapidated condition. It obligates the Port to offer any effort to rebuild or operate the marina to the Tenant prior to taking any action to do so by itself or by offering it to a third party. GBRCIII negotiated to retain this option because the development of the marina can have a major impact on the operation of the restaurant. The Tenant is also interested in taking advantage of the symbiotic relationship that could be developed between the restaurant and the Aqua Vista Park marina.

NEW LEASE TERMS:	
Tenant:	Golden Bear Restaurant Company III, LLC dba Mission Rock Resort ("GBRCIII")
New Lease Number:	L-15108
Premises:	Approximately 7,924 sf. of building, 2,888 sf. of deck and 3,044 sf. of land located at 817 Terry A. Francois Boulevard
Lease Commencement Date:	Upon lease approval by the Port Commission and then the Board of Supervisors and final execution by Port, anticipated by June 2012
Rent Commencement Date:	Lease Commencement Date
Lease Expiration Date:	Fifteen years from Rent Commencement Date
Renewal Option:	One (1) five-year option exercisable by tenant with Minimum Base Rent Adjustment provided tenant is not in default
Monthly Base Rent:	$15,820.00
Base Rent Adjustment:	3% on each anniversary of the rent commencement date
Percentage Rent:	7% of all gross sales
Use:	Full service restaurant
Security Deposit:	Tenant shall provide a Security Deposit equal to two (2) month's Base Rent due in the fifteenth year of Lease
As Is:	The Premises shall be accepted in "as is" condition
FOG Program:	Tenant must comply with City-based program aimed at the elimination of fats, oil, and grease being introduced into the City's combined sewer system
Tenant Improvements:	Tenant capital improvements in the amount of $1,000,000 without rent credit or other financial compensation. Tenant shall have the obligation and right to design and construct tenant improvements at tenant expense, subject to Port approval. Tenant must complete the construction improvements no later than

	November 30, 2012. Tenant shall have a six month rent free period during construction
Right of First Refusal on Marina:	In the event that the Port decides to develop a Marina in the adjacent Agua Vista Park the Tenant shall have the Right of First Refusal.
Performance/Payment Bond:	Tenant shall provide both a Contractors Payment/Performance Bond (Labor and Materials) and a guarantee, each in an amount equal to 100% of the construction cost of Tenant Improvements per the approved Building Permit
Utilities:	Tenant's sole responsibility
Insurance:	Tenant shall provide insurance coverage acceptable to Port and City Risk Manager
City Requirements:	Tenant to comply with all applicable City laws, including but not limited to, Card Check, Non-Discrimination, First Source Hiring, Health Benefits Coverage, Limitation on Contributions, Prevailing Wages and other applicable laws
No Unilateral Right to Terminate:	Paragraph 4.2 is deleted from this Lease
NON-EXCLUSIVE LICENSE TO USE PROPERTY TERMS:	
Tenant: **New License Number:** **Premise:** **Term:** **License Fee:** **Use:**	GBRCIII at Agua Vista Park L-15108 (Non-exclusive access clause is incorporated into the GBRCIII Lease) 28,300 Square Feet of Park Month-to-Month $0 Access to Agua Vista Park to install $25,000 of landscape improvements, and provide daily janitorial cleaning, graffiti removal and limited maintenance

V. Staff Recommendation

Port Staff recommends that the Port Commission adopt the attached Resolution approving Lease No. L-15108 and authorize the Port Staff Executive Director to forward the Lease to the Board of Supervisors for approval pursuant to the Board's authorization under Charter Section 9.118, and upon the effectiveness of such approval, execute the Lease.

Prepared by: Elliott Riley
Senior Property Manager

For: Susan Reynolds
Deputy Director of Real Estate

Attachments
A: Map of Kelly's Mission Rock location
B: Conley Consulting Group Report

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 12-31

WHEREAS, Charter Section B3.581 grants to the Port Commission the authority and duty to use, conduct, operate, maintain, regulate and control the lands within the Port jurisdiction; and

WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisor's approval of leases of real property with anticipated revenue to the City of One Million Dollars ($1,000,000.00) or more; and

WHEREAS, Pursuant to Port Commission Resolution No. 93-52 (the Retail Leasing Policy), it is the policy of the Port Commission to competitively bid retail leasing opportunities; and

WHEREAS, The Port Commission approved sole source negotiations on February 28, 2012 (Resolution 12-20) for an exception to bidding retail leasing opportunities under the Retail Leasing Policy; and

WHEREAS, Golden Bear Restaurant Company III LLC dba Mission Rock Resort (GBRCIII) is a tenant in good standing, and GBRCIII is willing to make tenant improvements in the amount of One Million Dollars ($1,000,000.00) that will benefit the Port; and

WHEREAS, Port staff and GBRCIII have completed lease negotiations as outlined in the Staff Report accompanying this Resolution ("Lease"); now, therefore, be it

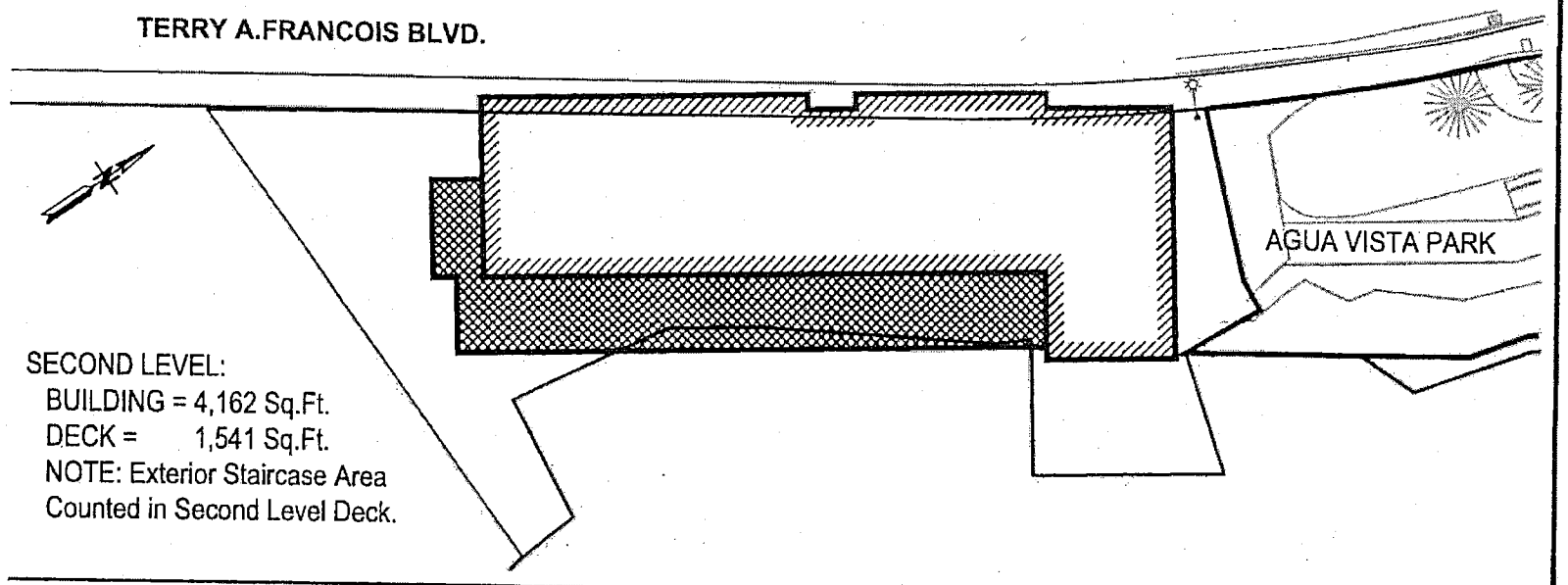
RESOLVED, That the Port Commission approves, subject to Board of Supervisors' approval, the Lease and authorizes and directs the Executive Director or her designee to forward the Lease to the Board of Supervisors (the "Board") for approval, pursuant to the Board's authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the Lease; and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations of liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Lease contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease, and any such amendments thereto.

