

File No. 210560

Committee Item No. 2

Board Item No. 8

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: June 23, 2021

Board of Supervisors Meeting:

Date: June 29, 2021

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Presentation – June 23, 2021</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Comm Reso No. 21-14 – April 13, 2021</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Lease L-8627 – May 8, 1974</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Prepared by: John Carroll

Date: June 18, 2021

Prepared by: John Carroll

Date: June 24, 2021

Prepared by: John Carroll

Date: _____

1 [Mutual Lease Termination Agreement - Ferry Plaza Limited Partnership]

2

3 **Resolution approving the mutual termination of Port Lease No. L-8627 between the Port**
4 **of San Francisco and Ferry Plaza Limited Partnership for the premises located at the**
5 **east end of Ferry Plaza and authorizing the Executive Director of the Port to execute a**
6 **Mutual Termination Agreement.**

7

8 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,
9 Sections 4.114 and B3.581 empower the Port Commission with the power and duty to use,
10 conduct, operate, maintain, manage, regulate, and control the Port area of the City and
11 County of San Francisco; and

12 WHEREAS, Ferry Plaza Limited Partnership is the current tenant under Port Lease No.
13 L-8627 (the "Lease") for the premises at the east end of Ferry Plaza, consisting of
14 approximately 34,659 square feet, of which 19,428 square feet is restaurant space; and

15 WHEREAS, The term of the Lease is 66 years, commencing December 1, 1974, and
16 expiring on November 30, 2040; and

17 WHEREAS, The Port and Ferry Plaza Limit Partnership now wish to agree on an
18 orderly early termination of the Lease on the terms of the Mutual Termination Agreement on
19 file with the Clerk of the Board of Supervisors (the "Mutual Termination Agreement"); and

20 WHEREAS, The Mutual Termination Agreement requires payment of outstanding rent
21 by Ferry Plaza Limited Partnership through December 31, 2020, the surrender of security
22 deposits to the Port, and includes other agreements relating to the release of claims and wind
23 down of the lease relationship; and

24

25

1 WHEREAS, On April 13, 2021, through Resolution No. 21-14, the Port Commission
2 approved the Mutual Termination Agreement and authorized the Executive Director or her
3 designee to execute it; and

4 WHEREAS, San Francisco Charter, Section 9.118 requires Board of Supervisors'
5 approval of the termination of any lease which when entered into was for a period of ten or
6 more years or having anticipated revenue to the City of one million dollars or more; now,
7 therefore, be it

8 RESOLVED, That the Board of Supervisors approves the Mutual Termination
9 Agreement and authorizes the Port Executive Director or her designee to execute the Mutual
10 Termination Agreement; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
12 Director to enter into any additions, amendments or other modifications to the Mutual
13 Termination Agreement that the Executive Director, in consultation with the City Attorney,
14 determines, when taken as a whole, to be in the best interest of the Port, do not materially
15 increase the obligations or liabilities of the City or the Port, and are necessary or advisable to
16 complete the transactions which this Resolution contemplates and effectuate the purpose and
17 intent of this Resolution, such determination to be conclusively evidenced by the execution
18 and delivery by the Executive Director of such documents; and, be it

19 FURTHER RESOLVED, That within thirty (30) days of the Mutual Termination
20 Agreement being fully executed by all parties, the Port of San Francisco shall provide the final
21 agreement to the Clerk of the Board for inclusion into the official file.

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

June 18, 2021

TO: Government Audit and Oversight Committee

FROM: Budget and Legislative Analyst



SUBJECT: June 23, 2021 Special Government Audit and Oversight Committee Meeting

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Item 2 File 21-0560	Department: Port Commission (Port)
EXECUTIVE SUMMARY	
<p>Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution approves the Mutual Termination Agreement between the Port and Ferry Plaza Limited Partnership to terminate the lease for premises at the east end of Ferry Plaza. <p>Key Points</p> <ul style="list-style-type: none"> • Ferry Plaza Limited Partnership leases restaurant space from the Port at the east end of Ferry Plaza. The original lease began in 1974 and is scheduled to end in 2040. According to the lease, the space is to be maintained and in use as a first-class restaurant, but according to the Port, the space has not been in use for the prior eight years, although Ferry Plaza Limited Partnership has continued to pay base rent. Because the tenant was not using the space as a restaurant, and because the Port and the tenant could not agree on another use of the space, the Port recommended, and the Port Commission agreed to an early termination of the lease. <p>Fiscal Impact</p> <ul style="list-style-type: none"> • Under the Mutual Termination Agreement, Ferry Plaza Limited Partnership forfeits its security deposit of \$222,866 and would pay rent due through December 2020 of \$228,534. The Mutual Termination Agreement is effective once final payment is made and agreement conditions are met. <p>Policy Consideration</p> <ul style="list-style-type: none"> • According to Port staff, in considering termination of the lease, Port’s maintenance and engineering staff conducted a walkthrough of the site and the Port hired a broker to visit and assess the site. The findings from those efforts comport with Port real estate staff’s assessment of the premises: that the site has excellent potential, in a very favorable setting, but that a new tenant would have to invest substantial capital to upgrade the site into a ‘destination’ location, attractive enough to motivate customers to walk out to the end of the pier. If the mutual termination is approved by the Board, Port staff intends to seek Port Commission direction regarding the terms under which to issue a competitive solicitation to find a new tenant to make these investments and operate the site. <p>Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that (1) any lease of real property for ten or more years, including options to renew, (2) have anticipated revenues to the City of \$1,000,000, or (3) the modification, amendment or termination of these leases is subject to Board of Supervisors approval.

BACKGROUND

The Port entered into a 66-year lease with Barbary Coast Investment, Inc. in 1974 for restaurant space, which was scheduled to end in 2040. Under the original lease, the tenant paid base rent, increased annually by the Consumer Price Index (CPI), and percentage rent. Barbary Coast Investment subsequently assigned its interest in the lease to Ferry Plaza Limited Partnership in accordance with lease provisions.

The lease required the tenant to construct restaurant space to be continuously used as a first-class restaurant. According to the Port staff memorandum to the February 9, 2021, Port Commission meeting, no restaurant has operated at this site for the past eight years, and operated only intermittently prior to the past eight years, although Ferry Plaza Limited Partnership continued to pay base rent. Because the tenant was not using the space as a restaurant, and because the Port and the tenant could not agree on another use of the space, the Port recommended, and the Port Commission agreed to an early termination of the lease.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves the Mutual Termination Agreement between the Port and Ferry Plaza Limited Partnership to terminate the lease for premises at the east end of Ferry Plaza.

The Mutual Termination Agreement requires Ferry Plaza Limited Partnership to leave the premises in substantially the same condition as existed during Port inspections. According to the staff memorandum, facility inspections identified some needed repairs, which the Port considered could be made from proceeds of the forfeited security deposit (see Fiscal Impact section), and tenant improvements to be made by a future tenant.

Under the Mutual Termination Agreement, the tenant broadly releases the Port from claims and the Port provides a limited release of the tenant from claims. This limited release applies to (a) third-party claims properly filed against the Port, (b) claims alleged in a written notice of violation by a regulatory agency, (c) claims resulting from conditions identified during Port inspections, and (d) claims by the Port for rent. The Mutual Termination Agreement provides that the tenant is released from these claims to the extent that loss or damage is not covered by insurance that the tenant was required to maintain.

FISCAL IMPACT

Under the Mutual Termination Agreement, Ferry Plaza Limited Partnership forfeits its security deposit of \$222,866 and would pay rent due through December 2020 of \$228,534. The Mutual Termination Agreement is effective once final payment is made and agreement conditions are met.

POLICY CONSIDERATION

According to Port staff, in considering termination of the lease, Port's maintenance and engineering staff conducted a walkthrough of the site and the Port hired a broker to visit and assess the site. The findings from those efforts comport with Port real estate staff's assessment of the premises: that the site has excellent potential, in a very favorable setting, but that a new tenant would have to invest substantial capital to upgrade the site into a 'destination' location, attractive enough to motivate customers to walk out to the end of the pier. If the mutual termination is approved by the Board, Port staff intends to seek Port Commission direction regarding the terms under which to issue a competitive solicitation to find a new tenant to make these investments and operate the site.

RECOMMENDATION

Approve the proposed resolution.

Port of SF – Ferry Plaza Limited Partnership Mutual Lease Termination Agreement

Government Audits and Oversight Committee Presentation

June 18, 2021





Background

- Lease L-8627 was entered in 1974 and is set to expire in 2040
- No active restaurant operation for at least 8 years
- Port issued Notice of Default in early 2020

Summary of Agreement Terms

- FPLP pays rent up through 12/31/20 (\$228,533.71)
- FPLP surrenders security deposit to Port (\$222,865.97)
- Facility returned in condition found during inspections
- Cooperate to ensure all permits and contractual obligations are transferred
- FPLP provides broad release of claims

Port Staff Analysis

- FPLP engaged in good faith negotiations to reach agreement; benefits to avoiding litigation
- While inspections identified items needing repair, facility is serviceable; renewal can be achieved through agreement funds combined with investments from new operator
- Port staff intends to return to Port Commission once transaction is executed to seek direction for seeking new tenant

MUTUAL TERMINATION AGREEMENT FOR LEASE NO. L-8627

This Mutual Termination Agreement (“**Agreement**”), dated for reference purposes as of April 1, 2021, is made and entered into by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the “**Port**”) and Ferry Plaza Limited Partnership, a California limited partnership (“**Tenant**”).

RECITALS

A. Tenant’s predecessor in interest, Barbary Coast Investments, Inc., a California corporation (“**BCIC**”), entered into that certain BARTD Ventilating Building Development Agreement, dated January 10, 1973 (the “**Development Agreement**”) with Port. Pursuant to the Development Agreement, Port and BCIC entered into that certain BARTD Ventilating Structure Barbary Coast Restaurant Lease, Port Lease No. 8627, dated May 8, 1974, as amended by the First Amendment dated December 1, 1974; the Second Amendment dated May 29, 1976; the Third Amendment dated November 20, 2001 (See Port Commission Reso. 01-73 and Board of Supervisors Reso. 843-01); and the Fourth Amendment dated September 1, 2005 under which Tenant leases real property known as the Bay Area Transit Ventilating Building roof and portions of the so-called Ferry Plaza for operation of a restaurant (the “**Lease**”). The Lease also grants Tenant certain easement rights to the Ferry Plaza. Pursuant to the Assignment and Amendment of Lease Agreement dated January 25, 1978, BCIC assigned, and Tenant assumed, all of BCIC’s right, title and interest in the Lease. Port, Bay Corporation (Tenant’s general partner), and Tenant entered into a Consent to Assignment, dated as of February 24, 2012 to clarify that Tenant is the sole tenant under the Lease. The Lease Expiration Date is November 30, 2040.

B. Tenant has requested termination of the Lease and Port is willing to terminate upon the terms and conditions provided in this Agreement.

C. While not making any concessions on any underlying issues or potential disputes or making any admissions of any kind, the Port and Tenant now wish to cooperatively terminate the Lease. Each of the parties have determined that entering this Agreement is in their respective best interests.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. Definitions. All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Lease.

