

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made by and between the City and County of San Francisco, operating by and through the San Francisco Port Commission (“**Port**”) on the one hand, and Castagnola, Inc. of San Francisco, a California corporation; Lolman Enterprises, Inc., a California corporation dba Castagnola’s Restaurant (collectively with Castagnola, Inc. of San Francisco, “**Castagnola**”); Kathrine Higdon, individually and on behalf of her heirs, domestic partners, executors, administrators, and assigns, if any (“**Higdon**”); and Cynthia Foxworth, individually and on behalf of her heirs, domestic partners, executors, administrators, and assigns, if any (“**Foxworth**”), on the other hand (together, Castagnola, Higdon, and Foxworth are referred to as the “**Defendants**”). Port, Castagnola, Higdon, or Foxworth may be referred to in this Agreement individually as a “**Party**,” or collectively they may all be referred to as the “**Parties**.” This Agreement shall become binding and effective as of the latest date by which it has been signed by all Parties below (the “**Effective Date**”).

RECITALS

A. Port and Castagnola’s predecessor in interest entered Lease No. L-7493 dated May 1, 1970, in which the predecessor in interest agreed to lease from the Port, and the Port agreed to lease to the predecessor in interest certain premises that are referred to therein as 286 Jefferson Street, in San Francisco, California (as assigned, amended, and transferred, the “**Castagnola Lease**”). The Parties dispute whether Higdon and Foxworth are also heirs or successors of a predecessor in interest to the Castagnola Lease. The premises that the Port leased pursuant to the Castagnola Lease is more specifically described and depicted in the Castagnola Lease (“**Premises**”). The Castagnola Lease has been assigned and amended from time to time and expires on April 30, 2036. A true and correct copy of the Castagnola Lease was filed with the unlawful detainer action that gave rise to this Agreement under docket number CUD-24-674725 in the Superior Court of California County of San Francisco Division, the terms of which are incorporated herein by reference.

B. Port and Castagnola entered Lease No. L-13524 dated August 1, 2003, in which Castagnola agreed to lease from the Port, and the Port agreed to lease to Castagnola certain storage premises with the street address on Al Scoma Way, in San Francisco, California (the “**Storage Lease**”). The premises that the Port leased to Castagnola pursuant to the Storage Lease are more specifically described and depicted in the Storage Lease (the “**Storage Premises**”). The Storage Lease was terminated effective June 30, 2021 with an outstanding balance owed on the Storage Premises totaling \$50,982.69.

C. Port and Castagnola are parties to an Application for San Francisco Port Commission Parking Permit (the “**Parking Permit**”) dated February 15, 2007 in which Castagnola agreed to license from the Port, and the Port agreed to license to Castagnola certain parking spaces that are referred to therein. The Parking Permit was terminated effective June 30, 2021 with an outstanding balance owed under such Parking Permit of \$22,500.00.

D. The Castagnola Lease will, from time to time in this Agreement, be referred to as the “**Lease.**” The Lease, Storage Lease, and the Parking Permit may be referred to collectively as the “**Agreements.**”

E. Starting April 1, 2020, Castagnola fell behind in making rent payments to the Port in accordance with the terms of the Agreements. Though Castagnola has made some rent payments to the Port since April 2020 and may dispute the specific outstanding balances described in Recitals B and C, Castagnola remains in arrears in its obligations to pay rent and other fees under all the Agreements as of the Effective Date of this Agreement. The Parties dispute whether Higdon or Foxworth are also individually liable for any outstanding balance.

F. On May 22, 2023, Port filed a civil action seeking surrender of the Premises, all back rent under the Agreements, and compensation for failure to correct unsafe deferred maintenance (the “**Civil Action**”).

G. On April 3, 2024, Port filed an unlawful detainer case against Castagnola for the Castagnola Lease in the Superior Court of California, County of San Francisco (the “**Court**”), seeking to collect outstanding amounts owed to Port under the Castagnola Lease for the previous year and to obtain possession of, and evict Castagnola from, the Premises. The unlawful detainer case that Port filed with respect to the Castagnola Lease was assigned Case Number CUD-24-674725 (the “**UD Case**”).

H. Port delayed proceeding with certain conduct in the Civil Action and the UD Case for the outstanding amounts owed under the Agreements and Castagnola Lease, respectively, and possession of the premises while the Parties negotiated the terms of this Agreement.