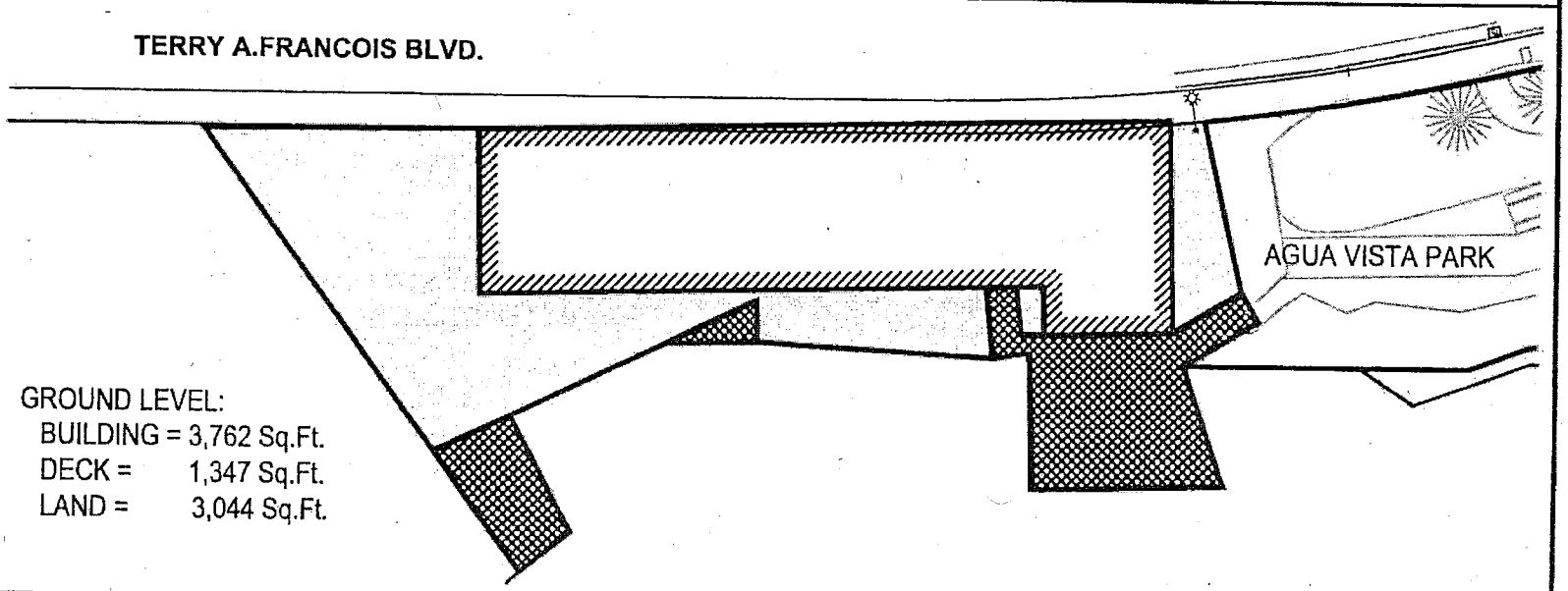
I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 10, 2012.

Secretary

EXHIBIT A



SECOND LEVEL:
BUILDING = 4,162 Sq.Ft.
DECK = 1,541 Sq.Ft.
NOTE: Exterior Staircase Area Counted in Second Level Deck.



GROUND LEVEL:
BUILDING = 3,762 Sq.Ft.
DECK = 1,347 Sq.Ft.
LAND = 3,044 Sq.Ft.

INITIALS: PORT: _____ TENANT: _____

LEASE NO.		TENANT		
L-15108	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	GOLDEN BEAR RESTAURANT CO., III dba, MISSION ROCK RESORT	DRAWN BY: AMN CHECKED BY: E. RILEY PLACE CODE NO. 1645-000	DATE: MAR. 28, 2012 SCALE: 1" = 30' SHEET NO. 1 OF 2 SHEETS

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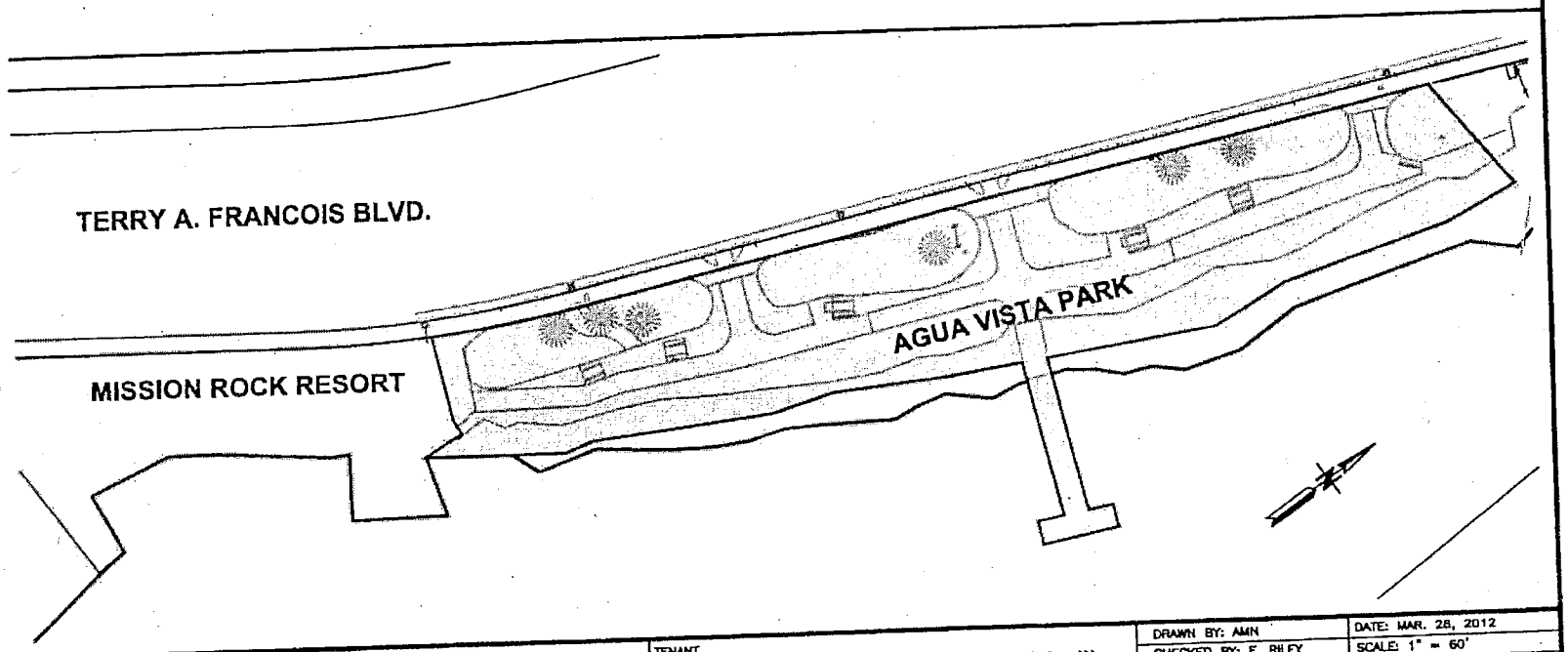
EXHIBIT A