3. Effective Date; Termination Date.

(a) This Agreement is subject to the approval of the Port Commission and the Board of Supervisors, each in its sole discretion. Notwithstanding anything to the contrary contained in this Agreement, Tenant acknowledges and agrees any obligations or liabilities of City under this Agreement are contingent upon a duly adopted resolution of the Port Commission and the Board of Supervisors approving this Agreement, each in its sole discretion, and this Agreement shall be null and void if such approval bodies do not approve this Agreement.

(b) The Effective Date of this Agreement is the date of Port’s signature as indicated below.

(c) The final termination date of the Lease (“**Termination Date**”) is the later of (i) the date Port confirms receipt of payment of the Outstanding Amount (as defined below); or (ii) the Effective Date. Promptly following the Termination Date, Port and Tenant shall execute a countersigned memorandum confirming the Termination Date, but either party's failure to do so shall not affect the expiration of the Term.

(d) Unless extended by mutual agreement of the Parties, if a Resolution of the Board of Supervisors approving this Agreement is not adopted by the date that is six (6) months from approval by the Port Commission, this Agreement will automatically expire and the Parties will have no further obligations under this Agreement. Port agrees to use good faith efforts to calendar this Agreement for Board of Supervisor’s consideration as soon as practicable after the Port Commission’s approval.

4. Surrender Condition. No later than the Termination Date, Tenant shall remove its personal property (including kitchen fixtures and equipment) and surrender the Premises in substantially the same condition as when Port staff inspected the Premises on December 16, 2020; January 20, 2021 and February 10, 2021. At mutually agreeable times prior to the Termination Date, the parties will conduct a joint inspection of the Premises to ensure the acceptable surrender condition.

Any items, including Tenant’s personal property, not removed by Tenant shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned personal property, and Tenant’s waiver of all claims in Section 6 below includes claims against Port for any damages resulting from Port's retention, removal and disposition of such property. Tenant agrees that Port may elect to sell Tenant’s abandoned personal property and retain any revenues therefrom without notice to Tenant and without compliance with the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.

5. Tenant and Port Obligations.

5.1. Tenant Obligations. Tenant shall comply with the following terms as material consideration for this Agreement and as a condition precedent for any Port obligation under this Agreement:

(a) **Payments.** Tenant shall (i) forfeit all moneys held by Port as a Security Deposit or otherwise under the Lease; and (ii) pay, by electronic fund transfer, per the instructions attached hereto as *Exhibit A*, all Rent amounts due without late fees or interest charges through December 31, 2020 (the “**Outstanding Amount**”). The Parties agree that the Outstanding Amount is \$228,533.71.

(b) **Third Party Payments.** Tenant shall pay for all services provided to the Premises by all contractors, third party vendors and utility providers until the Termination Date.

(c) **Permits.** Tenant will cooperate as needed to ensure all regulatory permits and ongoing third party contractual obligations relating to the Lease are disclosed and assigned to Port as appropriate.

(d) **Good Standing.** Aside from the terms and conditions set forth in this Agreement, Tenant shall remain a Tenant in Good Standing as defined by Port policy. If, at any time, prior to the Termination Date, Port finds that Tenant is no longer in good standing, this Agreement shall automatically terminate.

(e) **Estoppel Certificate.** No sooner than three (3) days prior to the Termination Date, Tenant must execute and deliver to Port an estoppel certificate in the form attached hereto as *Exhibit B*.

5.2. Port Obligations. In exchange for Tenant’s performance of obligations in Sections 4 and 5.1, Port shall continue to hold and not deposit the following checks: ## 3176;

3175; 3178; 3180; 3182; 3190; 3191; 3196; 3198; 3206; and 3212. Upon confirmation of the electronic fund transfer of the Outstanding Amount to Port, Port shall return such checks to Tenant.

6. Tenant Release. To the maximum extent allowed by law, Tenant, in its own capacity and on behalf of its partners, members, officers, employees, owners, successors, and assigns, if any, hereby agrees to fully and forever release and discharge the City and County of San Francisco, together with its elective and/or appointive boards, agents, servants, employees, consultants, departments, commissioners, and officers, successors, and assigns, including without limitation the San Francisco Port Commission from any and all claims, actions, causes of action, liabilities, damages, demands, attorneys' fees, expenses and costs (including without limitation court costs) ("**Claims**") of any kind or nature whatsoever, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions set forth or alleged in this Agreement, the Lease or any correspondence or documentation related to this Agreement or the Lease. Tenant understands and expressly accepts and assumes the risk that any facts concerning the claims released in this Agreement or the Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement or the Lease shall remain effective. Therefore, with respect to the claims released in this Agreement and the Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads 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.

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time this lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

7. Port Release. Except as expressly provided below and provided that Tenant complies with the terms and conditions of this Agreement, to the maximum extent allowed by law, the San Francisco Port Commission, in its own capacity and on behalf of its commissioners, and officers, successors, and assigns, hereby agrees to fully and forever release and discharge Tenant, together with its partners, members, officers, employees, owners, successors, and assigns, if any, from the following Claims which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions set forth or alleged in this Agreement, the Lease or any correspondence or documentation related to this Agreement or the Lease each as of the Termination Date: (1) any third-party Claim properly filed against the Port, (2) any Claim alleged in a written notice of violation by a regulatory agency including regulatory agencies of City, (3) any Claim resulting from a condition identified and described in the Port's Real Estate Survey report and rough order of magnitude cost estimate report attached hereto as **Exhibit C** detailing its findings from Port's inspections of December 16, 2020; January 20, 2021 and February 10, 2021, and (4) any Claim by Port for Rent (collectively, "**Known Claims**") to the extent such loss or damage is not covered by insurance which was required to be maintained by Tenant under the Lease or is otherwise actually covered by insurance obtained by Tenant. The release of Known Claims does not include Claims filed by Tenant. Tenant shall not be released from any Claims other than the Known Claims and shall indemnify and hold Port harmless from any and all such other Claims to the extent required by the Lease.

8. Quitclaim. Not later than thirty (30) days after the Termination Date, Tenant shall, at no cost to Port, record a quitclaim deed with respect to the leased premises and Tenant's personality in the form attached hereto as *Exhibit D*.

9. Continuing Rights and Obligations under the Lease. From and after the Termination Date, neither Port nor Tenant have any rights or obligations under the Lease, except for obligations arising prior to the Termination Date and any rights or obligations which, by their express terms, survive the expiration or termination of the Lease except as may be expressly provided by this Agreement.

10. No Representation or Warranty by Port. Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

11. Rights Are Cumulative. Except as may otherwise be provided herein, all liabilities and the rights and remedies of either party as set forth in this Agreement shall be cumulative and in addition to any and all other rights or remedies of each party now or later allowed by applicable law or in equity.

12. Authority. Each of the persons executing this Agreement on behalf of Tenant hereby covenants and warrants that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Tenant are authorized to do so.

13. Litigation Expenses. The Prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Agreement shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this Agreement, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

14. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Agreement are superseded in their entirety by this Agreement. No prior drafts of this Agreement or changes between those drafts and 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 such drafts in interpreting this Agreement.

15. Miscellaneous. This Agreement shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Agreement is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third-party beneficiary of otherwise. This Agreement may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Agreement that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. In the event

of any inconsistencies between the terms of this Agreement and the Lease, 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.

16. Severability. 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.

17. Lease in Full Force and Effect. Until the Termination Date, this Agreement shall not be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Lease.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, PORT and TENANT execute this Agreement as of the last date set forth below.

PORT: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Rebecca Benassini
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: FERRY PLAZA LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP

By Its General Partner
Chong Investments, Incorporated, a California corporation

By: _____
Name: _____
Title: President

Date Signed: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Name: Rona H. Sandler
Deputy City Attorney

Agreement Prepared By: Kent Nishimura, Commercial Property Manager (initial)

Port Commission Reso.
Board of Supervisors Reso.

EXHIBIT A

Electronic Transfer Instructions

[See attached]



WIRING INSTRUCTIONS

To send funds electronically to the City and County of San Francisco's account either through the **Federal Wire System** or ACH, the following wiring instructions should be provided to your bank:

Banking Institution:	Bank of America
Address:	555 Capitol Mall, Suite 765 Sacramento, CA 95814 Branch Locator #148
<i>FedWire</i> Bank ABA:	026-009-593
ACH Bank ABA:	121-000-358
SWIFT code:	BOFAUS3N
Bank Account No.	14279-00027
Bank Account Name:	City and County of San Francisco
For the Credit of:	Port of San Francisco

Important Beneficiary Information:

In order to allow for timely and proper credit to your account, please indicate any invoice number, grant number, or account number pertaining to the department you are paying.

If you have any questions on the bank account information, feel free to send an Email to TTX.BankingTreasuryAccounting@sfgov.org

NOTE: Please send all payment remittance information to: _____
(your department's email address if applicable)

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EXHIBIT B

TENANT ESTOPPEL CERTIFICATE

The undersigned, _____, is the tenant of a portion of the real property commonly known as [Insert Premises Address] located in San Francisco, California (the "**Property**"), and hereby certifies, represents and warrants to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION ("Port")** the following:

1. Tenant certifies, represents and warrants:

(a) That there is presently in full force and effect a lease dated as of _____, 20__, as modified, assigned, supplemented and/or amended by _____ ("**Lease**") between the undersigned and Port, covering approximately _____ square feet of the Property (the "**Premises**").

(b) That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.

(c) That the commencement date under the Lease was _____, __, and the expiration date of the Lease is _____, 20__.

(d) That the present minimum monthly Base Rent under the Lease is \$ _____. All rent due under Lease has been paid through _____, 20__.

(e) The security deposit held by Port under the terms of the Lease is \$ _____ and Port holds no other deposit from Tenant for security or otherwise.

(f) The undersigned has or will pay for all contracted services provided by contractors, third party vendors and utility providers for services provided to the Premises until the Termination Date.

2. Tenant certifies, represents and warrants, to the best of the undersigned's knowledge as of the date set forth below:

(a) Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port;

(b) Except as may be provided in that Mutual Termination Agreement of Lease No. L- 8627, dated April 1, 2021, between the Port and the undersigned, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned;

(c) The undersigned has no claims, counterclaims, defenses or setoffs against Port arising from the Lease, nor is the undersigned entitled to any concession, rebate, allowance or free rent for any period; and

(d) There are no liabilities, claims for damages or suits pending or threatened against the undersigned for or by reason of any injury or injuries to any person or persons or property in any way connected with the Premises or the Lease.

3. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

4. This Certificate shall be binding upon and inure to the benefit of Port and the undersigned recognizes and acknowledges it is making these representations to Port with the intent that Port will fully rely on the representations and warranties in this Certificate.

5. From the date of this Certificate and continuing until the date that is twelve (12) months from the Termination Date, the undersigned agrees to notify Port immediately of the occurrence of any event or the discovery of any fact that would make any representation contained in this Certificate inaccurate as of the date hereof or as of any future date.

Dated: _____, 2021.