I. On _____, by Resolution __-__, the San Francisco Port Commission approved the terms of this Agreement and authorized the Port Executive Director or the Executive Director’s designee to execute this Agreement.

J. The Parties agree that it is in their mutual interests to avoid the uncertainty and expense of continuing to litigate the UD Case and Civil Action to resolve the underlying disputes by reaching a settlement and compromise of the matters encompassed in this Agreement, without any admission of law or fact by either of them.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree to resolve all of their disputes on the terms and conditions that are set forth below.

AGREEMENT

1. **Total Outstanding Balance Due.** The Parties agree that the outstanding base rent, fees, late fees, and interest, and other charges owed by Castagnola to Port under the Agreements as of January 1, 2025 is as set forth in **Table 1**.

Table 1: Agreements Outstanding Balances

Agreement/Premises	Status	Explanation	Charges	Subtotal
L-7493 Restaurant	Active	Rent and Charges	1,049,462.84	1,049,462.84
		Fire Permit Fees	888.00	1,050,350.84
		NSF Charge	50.00	1,050,400.84
L-7493 Subtotal				1,050,400.84
L-13524 Storage	Terminated	Rent and Charges	50,982.69	1,101,383.53
Parking	Terminated	License Fees	22,500.00	1,123,883.53
Agreements Total				1,123,883.53

2. **Settlement Fee.** Castagnola will pay or cause to be paid to Port Three Hundred Thousand Dollars (\$300,000) in up to two payments: an “**Initial Payment**” of Two Hundred Thousand Dollars (\$200,000) prior to Port’s execution of this Agreement, and a “**Final Payment**” of One Hundred Thousand Dollars (\$100,000) on or before the day that is one hundred eighty (180) calendar days from Port’s execution of this Agreement. Together, the Initial Payment and Final Payment are referred to as the “**Settlement Fee.**” The Initial Payment and Final Payment shall each be paid in certified check or electronic funds transfer. The Settlement Fee will: (a) fully and finally satisfy any and all outstanding debt related to or otherwise associated with the Storage Lease and Parking Permit, (b) reduce the outstanding balance owed under the Castagnola Lease after replenishing the Security Deposit and addressing Fire Monitoring Equipment, all as described in **Table 2**, below, unless (c) the Fire Monitoring Equipment may be addressed for a lesser amount by mutual agreement of the Parties, in which case that line item shall be reduced accordingly.

3. **Castagnola to Replenish Security Deposit.** The Parties agree and acknowledge that prior to execution of this Agreement, Port applied the entirety of the security deposit under each of the Agreements for outstanding monies owed to Port. Accordingly, the payment of the Settlement Fee, includes replenishment of the Security Deposit under the Lease in the amount of \$51,482.30, which sum shall be held by Port in accordance with the terms and conditions of the Lease.

Table 2: Allocation of \$300,000 Settlement Fee and Outstanding Balance Calculation

	Explanation	Initial Balance	Settlement Fee	
			Applied	Remaining
Settlement Fee	Port Receives Payment		300,000.00	300,000.00
L-13524	Resolve Account	50,982.69	(50,982.69)	249,017.31
Parking License	Resolve Account	22,500.00	(22,500.00)	226,517.31
L-7493	Security Deposit	51,482.30	(51,482.30)	175,035.01
	Fire Monitoring Equipment	10,000.00	(10,000.00)	165,035.01
		1,050,400.84	(165,035.01)	0.00
L-7493 Outstanding Balance		\$885,365.83		

4. **Minimum Investment Obligation.** Notwithstanding prior disputes and in order to resolve their disputes, Castagnola agrees to invest or cause to be invested no less than Nine Hundred Thousand Dollars prior to the Reopening Deadline, as it may be extended pursuant to Section 5, below (the “**Minimum Investment**”). The Parties agree that documented expenses reasonably necessary to reopen the Premises to the public for restaurant operations shall count toward the Minimum Investment obligation, including but not limited to structural or sub-structural issues, furniture, fixtures, equipment, signage, and other infrastructure costs.

(a) Marketing costs, permitting fees, intellectual property and concept development costs (menus, branding, etc.), and legal fees shall not count toward the Minimum Investment.