AGUA VISTA PARK:
AREA ≈ 28,300 Sq.Ft.



INITIALS: PORT: _____ TENANT: _____

LEASE NO. L-15108	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	TENANT GOLDEN BEAR RESTAURANT CO., III dba, MISSION ROCK RESORT	DRAWN BY: AMN CHECKED BY: E. RILEY PLACE CODE NO. 1645-000	DATE: MAR. 28, 2012 SCALE: 1" = 60' SHEET NO. 2 OF 2 SHEETS

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Conley Consulting Group

MEMORANDUM

March 30, 2012

To: Susan Reynolds, Port of San Francisco

From: Mary A. Smitheram-Sheldon, Denise Conley
Conley Consulting Group

Subject: Review of Proposed Lease of Pier 64 ½ to Golden Bear Restaurant Company III, dba Mission Rock Resort, a California Limited Liability Company

As requested by the Port of San Francisco (Port), Conley Consulting Group (CCG) has reviewed the proposed lease of the building and land at Pier 64 ½ to Golden Bear Restaurant Company III, LLC, a California Limited Liability Company dba Mission Rock Resort (Golden Bear III). The property was previously occupied by Kelly's Mission Rock, LLC under a long-term lease from the Port. Mission Rock subsequently declared bankruptcy. The principal behind Golden Bear III purchased the lease out of bankruptcy in December 2011. The restaurant building is in need of capital improvements. As a result, Golden Bear III believes the remaining term (including options) of the existing lease is insufficient to amortize the amount of proposed capital improvements. Thus, Golden Bear III is negotiating a new lease with the Port.

Purpose, Data Sources, and Conclusion

The purpose of this assignment is to review the proposed lease between the Port and Golden Bear III, in the context of market rent and lease terms for restaurant spaces in San Francisco, in order to ensure that the proposed lease is within market parameters. Additionally, CCG was requested to comment generally on the merits of the operator behind Golden Bear III. For this assignment, CCG reviewed the draft lease between the Port and Golden Bear III, as well as related documents such as prior staff reports to the Port Commission, the 1997 lease with Kelly's Mission Rock, LLC, and Golden Bear III's Business Summary. CCG obtained comparable restaurant lease information from the Port as well as from its broker, appraiser, and consultant contacts. These data included several leases, as well as asking rates and terms for vacant restaurant spaces. Lastly, CCG reviewed information in its files from other

Real Estate Economics
Development Strategy
Economic Development

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projects, including its recent work for the Port with regard to the Pier 70 20th Street Historic Buildings.

Based on its review, as discussed in the following paragraphs, CCG concludes that the proposed lease between the Port and Golden Bear III is within market parameters for restaurant spaces in San Francisco, albeit with a base rent at the low end of the reasonable range. This basis of this conclusion considers the unique qualities of the space and location, as well as other factors in the proposed lease. Importantly, the lease's percentage rent clause allows for the Port to potentially realize revenues significantly above the base rent over the term of the lease. Furthermore, CCG believes that Golden Bear III is backed by an experienced operator who has achieved success in a similar situation.

Proposed Lease Discussion

The property at Pier 64 ½ comprises approximately 7,924 square feet of building area (on two floors), 2,888 square feet of deck space, and 3,044 square feet of land.[1] Pier 64 ½ is located at the southern fringe of Mission Bay, and the area is still in the early stages of transformation from an industrial area to a residential, educational, medical, and commercial neighborhood. The potential of this area is clearly evident from the actual and proposed investment by public and private entities – one can see that the area will one day be a vibrant neighborhood. However, currently, the area is still pioneering and lacks the substantial foot traffic on which retail businesses rely.

The proposed lease is for a 15 year term with one, five-year renewal option. Monthly base rent, which is on a triple net basis (i.e., tenant pays expenses), is as follows:

TABLE 1: PROPOSED LEASE TERMS

Area	Size (SF)	Rent	Rent per SF
Building	7,924	$13,767	$1.74
Deck	2,888	$1,444	$0.50
Land	3,044	$609	$0.20
			$1.14
Totals	**13,856**	**$15,820**	**$1.46** based on building and deck

Source: Conley Consulting Group, 2012.

The base rent is stipulated to increase annually at 3.0 percent. In addition, the lease includes a percentage rent provision of 7% of gross revenues above a natural breakpoint. The inclusion of the percentage rent clause is important as it allows the Port to participate in the upside associated with successful operations as well as with the evolution of the neighborhood.

[1] The quoted square footages reflect March 2012 measurements by Port staff. These measurements are significantly different than those indicated in the 1997 Kelly's lease; thus, it is inappropriate to draw comparisons between the current proposed lease and the prior lease.

Market Data Summary

The lease data reviewed by CCG included leases with a variety of locations and sizes throughout San Francisco. Excluding those with highly desirable Union Square and Financial District locations, the leases indicate base rent ranges from about $1.75 per square foot per month to about $3.50 per square foot per month, with expenses on a triple net basis. Lease terms were predominantly 10 to 15 years. Percentage rent clauses range from 5% to 7% of gross revenues over a natural breakpoint. The majority of the spaces leased were less than 6,000 square feet in size and offered closer-in locations.