[Name of Tenant]

By:

Name:

Title:

EXHIBIT C

Port's Real Estate Survey report and Rough Order of
Magnitude Cost Estimate Report

[See attached]

**PORT OF SAN FRANCISCO
REAL ESTATE SURVEY**

Date: 12/16/2020 & 1/20/2021

Facility Name / CODE: Ferry Plaza Restaurant Building / FIN #2000

Last Survey: _____

Follow-up Date: 2/10/201 (Under-pier plumbing)

Facility Survey
 Tenant Premises Survey

Pre-Lease Survey
 Termination Survey

Condition: G (Good) F (Fair) P (Poor)
Responsibility: P (Port) T (Tenant) PT (Shared) NA (Not Applicable)

ITEM	COND ITION	RESPON SIBILITY	REMARKS
EXTERIOR			
Paint	N/A	T	Exterior is bare concrete, no paint. Some graffiti.
Glazing (e.g., windows)	F	T	No broken glazing. Some graffiti.
Fencing & Gates	F	T	
Facade	F	T	Minor concrete spalls at exterior of north stair tower and south building. Upper façade of central building is masonry. Looks ok, some staining.
Siding	N/A	T	Exterior timber siding is below restaurant floor, likely BART responsibility.
Signage	P	T	Awning w/ signage has tears
Curb / Walkways	F	T	Exterior curbs and walkways are serviceable but have poor finish / appearance.
Landscape	P	T	Exterior planters have not been maintained. Ground level courtyard at south-east corner is fenced off, piles of trash.
Parking Lot(s) (Striping, pavement, etc.)	F	T	Limited road surface in lease area is in serviceable condition.
Man Doors	P	T	Exterior metal doors are functional but weathered and corroded. Likely need replacement. These are all emergency egress doors.
Roll-up Doors	N/A	T	
Other <i>Expansion joints</i>		T	Enclosed expansion joint between south and central building is in poor condition and is not weather tight. Steel cover plate over expansion joint between north stair tower and central building is not flat, tripping hazard at emergency exit route.
ROOF			
Leaking or water tight	F	T	Glass roof of south building appears to be watertight, no evidence of leaks. Last rain was 3 days before inspection. Flat roof of central building looks ok, but signs of water intrusion around perimeter of central building. Center rooms do not have water stain, low point of roof and roof drains are around the perimeter so leaks are more likely there. Roofing material appears to be pre-2002, but significant HVAC equipment added to roof in 2002 so there was probably patching then. Mezzanine level patio at south building has damaged waterproofing membrane, likely not water tight.
APRON			
Condition of Surface (cracks?)	F	T	See exterior Curbs / Walkways and Parking Lot(s)
Substructure		P	Substructure is not tenant responsibility. See Ferry Plaza RSA report for condition.
INTERIOR			
Common Areas	F	T	General interior condition is fair. Finishes are dated, last major TI was in 2002.

Elevator	P	T	Exterior service elevator non-functional, reported to be out of service for several years. Interior passenger elevator non-functional for unknown reasons. Wheelchair lift functional but not certified. Need specialist elevator contract to evaluate non-functional elevators and determine what the issues are.
Restrooms	F	T	Restrooms match 2002 drawings, compliant w/ accessibility standards at the time.
General Cleanliness	F	T	Need to remove old equipment and fixtures
HVAC (any known problems)		T	Rooftop HVAC equipment is weathered, expansion joints are all torn. Most HVAC installed in 2002.
Drive-way	N/A	T	No interior driveway.
Other			Offices and restroom in North bldg. storage mezzanine may have been constructed w/o permits. Called "storage" on 2002 drawings, and no other permit records located.
FIRE / LIFE-SAFETY			
Sprinklers Yes or No (circle one)		T	Smoke detectors and central fire alarm control panel are newer, installed in 2010. Sprinklers are only in the central building over BART vent structure, not in the south building.
MARITIME			
Maritime Improvements		N/A	
HAZARD MATERIALS			
HAZMATS Yes or No (circle one)	No	T	No obvious HAZMATS. Old HVAC and refrigeration equipment may have chemical hazards. Asbestos and lead should be tested prior to any major TI work. If yes, contact EH&S. Date contacted:
Other environmental issues (Revised 2/10/2021)	Yes	P	Port Maintenance inspected under-pier plumbing and found broken and corroded 2" sewer lines under south building prep kitchen and bar areas. Ground level sinks and floor drains may not be used until under-pier plumbing is replaced. Note that south building restrooms are elevated about 4 feet above ground level and do not appear to have under-pier plumbing.

Inspection checklist prepared by M. Bell January 2021 based on input from Port Engineering and Maintenance Staff. Photo log and ROM cost estimate for major core & shell items likely needing replacement or repair are attached.

Revised 2/10/2021 after under-pier plumbing inspection by Port Maintenance, see "Other environmental issues" above.

One Ferry Plaza (REVISION 1 - Feb 2020)

Rough order of magnitude cost estimate for deficient core and shell building elements from Dec. 2020, Jan 2021 and Feb 2021 inspections

ITEM	DESCRIPTION	QTY.	UNIT	\$ / UNIT	EXT.
Roofing & Waterproofing					
Ballasted low-slope Roofing	Assume 5-ply BUR roofing system with rigid insulation and new perimeter flashings and ballast.	8,150	SF	\$40	\$326,000
Metal coping and gutters	Install painted coping with SAF underlayment along entire perimeter of North bldg. sloped metal roof.	450	LF	\$65	\$29,250
Waterproof deck coating	South bldg. 2nd floor deck: Assume reinforced waterproofing system with wear coat and new perimeter flashings	280	SF	\$25	\$7,000
Interior and exterior expansion joints, 2" travel	Remove and replace interior and exterior joint cover assemblies and restore finishes between north and south building.	46	LF	\$250	\$11,500
HVAC					
4-ton Rooftop A/C units	Replace nine existing units in kind w/ 4-ton, epoxy-coated coils, modify and replace exterior ducting as needed, test and commission system.	9	EA	\$20,000	\$180,000
Plumbing					
Replace 2" sewer line branches and supports	The only ground-level sewer drains are at south building prep kitchen and bar areas. Sewer lines were inspected under deck and require complete replacement.	1	LS	\$25,000	\$25,000
Elevator					
2-stop hydraulic elevator	Exterior service elevator and interior passenger elevator are both non-operational. Likely need major servicing or complete replacement. Exterior service elevator likely is the worse of the two elevators.	2	EA	\$65,000	\$130,000
Grand Total	(Rounded to nearest \$1,000)				\$709,000

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EXHIBIT D

QUITCLAIM DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Port of San Francisco
Pier One The Embarcadero
San Francisco, CA 94111
Attention: Deputy Director of Real Estate and Development

Block No. xxx, Lot xxx

QUITCLAIM DEED

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105).

Ferry Plaza Limited Partnership, a California Limited Partnership ("Transferor") does, effective [Termination Date], hereby REMISE, RELEASE, and forever QUITCLAIM to THE CITY AND COUNTY OF SAN FRANCISCO, acting by and through the SAN FRANCISCO PORT COMMISSION ("Transferee"):

all rights, title, and interest Transferor has in the following described real property located in the City and County of San Francisco, State of California, commonly known as the Bay Area Transit Ventilating Building roof, portions of the so-called Ferry Plaza and the Ferry Plaza easement rights as more specifically described in the lease between the San Francisco Port Commission as landlord and Ferry Plaza Limited Partnership, a California Limited Partnership, as tenant, dated as of May 8, 1974 (as amended, the "Lease") Assessor's Block No. xxx, Lot xxx, as shown in *Exhibit A* attached hereto and Tenant's personal property remaining in, on or about the leased premises as of the effective date hereof.

The person executing this Quitclaim Deed on behalf of Transferor does hereby covenant and warrant that Transferor is the tenant under the Lease and is a duly authorized and existing entity, that Transferor is qualified to do business in California, that Transferor has full right and authority to execute this Quitclaim Deed, and that the person signing on behalf of Transferor is authorized to do so.

Dated: _____, 2021

FERRY PLAZA LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP

By: _____

Its: _____

Dated: _____

Exhibit A
Map of Quitclaimed Property

[ATTACH EX. A and EX. B from the 4th Amendment]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)



MEMORANDUM

April 9, 2021

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request approval of Mutual Termination Agreement for Port Lease No. L-8627 with Ferry Plaza Limited Partnership, located adjacent to Ferry Plaza

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution No. 21-14

Executive Summary

Ferry Plaza Limited Partnership ("FPLP") is the current tenant under Port Lease No. L-8627 (the "Lease") for premises at the east end of Ferry Plaza. After lengthy negotiations by FPLP and FPLP together with Port seeking the re-establishment of a restaurant operation at the premises, Port staff and representatives of FPLP have agreed to seek a termination of the Lease on the terms summarized below. Accordingly, Port staff is seeking Port Commission approval of the proposed mutual termination agreement (the "Agreement").

Strategic Objective

The proposed Agreement is expected to contribute to meeting the Stability Objective of the Port's Strategic Plan by regaining control of the subject property in order to seek a new tenant relationship under business terms that would be better able to perform through economic cycles and would provide additional benefits to the Port, if feasible.

Background

As noted above, FPLP is the current tenant under the Lease for premises at the east end of Ferry Plaza, consisting of approximately 34,659 square feet, of which 19,428 square feet is interior restaurant space. The term of the Lease is 66 years,

commencing December 1, 1974 and expiring November 30, 2040.

The Lease calls for the premises to be operated as a “first class” restaurant. Port records indicate that there has not been an operating restaurant onsite for at least eight years, and prior to that period there were periods of operation interspersed with periods of closure. Despite the ongoing lack of an operating business at the site, FPLP has consistently paid the base rent due, currently \$18,572 per month (which equates to an annual rent of \$222,866). Percentage rent is also payable at rates of 6% of food and 8% of bar sales, with the tenant paying the greater of base rent or percentage rent. Percentage rent has rarely exceeded base rent since the commencement of the Lease, even in the best of economic conditions. Under the Lease the Port is not entitled to any participation in the proceeds of a transfer or refinance of the Lease.

Since the restaurant last operated, Port staff and representatives of FPLP have engaged in discussions regarding a range of potential transactions to bring in a new operator that would reanimate the site and generate additional rent to the Port. When it became apparent that these discussions would not prove successful, Port staff terminated negotiations and in early 2020 issued a notice of default to FPLP for failure to operate a first class restaurant at the site. At that point, the Port stopped cashing the rent checks submitted by FPLP to avoid the requirement to renotice the default at a later date if the Port chose to pursue its remedies in court. The parties’ discussions then turned away from establishing a new operation under the Lease and instead focused on seeking the orderly termination of the lease relationship. After a series of inspections by Port engineering and maintenance staff to ascertain the condition of the building, the parties ultimately negotiated the proposed Agreement that is the subject of this staff report.

Mutual Termination Agreement Summary

The proposed Agreement includes the following key terms:

1. FPLP will pay all rent amounts due up until December 31, 2020, with no late fees or interest charges. After taking into account the uncashed rent checks referenced above, this payment amount totals \$228,533.71.
2. FPLP will surrender any claim to the \$222,865.97 security deposit upon termination.
3. FPLP will deliver the facility in substantially the same condition as Port staff found it during the inspections noted above.
4. FPLP will cooperate as needed to ensure all permits and contractual obligations relating to the leasehold are assigned or addressed as appropriate to complete the transaction.
5. FPLP will provide a broad release of claims against the Port.
6. Port will provide a limited release of liability for known claims.