(b) Castagnola shall complete or cause the completion of the following prior to the Reopening Deadline (as it may be extended), the reasonable costs for which shall count toward the Minimum Investment: (1) replace fender piles along the northeast corner and eastern edge of the structure with polyurea coated timber piles, sleeved with a thick HDPE pipe to mudline for abrasion resistance; (2) remove or replace the catwalk walkways associated with the fender piles located along the northeast corner and eastern edge of the structure; and (3) repair, replace, or remove the back staircase.

(c) On or before the Reopening Deadline (as it may be extended pursuant to Section 5, below), Castagnola must provide auditable evidence to Port’s reasonable satisfaction that the Minimum Investment has been made, including a general ledger, copies of cancelled checks, or other evidence Port requires in its sole discretion.

(d) In furtherance of the Minimum Investment obligation and restaurant reopening, Castagnola shall comply with the following deadlines:

- i. Castagnola shall submit all applicable construction documents and request applicable Port building permits within six (6) months after the date this Agreement has been fully executed by Port; and
- ii. Castagnola shall commence construction within one (1) month of issuance of applicable Port building permits; and

provided further, that upon written request by Castagnola, Port may, in its sole and absolute discretion, extend each or either aforementioned deadline for up to one (1) year.

(e) For the avoidance of doubt, Port acknowledges that Castagnola will require the assistance of others to perform work to comply with the Minimum Investment obligations, restaurant reopening, and ongoing operations, among other aspects of this Agreement, and hereby consents, in accordance with Section 10 of the Lease, to Castagnola directing the use of the Premises by other persons or entities, which use shall not constitute an assignment to, subletting of, or occupancy by such persons or entities.

5. **Restaurant Reopening.** Castagnola must reopen or cause the reopening of the Premises as a restaurant within three hundred sixty-five (365) calendar days after the date this Agreement has been fully executed by Port (the “**Reopening Deadline**”). Upon written request by Castagnola, Port may, in its sole and absolute discretion and subject to conditions described in this Agreement, extend the Reopening Deadline for up to one year from the initial Reopening Deadline date. For the avoidance of doubt, Castagnola must make the Minimum Investment in the Premises in addition to paying for any and all other costs required to reopen the Premises by the Reopening Deadline; if the Reopening Deadline is extended then the period to complete the Minimum Investment is also extended.

(a) **Monthly Rent Pending Reopening.** The Parties agree that the current monthly base rent is \$25,741.15, which amount is scheduled to increase on August 1, 2025. Port agrees that after payment of the Settlement Fee and prior to the Reopening Deadline, Port shall defer collection of Rent and, upon compliance with the Reopening Deadline and the Continuous Operations obligation described below, shall irrevocably waive collection of such deferred Rent. For the avoidance of doubt and assuming compliance with the Reopening Deadline and Continuous Operations obligation, Port will defer and waive Rent for twelve (12) months, which amount will be Three Hundred Eight Thousand Five Hundred Sixty Nine and 80/100 Dollars (\$308,569.80), plus any applicable increase in rent effective August 1, 2025. The Parties acknowledge that Rent deferral is independent from any potential extension of the Reopening Deadline by Port. The Parties agree that upon an extension of the Reopening Deadline, the Port may, in its sole and absolute discretion, discontinue deferral of and may, or may not, waive collection of Rent due on and after the first day of the month following the initial Reopening Deadline.

(b) **Reopening.** Restaurant reopening means Castagnola shall or shall cause, with all necessary regulatory permits and approvals, the restaurant to open to the public and operate seven (7) days per week for no less than four (4) hours per day, unless expressly permitted by Port. Operations may include take-out, outdoor, curbside, and/or indoor dining.

6. **Continuous Operations to Achieve Tenant in Good-Standing Status.** The Parties agree that subsequent to: payment of the Settlement Fee, compliance with the Minimum

Investment obligation, compliance with the restaurant Reopening Deadline, and if Defendants continue to:

- (a) operate the restaurant seven (7) days per week for no less than four (4) hours per day (unless otherwise expressly permitted by Port);
- (b) timely pay all rent due and owing after the Reopening Deadline (including base rent and percentage rent); and
- (c) otherwise comply with the terms and conditions of the Lease for six (6) continuous months after reopening the restaurant;

then on the first day of the seventh (7th) month Port shall: (y) deem Tenant to be a Port tenant in Good Standing, and (z) waive or otherwise consider satisfied any outstanding rent payments or obligations related to the Lease prior to the restaurant reopening (other than deferred maintenance, if any), including any claims related to such debt.