Golden Bear III

The current tenant, and prospective tenant under the proposed new lease, is Golden Bear III. The principal behind this entity, Peter Osborne, operates three restaurants, MoMo's, Pete's Tavern, and Pedro's Cantina, all of which are located on King Street across from AT&T Park. Prior to construction of the ballpark, when MoMo's opened, this area was perceived to have potential, with the ball park (then under construction) and given its proximity to Mission Bay. Nevertheless at that time the location was considered pioneering. The success of MoMo's in fact helped to establish this area and in turn spawned the other two restaurants. It is anticipated that Mr. Osborne will apply his experience, and leverage the abilities of his management and culinary staff, to the new restaurant at Pier 64 ½. Part of Mr. Osborne's strategy includes a significant capital investment in the building. This investment includes $1,000,000 in hard costs, plus $200,000 in kitchen and bar improvements and $150,000 in furniture, fixtures and equipment. Added to these costs are soft costs (permits, architecture fees, contingency, legal/accounting, public relations, and pre-opening rent) and the lease purchase ($375,000). The total investment is budgeted at $2,500,000. Thus, the combination of an upgraded restaurant facility and an experienced management team provide the basis for potential future success.

Conclusion

In its review of the market data in comparison to the proposed lease with Golden Bear III, CCG finds that the rental rate in proposed lease at the low end of the range established by the market. However, the following factors require consideration when comparing the market data with this particular restaurant space:

- The location of Pier 64 ½ is still distant from much of the business and tourist activity in San Francisco. Although this area is evolving, the neighborhood currently does not have sufficient foot traffic to boost business revenues. This location factor is especially true when considering other Port leases for spaces ideally situated near Fisherman's Wharf or between the Ferry Building and AT&T Park.
- The rentable area (building and deck area) is large, particularly in conjunction with the location issues mentioned above.
- Golden Bear is proposing to take the space "as is" and spend $1,000,000 in hard costs, plus $200,000 in kitchen and bar improvements and $150,000 in furniture, fixtures and equipment. Soft costs (permits, architecture fees, contingency, legal/accounting, public

relations, and pre-opening rent), plus the lease purchase ($375,000), bring the total proposed investment in the building and land to $2,500,000.

- The lease calls for annual minimum rent increases of 3.0% per year, which is higher than that specified in some of the Port and other market leases reviewed by CCG.

Other factors of the lease, such as the 15-year term, triple net expense structure, and percentage rent provision, are in line with typical market lease terms. Furthermore, Golden Bear III has the experience needed to maximize the potential for successful restaurant operations at the site, particularly with regard to its evolving location.

The contents of this memorandum are subject to the following Caveats and Limitations.

Caveats and Limitations

Conley Consulting Group, (CCG) has made extensive efforts to confirm the accuracy and timeliness of the information contained in this document. Such information was compiled from a variety of sources deemed to be reliable, including state and local government, planning agencies, real estate brokers, and other third parties. Although CCG believes all information in this document is correct, it does not guarantee the accuracy of such and assumes no responsibility for inaccuracies in the information provided by third parties. Further, no guarantee is made as to the possible effect on development of current or future federal, state, or local legislation including environmental or ecological matters.

The accompanying projections and analyses are based on estimates and assumptions that were developed using currently available economic data, project specific data and other relevant information. It is the nature of forecasting, however, that some assumptions may not materialize and unanticipated events and circumstances may occur. Such changes are likely to be material to the projections and conclusions herein and, if they occur, require review or revision of this document.

1. The analysis assumes that both the local nor national economy will continue to have a slow, but shallow recovery. If an unforeseen change occurs in the economy, the conclusions contained herein may no longer be valid.

PORT OF SAN FRANCISCO

MEMORANDUM

March 3, 2011

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Ann Lazarus, Vice President
Hon. Francis X. Crowley
Hon. Leslie Katz

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of the Port of San Francisco Retail Leasing Policy

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

Background

At its September 28, 2010 meeting, Port staff delivered an informational presentation to the Port Commission describing the Port's current Policy for Leasing of Retail Business Sites ("Current Retail Leasing Policy"). The current policy, adopted in 1993, is attached as Exhibit A.

Prompted by recommendations offered by the Board of Supervisors Budget Analyst Harvey Rose, Port staff undertook a review of the Current Retail Leasing Policy and recommends a number of changes to the policy as shown in Exhibit B ("Proposed Retail Leasing Policy").

At its September 28, 2010 meeting, the Port Commission encouraged Port staff to review the proposed policy with the Fisherman's Wharf Advisory Group ("FWWAG"). That meeting was scheduled January 18, 2011 at Scoma's. Port staff presented the Proposed Retail Leasing Policy and received no substantive input to the policy. One member of the public queried about the level of outreach Port staff have undertaken regarding the Proposed Retail Leasing Policy and Port staff described the process of hearing an informational item at the Port Commission, followed by a presentation at FWWAG, followed by a proposed Port Commission action item.

This report summarizes the Proposed Retail Leasing Policy.

This Print Covers Calendar Item No. 9B

2010 Proposed Retail Leasing Policy

Scope of Retail Leasing Policy: The proposed policy applies to both maritime and non-maritime retail tenancies.

Competitive Solicitation: Port leases that are subject to approval by the San Francisco Board of Supervisors are subject to the competitive bidding policy provided in San Francisco Administrative Code Section 2.6-1, which generally requires an award of the subject lease through competitive bidding, "except where the Board of Supervisors finds that the bidding procedures or insurance requirements are impractical or impossible."

When conducting a competitive solicitation, Port staff will establish criteria for qualified responses to the competitive solicitation; provide public notice of the opportunity; invite local businesses to participate; hold a pre-submittal conference; evaluate responses based on published criteria; and present each lease with a successful respondent to the Port Commission and the Board of Supervisors (if required) for approval.

Non-Retail Tenants Seeking to Become Retail Tenants: Port staff will entertain proposals by existing non-retail tenants to become retail tenants only when the proposed use is consistent with the Port's Waterfront Land Use Plan and the Port Commission first approves a resolution authorizing Port staff to enter into a sole source negotiation for a retail use.

Existing Retail Tenants – Renewal Prerequisites: Port staff will evaluate renewals and extension requests on a case-by-case basis based on proposed improvements, capital costs, the Port's future plans for the site, and tenant history. Tenants must be in compliance with the Port's **Tenant in Good Standing Policy** to be considered for a new or extended lease. Changes in or intensification of use must be consistent with Port, San Francisco Bay Conservation and Development Commission and other regulatory applicable limitations.

Port staff may negotiate with an existing retail tenant under the following circumstances:

1. For a short term lease extension, not to exceed 3-5 years, during any period when the U.S. economy is in a recession or San Francisco Bay Area is experiencing a commercial real estate downturn. Lease extensions will adjust base and percentage rents to then-current market-rates as adopted by the Port Commission.

2. Where the tenant proposes to make capital improvements, a lease extension or renewal may have a term of the greater of 10 years or the time required to amortize planned improvements. In exercising this extension option, the Port Commission will make a finding that the proposed capital improvements to Port property serve a public purpose.

3. If a tenant fails to meet the Port's criteria for a direct negotiation exception, a lease extension or renewal may have a term of up to 5 years without any

additional extension option, if the Port has conducted a Request for Interest and received no expressions of interest.

In exercising each of these renewal or extension options, the Port Commission will make a finding that it is impractical to bid the subject lease, consistent with the provisions of S.F. Administrative Code Section 2.6-1.