Port Staff Analysis

Port staff recommends approval of the Agreement for the following reasons:

1. The tenant has remained current on rent throughout the period of being unable to establish a feasible restaurant operation, and has engaged in good faith with the Port on various means to achieve compliance with the operating requirement under the Lease.
2. Although the facility inspections identified some needed repairs and replacements relative to the maintenance obligations under the Lease, as a general matter the facility was in serviceable condition (and notably the Tenant did not have maintenance responsibility for the substructure under the Lease, unlike a number of other restaurant tenancies on Port property). Port staff believes that these renewal needs can be addressed through a combination of (a) the large security deposit relative to other like tenancies on Port property and (b) the tenant improvements that would be needed to establish a new operation at the site.
3. The Port has an interest in regaining control of the site, especially in light of its adjacency with desired improvements of Ferry Plaza.

Recommendation

Port staff recommends that the Port Commission adopt Resolution No. 21-14 approving the Agreement. If the Port Commission approves, the Agreement would be subject to approval by the Board of Supervisors since it was originally approved by the Board under Charter Section 9.118. Upon successful completion of approvals and execution of the Agreement, Port staff would return to the Port Commission to seek direction on seeking a new tenant for the facility.

Prepared by: Michael Martin
Assistant Port Director

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

RESOLUTION NO. 21-14

- 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 and Ferry Plaza Limited Partnership’s predecessors in interest (“Tenant”) entered into that certain BARTD Ventilating Structure Barbary Coast Restaurant Lease, Port Lease No. 8627, dated May 8, 1974, under which Tenant leases real property known as the Bay Area Transit Ventilating Building roof and portions of the so-called Ferry Plaza for operation of a restaurant (as amended, the “Lease”); and
- WHEREAS, The Lease expires on November 30, 2040; and
- WHEREAS, Port and Tenant now wish to agree on an orderly termination of the Lease, per the terms of the Mutual Termination Agreement on file with the Commission Secretary (the “Mutual Termination Agreement”), and
- WHEREAS, Among other things, the Mutual Termination Agreement requires payment of rent by FPLP through December 31, 2020, the surrender of the security deposit to the Port, and other agreements relating to the release of claims and wind down of the lease relationship, all as more particularly described in the Memorandum to the Port Commission dated April 9, 2021; now, be it
- RESOLVED, that, subject to Board of Supervisors’ approval, the Port Commission approves the Mutual Termination Agreement and authorizes the Executive Director or her designee to execute such agreement in substantially the same form on file with the Port Commission Secretary; and, be it further
- RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Mutual Termination Agreement 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.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 13, 2021.

DocuSigned by:

Carl Neita

Secretary

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ORIGINAL

L-8627

BARTD VENTILATING STRUCTURE

BARBARY COAST RESTAURANT LEASE

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BARTD VENTILATING STRUCTURE

BARBARY COAST RESTAURANT LEASE

THIS LEASE, made on the 8th day of May, 1974, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating through the SAN FRANCISCO PORT COMMISSION, hereinafter called "Port", Landlord, and BARBARY COAST INVESTMENT, INC., a California corporation, hereinafter called "Tenant";

W I T N E S S E T H:

1. Letting. Port does hereby lease, demise, and let to Tenant that real property known as Bay Area Rapid Transit District Ventilating Building roof of 8,000 square feet, more or less, in the City and County of San Francisco, State of California, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein, to have and to hold for the term of sixty-six (66) years, commencing on January 10, 1974. Said real property and the improvements thereon and all replacements thereof and additions thereto are hereinafter called the "leased premises."

2. Rental. During the term hereof Tenant will pay rent to Port as follows:

(a) Minimum Rental. Tenant agrees to pay a minimum rental of Two thousand nine hundred sixteen and 66/100 dollars (\$2,916.66) per month, payable in advance on the first day of each month. (If Tenant goes into occupancy, or if this lease commences on other than the first day of the month, the rent for that month will be apportioned as the number of days of occupancy bears to the month. The anniversary date of this lease will, however, in that case, be the first day

of the month following the date of actual occupancy. If the lease commences on the first of the month the anniversary date will be that date.) At the end of the fifth year of the lease, and at the end of every five-year period thereafter, the minimum rental shall be adjusted for the succeeding five-year period, commencing with the anniversary date, in direct proportion to any increase or decrease in the cost of living index from the base date to the last date prior to the anniversary date for which the index is published. The cost of living index shall mean the United States Department of Labor's Bureau of Labor Statistics Consumer Price index (all items) San Francisco-Oakland, California. If the aforesaid index is no longer published, the Port shall use such index as is substantially similar in nature to the present publication, and appropriate adjustment shall be made, if necessary. The date on which the base shall be determined shall be the quarter ending the month of December, 1971, and the parties agree that the index was at 121.8 for that month (1967 U. S. dollar).

The entire amount of the minimum rental paid to Port shall be applied as a credit to the percentage rental due for the month for which the minimum rental was paid, when the percentage rental shall become due and payable.

(b) Percentage Rental. In addition to the minimum rental, Tenant agrees to pay Port that percentage received by Tenant for gross receipts as herein defined for each use set forth in the following table:

<u>Use</u>	<u>Percentage Rental for that Use</u>
Alcoholic beverages and all other items sold through the bar	8%
Food	6%

Gross receipts means all amounts received and receivable from all sales and business transacted by Tenant on the leased premises, or services performed on the leased premises for which charge is made by Tenant, or by any other person, firm, or corporation (including concessionaires) conducting sales or performing services of any sort in, upon, or from any part of the leased premises, and shall include sales and charges for cash or credit, regardless of collections in the case of the latter, but shall exclude returns and refunds and shall exclude the amount of any sales tax, or similar tax or imposition imposed on such sales or charges where such sales tax or similar tax or imposition is billed to the purchaser as a special item, and shall exclude meals served to employees of Tenant during the course of employment whether such meals are served with or without charge, or whether such meals are treated as meals sold for any other purpose. Such percentage rental shall be determined by Tenant for each month of the year and shall be payable by the 20th day of the following month. The percentage rental shall commence as soon as sales are made on the premises, and shall continue so long as sales are made on the premises. In the event this lease terminates during a month, payment of the percentage rental for that portion of the month during which sales were made on the premises shall be determined and reported by Tenant to Port within twenty (20) days after Tenant ceases to make sales on the premises, but in the event this lease terminates for fault of Tenant, including insolvency thereof,

any amounts due hereunder shall be payable forthwith. At the time of paying percentage rental Tenant shall furnish a statement showing the computation of percentage rental for the period covered by such payment. Tenant agrees to make available to Port, or any City auditor, all of its books and records pertaining to the operation under this lease, which books and records shall be maintained in San Francisco, for the purposes of auditing or re-auditing these accounts for three (3) years, except that if audit is made within that time and the Port claims errors or omissions have occurred, the books shall be retained and made available until the matter is finally determined. Sales tax returns shall be made available for purposes of conducting the audit. Port shall keep confidential, so far as legally possible, all such information obtained from Tenant and Tenant shall not be required to keep records for more than three (3) years. If Tenant understates its gross sales for any month by more than three percent (3%), the cost of the audit for that month shall be borne by Tenant. If Tenant understates its gross sales for any month with knowledge of such understatement or by reason of gross negligence or gross carelessness in addition to the foregoing, on the first such occasion Tenant shall pay Port ten (10) times the amount Port should have received. A second such understatement made with knowledge or by reason of gross negligence or gross carelessness shall result in cancellation of this lease.

(c) The parties have agreed to designate the period from March 1, 1974 to March 31, 1975 as the construction period. Rent during the construction period shall be paid as follows:

(i) Upon the execution of the lease Tenant shall pay to Port \$20,000.00.

(ii) Upon the commencement of sales or March 31, 1975, whichever shall first occur, Tenant shall pay the remaining amount due as minimum rent. If the construction should not be completed until March 31, 1975, the remaining amount due will be \$17,916.58 which Tenant agrees to pay. In the event sales should be made on the premises and business commence prior to March 31, 1975, the construction period shall be deemed ended as of that date with the minimum rental being due at once. The regular rental provisions of the lease shall thereafter apply.

3. Guarantee Deposit. Tenant shall, when the term commences, in addition to the advance payment of the first month's minimum rent deposit with Port, either in cash or in securities acceptable to Port, or by bond or undertaking written with an insurer admitted in California and in a form acceptable to Port, an amount equal to one year's minimum rent, which amount shall be held by Port as a guarantee for the future payment of rent, payment of any and all damages suffered by Port by reason of the tenancy by Tenant, and the full and faithful performance of any and all covenants and agreements undertaken by Tenant in this lease. If the minimum rent is increased, the guaranteed amount shall be increased accordingly. The form of deposit of security may be changed from time to time by mutual consent. In the event Tenant wishes to use a bond as security, it must supply evidence of satisfactory renewal or reissuance promptly and prior to the expiration of any existing bond. In the event that Tenant wishes to deposit securities, Tenant may deposit the securities in a depository mutually acceptable to the parties and may obtain all interest payable on the securities as the same becomes due. The deposit of security, or so much thereof as

remains after Tenant's obligations and liabilities to Port hereunder have been satisfied, shall be refunded to Tenant upon the termination of this lease. It is understood that this security is in addition to any and all rights accruing to Port under and by virtue of the terms of this lease, or conferred by law upon Port because of a breach of any of the covenants of this lease.

4. Default and Re-Entry. If any rental or other payment shall be due and unpaid for thirty (30) days, or if any other default shall be made by Tenant in any of the conditions or covenants of this lease and said other default shall continue for thirty (30) days after notice in writing to Tenant, then Port, besides any other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises, providing, however, that if the default cannot be cured in thirty (30) days, Tenant shall have such additional time as may be required, provided he commences to remedy the default and continues to so remedy the default with due diligence; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant. Should Port elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this lease or it may from time to time, without terminating this lease, relet said premises or any part thereof to a tenant suitable to Port for such term or terms (which may be for a term extending beyond the term of this lease) and such conditions as Port in its sole discretion may deem advisable with the right to make alterations and repairs to said premises; upon each such reletting (a) Tenant shall be immediately liable to pay

to Port, in addition to any indebtedness other than rent due hereunder, the cost and expense of such reletting incurred by Port, including the cost of alterations or repairs to the extent that Tenant was obligated by this lease to make such alterations or repairs, and the amount, if any, by which the rent reserved in this lease for the period of such reletting (up to but not beyond the term of this lease) exceeds the amount agreed to be paid as rent for the leased premises for such period on such reletting; or (b) at the option of Port, rents received by Port from such reletting shall be applied, first, to the payment of any indebtedness, other than the rent due hereunder from Tenant to Port; second, to the payment of said costs and expenses of such reletting; third, to the payment of rents due and unpaid hereunder; and the residue, if any, shall be held by Port and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting under option (b) during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Port. Such deficiency shall be calculated and paid monthly. In calculating value of percentage rental it shall be deemed the rent payable for the previous twelve (12) months prior to breach is the yearly rental value of the premises. If the breach occurs before twelve (12) months of percentage rent is due, the monthly amount payable as percentage rent shall be averaged and extended on a twelve-month basis. Monthly rent shall be one-twelfth (1/12th) of the yearly amount. No such re-entry or taking possession of said premises by Port shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to

Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, the Port may at any time thereafter elect to terminate this lease for such previous breach. Should Port at any time terminate this lease for any breach, in addition to any other remedy it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the premises and including the worth at the time of such termination of the excess, if any, of the amount of rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Port.

