



MEMORANDUM

April 18, 2025

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Gail Gilman, Vice President
Hon. Willie Adams
Hon. Stephen Engblom
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of a Settlement Agreement for Castagnola Restaurant regarding Lease No. L-7493 (restaurant), Lease L-13542 (storage), and Parking Permit to resolve all balances due including Port waiver of certain rent, terms for reopening the restaurant, and resolution of litigation against Tenant upon compliance with the Settlement Agreement, including payment to the Port in the amount of \$300,000, enforceable through Stipulated Judgements in: CITY AND COUNTY OF SAN FRANCISCO VS. CASTAGNOLA, INC. OF SAN FRANCISCO, A CAL. CORP ET AL, Superior Court of San Francisco County, Case No. CUD24674725; and CITY AND COUNTY OF SAN FRANCISCO VS. LOLMAN ENTERPRISES, INC., ET AL, Superior Court of San Francisco County, Case No. CGC23606678.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 25-23

EXECUTIVE SUMMARY

Tenant leases approximately 9,701 square feet in a two-story building for a restaurant under Lease L-7493 ("Castagnola Lease"), that closed in 2020. The Castagnola Lease expires April 30, 2036. Tenant also leased 1,753 square feet of storage space under Lease L-13524 ("Storage Lease") and four parking stalls under Application for San Francisco Port Commission Parking Permit ("Parking Permit"), both of which terminated in June 2021 leaving balances due.

THIS PRINT COVERS CALENDAR ITEM NO. 7D

Despite extensive efforts by the Port and the multiple legal actions described in this report, the restaurant has remained closed for nearly five years, and until now, there has been no mutually agreed resolution to the occupancy status and obligations outstanding. There is a balance due under the Castagnola Lease, Storage Lease, and Parking Permit (“Agreements”), which as of January 10, 2025 totals \$1,123,884.

Port staff have reached an agreement with Tenant and are proposing to enter into a Settlement Agreement that requires a payment of \$200,000 on the Effective Date as defined in the Settlement Agreement with a second payment of \$100,000 due six (6) months after the Effective Date and requires Tenant to invest \$900,000 (“Minimum Investment”) in the Premises as part of anticipated investments to upgrade and return the premises to operating condition.

Port will require re-opening no later than one (1) year after the Effective Date (“Reopening Deadline”), but this deadline may be extended by the Port for up to one (1) year in its sole and absolute discretion (“Extended Reopening Deadline”), subject to active bona fide efforts by Tenant to reopen. To support reopening, Port will waive rent balance due after the \$300,000 is paid and rent accrued from February 1, 2025 through the Reopening Deadline. Upon compliance with all Settlement Agreement terms and after six (6) months of operations and timely rent payments, Port will consider Tenant to be in good standing and terminate the lawsuits against Tenant. At that time, Port would allow Tenant to exercise its rights under the lease, including potential transfer of the Castagnola Lease.

The settlement will require Tenant to accept a stipulated judgment that benefits the Port: if Tenant defaults on any settlement terms, Port can rapidly enforce the stipulated judgment for monetary damages and retake the property without further litigation and minimal court proceedings.

Port staff recommend approval of the proposed settlement agreement as Port staff believe the Port’s interests are best met by resolving the balance due with consideration as new investment in the physical premises and reopening the restaurant.

STRATEGIC PLAN ALIGNMENT

Settlement of the balance due and reopening of the restaurant supports the following goals of the Port’s Strategic Plan:

Economic Recovery

Tenant Recovery: Reopening Castagnola’s will provide new revenue to the Port and enliven a dormant location in a critical stretch of Jefferson Street in Fisherman’s Wharf.

Equity

Restaurant operations will add employment opportunities to the district and expand the retail offerings in the area, adding to the diverse mix.

Evolution

The reopening of Castagnola's with a new restaurant concept is a good step to revitalize Fisherman's Wharf. Reopening will provide customer access to elevated patios and dining rooms with views of the inner lagoon and beyond.

Engagement

Public Awareness: The reopening of Castagnola's will be a good step to bring more people to Fisherman's Wharf and improve the appearance of a building emblematic of restaurant closures from the COVID-19 pandemic.

BACKGROUND

Tenant is comprised of Castagnola, Inc. of San Francisco, Lolman Enterprises, Inc., Kathrine Higdon, and Cynthia Foxworth (collectively, "Castagnola" or "Tenant"). Tenant leases approximately 9,701 square feet in a two-story building for a restaurant under Lease L-7493 which expires April 30, 2036. Castagnola's restaurant closed in March 2020.

Castagnola's restaurant sits in a prominent location at the beginning of Al Scoma Way (the end of Jones Street) facing the inner lagoon on two sides. The restaurant, as a "dark" space since 2020, has been subject to vandalism, graffiti, and encampments and is a significant visual detractor in a location that invites all manner of nuisances such as broken windows, break-ins, and trash.