For the avoidance of doubt, once Tenant is deemed a Port tenant in Good Standing, then Tenant will be entitled to all rights related to transfer under the Lease; and provided further, that Tenant and Port agree that it is and shall be reasonable for Port to condition upon, and withhold its written consent to transfer, assign, or sublet the Lease (or any interest therein) unless, Tenant and/or its proposed transferee agree to address or otherwise resolve to Port's reasonable satisfaction any and all deferred maintenance identified by Port in accordance with Sections 7 and 21 of the Lease, which may include but is not limited to: (i) replacing pile wraps with a more robust pile encasement product for pile wraps with noted deficiencies, as identified in the Seawall Lot 302 Castagnola's Restaurant Substructure Rapid Structural Assessment dated December 11, 2023 (as it may be updated or revised); (ii) replacing stringers and other members that have significant termite or rot damage with pressure treated lumber; (iii) treating structure for termites to help prevent future damage and routinely monitor for additional termite activity.

7. **Stipulated Judgement and Personal Waivers.** As a condition of this Agreement Castagnola shall execute a Stipulation for Entry of Judgment Upon Condition ("**Stipulated Judgment**") as detailed in Section 9(c), below, and Higdon and Foxworth shall expressly disclaim and otherwise waive any and all right, title, and interest in the Lease, the Lease Premises, and any and all claims related thereto, including but not limited to any tax consequences in connection with such disclaimers and waivers ("**Personal Waivers**"). Port shall require fully executed and notarized quitclaim deeds from Higdon and Foxworth in a form to be approved by Port in its sole and absolute discretion to memorialize the Personal Waivers, which quitclaim deeds must be received prior to Port's execution of this Agreement. Port may further require, in its sole and absolute discretion, Defendants to record the quitclaim deeds in the official records of the City and County of San Francisco at Defendants' sole cost and expense within five (5) business days of Port's written request. Defendants acknowledge and agree that the Stipulated Judgement and Personal Waivers are each a material condition of this Agreement and that Port would not have agreed to this Agreement absent such terms.

8. **Stipulated Judgment and Settlement of the Civil Action and UD Case.** Within five (5) days of the Effective Date, the Parties shall file with the San Francisco Superior Court and

request such court's approval of the Stipulated Judgment attached as **Exhibit A**. In consideration for Castagnola's promises and covenants contained herein and the Superior Court's approval of the Stipulated Judgment and filing of the same, within five (5) business days of the San Francisco Superior Court's approval of the Stipulated Judgment and the filing of the same, the Port shall file a Conditional Notice of Settlement of the Entire Case ("**Notice of Settlement**"). The Notice of Settlement will indicate that the Port will move to voluntarily dismiss the Civil Action and UD Case within twelve (12) months of the Restaurant Reopening, provided that Castagnola has complied in full with all the terms set forth in this Agreement. If the Court does not approve the Stipulated Judgment or the filing thereof, then the Parties shall amend and refile the Stipulated Judgment with the Court within five (5) business days. Parties shall use good faith cooperative efforts to amend and refile the Stipulated Judgment with the Court, in a manner the Court will accept, within five (5) business days of the Court's disapproval. Except as set forth in Section 9, the Parties shall continue to amend and refile the Stipulated judgment at least four (4) times or until the Stipulated Judgment is accepted by the Court.

9. **Default.** If Castagnola defaults on one or more of its obligations under the terms of this Agreement or the Lease, for example, by failing to pay the Final Payment of the Settlement Fee, failing to make the Minimum Investment, or failing to open the restaurant by the Reopening Deadline (as it may be extended pursuant to Section 5, above), the Parties agree that Castagnola shall be entitled to a written notice of default from the Port by email to the following individuals:

Name	Email
Kathrine Higdon	Yobrooks@comcast.net
Todd A. Murray	tmurray@tamurraylaw.com

With a courtesy copy to:

cmcgarry11@gmail.com

Castagnola consents to receiving written notice of default sent to the email address(es) specified above as the sole means of notice of default. Castagnola will promptly notify Port in accordance with the notice provision (Section 29) of the Lease, if any of the specified email addresses change and/or if any of the above-mentioned individuals should be replaced with new individuals who should be notified instead. A notice of default email sent to the email address(es) (or any changed email address or notice party, as applicable) shall constitute sufficient and complete notice of default for purposes of this Agreement.