Direct Negotiation Exception: Port staff may not begin lease negotiations with an existing tenant until the Port Commission has authorized sole source negotiations with that tenant. Before presenting the Port Commission with a direct negotiation request, Port staff will determine that the tenant is in good standing, evaluate whether the tenant is the most suitable economic tenant, and receive and review a business plan and the Tenant's historic audited financial statements and/or tax returns.

The Port will not enter into direct negotiations with an existing tenant that has paid below average rent per square foot to the Port (base rent and percentage rent) in the prior three (3) year period compared to retail tenants at similar locations on Port property.

Capital Improvement Requirements for Direct Negotiations: The Tenant must make a substantial capital investment approved by the Port, subject to the following:

- Improvements may include substructure improvements, improvements to the core and shell of the lease premises, Americans with Disabilities Act access to the facilities, upgrades to utilities serving the premises or improvements to surrounding Port property;

- The Tenant will quantify the cost of the proposed capital improvement as a percentage of leasehold value;

- The proposed capital improvement must be sufficient to allow Port staff to make a finding that the improvement serves a public purpose; and

- The Tenant must demonstrate the financial capacity to pay for the proposed capital improvement and demonstrate that such improvement can be depreciated.

The Tenant will not qualify for rent credits for proposed capital improvements that are the basis for direct negotiations. Port staff will evaluate facility conditions and may propose additional investments that would justify a new lease with the existing tenant.

Lease Requirements: The renewed or extended lease will be subject to certain lease provisions, including Port Commission-approved boilerplate lease provisions, detailed in Attachment B. The Tenant will pay base and percentage rent that is market rent for comparable uses and locations on gross retail income, retail sales and concession revenues, including subtenant rents and sales.

Conclusion

Port staff recommends approval of the attached resolution approving the Proposed Retail Leasing Policy.

Port staff recommends submitting the policy for consideration at a hearing of the San Francisco Board of Supervisors.

Prepared by:	Brad Benson Special Projects Manager
Prepared for:	Monique Moyer Executive Director

Exhibit A
1993 Policy for Leasing of Retail Business Sites, adopted by Resolution 93-52

Exhibit B
Proposed 2011 Retail Leasing Policy

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-15

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and

WHEREAS, Port leases that are subject to approval by the San Francisco Board of Supervisors are subject to the competitive bidding policy provided in San Francisco Administrative Code Section 2.6-1, which generally requires an award of the subject lease through competitive bidding, "except where the Board of Supervisors finds that the bidding procedures or insurance requirements are impractical or impossible;" now, therefore, be it

RESOLVED, That the Port Commission hereby repeals Resolution 93-52; and be it further

RESOLVED, That the Port Commission hereby adopts the 2011 Port of San Francisco Retail Leasing Policy attached hereto as Exhibit B and authorizes Port staff to negotiate new retail agreements or amendments to existing retail agreements under the circumstances described in the new Policy; and be it further

RESOLVED, That the Port Commission hereby authorizes Port staff to submit the policy for consideration at a hearing of the San Francisco Board of Supervisors.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 8, 2011.

Secretary

CI AND COUNTY OF SAN FRANCI)

SAN FRANCISCO PORT COMMISSION

AGENDA SUMMARY SHEET

SUBJECT: Leasing Policy for Retail Sites

Meeting Date: 4/28/93
Agenda Item No: 5D
Res. No.: 93-52

SUBMITTED BY: Dorothy Schimke, Manager
Leasing & Commercial Property Management

AGENDA CLASSIFICATION

____Executive Director's Report
____Finance & Administraion
_x_Tenant Services
____Cargo Services
____Engineering & Maintenance
____Planning & Research
____Legal
____Other

BACKGROUND

The Port of San Francisco is responsible for management of a diverse waterfront. While the primary focus of the Port is to foster the growth of water related industries, a wide spectrum of other uses have developed through time and become an integral part of the Port. Due to this diversity, the San Francisco waterfront now offers the populus of the San Francisco Bay Area the opportunity for development of retail, commercial and industrial businesses, recreational activities, public access and tourism.

Retail businesses of the Port include such operations as restaurants, galleries, ship chandleries, souvenir shops and excursion vessel operations. Many restaurants coexist along the

(To Be Continued)

RECOMMENDATION: Adopt the attached resolution approving the proposed policy for leasing of retail business sites.

EXECUTIVE DIRECTOR'S RECOMMENDATION	COMMISSION ACTION REQUIRED	COMM. ACTION TAKEN
NB for NB	___Motion ___Resolution ___Ordinance ___Information Only	Date_____ Approved_____ Disapproved____ _____ SECRETARY: _____

waterfront serving the public, tourists and workforce of the City. They vary from the quick and economical hamburger stands to delicatessens to lavish seafood restaurants. All represent a choice of lifesyle to those who frequent them and a livelihood to those who operate them.

Such tenancies generate cash flows for the Port through percentage rents which are essential for balancing the operating budget and funding capital improvements which support the Ports maritime mission. Such capital improvements include:

* cargo facility development
* modernization of the deteriorating infrastructure
* development of public access amenities which encourage the public to visit and use the waterfront.

Several current tenants operate businesses on Port property under a month to month lease whose fixed term has expired. Others are on a month to month holdover of a lease whose fixed term has expired. Still others operate under an existing fixed term lease scheduled to terminate in the near future. Many of these tenants have approached the Port to negotiate a new fixed term lease which would allow them to finance capital improvements needed to expand or improve their businesses.
Lacking an adequate lease term inhibits their ability to develop long term business plans and to obtain financing which is required to implement such plans for growth and remain competitive. A direct result is a constriction of the tenant's ability to increase their gross sales and consequently, the Port's revenue stream generated from percentage rents.

Although the Port would like to work with existing tenants to improve Port property and business, this interest must be balanced against the Port's affirmative responsibility to afford an opportunity for a waterfront business to all, through competitive bidding and community outreach. While affirmative action is highly desirable, it must be recognized that making available an existing business location through the bid process has the potential to interrupt an ongoing concern and threaten a small business and create vacancy -- all of which will interrupt an existing revenue stream.

In order to address these issues in an equitable fashion, Port staff is proposing a new policy to be known as the Policy for Leasing of Retail Business Sites. A copy of this policy is attached for review. This policy offers the Port a mechanism for balancing the potential and the needs of existing tenancies and new tenancies while safeguarding stability in its revenue stream. The policy is based on criteria upon which the Port could determine in what instances it should negotiate with one party (a direct negotiation exception) rather than utilizing the bid process.

The proposed retail leasing policy begins with a reaffirmation of the Port's commitment to the general policy of equal opportunity through outreach and competitive bidding. The direct negotiation exception of the retail leasing policy would be applicable in instances where an existing tenant is committed to making a large capital investment in its business and it has approached the Port to negotiate a long term lease. The policy recognizes that in order to gain financing for such investments, a lease term of sufficient length is required and therefore, the term would be justified by the size of the investment. To qualify for direct negotiation, the tenant must be:

1. A tenant in good standing.
2. A tenant committed to making a significant investment supported by a sound business plan.
3. A tenancy in the best economic interest of the Port.
4. A tenant with a good record of affirmative action and nondiscrimination and committed to future compliance.