5. Tenant's Improvements and Use of the Leased Premises.

Tenant agrees to construct the structures and other appurtenances necessary to the conduct of a first-class restaurant and uses necessarily related thereto, all as set forth in the proposal by the Tenant to develop the BARTD Ventilating Building roof. Changes in use or in kind or class of development shall be made only upon the express written consent of Port. Title to the improvements shall remain in Tenant until the termination of the lease. Upon expiration of the lease or earlier termination for any reason whatsoever, other than a taking under paragraph 21, all of the improvements shall vest in Port, subject to the provisions of paragraph 32.

6. Requirement that Premises be Used. Tenant shall operate to secure maximum economic return based on the uses specified. If Tenant fails to use the property for the purposes for which the property is leased, or in the manner set forth, and such failure

shall continue for a period of thirty (30) days after written notice from the Port requesting that Tenant use the property as required, and unless such failure shall be for reasons beyond the control of Tenant, then the Port at its option may terminate this lease. It is the intent hereof that a Tenant shall not acquire the use of the property through a lease and then not use it.

7. Standard of Condition of Premises. Tenant shall keep said premises and appurtenances, including glazing, in good and sanitary order, condition, and repair. Except as more fully provided in paragraph 22 hereof, Tenant shall maintain the premises at all times to the extent and in the manner to insure a first-class restaurant operation.

8. Improvements. Tenant shall construct a building on the leased premises for a use set forth above and as specified in Tenant's plans all as set out in Exhibit "B" attached hereto and by this reference incorporated herein as if more fully set forth. Tenant shall also grade, pave, landscape, and maintain the leased premises in such fashion as to serve the needs of the premises and enhance the appearance of the premises. All plans and specifications for any improvements on the leased premises shall first be submitted to and approved by the Chief Engineer of Port. Any necessary building permits shall be obtained from City and any other agency having jurisdiction thereof and building on the leased premises shall be in conformity with City code and lawful requirements of any other agency. No signs shall be erected or installed on the premises without the approval of Port. When improvements have been erected on premises there shall be no demolition thereof without approval of Port. Title to improvements constructed by Tenant shall, however, remain in Tenant

until termination of the lease, but once erected or installed, improvements to realty, other than trade fixtures, may not be removed without Port's approval.

Tenant shall improve that area known as Ferry Plaza East described in BCDC Permit No. 10-73 in a pleasing public access area with landscaping and other improvements as shown on Exhibit "C". Tenant shall maintain said landscaping including replacement thereof for the term of this agreement including all gardening, watering, and other incidental or necessary garden work. Tenant further shall maintain those public plaza areas by appropriate sweeping, debris pickup and removal, to a standard that shall be conducive to public use of the plaza area.

Port shall supply electricity and water for the public use area of the plaza for the term of this agreement. In view of the uncertainty of daily maintenance costs in the public use area of the plaza, which maintenance has been assumed by the Tenant, Port shall supply for the first five (5) years after the commencement of sales on the premises, electricity, gas, and water to the restaurant and Port shall assume responsibility for repair or restoration of improvements damaged by vandalism in the public plaza area, however, Port's responsibility to supply electricity, gas, and water of the restaurant and Port's responsibility for vandalism shall be limited to not more than \$2,000.00 per month, non-cumulative. At the end of the fifth year, Tenant shall assume the costs of utilities specifically electricity, water, and gas for the restaurant operation. Port and Tenant agree to evaluate the loss experience resulting from vandalism in the public plaza area at the end of the fifth year and shall determine how said responsibilities shall be thereafter shared.

9. Prohibited Uses. Tenant shall not use, or permit said premises, or any part thereof, to be used, for any purposes other than the purpose or purposes for which the said premises are hereby leased; and no act shall be permitted on the leased premises which will cause a cancellation of any insurance policy covering said building, or any part thereof, or which shall in any way conflict with any law, ordinance, rule or regulation affecting the occupancy and use of said premises, which is or may hereafter be enacted or promulgated by federal, state, county, or municipal authority having jurisdiction over the premises, including any rules and regulations of said building, or in any way obstruct or interfere with the rights of other tenants or licensees of the Port, or injure or annoy them, nor use, nor allow said premises to be used, for any improper, immoral, unlawful or objectionable purpose.

10. Assignment and Subletting. Tenant shall not assign this lease or any interest therein and shall not sublet the said premises or any part thereof or any right or privilege appurtenant thereto, or suffer any other person to occupy or use the said premises or any portion thereof without the written consent of the Port first had and obtained, which consent shall not be unreasonably withheld so long as the assignee has demonstrated the financial stability and business expertise to operate a restaurant of the quality of Tenant. A consent to one assignment, subletting, occupation or use by any person shall not be construed as a consent to a subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without consent shall be void and shall, at the option of the Port, terminate this lease. This lease shall not nor shall any interest therein be assignable

as to the interest of the Tenant by operation of law without the written consent of the Port.

11. Security Interests. The Tenant may, in a bona fide transaction relating to the needs of business on the premises and upon the written permission of the Port, hypothecate its interest in the leasehold as security for the payment of money or for any other lawful obligation of the lessee for the development of the leased premises.

In the event of such hypothecation and for the express benefit of a mortgagee, beneficiary under a deed of trust, or any other secured party (hereinafter referred to as "lender") the Port and Tenant agree as follows:

(a) The execution of any mortgage, deed of trust or other security instrument, or the foreclosure thereof or sale thereunder either by judicial proceedings or through any power reserved therein, or conveyance by Tenant to Lender, or the exercise of any right, power or privilege reserved therein, shall not constitute a violation of any of the terms or conditions of this lease or an assumption by Lender, personally, of any of the obligations of Tenant under this lease except as provided in subparagraph (c) below.

(b) The Lender, at its option, may at any time before the Port's exercise of any of its rights pursuant to paragraph 4 hereof, or before the expiration date of the period specified in subparagraph (f) below, whichever last occurs, perform any of the covenants and conditions required to be performed hereunder by the Tenant, to the extent that such covenants and conditions are applicable and pertain to and affect the portion of the leased premises encumbered by such lien, and such performance by the

Lender shall be as effective to prevent the termination of this lease as the same would have been if done and performed by Tenant.

(c) The Port hereby agrees with respect to any mortgage or deed of trust or other security instrument executed by the Tenant of a leasehold interest in all or part of the leased premises that the Lender may cause such mortgage, deed of trust or other security instrument to be recorded and may enforce said mortgage, deed of trust or other security instrument and upon foreclosure sell and assign said leasehold and the interest of the Tenant in any improvements thereon to an assignee from whom it may accept a purchase price, or may acquire title to said leasehold and interest in improvements in any lawful way, and if the Lender shall become the assignee, may sell and assign said leasehold and said interest of the Tenant in any improvements thereon. Should the Lender acquire Tenant's leasehold estate hereunder by foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by any mortgage, deed of trust or other security instrument, or by a property conveyance from Tenant, Lender shall take Tenant's leasehold estate subject to all of the provisions of this lease, and shall, so long as and only so long as it shall be the owner of such estate, assume personally the obligations of Tenant.

(d) Should Lender acquire Tenant's leasehold estate hereunder by foreclosure or other appropriate proceedings in the nature thereof or as a result of any other action or remedy provided for by any mortgage, deed of trust or other security instrument, or by a conveyance from Tenant in lieu of foreclosure, the Lender may sublease such portion for any period or periods within the term of this lease, or may assign Tenant's leasehold estate hereunder by sale

or otherwise, provided that any assignee or purchaser of said leasehold estate subject to all of the covenants and conditions herein contained on the part of the Tenant to be kept, observed and performed, and shall, as a condition of such assignment, purchase or taking, assume and agree to perform all such covenants and conditions.

(e) No such foreclosure, assignment, sale, hypothecation, or subleasing of the Tenant's leasehold estate hereunder, nor the acceptance of rent by the Port from any such assignee, purchaser, sublessee, or any other person, shall relieve, release, or in any manner affect the liability of the Tenant hereunder.

(f) Upon the occurrence of an event of default under paragraph 4 hereof, the Lender shall have sixty (60) days after receipt of written notice from the Port setting forth the nature of the Tenant's default, and a reasonable time thereafter if the Lender shall have commenced foreclosure proceedings or other appropriate proceedings in the nature thereof within such sixty (60) days' period and is diligently prosecuting the same, within which to endeavor to cure such default. The right of the Port to exercise its rights pursuant to paragraph 4 hereof upon the failure or neglect of the Tenant to observe, keep and perform the covenants and conditions hereof, is, and shall continue to be, at all times while the Tenant is indebted to the Lender subject to and conditioned upon the Port having first given to the Lender subject to and conditioned upon the Port having first given to the Lender written notice of such default, or within a reasonable time thereafter if it shall have commenced foreclosure or other appropriate proceedings in the nature thereof within such sixty (60) days' period and is diligently prosecuting the same. The fact that the time has expired for performance of a

covenant by the Tenant shall not be deemed to render performance by the Lender or a purchaser impossible, but in such event, if the Lender or any purchaser shall promptly undertake to perform the Tenant's defaulted obligation and shall diligently proceed with such performance, the time for such performance shall be extended by such period as shall be reasonably necessary to complete such performance. If, and so long as, the Lender is prevented, by any process, injunction, or other order issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving the Tenant or any injunction or other suit, action, or proceedings, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, it shall be deemed to have commenced foreclosure proceedings and to have diligently prosecuted said proceedings for purposes of this subparagraph (f); provided, however, that the Lender shall use reasonable efforts to contest and appeal the issuance of any such process, injunction or other order.

(g) The Lender shall give written notice to the Port of the Lender's address and the existence and nature of its security interest. Failure to give such notice shall constitute a waiver of Lender's right to receive written notice hereunder.

12. Insolvency. Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of Tenant and not released within thirty (30) days, or (b) a general assignment by Tenant for the benefit of creditors, or (c) any action taken or suffered by Tenant under any insolvency or bankruptcy act shall at the option of the Port constitute a breach of this lease by Tenant.