If Castagnola fails to cure a noticed default within thirty (30) days from the date of transmission of the notice of default email, then the Port shall be entitled to immediately move to enforce the Stipulated Judgment against Castagnola *ex parte*, as follows:

(a) Enforcement of Stipulated Judgment. In the event of a default by Castagnola of its obligations under the terms of this Agreement or the Agreements, and Castagnola's failure to cure the default within thirty (30) days of receiving written notice from Port in the manner described above, the Port may immediately move to enforce the Stipulated Judgment against Castagnola and obtain entry of judgment upon *ex parte* application setting forth the default. Castagnola hereby waives any right to file a responsive pleading to this filing and hereby consents to immediate entry of judgment pursuant to the terms of this Agreement and the Stipulated Judgment. The Port shall not be required to give notice to Castagnola of the application to enter judgment. Castagnola hereby waives any right to receive notice of any such application, including, but not limited to, any requirement under the California Rules of Court for notice of an *ex parte* application.

(b) Knowing and Voluntary Waiver of Procedural Rights. With the exception of its right to a written notice of default and thirty (30) day cure period described above, Castagnola expressly agrees and acknowledges: (i) it understands the Stipulated Judgment and its implications and consequences, (ii) it waives civil due process rights to further eviction notices to which it is otherwise entitled by law, trial, notice and hearing in the event of a default and entry of judgment hereunder, (iii) the fact that Castagnola was represented by counsel who explained the consequences of such understanding and waiver at the time this Agreement was made, or that Castagnola had the opportunity to consult with counsel, but declined to do so, and (iv) it is willing to sign the Stipulated Judgment and does so voluntarily and freely.

Initials:	_____	_____
Name:	_____	_____
	Castagnola Inc., of San Francisco	Lolman Enterprises, Inc.

(c) Terms of Judgment. If the Court continues to reject the Stipulated Judgment for filing even though the Parties have used good faith cooperative efforts to amend at least four (4) times the Stipulated Judgment in a manner the Court will accept as described in **Section 8** above, and Castagnola defaults on one or more of its obligations under the terms of this Agreement or the Lease as stated above in this Section, then Port in its sole election, may seek a different judgment and/or other relief from the Court, Court commissioner or Court clerk, as the Port may be entitled to under California law for:

- (i) Possession of the Premises;
- (ii) Termination and forfeiture of any right, privilege or tenancy under which Castagnola occupied and/or possessed the Premises;
- (iii) A money judgment against Castagnola equal to the Minimum Investment amount, plus all deferred Rent, less any verified payments toward the Minimum Investment that permanently improve the physical condition of the Premises (which improvements shall include furniture, fixtures, and equipment only to the extent that the same remain with the Premises, and in good and operable condition upon Port's possession), which determination shall be made by Port in its sole and absolute discretion, plus holdover rent, holdover damages, and prejudgment interest; and

(iv) All attorneys' fees and costs to which the Port is entitled to under the terms of the Agreements, which may include the attorneys' fees accumulated over the course of filing the underlying Civil Action or UD Case that cumulated in this Agreement.

(d) **Default Interest.** If there is a default under this agreement, the Parties agree that the Minimum Investment and any Rent or other outstanding debt (collectively, the "**Default Debt**") will incur default interest of ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law, which will continue to accrue until paid in full. If Castagnola fails to comply with the terms of this Agreement, the amount of damages Port would be entitled to under the Agreements made enforceable by this Agreement and the Stipulated Judgment will include the default interest that accrues on the Default Debt after the Effective Date.

10. **Mutual Release of Claims By and Between Higdon, Foxworth, and Port.** Effective (a) upon Port's timely receipt of the Final Payment of the Settlement Fee, and (b) so long as there is no outstanding Default under the terms of this Agreement when the Final Payment is received, Higdon, Foxworth, and Port shall mutually release and forever discharge one another from any and all claims, damages, actions, causes of action, claims of indemnity, claims of contribution, liabilities, judgment, liens, contracts, agreements, rights, debts, suits, obligations, promises, acts, costs and expenses, fees, attorneys' fees, damages, losses, personal injury claims and charges of whatever nature, whether known or unknown, suspected or unsuspected, fixed or contingent, filed or prosecuted, which arise out of and/or relate to the Lease, the Agreements, the Civil Action, the Unlawful Detainer case, the Premises and the Stipulated Judgment (the "**Mutual Release**"). As to Higdon and Foxworth, the Mutual Release shall apply individually and to each other's predecessors, successors, heirs, assigns, executors, administrators, trustees, spouses, and issue, living or deceased. As to Port, the Mutual Release shall apply to the City and County of San Francisco, its elective and/or appointive boards, agents, employees, departments, commissioners, and officers, including without limitation the San Francisco Port Commission.