In September 2021, the City Attorney's Office filed an unlawful detainer ("UD") action demanding surrender of the Castagnola Lease premises and payment of 12 months of back rent. In September 2022, Castagnola paid \$309,000, the sum demanded under the UD filing. Castagnola continued to pay Castagnola Lease rent for six months and maintained insurance coverage, but did not operate the restaurant or repair and maintain the premises, including the substructure, and subsequently stopped paying Castagnola Lease rent.

In March 2023, the City Attorney's Office filed a new lawsuit demanding (1) surrender of the restaurant premises, (2) all back rent for the Agreements; and (3) compensation for the failure to correct unsafe deferred maintenance (the "Civil action"). This Civil action is outstanding, and is currently set for a June 23, 2025 trial date.

In March 2024, due to the slow pace of the Civil action, the City Attorney's Office filed a new UD action seeking 12 months of back rent and surrender of the premises. This new UD case also remains open.

The City Attorney's Office is prepared to continue to prosecute both the Civil and UD actions if the settlement discussions fail. A legal victory on the Civil or UD actions or both would likely lead to possession and a monetary award, but the collection of the award is uncertain.

As of January 10, 2025, the “Balance Due” totals \$1,123,884 as shown below.

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

Port staff propose to resolve not only the back rent and accrued rent due under L-7493 and reopening the restaurant under the terms of a settlement agreement as detailed in the next Section.

PROPOSED TERMS OF SETTLEMENT AGREEMENT

Negotiated settlement terms include the following:

- Castagnola to make an up-front payment of \$200,000 to Port on the Effective Date of the Settlement Agreement with another \$100,000 due six (6) months after the Effective Date.
- Tenant must make an additional \$900,000 Minimum Investment in the Premises to cure deferred maintenance and support reopening. The full cost to reopen is expected to be more than the Minimum Investment.
- Tenant must open the restaurant by the Reopening Deadline which is one (1) year after the Effective Date. Port in its sole and absolute discretion, subject to Port Commission approval, may extend the Reopening Deadline subject to continuing efforts by Tenant to reopen.
- Port established the deadlines below to track performance deadlines, which if not met could become defaults:
 - Castagnola shall submit all applicable construction documents and request applicable Port building permits no later than six (6) months after the Effective Date; and
 - Castagnola shall commence construction no later than one (1) month after receiving the building permit; and
 - Provided further, that upon a written request by Castagnola, Port may, in its sole and absolute discretion, extend the aforementioned each or either deadline for up to one (1) year, subject to Port Commission approval.

- On restaurant reopening, Tenant to commence all payments required under the Castagnola Lease and comply with all Castagnola Lease terms, including payment of base rent of \$25,741 per month through July 1, 2025, and increased by the 5-year CPI adjustment effective August 1, 2025, and percentage rent.
- Upon compliance with the settlement agreement terms and after six months of operations and timely payments, Port will terminate the Civil and UD actions and will waive any remaining Balance Due under the Agreements, including rent due between February 1, 2025 and restaurant reopening. At that time, Port may deem Tenant to be in good standing, assuming no other defaults.

The \$300,000 payment will be applied as shown in the chart below.

		Settlement Fee		
Account	Explanation	Initial Balance	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 Alarm Equipment	10,000.00	(10,000.00)	165,035.01
	Outstanding Balance	1,050,400.84	(165,035.01)	0.00
L-7493	Balance after Settlement Fee	885,365.83	Waived on restaurant reopening	

The settlement terms will be secured by and enforceable through a stipulated judgment allowing the Port the right to promptly exercise its remedies on Castagnola's default of the Settlement Agreement. The stipulated judgments will grant the Port the right to avoid trial and swiftly enforce judgments in the Civil Action and/or UD Action, including a monetary award and the right to regain possession of the property through a simple court hearing.

A copy of the proposed Settlement Agreement for Castagnola's leases L-13524, Parking License, and L-7493 is on file with the Port Commission Secretary.

STAFF ANALYSIS AND DISCUSSION

Port staff considered two paths to resolution.

The first approach is to pursue and complete a settlement with Castagnola under the terms discussed above.

The benefits of completing the Settlement Agreement include new revenue once the restaurant reopens through required investments and resolving all sums required under the Castagnola Lease, including the resumption of restaurant base rent of \$25,741 per month through July 1, 2025, and the 5-year CPI escalation effective August 1, 2025, plus percentage rent as due.

Reopening Castagnola will provide activation of a long-standing vacant Fisherman's Wharf property, solidify the perception that Fisherman's Wharf is economically recovering, and reduce nuisance activities and security issues.

Settling does not require Port to take on and manage another large, vacant restaurant at Fisherman's Wharf, and avoid direct payment for refurbishment costs, leasing commissions, and operating costs.

The settlement will help manage potential liability and limit further legal costs, which could be greater if Tenant contests the Civil and UD actions.