13. Comprehensive Public Liability Insurance. Tenant shall

maintain and pay premiums on a policy or policies of liability insurance, which name Port and City and County of San Francisco, their officers, agents and employees, as additional or co-insureds, with a company or companies acceptable to Port. Such policy or policies shall cover the leased premises and its operation against claims for personal injury and death in an amount of not less than \$500,000 for injury or death of any one person, and \$1,000,000 for injury or death of all persons in any one occurrence, and \$100,000 for property damage. Tenant shall furnish to Port a certificate evidencing the fact that the insurance described in this paragraph has been obtained and is in full force and effect and that such insurance cannot be cancelled or a change made affecting coverage without fifteen (15) days' prior notice to Port. Tenant shall promptly notify Port of any change in the terms of such policy or policies and shall provide Port with certificates evidencing such change. Said policy or policies shall either contain a broad form of contractual liability coverage, including leases, or there shall be attached to all policy or policies an endorsement providing that such insurance as is provided for therein shall apply to the obligations assumed by Tenant under this lease. The procuring of this policy or policies shall not be construed to be a substitute in any respect for Tenant's obligations under this lease. Tenant and Port shall periodically review the amount of public liability insurance carried pursuant to this paragraph, but in any event not less than every ten (10) years during the term of this lease. If it is found to be the general commercial practice in the City and County of San Francisco to carry public liability insurance in an amount substantially greater or lesser than the amount then being carried by

Tenant with respect to risks comparable to those associated with the leased premises, the amount carried by Tenant shall be increased or decreased to conform to such general commercial practice.

14. Indemnification. Port and the City and County of San Francisco, their officers, agents and employees, shall be free from liabilities and claims for damages, and suits for or by reason of any injury or injuries to any person or persons, or property brought upon or affixed to the premises, of any kind whatsoever, from any cause or causes whatsoever, while in, upon or adjacent to, or in any way connected with the leased premises, or in any occupancy of said leased premises by Tenant, including the sole negligence of, but excluding intentional harm by, Port, its officers, agents, or employees, and Tenant hereby covenants and agrees to save harmless the Port and the City and County of San Francisco from all such liabilities, claims for damages, suits and litigation expenses.

15. Waiver of Claims. Tenant, as a material part of the consideration to be rendered to Port, hereby waives all claims against Port, and agrees to hold Port harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment and persons in or upon said premises from any cause arising at any time, including all claims arising out of the negligence of, but excluding intentional harm by, Port, its officers, agents or employees.

16. Liens. Subject to the provisions of paragraph 11 hereof, Tenant shall keep the demised premises and the improvements thereon free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant, provided, however, this paragraph shall not apply to any lien for the purchase or other acquisition of a removable fixture placed upon the premises by Tenant.

17. Destruction; Fire Insurance.

(a) In the event that at any time during the term of this lease there shall be a partial or total destruction of the improvements from time to time theretofore constructed on the leased premises by Tenant, resulting from any cause or casualty for which insurance was not obtainable by the Tenant at the time of such damage or destruction, the Tenant shall (i) diligently proceed to restore or rehabilitate the improvements; or (ii) terminate this lease by giving the Port written notice of such termination within ninety (90) days after such destruction, whichever of (i) or (ii) the Tenant shall elect; provided, however, that if the Tenant shall elect to terminate this lease pursuant to (ii) above, then it shall demolish the remainder of such partially or totally destroyed improvements unless the Port within sixty (60) days after receipt of the written notice of termination, shall advise the Tenant in writing of the Port's desire to retain such partially or totally destroyed improvements. If the destruction is partial and not material, Tenant shall diligently proceed to restore or rehabilitate the improvements.

(b) The Tenant shall at all times during the term hereof keep in force a policy or policies of insurance against loss or damage by fire, explosion, lightning and the perils covered by the standard extended coverage endorsement, on all insurable improvements located on the leased premises. Said policy or policies shall be at least in the amount of 90% of replacement cost of such structures and shall contain standard replacement cost endorsements. Said policies shall be placed with insurance companies authorized to do business in the State of California. Rent shall continue to be paid to Port in amount equal to the minimum rental due during the then current lease

year, or the average annual rental, both minimum and percentage paid during the previous three (3) lease years, whichever is greater, in the event the property is damaged or destroyed by any of the perils insured against under the aforesaid standard fire and extended coverage policy. Tenant may carry, or may cause its sublessees and tenants to carry, insurance to protect its obligation to Port under this clause.

18. Taxes. Tenant agrees to pay to the proper authority any and all taxes, assessments and similar charges on the leased premises in effect at the time this lease is entered into, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy, as distinguished from the ownership of the premises and property.

19. Compliance with Law. The premises leased hereunder are not to be used in such manner nor shall business be conducted thereon which shall in any way conflict with any valid law, ordinance, rule or regulation applicable to the premises, affecting the occupancy or use of the leased premises, and failure to abide by any such law, ordinance, rule or regulation will be deemed a violation of a condition of this lease.

20. Entry. The right is hereby reserved to Port, its officers, agents, and employees to enter upon the leased premises at any time during normal business hours for the purpose of inspection and inventory, and when otherwise deemed necessary for the protection of the interests of the Port, and Tenant shall have no claim of any character on account thereof against the Port, or any officer, agent or employee thereof, and there shall be no rebate of rent or any claim against the Port for any loss of occupation or quiet enjoyment of the premises thereby occasioned.

21. Eminent Domain. Whenever the word "condemned" is used herein it shall be deemed to have the same meaning as the words "eminent domain." In the event that any action or proceeding is commenced for condemnation of the leased premises, or any portion thereof, or if Port is advised in writing by any government or agency or department or bureau thereof, or any entity or body having the right or power of condemnation, of its intention to condemn the leased premises, or any portion thereof, Tenant having the right of possession of the leased premises at the time thereof, or if the leased premises or any portion thereof be condemned through such action, then and in any of said events:

(a) Port may, without any obligation or liability to Tenant, and without affecting the validity and existence of this lease other than as hereafter expressly provided, agree to sell or convey to the condemnor, without first requiring that any action or proceeding be instituted, or if such action or proceeding shall have been instituted, without requiring any trial or hearing thereof, and Port is expressly empowered to stipulate to judgment therein, the part and portion of the leased premises sought by the condemnor, free from this lease and the rights of Tenant hereunder, excepting only as hereinafter in paragraph (b) provided.

(b) Tenant shall have no claim against Port nor be entitled to any part or portion of the amount that may be paid or awarded as a result of the sale, for the reasons as aforesaid, or condemnation of the leased premises or any part or portion thereof, Tenant hereby assigning,

transferring, and setting over unto Port any interest, if any, which Tenant would but for this provision have in, to, upon, or against the leased premises or any part or portion thereof or the amount agreed to be paid or awarded and paid to Port, excepting only Tenant shall be entitled to seek to recover as against the condemnor, and Port shall have no claim therefor or thereto, for Tenant's trade fixtures to which Tenant holds title or may remove upon the expiration of the term hereof, the fair market value of Tenant's leasehold interest, and structures or improvements erected and made by Tenant to or upon the leased premises. In the event that any sum of money is paid or awarded to Port for the structures or improvements erected and made by Tenant to or upon the leased premises, Tenant will be paid the money or award to Port. Port agrees that it will not settle any condemnation action without first obtaining Tenant's consent insofar as it relates to the value of the aforesaid structures or improvements.

(c) In the event that a part or portion of the leased premises condemned is not so great as to substantially impair the operation of the lease, this lease shall remain in full force and effect and shall not terminate or otherwise be affected, but the portion so condemned shall be removed and released from the effect of, and shall no longer be a part of the leased premises after the condemnation thereof. The monthly rental reserved hereunder, however, shall be reduced from and after the taking of physical possession by the condemnor

of the portion taken by the percentage by which Tenant's use of the premises is affected or impaired by the condemnation.

22. Maintenance. Recognizing that the improvements upon the leased premises remain in Tenant for the term of the lease, the Tenant throughout the term at its sole cost and expense shall maintain the leased premises and all improvements in first-class condition and repair, ordinary wear and tear excepted, only to the extent that a first-class restaurant can be operated on the premises, and in accordance with all laws, rules, ordinances, and regulations. Tenant has no obligation to structurally maintain the BARTD ventilating shaft.

23. Nondiscrimination Provisions. Nondiscrimination provisions attached hereto are made a part hereof. Where the term "contractor" is used therein it shall be deemed to mean "tenant."

24. Waiver of Breach. The waiver by Port of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition with respect to any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Port shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition of this lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Port's knowledge of such preceding breach at the time of acceptance of such rent. No act or omission by either the Port or Tenant shall constitute a modification of this lease, it being understood by all parties that this lease may be changed or otherwise modified only by written agreement of all parties.

25. Successors. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply

to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

26. Modification of Lease. The parties hereto, by mutual agreement in writing, may alter or modify the terms of this lease, or may terminate the same, with such adjustments and for such considerations as may be fair and equitable in the circumstances.

27. Holding Over. Any holding over after the expiration of the term of this lease shall be deemed a month-to-month tenancy, and upon each and every one of the terms, conditions, and covenants of the within lease. In the event of a month-to-month tenancy, Port may cancel the same upon thirty (30) days' notice left at the leased premises, and Tenant shall have the privilege of cancelling the same upon thirty (30) days' notice to Port, all notices to be in writing.

28. Quit Claim. Tenant will, upon expiration or earlier termination of this lease, peaceably and quietly leave, surrender and yield up to Port, all and singular, the leased premises, and, if requested, execute and deliver to Port a good and sufficient quit claim deed to the rights arising hereunder. Should Tenant fail or refuse to deliver to Port a quit claim deed, as aforesaid, a written notice by Port reciting the failure or refusal of Tenant to execute and deliver said quit claim deed as herein provided, shall from the date of recordation of said notice be conclusive evidence against Tenant and all persons claiming under Tenant, of the termination of this lease.

29. Mineral Reservation. The State of California, pursuant to Section 2 of Chapter 1333, Statutes 1968, as amended by Chapter 1296, Statutes 1969, has reserved all subsurface mineral deposits,

including oil and gas deposits on or underlying the leased premises in accordance with the provisions of these Statutes. Landlord shall and hereby does grant to the State of California the right to explore and drill for and extract said subsurface minerals, including oil and gas deposits, from a point located by Lambert Projection, California Grid System Zone 3 at x and y where $x = 1,454,666$ and $y = 478,666$, which point was not improved on July 1, 1972, and is outside the boundaries of the leased premises.

30. Governmental Approvals. Tenant is advised that approvals for the construction of a building on the leased premises will require the approval of certain governmental agencies. Tenant agrees to secure the necessary approvals from agencies exercising lawful jurisdiction over the property including but not limited to the following: Department of Building Inspection; Department of Public Works, Bureau of Permits; City Planning Commission and BARTD. Tenant also agrees to secure written approval from BARTD for the construction of its proposal.

31. Notices. All notices to be given pursuant to this lease shall be addressed, if to the Port to:

Commercial Property Manager
San Francisco Port Commission
Ferry Building
San Francisco, California 94111

and if to Tenant to:

Barbary Coast Investment, Inc.
2030 Union Street
San Francisco, California 94109

or as may from time to time otherwise be directed in writing by the parties. Notice shall be deemed to have been duly given if posted by certified mail in a properly sealed envelope, or wrapper,

addressed as aforesaid and deposited, postage prepaid, in a post office or branch post office regularly maintained by the United States Government.