11. **Statutory General Release.** Defendants specifically waive and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Initials:

Name:	Kathrine Higdon	Cynthia Foxworth	Castagnola Inc., of San Francisco	Lolman Enterprises, Inc.	Scott Landsittel Port
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Castagnola acknowledges that it has received the advice of legal counsel with respect to the aforementioned waiver and understands the terms thereof, or that Castagnola had the opportunity to consult with counsel but declined to do so.

This waiver of rights afforded by Section 1542 of the California Civil Code only relates to claims and disputes concerning the Total Balance Due set forth in **Table 1** and the Settlement Fee and the Outstanding Balance set forth in **Table 2** and does not impact any unrelated rights or obligations under the Leases and Castagnola's occupancy and use of the leased premises.

12. **Confirmation of Lease.** The Parties agree that as of the date of their execution of this Agreement:

(a) That there is presently in full force and effect Lease No. L-7493, dated as of May 1, 1970 (as modified, assigned, supplemented and/or amended as set forth below), between Port, as landlord, and Castagnola, as tenant, for the Premises and other improvements, as further described in the Lease.

(b) That the Lease has not been modified, transferred, assigned, supplemented or amended except as follows: First Amendment to Lease No. L-7493, dated as of September 3, 1970; Second Amendment to Lease No. L-7493, dated as of December 24, 1971; Third Amendment to Lease No. L-7493, dated as of April 14, 1976; and that certain Extension Agreement dated as of August 15, 1995.

(c) A true and accurate copy of the complete Lease as modified, assigned, supplemented, and/or amended, is attached to this Agreement as **Exhibit B**, which is attached hereto.

(d) The Parties further agree that upon compliance with the terms of this Agreement and to memorialize tenant in good standing status on or after the first day of the seventh month of continuous operations, Port and tenant shall execute a Fourth Amendment to Lease No. L-7493 that memorializes Port's waiver of rent as described in this Agreement, substantially in the same form as attached in **Exhibit C**.

13. **Attorneys' Fees.** Should any legal action arise between the Parties hereto, or their successors or assigns, concerning the interpretation or enforcement of any provision of this Agreement, or the rights and duties of any person in relation thereto, the Party prevailing in such legal action or arbitration shall be entitled, in addition to such other relief that may be granted, to recover reasonable attorneys' fees and legal costs in connection therewith.

14. **Governing Law; Venue.** This Agreement shall be governed and construed, and if necessary enforced, pursuant to the laws of the State of California. Any legal suit, action, or proceeding arising out of or relating to this Agreement will be instituted in the Superior Court for the City and County of San Francisco, and each Party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought

in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to federal court.

15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. Signatures of the Parties transmitted by electronic mail PDF format or electronic document signing software such as DocuSign shall be deemed to constitute originals and may be relied upon, for all purposes, as binding the transmitting Party hereto. The Parties intend to be bound by the signatures transmitted by electronic mail PDF format or electronic document signing software such as DocuSign, are aware that the other Party will rely on such signature, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

16. **Authority and Successor and Assigns Liability.** Each of the persons executing this Agreement on behalf of Castagnola, Inc. of San Francisco and/or Lolman Enterprises, Inc. hereby covenants and warrants that Castagnola, Inc. of San Francisco and Lolman Enterprises, Inc. are each a duly authorized and existing entity, that has and is qualified to do business in California, that has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Castagnola, Inc. of San Francisco and/or Lolman Enterprises, Inc. are authorized to do so. Each party acknowledges that, in executing this Agreement, it is acting on its own, independent judgment informed by legal counsel or that they had the opportunity to consult with counsel but declined to do so. Each party acknowledges having read this Agreement, the Stipulated Judgment attached to this Agreement and has been advised by their attorney as to its meaning and effect or that they had the opportunity to consult with counsel, but declined to do so. Castagnola, Inc. of San Francisco and Lolman Enterprises, Inc. further agrees that if Castagnola defaults under the terms of this Agreement and a successor entity to Castagnola, Inc. of San Francisco and/or Lolman Enterprises, Inc. is formed and that performs similar functions as the original entity and/or succeeds Castagnola's existing contractual benefits or obligations, and such successor entity includes either Kathrine Higdon, Cynthia Foxworth, or both, as an employee, director, officer, or board member, then such entity will be obligated to comply with the terms of the Stipulated Judgment. Until the obligations set out in this Agreement are fully paid, the obligations remain a liability of Castagnola, its successors-in-interest, and assigns. The obligations in this Agreement shall be included in any disclosure packet Castagnola, Inc. of San Francisco and/or Lolman Enterprises, Inc. might provide to any successors-in-interest and assigns or any other entity or individual who assumes responsibility for all or part of the Agreements.