The second approach is to continue with Civil and UD actions pursuing possession of the premises and a monetary judgment. This includes:

- Although the Port anticipates favorable rulings in the UD action and Civil lawsuit, each lawsuit may not be resolved until 2025 or 2026 and could still be appealed by Tenant. Continuing litigation includes uncertain timing and will require paying more legal expenses as compared to a settlement agreement.
- Port would take possession of the functionally obsolete premises with its physical and aesthetic deficiencies which are estimated to cost from \$3 to \$5 million to cure before the restaurant is ready to reopen. Port would become responsible for maintenance of the premises and additional liabilities that are now Castagnola's obligations.
 - A new lease would require Port to pay for tenant improvements and leasing commissions.
- The Broker process to lease Alioto's has not been successful as the premises were not attractive to prospects (too large, three floors, large capital investment required) looking for restaurant space. Castagnola's premises have similar characteristics and would likely be difficult to lease, too.
- Finding a new tenant will require a competitive bidding process through an RFP or Broker and it is likely to take 18 to 24 months, not including the time needed for repairs and improvements, estimated to be at least 12 more months. The total time to reopen under this scenario could be up to three years.

The risk in proceeding with a settlement is that Castagnola's does not live up to settlement terms. To mitigate this risk, Port will require stipulated judgments to regain the premises and a money judgment. Notably, enforcing the money judgment may be difficult even with a stipulated judgment.

The proposed settlement agreement recovers a greater gross amount, with more private investment and opportunity to quickly open the space than any of the other settlements or terminations executed since the pandemic.

Port staff recommend approval of the settlement agreement because Port staff believe there is a fair chance of success under the settlement terms, and that settlement is better than pursuing the Civil or UD actions at additional legal expense. In addition, a settlement

would allow Port to avoid downtime and the need to make a significant capital investment to reopen the restaurant.

RECOMMENDATION

Port staff recommend that the Port Commission approve the attached resolution authorizing the Executive Director to enter into the proposed Settlement Agreement with Tenants and authorize the Executive Director to forward the Settlement Agreement to the Board of Supervisors for approval and upon the effectiveness of such approval, authorize the Executive Director or designee to execute the Settlement Agreement.

Prepared by: Don Kavanagh, Senior Property Manager
Real Estate and Development

For: Scott Landsittel, Deputy Director
Real Estate and Development

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 25-23

- 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, Castagnola, Inc. of San Francisco, a California corporation, (with its successors and assigns, "Tenant") leases premises under Lease L-7493 ("Lease") for premises at 286 Jefferson Street; and
- WHEREAS, Tenant was party to Storage Premises Lease L-13524 dated August 1, 2003, and terminated June 30, 2021, and Parking Permit dated February 15, 2007, and terminated effective June 30, 2021, both with balances due (collectively, the Storage Premises Lease L-15524, Parking Permit, and the Lease are referred to as the "Agreements"); and
- WHEREAS, Port commenced litigation against Tenant, including a civil action filed on May 22, 2023, seeking surrender of the Premises, all back rent under the Agreements, and compensation for failure to correct unsafe deferred maintenance (the "Civil Action"), and an unlawful detainer action filed on April 3, 2024 to see outstanding amounts owed and to regain possession of the restaurant Lease premises (the "Unlawful Detainer"); and
- WHEREAS, Port and Tenant now wish to agree on a settlement agreement that requires Tenant to: (1) pay a settlement fee totaling \$300,000 within 180 days of Port's execution of the agreement to resolve certain accounts and pay down debt under the Lease, (2) request construction permits for the restaurant Lease premises on or before six (6) months after Port's execution of the agreement, (3) commence construction on or before one (1) month after the building permit is issued, (4) invest into the Lease premises a sum equal to \$900,000, and (5) reopen the restaurant on or before one (1) year after Port executes the agreement, which dates may only be extended by the Port in its sole and absolute discretion for up to one year each, all as described in the memorandum accompanying this Resolution and more particularly detailed in the Settlement Agreement on file with the Commission Secretary (the "Settlement Agreement"); and
- WHEREAS, The Settlement Agreement requires approval by the Board of Supervisors; now, therefore be it
- RESOLVED, That the Port Commission approves the Settlement Agreement on file with the Commission Secretary, subject to approval by the Board of Supervisors; and be it further

- RESOLVED, That the Port Commission recommends that the Board of Supervisors approve the Settlement Agreement, and be it further
- RESOLVED, That, upon approval, the Port Commission authorizes the Executive Director to execute the Settlement Agreement and any other documents, additions, amendments, or other modifications to the Settlement Agreement and/or the Lease that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions which this Resolution 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 such documents; and be it further
- RESOLVED, That the Executive Director, or the Executive Director's designee, may grant extensions of up to one year for each of the deadlines as defined in the Settlement Agreement, including to request construction permits, commence construction, and reopen the restaurant, so long as any extension is expressly approved by the Port Commission.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 22, 2025.

DocuSigned by:

A blue bracket on the left side of the signature block groups the text "DocuSigned by:", the signature "Jenica Lin", the title "Secretary", and the hash "2A9BEF9AAF934F9...".

Secretary

2A9BEF9AAF934F9...