Integral to the definition of a "tenant in good standing" is whether nor not the tenant is in compliance with affirmative action guidelines. The tenant should have a good record regarding nondiscrimination and affirmative action in employment, purchasing and contracting, including as a minimum standard, compliance with existing City and State laws and policies regarding employment. In addition, the tenant must commit to a future affirmative action plan including goals, outreach efforts, reporting and penalties if the tenant fails to comply with the plan.

Finally, several other relevant considerations should be taken into account such as compatibility with Port planning efforts, years of service to the community and communities ties.

If the tenant meets all these criteria, before the staff may enter into direct negotiations with the tenant the Commission must make a finding that the benefits of direct negotiations override the benefits of competitive bidding.

The Leasing Policy for Retail Business Sites also provides a mechanism for analyzing those long time tenants who wish a fixed term lease but are not prepared to commit to major investments in their business at this time. Under the proposed policy, these tenants would be permitted a one-time opportunity to negotiate a three year lease if they met the criteria for "tenants in good standing" and affirmative action. The criteria regarding significant new investment in the property would not be applied to these tenants at this time. This opportunity would be offered for one year only, after which time all the criteria, including the investment criteria, would apply. This mechanism is appropriate in that it allows a short term lease providing sufficient time for the tenant to develop a business plan and strategy for capital investment. It also encourages all Port tenants to expand their business and improve Port property and revenues.

ts/directme.wp5/jaf

PORT OF SAN FRANCISCO

POLICY FOR LEASING OF RETAIL BUSINESS SITES
APRIL 1993

I. GENERAL POLICY

It is the general policy of the Port to foster and encourage full and equitable opportunties for leasing of retail sites to all businesses that wish to develop a waterfront business along the San Francisco waterfront. This is accomplished in accordance with the City's and Port's policy to competitively bid retail sites pursuant to the Administrative Code Section 23.24. This process is based on a good faith effort to reach out to the whole community including disadvantaged local, minority and women owned businesses through the following steps:

A. Creation of clear bid specifications.
B. Public Notice through Port action to proceed with the bid.
C. Advertising through the purchaser's newsletter, minority and womens newspapers.
D. Outreach to minority, women and disadvantaged business community groups.
E. Pre-bid conference.
F. Bid Opening conference
G. Evaluation of bids based upon pre-determined minimum qualifications as set forth in the bid package.
H. Approval by Commission of apparent successful bidder.

II. DIRECT NEGOTIATION EXCEPTION

An exception to the general policy permits the Port to negotiate an extension of an existing tenancy rather than competitively bid the lease as set forth in the Administrative Code when:

A. The existing tenant is in good standing.
B. The tenant is committed to making significant capital investment in its leasehold which will benefit the Port.
C. The benefits of direct negotiation outweigh the benefits of competitive bidding.

III. APPLICATION OF DIRECT NEGOTIATION POLICY

The direct negotiation policy may be applied when:

A. A tenant in good standing approachs the Port with a sound business plan requiring a capital investment in its leasehold.
B. The tenant has a month to month lease or a lease term insufficient to support its business plan.
C. The tenant is the best economic tenant available.

IV. IMPLEMENTATION

When approached by a tenant with a request for direct negotiation, the Port will:

A. Determine if the tenant is in good standing. A tenant in good standing is defined as a tenant who:

1. Complies with the use provisions and does not allow any unpermitted uses.
2. Maintains the leasehold in good and sanitary condition.
3. Has a good payment history and a current account.
4. Complies with all insurance requirements.
5. Keeps accurate records and cooperates with the audit process.
6. Complies with the regulatory permit process.
7. Provides a dependable level of goods and services.
8. Utilizes good business practices.
9. Meets other relevant factors specific to the business.
10. Has provided a welcoming atmosphere to customers of diverse backround and ethnicity.

B. Evaluate the tenant to determine if it is the best economic tenant based on:

1. Sales and revenues to Port.
2. Survey of rent comparables.
3. Stable growth pattern.

C. Evaluate the business plan including review of:

1. Cost estimates of capital improvements.
2. Revenue projections.
3. Marketing plan.

D. <u>Affirmative Action</u>

1. Review of the tenant's existing practices regarding nondiscrimination in public accommodation and affirmative action in employment, purchasing and contracting, including as a minimum standard, compliance with existing City and State laws and policies regarding employment.
2. Commitment by the tenant to an affirmative action plan which will become a material condition of the new lease and which includes the following elements:
   a) Affirmative action goals in hiring, purchasing and contracting including capital improvements;
   b) Requirement for affirmative action outreach by tenant;
   c) Requirement for tenant to document its good faith efforts to comply;
   d) Ability to assess penalties for noncompliance.

E. Staff, which will include the EEO Programs Specialist, shall report the results of the evaluation of each of the above criteria in Sections A-D to the Commission. In order for staff to enter into direct negotiation, the Commission must make a finding that the benefits of direct negotiation outweigh the benefits of competitive bidding.

V. TRANSITION PERIOD

There will be a one-time opportunity for existing tenants to convert a license or a month to month lease to a short term lease without immediate capital investment.

A. To qualify for this opportunity the tenant must*:
   1. Be a tenant in good standing as defined in section IV A hereof.
   2. Be in compliance with affirmative action criteria as outlined in section IV D hereof.

B. A lease negotiated pursuant to this Section V will be limited to a three year term.

C. The tenant must enter into a lease within one year of the adoption of this leasing policy by the Port.

* The qualifications for this one-time opportunity to negotiate a short term lease <u>do not</u> include the requirements set forth in Section IVB, IVC, or IVE.

CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO PORT COMMISSION
RESOLUTION NO. 93-52

WHEREAS, The general policy of the San Francisco Port Commission is to foster and encourage equitable opportunities for leasing of retail sites to disadvantaged businesses through the competitive bid process in accordance with Chapter 12D of the Administrative Code and this general policy must be balanced with the need to negoitate directly with existing retail tenancies in certain instances; and

WHEREAS, the Port Commission has developed a Policy for Leasing of Retail Business Sites as set forth in the attached policy statement;

NOW THEREFORE BE IT RESOLVED, that the Commission hereby approves and adopts the Policy for Leasing of Retail Business Sites.

I HEREBY CERTIFY that the foregoing resolution was approved by the San Francisco Port Commission at its meeting of April 28, 1993.