32. Termination. Upon the expiration or earlier termination of this lease, Port may at its option require Tenant at Tenant's expense to remove all or any part of the improvements, or repair or restore the leased premises to the same condition as existed when the leased premises were first occupied by Tenant, subject to improvements Port elects to have remain, or Port may remove, repair, or restore said leased premises and Tenant shall be liable for the cost of such repair, restoration, or removal. It is expressly agreed that any passenger elevators or escalators are trade fixtures. If Port elects to have Tenant's improvements removed from the leased premises, such removal shall be in accordance with sound engineering practice and the premises shall be left broom clean and free of debris.

33. Automobile Access. Automobile access for the term of this agreement from The Embarcadero to leased premises as shown on Exhibit "C" shall be permitted to Tenant for purpose of arriving or departing the restaurant and servicing said restaurant with deliveries. Said access way within Ferry Plaza East area shall be installed and maintained by Tenant during the term hereof at the sole expense of Tenant.

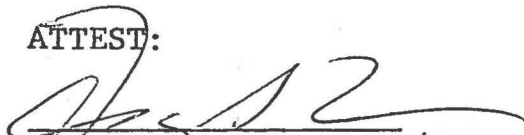
34. Time is of Essence. Time is of the essence of this lease.

35. Captions. The captions in this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the terms and provisions of this lease.

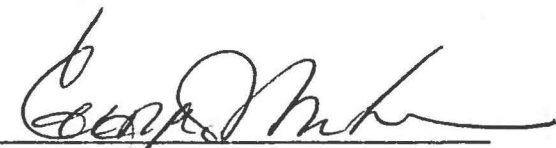
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

BARBARY COAST INVESTMENT, INC., a
California corporation

ATTEST:

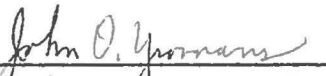

Fay S. Tom
Secretary

By

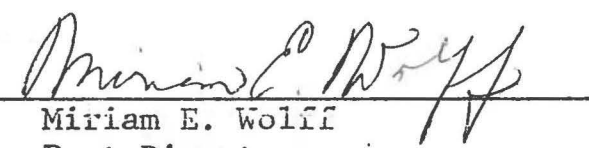

George Lu
President

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating
through the SAN FRANCISCO PORT
COMMISSION

ATTEST:


John O. Yonans
Secretary

By


Miriam E. Wolff
Port Director



STATE OF CALIFORNIA)
) ss
COUNTY OF SAN FRANCISCO)

On this 22nd day of May, 1974, before me,
a Notary Public of said county and state; duly commissioned and
sworn, personally appeared George Lu,
known to me to be the President of the Barbary
Coast Investment, Inc that executed the within instrument,
and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal the day and year first above written.

Margaret M. Leahy
Notary Public in and for said
County and State



STATE OF CALIFORNIA)
) ss
COUNTY OF SAN FRANCISCO)

On this 15th day of May, 1974, before me,
a Notary Public of said county and state, duly commissioned and
sworn, personally appeared Miriam E. Wolff,
known to me to be the Park Director of The San
Francisco Park Commission that executed the within instrument,
and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal the day and year first above written.

Margaret M. Leahy
Notary Public in and for said
County and State



DESCRIPTION OF LEASE AREA AT FERRY PLAZA EAST
OVER SFBARTD VENTILATION STRUCTURE

Commencing at a point, at Ferry Plaza East, being the southwest corner of the permanent easement granted by the San Francisco Port Commission to the San Francisco Bay Area Rapid Transit District for a ventilating structure, having grid coordinates of X = 1,453,679.76 and Y = 477,257.35; running thence N 61°51'54" E for a distance of 22.94 feet; thence N 28°08'06" W for a distance of 25.27 feet to the true point of beginning having coordinates X = 1,453,688.07 and Y = 477,290.65; running thence N 28°08'06" W for a distance of 79.47 feet; thence N 61°51'54" E for a distance of 134.13 feet; thence S 28°08'06" E for a distance of 79.47 feet; thence S 61°51'54" W for a distance of 134.13 feet to the true point of beginning; the parcel described being a portion of the roof area over SFBARTD Ventilation Structure; and containing an area of 10,507 square feet; with exceptions* from above described parcel of two rectangular areas (8.14 feet by 9.34 feet) as shown on Drawing No. 8319-200-6.

Bearings and coordinates shown are California Grid, Zone 3.

Distances shown are ground distances. Grid factor = 0.9999294.

*EXCEPTIONS:

Any construction adjacent to or in the vicinity of the excepted area (hatches) must conform to the four-hour separation provisions of the Uniform Building Code and the Building Code of the City and County of San Francisco.

The hatch at Column Line 4, all as more particularly shown by drawings in the office of the Chief Engineer of the Port of San Francisco, must be removed and a structural slab integral with roof slab conforming to the four-hour separations must be installed in replacement thereof.

See Dwg. No. 8319-200-6

4-3-72

EXHIBIT "A"

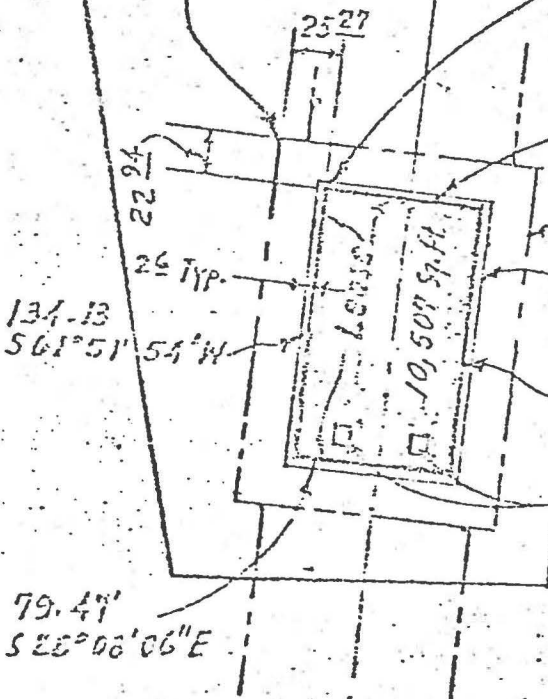
EMBARCADERO

FERRY BLDG.

FERRY PLAZA EAST
PLATFORM

X = 1,453,679.76
Y = 477,257.55

True Point of Beginning
X = 1,453,688.07
Y = 477,290.65



79.47', N 28° 06' 06\"W

Permanent Easement

Ventilation Structure (face)

134.13', N 61° 51' 54\"E

2 Exceptions, 8.14' x 9.34' (Hatches)

79.47'
S 28° 06' 06\"E

San Francisco Bay

Lease area shown shaded.
Bearings & coordinates are Calif. Grid, Zone 3.
Distances are ground distances.
Grid factor = 0.9999294.

SAN FRANCISCO FORT AUTHORITY
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

Facility 200
LEASE AT VENT STRUCTURE

APPROVED	<i>[Signature]</i>
DATE	
DRAWING NO	8519-200-6
SHEET NO	1 OF 1

IN CHARGE OF FSN	MADE BY FSN	TRACED BY FSN	CHEK. BY PA	DATE 4-4-75	SCALE 1" = 150'
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ADDENDUM TO ALL
CITY AND COUNTY OF SAN FRANCISCO CONTRACTS

NONDISCRIMINATION PROVISIONS
OF Sec. 12B. 2, as amended by Ordinance No. 96-72
(Chap. 12B, S.F. Admin. Code)

Ordinance No. 261-66 (Approved October 21, 1966) as amended by Ordinance No. 340-68 (Approved December 6, 1968) amending administrative code by adding Chapter 12B thereto requiring nondiscriminatory employment provisions in all city contracts: authorizing Human Rights Commission to hold hearings; prescribing the powers and duties thereof; authorizing the Human Rights Commission to conduct prebid conferences; requiring that bidders participate in prebid conference; and establishing procedures for development of affirmative action nondiscrimination programs. And as amended by Ordinance 96-72 (approved April 21, 1972) including provision against discrimination based on sex or sexual orientation.

In the performance of this contract, the contractor, subcontractor or supplier agrees as follows:

(a) Wherever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, or sexual orientation. The contractor, subcontractor or supplier will take affirmative action to insure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, religion, ancestry, national origin, sex, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this ordinance shall require or prohibit the establishment of new classifications of employees in any given craft. The contractor, subcontractor or supplier agrees to post in conspicuous places, available to employees and applicants or employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this section.

(b) The contractor, subcontractor, supplier, will, in all solicitations or advertisements for employees placed by or on his behalf state that qualified applicants will receive consideration for employment without regard to race, creed, color, ancestry, national origin, sex or sexual orientation. Any solicitations or advertisements that satisfy similar requirements under Federal law, subject to the approval of the awarding authority, will also satisfy this requirement.

(c) The contractor, subcontractor or supplier will send to each Labor Union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers' representative of the contractor's, subcontractor's or supplier's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor, subcontractor, supplier, will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the awarding authority, the Fair Employment Practices Commission, or the San Francisco Human Rights Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this contract, and on request provide evidence that he has or will comply with the nondiscrimination provisions of this contract.

(e) That contractor, subcontractor or supplier shall be deemed to have breached the nondiscrimination provisions of this contract upon:

(1) A finding by the Director of the San Francisco Human Rights Commission, or such other official who may be designated by the Human Rights Commission, that contractor, subcontractor or supplier has fully violated such nondiscrimination provisions; or

(2) A finding by the Fair Employment Practices Commission of the State of California that contractor, subcontractor or supplier has violated any provision of the Fair Employment Practices Act of California or the nondiscrimination provisions of this contract; provided that the Fair Employment Practices Commission has issued a final order pursuant to Section 1426 of the Labor Code, or has obtained a final injunction pursuant to Section 1429 of the Labor Code; provided further, that for the purposes of this provision, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of the Court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

(3) Upon such finding by the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, or the Fair Employment Practices Commission, the awarding authority shall notify contractor, subcontractor, or supplier that unless he demonstrates to the satisfaction of the Director of the San Francisco Human Rights Commission, or other official designated by the Human Rights Commission, within such reasonable period as the Human Rights Commission shall determine, that the violation has been corrected, action will be taken as set forth in subparagraphs (f) and (g) hereof.

(4) The Human Rights Commission shall, within ten days of the date of issuance of any finding by the Director of the Human Rights Commission or other official designated by the Commission in the endorsement of this chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of his right to appeal. Notice of appeal must be filed in writing with the Chairman of the Commission with 20 days of the date of mailing said copy and notice.

(5) For purposes of appeal proceedings, under this section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Human Rights Commission be designated under Sec. 12B.2(e)(1) of the contract, that Commissioner may not participate in an appeal under this section except as a witness.

(6) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his testimony, or books, records, documents or other things under his control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his presence at the proceeding, and requiring him to bring such books, records, documents or other things under his control.

(7) All appeals to the Human Rights Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, and to the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to this contract.

(8) If any contractor, subcontractor or supplier under contract to the City and County of San Francisco shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for cancellation of the contract or subcontract and such contractor, subcontractor or supplier shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(9) The Human Rights Commission of San Francisco shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this contract, and such rules and regulations shall, so far as practicable, be similar to those adopted in applicable Federal executive orders.