17. **664 Jurisdiction.** Nothing in this Agreement shall be construed to prevent a Party from bringing an action for enforcement of this Agreement. The Parties hereby agree and stipulate that the Court shall retain jurisdiction of this matter pursuant to Civil Code of Procedure ("CCP") section 664.6. The Parties hereby agree that a stipulation will be filed with the Court before the filing of a dismissal or stipulated judgment noting this Agreement and requesting that the trial court retain jurisdiction pursuant to CCP section 664.6.

18. **Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective successors and assigns.

19. **Voluntary Agreement.** The Parties have read this Agreement and mutual release as contained herein, and on the advice of counsel they have freely and voluntarily entered into this Agreement.

20. **Miscellaneous.**

(a) Each Party acknowledges that, in executing this Agreement, it is acting on its own, independent judgment and has either been advised by legal counsel or has decided in its sole discretion not to seek legal counsel. Each Party acknowledges having read this Agreement and each of its provisions and understands its meaning and effect. Each Party acknowledges and warrants that its execution of this Agreement is free and voluntary.

(b) Each Party acknowledges that this Agreement contains and constitutes the entire agreement between the Parties with respect to the matters discussed herein. The terms of this Agreement are contractual and not a mere recital. Each Party acknowledges that the other Party has made no representations, express or implied, to induce that Party to enter into this Agreement, other than as expressly set forth herein.

(c) Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any Party or other person, and no court or other body should consider those drafts in interpreting this Agreement.

(d) No aspect of this Agreement is intended to be nor at any time shall be construed, deemed, or treated in any respect as an admission by either Party of liability for any purpose. The Parties expressly understand that this Agreement does not constitute an admission of the truth or accuracy of any of allegations made in the course of the Parties' discussions. Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

(e) This Agreement has been fully negotiated with the assistance of counsel (if the Party so chose) and should not be construed more strictly against one Party than another.

(f) If any of the provisions of this Agreement or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Agreement to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared and understood to be severable.

(g) In the event of any inconsistencies between the terms of this Agreement and the Existing Leases, the terms of this Agreement shall prevail. Time is of the essence of this Agreement. This Agreement shall be governed by the laws of the State of California. Neither this Agreement nor any of the terms hereof may be amended or modified except by a written instrument signed by all the Parties hereto.

21. **Port Commission Approval Required.** This Agreement is subject to the approval of the San Francisco Port Commission. This Agreement shall not take effect unless and until it is approved by the San Francisco Port Commission and executed by Port.

22. **Approval of Board of Supervisors.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, DEFENDANTS ACKNOWLEDGE AND AGREE THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[Signatures contained on following pages.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) set forth below.

Castagnola:

CASTAGNOLA, INC. OF SAN FRANCISCO,
a California corporation

By: _____
Name: _____
Title: _____
Date Signed: _____

LOLMAN ENTERPRISES, INC.,
a California corporation, dba Castagnola's Restaurant

By: _____
Name: _____
Title: _____
Date Signed: _____

KATHRINE HIGDON, an individual

Date Signed: _____

CYNTHIA FOXWORTH, an individual

Date Signed: _____

[Signatures continue on following page.]

Port:

CITY AND COUNTY OF SAN FRANCISCO,
operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____

Name: Scott Landsittel

Title: Deputy Director of Real Estate and Development

Date Signed: _____

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____

Name: Justin Bigelow

Deputy City Attorney

Agreement Prepared By: Don Kavanagh, Senior Property Manager: _____ (initial)

Port Commission Reso. _____, Date _____

Board of Supervisors Reso. _____, Date _____

EXHIBIT A

STIPULATED JUDGMENT

EXHIBIT B

LEASE NO. L-7493

EXHIBIT C

FORM

FOURTH AMENDMENT TO LEASE NO. L-7493