Elizabeth Day 1993
Secretary

Port Commission

PORT OF SAN FRANCISCO
RETAIL LEASING POLICY
ADMINISTRATIVE GUIDELINES

I. **Tenant in Good Standing is defined as a tenant who:**

A. Complies with the use provisions and does not allow any unpermitted uses.

Example: Tenant leases property from Port. The use clause of the lease provides for the sale of fine art. The tenant, in addition to fine art, begins selling posters, post cards and souvenirs without the written consent of the Port. This tenant would not be in compliance with the use provisions of the lease

B. Maintains the leasehold in good and sanitary condition. A tenant in compliance would be one who:

1. Keeps the premises clean and litter free.
2. Makes neccesary repairs promptly to maintain curb appeal and a presentable business atmosphere.
3. Complies with health and safety requirements.
4. Practices preventative maintenance.
5. Reports maintenance which is Port's responsibility to Port promptly.

C. Has a good payment history and a current account.

1. A tenant with a good payment history is one who consistently pays all rents before they become delinquent in accordance with the Port's Collection Policy (see attached) and does not tender checks which will be returned for non-sufficient funds.
2. A tenant with a current account is a tenant who has no delinquent invoices.

D. Complies with all insurance requirements. Compliance requires maintenance of:

1. A current certificate of insurance verifying that all coverages are in place with no less than the minimum coverage set forth in the lease.
2. A certificate with all required endorsements.
3. Any additional insurance coverage as determined by Port based on industry standards for region and use.

E. Keeps accurate records and cooperates with the audit process. Proper reporting procedures include:

1. Compliance with reporting timelines as set forth in the Port's Collection Policy.
2. Maintenance of records according to Generally

Accepted Accounting Practices.

3. Cooperation with the City auditors.
4. Making records available to City auditors as requested.
5. Comply with any conditions recommended pursuant to the City's audit process.

F. Complies with regulatory permit process. A tenant in compliance will:

1. Attain any required permits including but not limited to:
   a. Port Building Permit
   b. CEQA Permit
   c. BCDC Permit
   d. Conditional Use Permit
   e. Fire Department Permits
   f. Health Department Permit
2. Adhere to the conditions of the required permits.

G. Provides a dependable level of goods and services. A tenant doing so maintains:

1. Consistent products and services.
2. Consistent hours of operation.
3. Proper inventories.
4. Sufficient and well trained staffing.

H. Utilizes good business practices. A tenant doing so:

1. Maintains current business accounts/pays vendors promptly.
2. Provides a safe environment for customers.
3. Practices ethical employer/employee relations.
4. Utilizes ethical pricing practices.
5. Is responsive to market trends.

I. Meets other relevent factors specific to business.

Example: Tenant leases property from Port for the purpose of operating excursion vessels from the North Ferry Terminal. The lease provides for the loading of stores onto the vessel from the terminal under certain conditions, i.e., during set hours, within a set time limit, and using specified equipment which will not overload the barge. Tenant would be required to comply with the conditions set forth in the lease.

J. Provides a welcoming atmosphere to customers of diverse backround and ethnicity. Such a tenant is one who:

1. Has a record of providing equal services to all customers.
2. Has not exhibited a pattern of discrimination.

MARCH 8, 2011

EXHIBIT B
PORT OF SAN FRANCISCO
RETAIL LEASING POLICY

Background

The Port of San Francisco ("Port") is a public enterprise committed to promoting a balance of maritime, recreational, industrial, transportation, public access and commercial activities on a self-supporting basis through appropriate management and development of the waterfront for the benefit of the public.

General Policy

The Port's Retail Leasing Policy provides entrepreneurs that wish to develop and operate a business along the San Francisco waterfront an opportunity to bid on retail lease opportunities, as described in this policy. This policy also permits the Port and its successful, existing retail operators to enter into new leases under specified conditions. Retail opportunities will be available only at locations deemed appropriate for retail activity in accordance with the Port's Waterfront Land Use Plan, as it may be amended from time to time.

Businesses on Port property include uses such as restaurants, galleries, ship chandleries, souvenir shops, food and beverage sales, clothing and apparel shops, on-going special event venues and visitor-serving excursion operators. The Port enjoys a diverse mix of retail uses that serve the public and are consistent with the Burton Act and the public trust for navigation, commerce and fisheries.

Lease revenues are essential for funding the Port's operating and capital budget, which support the Port's public trust maritime mission. The Port's retail tenancies also provide business opportunities for local merchants and employment opportunities for San Francisco residents.

Scope of Retail Leasing Policy

This policy applies to both maritime and non-maritime retail tenancies. This policy does not apply to retail tenancies in mixed-use developments on Port properties that have been master- or ground-leased by the Port Commission.

Competitive Solicitation

Port leases that are subject to approval by the San Francisco Board of Supervisors are subject to the competitive bidding policy provided in San Francisco Administrative Code Section 2.6-1:

SEC. 2.6-1. - POLICY RELATIVE TO APPROVAL OF LEASE AND CONCESSION AGREEMENTS. Whenever in accordance with the provisions of the Charter, any officer, board or commission of the City and County submits a proposed lease or agreement for concession privileges to be operated in or upon any property or facility of the City and County to the Board of Supervisors for its approval or disapproval, except where the Board of Supervisors finds that the bidding procedures or insurance requirements are impractical or impossible, it shall be the policy of said board (1) to approve only such proposals as have been awarded to the highest responsible bidder in accordance with competitive bidding procedures, and (2) to approve only

such leases as require the lessee to provide appropriate insurance naming the City as an additional insured in a form and amount approved by the Office of Risk Management. When conducting a competitive solicitation, Port staff will:

1. Describe a range of desired uses and establish criteria for qualified responses to the competitive solicitation;

2. Provide public notice of the competitive solicitation through the Port's website, the City's designated local newspaper for notices, and community-based media;

3. Invite local business enterprises to participate, in coordination with the Human Rights Commission and Office of Contract Management;

4. Hold a pre-submittal conference;

5. Evaluate responses and award retail leasing opportunities based on criteria specified in the solicitation package; and

6. Present each lease with a successful respondent to the Port Commission and the Board of Supervisors (if required) for approval.

Non-Retail Tenants on Port Property Seeking to Become Retail Tenants

Occasionally, existing Port non-retail tenants express an interest in opening retail businesses within or adjacent to their premises. The Port usually enters into non-retail leases without competitive bidding, based on the Port Commission's approved parameter rental rate policy and a finding, upon public hearing of the Port Commission, that bidding office, warehouse, open land or other (non-retail) leases is impractical.

While the Port understands that many of its tenants may have the business acumen and financial wherewithal to open retail businesses, commencing such a tenancy without bidding potentially conflicts with City and Port policy. Port staff will entertain such proposals only when the proposed use is consistent with the Port's Waterfront Land Use Plan and the Port Commission first approves a resolution authorizing Port staff to enter into a sole source negotiation for a retail use.

Existing Retail Tenants – Renewal Prerequisites

Existing retail tenants often request a lease renewal when a lease is expiring or the tenant desires to make capital improvements and amortize its investment over a period longer than the existing lease term. Port staff will evaluate renewals and extension requests on a case-by-case basis based on proposed improvements, capital costs, the Port's future plans for the site, and tenant history. Tenants must be in compliance with the Port's **Tenant in Good Standing Policy** to be eligible for consideration for a new or extended lease.

Changes in or intensification of use must be consistent with the Port's Waterfront Land Use Plan, San Francisco Bay Conservation and Development Commission (BCDC) requirements and other regulatory limitations applicable to the site, including compliance with the California Environmental Quality Act. The Port, in its sole discretion, may determine that proposed changes in or alterations of use would trigger the need for a competitive solicitation.

Port staff may negotiate with an existing retail tenant in good standing under the following circumstances:

1. For a short term lease extension, not to exceed 3-5 years, during any period when the National Bureau of Economic Research has determined that the U.S. economy is in a recession or other data support a finding by the Port Commission that the San Francisco Bay Area is experiencing a commercial real estate downturn. Under these conditions, the renewals and extensions will adjust base and percentage rents to then-current market-rates as adopted by the Port Commission.

2. Where the tenant proposes to make capital improvements, a lease extension or renewal may have a term of the greater of 10 years or the time required to amortize planned improvements (using the term of the tenant's financing or, if not financed, straight line depreciation for qualified leasehold improvement property (currently 15 years) if the tenant meets the Port's criteria for a direct negotiation exception (described below). In exercising this extension option, the Port Commission will make a finding at a public hearing that the proposed capital improvements to Port property serve a public purpose.

3. If a tenant fails to meet the Port's criteria for a direct negotiation exception, a lease extension or renewal may have a term of up to 5 years without any additional extension option, if the Port has conducted a Request for Interest and received no expressions of interest from qualified parties.

In exercising each of these renewal or extension options, the Port Commission will make a finding that it is impractical to bid the subject lease, consistent with the provisions of S.F. Administrative Code Section 2.6-1.

Direct Negotiation Exception

Before entertaining a direct negotiation request for a lease renewal or extension, Port staff will:

1. Determine if the tenant is in compliance with the **Tenant In Good Standing Policy;**

2. Evaluate whether the tenant is the most suitable economic tenant based on reasonably projected sales and revenues to the Port, using comparable retail rents on a square foot basis; and

3. Request a written business plan and evaluate the plan to determine cost and value of capital improvements to Port property, viability of revenue projections including historical audited financial statements and/or the last 3 years' tax returns and use of property.

The Port will not enter into direct negotiations with an existing tenant that has paid average rent per square foot to the Port (base rent and percentage rent) in the three (3) year period immediately preceding the request that is less than the average of rents per square foot for like retail tenants at similar locations on Port property (e.g., with a tenant that generates below-average rents).

Capital Improvement Requirements for Direct Negotiations

The Tenant must make a substantial capital investment approved by the Port, according to the following conditions:

- Improvements may include substructure improvements, improvements to the core and shell of the lease premises, Americans with Disabilities Act access to the facilities, upgrades to utilities serving the premises or improvements to surrounding Port property;

- The Tenant will quantify the cost of the proposed capital improvement as a percentage of leasehold value, with actual expenditures subject to verification pursuant to lease terms;

- The proposed capital improvement must be sufficient to allow Port staff to make a finding that the improvement serves a public purpose; and

- The Tenant must demonstrate the financial capacity to pay for the proposed capital improvement and demonstrate that such improvement can be depreciated within the proposed lease term.

The Tenant will not qualify for rent credits for proposed capital improvements that serve as a basis for direct negotiations.

Port staff will evaluate facility conditions and may propose additional facility investments that would justify a new lease with the existing tenant.

Lease Requirements

1. The Tenant will pay base and percentage rent that is market rent for comparable uses and locations on gross retail income, retail sales and concession revenues, including subtenant rents and sales.

2. The Port reserves the right to approve all sub-tenancies, and all sublease revenues will be separately reported to the Port in a customary and pre-approved manner.

3. Base rent will be based on available industry comparables, site history, best site use and percentage rent history. Base rent will be adjusted annually (either as a fixed percentage increase or as a CPI percentage increase) with no provision for rent reduction or rebate.

4. The Tenant will disclose all gross revenues and related expenses and grant the Port the right to conduct periodic audits and obtain related financial reports.

5. Depending on the type of proposed capital improvements, the new term of the lease may include a construction period, with a deadline to complete required tenant improvements.

6. The Tenant will provide a tenant guarantee and a contractor's surety bond or other financial assurance approved by the Port in its sole discretion in an amount approved by the City's Risk Manager. If the Tenant fails to obtain the approval, permits or financing

of the proposed improvements in the agreed upon time frame, or fails to complete the project in any way, the Tenant may be subject to liquidated damages, lease default or other remedies as provided by the lease.

Sale of Business/Lease, Transfer or Assignment

Subject leases will include provisions that are part of the Port Commission's approved boilerplate lease, as it may be amended from time to time, including but not limited to:

1. The Port shall participate in a portion of the proceeds from the sale, transfer, assignment, restructuring, and refinancing of leaseholds.

2. The proposed transferee shall provide audited financial statements and the Port shall have the right to request a written business plan supported by market analysis.

3. The Port shall approve all ownership and capital changes at its reasonable discretion. The proposed transferee must demonstrate expertise in operating the business and maintaining the asset.

4. The proposed transferee or assignee shall jointly assume any structural, substructure repair/maintenance or seismic upgrade responsibilities that are the obligation of the seller, transferor or assignor. Upon request for the Port's consent to the transfer, sale or assignment of its lease, the Tenant shall provide a written report prepared by a Port-approved engineer detailing the current condition of the physical assets, including any deferred repairs or maintenance along with a remedial plan for repairs as a condition to the Port's consent.

5. All maintenance and/or construction work required in the original lease must be completed, with all permits closed out, prior to the request for the Port's consent, or the transfer agreement will address the obligations of the transferee to complete such work.

ORIGINAL

PORT OF SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

LEASE NO. L-15108

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AND

GOLDEN BEAR RESTAURANT COMPANY III
DBA MISSION ROCK RESORT
A CALIFORNIA LIMITED LIABILITY COMPANY

PIER 64 1/2

MONIQUE MOYER
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

DOREEN WOO HO, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
FRANCIS X. CROWLEY, COMMISSIONER
LESLIE KATZ, COMMISSIONER
ANN LAZARUS, COMMISSIONER

** Complete copy of document is located in

File No. 120279

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File No. 120279

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: Golden Bear Restaurant Company III, a Limited Liability Company, dba Mission Rock Resort	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. ***Use additional pages as necessary.*** 1) None 2) None 3) Peter Osborne, Chief Managing Partner 4) None 5) None	
Contractor address: 817 Terry A. Francois Boulevard, San Francisco, CA	
Date that contract was approved: *(By the SF Board of Supervisors)* Upon lease approval by the Port Commission and then the Board of Supervisors and final execution by Port	Amount of contract: Total: $$15,820.00 (15 years plus a five year option and 3% annual increase) or 7% of gross sales, whichever is greater.
Describe the nature of the contract that was approved: Lease of Port Real Property located at 817 Terry A. Francois Boulevard	
Comments:	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer) — Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) — Date Signed