(f) There may be deducted from the amount payable to the contractor, subcontractor or supplier by the City and County of San Francisco under this contract a penalty of ten (10) dollars for each person for each calendar day during which such person was discriminated against in violation of the provisions of this contract. In addition to any other penalties herein provided for the violation of the nondiscrimination provisions of this contract or for the failure of any contractor, subcontractor or supplier to abide by the rules and regulations herein contained, this contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding as set forth in Sec. 12B.2(e) that the contractor, subcontractor or supplier has discriminated contrary to the provisions of this contract, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City and County of San Francisco.

(g) A breach of the nondiscrimination provisions in the performance of this contract shall be deemed by the City and County of San Francisco to be a material breach of contract and basis for determination by the officer, board or awarding authority responsible for the awarding or letting of such contract that the contractor, subcontractor or supplier is an irresponsible bidder as to all future contracts for which such contractor, subcontractor or supplier may submit bids. Such person, firm or corporation shall not for a period of two (2) years thereafter, or until he shall establish and carry out a program in conformity with the nondiscrimination provisions of this contract, be allowed to act as a contractor, subcontractor or supplier under any contract for public works, goods or services for or on behalf of the City and County of San Francisco.

(h) Nothing contained in this contract shall be construed in any manner so as to prevent the City and County of San Francisco from pursuing any other remedies that may be available at law.

(i) Nothing contained in this contract shall be construed in any manner so as to require or permit the hiring of aliens on public works as prohibited by law.

(j) The contractor, subcontractor or supplier will meet the following standards for affirmative compliance:

(1) If the contractor, subcontractor or supplier has been held to be an irresponsible bidder under Section 12B.2(g) hereof, he shall furnish evidence that he has established and is carrying out a program in conformity with the nondiscrimination provisions of this contract.

(2) The contractor, subcontractor or supplier may be required to file with the Human Rights Commission a basic compliance report which may be a copy of the federal EEO-1, or a more detailed report as determined by the Commission. Wilful false statements made in such reports shall be punishable as provided by law. No contractor, subcontractor or supplier shall be held in nonconformance for not filing such a report with the Human Rights Commission unless he has been specifically required to do so in writing by the Human Rights Commission.

(3) Personally, or through his representatives, the contractor, subcontractor or supplier shall, through negotiations with the unions with whom he has collective bargaining or other agreements requiring him to obtain or clear his employees through the union, or when he otherwise uses a union as an employment resource, attempt to develop an agreement which will:

(a) Define and outline responsibilities for nondiscrimination in hiring, referral, upgrading and training.

(b) Otherwise implement an affirmative anti-discrimination program in terms of the unions' specific areas of skill and geography, such as an apprenticeship program, to the end that minority workers will be available and given an equal opportunity for employment.

(4) The contractor, subcontractor, supplier or trade association shall notify the contracting agency of opposition to the nondiscrimination provisions of this contract by individuals, firms or organizations during the term of this contract.

Section 12B.3. The San Francisco Human Rights Commission, its presiding officer and its Director are hereby granted the power to do all acts and exercise all powers referred to in Section 12B.2 hereof.

Sec. 12B.4. In order to be eligible to bid or to have a bid considered by the awarding agency, the contractor in all public works contracts shall submit an affirmative action program which shall meet the requirements of the Human Rights Commission. For the purpose of this ordinance, the following definitions shall apply to the following terms:

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who submits a bid and/or enters into a contract with department heads and officers empowered by law to enter into contracts on the part of the City and County for public works or improvements to be performed, or for goods, supplies or services to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a contract or agreement with the contractor to perform a substantial specified portion of the contract for public works, improvements, supplies, goods or service let or awarded for or on behalf of the City and County in accordance with the plans and specifications of such contract. Such term shall also include any contractor who enters into a contract with any subcontractor for the performance of 10 per cent or more of the subcontract.

"Supplier" means any person or persons, firm, partnership, corporation, or any combination thereof, who submits a bid or enters into a contract with the awarding agency of the City and County for the supplying of goods, materials, equipment, furnishings or supplies.

"Sex" means the character of being male or female, and "sexual orientation" means the choice of human adult sexual partner according to gender.

The Human Rights Commission may also require contractors, subcontractors and suppliers to take part in a prebid or preaward conference in order to develop, improve or implement a qualifying affirmative action program.

(a) Affirmative action nondiscrimination programs developed pursuant to this section shall be effective for a period of twelve months next succeeding the date of approval by the Human Rights Commission. Contractors, subcontractors and suppliers who are members in good standing of a trade association which has negotiated an affirmative action nondiscrimination program with the Human Rights Commission may make this association program their commitment for the specific contract upon approval of the Human Rights Commission without the process of a separate prebid or preaward conference. Such an association agreement shall be effective for a period of twelve months next succeeding the date of approval by the Human Rights Commission.

Trade associations shall provide the Human Rights Commission with a list of members in good standing in such association. The Human Rights Commission shall annually supply contracting agencies of the City and County with a list of contractors, subcontractors and suppliers who have developed approved affirmative action nondiscrimination programs.

(b) The awarding agency shall be responsible for notifying all prospective bidders of the requirements of this section and also when requested by Human Rights Commission, for notifying the Human Rights Commission of each contract which is being proposed to be put to public bid.

(c) The proposed affirmative action program required to be submitted under Sec. 12B.4 hereof, and the prebid or preaward conference which may be required by Human Rights Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

(1) Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;

(2) Classroom preparation for the job when not apprenticeable;

(3) Preapprenticeship education and preparation;

(4) Upgrading training and opportunities;

(5) Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City and County of San Francisco for such work; and

(6) The entry of qualified minority journeymen into the industry.

(d) Affirmative action nondiscrimination agreements resulting from the proposed affirmative action programs or the prebid or preaward conferences shall not be confidential and may be publicized by the Human Rights Commission at its discretion. In addition, the Human Rights Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this ordinance.

(e) Any job training or education program using the funds, facilities, or staff of the City and County of San Francisco which, in the judgment of the Board of Supervisors or the Human Rights Commission, can make a contribution to the implementation of this ordinance shall submit reports to the Human Rights Commission as requested and shall be required to cooperate with the contractors, subcontractors, suppliers and unions and with the Human Rights Commission for the effectuation of the affirmative action nondiscrimination programs developed under this ordinance.

Contractor shall include the foregoing nondiscrimination provisions in all subcontracts let or awarded hereunder.

(Sections 12B.1 and 12B.2 of Ord. No. 261-66 as amended by Ord. No. 340-68 and Ordinance 96-72.)

PORT OF SAN FRANCISCO

Memorandum

To : MR HUNTSMAN

Date : January 25, 1973

File No.:

From : PROPERTY

Subject: ORIGINAL COPY "BARTD VENTILATING BUILDING DEVELOPMENT AGREEMENT"
BARBARY COAST DEVELOPMENT, INC.

Herewith is Original copy of Development Agreement between the Port of San Francisco and Barbary Coast Development, Inc. for restaurant atop the BARTD ventilating Building.

H. J. Thiemann

H. J. Thiemann *WW*
Commercial Property Manager

WW

ORIGINAL

BARTD VENTILATING BUILDING

DEVELOPMENT AGREEMENT

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BARTD VENTILATING BUILDING

DEVELOPMENT AGREEMENT

THIS AGREEMENT, made on the 10th day of January, 1973, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating through the SAN FRANCISCO PORT COMMISSION, hereinafter called "Port", and Barbary Coast Development, Inc.

(a California corporation), hereinafter called "Developer";

W I T N E S S E T H:

WHEREAS, Port is the transferee from the State of California of that land described in Exhibit "A" hereof, together with other lands and subject to certain exceptions and reservations, all as more particularly set forth in California Statutes 1968, Chapter 1333, as amended; and

WHEREAS, pursuant to paragraph 6 of Section 3 of the said Statutes of 1968, Chapter 1333, Port is authorized to lease any portion of the property transferred under said Act for a period not exceeding sixty-six (66) years; and

WHEREAS, Developer desires to lease and develop that certain area of that real property in the City and County of San Francisco, State of California, described in Exhibit "A" which is attached hereto and incorporated herein by reference, being a part of the real property transferred and conveyed to the City and County of San Francisco as aforesaid, and consisting generally of 8,000 square feet of roof space on the Bay Area Rapid Transit District Ventilating Building roof; and

WHEREAS, Port has determined that said area may be utilized for restaurant development pursuant to and as set forth in that certain agreement dated 21 July 1965 between Port and BARTD; and

WHEREAS, Port holds permit Number 11-67 from Bay Conservation and Development Commission dated September 22, 1967,

amended November 16, 1970, permitting development;¹

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of the parties does hereby covenant and agree with the other as follows:

1. Agreement to Lease. Subject to the terms and conditions hereof, Port agrees to lease to Developer and Developer agrees to hire and take from Port that area described in Exhibit "A" and Developer agrees to develop the said area or cause the same to be developed for purposes that are set forth in the proposal to Port dated June 1, 1972, incorporated herein as if more fully set forth, subject to the terms and conditions hereof. As promptly as possible, but not later than twelve (12) months from and after the date of this Development Agreement, Developer shall execute a lease in the form attached hereto and marked Exhibit "C", covering the entire Project Area. The lease shall be signed within twelve (12) months and shall be for a term of 66 years, commencing on the date it is executed by Port.

2. Developer's Improvements. Developer of the property contemplates the design and construction of a first-class restaurant and bar business with related public amenities all as more fully shown on developer's plans. Developer also agrees to secure BARTD approval of said development and supply a copy of the same duly executed and certified to Port.

As further consideration, Developer agrees to pay a minimum rent of \$35,000, subject to the lease terms and to pay a percentage rental on gross receipts of 6%-food 8%-alcoholic bev. & all bar items per year. Gross receipts shall be the amounts received and receivable from all sales and business transacted or services performed on the leased premises for which charge is made by Tenant or by any other

¹Although Port believes the permit from BCDC allows improvement of the BARTD Ventilating Building roof, no representations may be made by Port pending the resolution of CCSF v. BCDC, Superior Court No. 628-659.

person, firm or corporation selling merchandise or performing services of any sort in, upon, or from any part of the leased premises, and shall include sales and charges for cash or credit, regardless of collections in the case of the latter, but shall exclude returns and refunds, and shall exclude the amount of sales tax and any sales tax or similar tax or imposition imposed for such sales and charges, where such sales tax or similar tax or imposition is billed to the purchaser as a special item.

3. Conditions to Developer's Obligations. Developer may cancel this Development Agreement by giving Port written notice of such cancellation, in which event neither party shall have any further rights or liabilities hereunder, if:

(a) Port fails to execute a lease on the Project Area in the form and substances and at the time herein provided, and such failure shall not be cured within sixty (60) days after written demand by Developer; or

(b) the permits, approvals, waivers or variances required with respect to any portion of the improvements to be made by Developer, upon or in connection with the development of the Project Area, of any other governmental body having jurisdiction, shall not have been granted or given or having been granted or given, shall have been revoked or shall have expired or been declared invalid, prior to the date for leasing of the Project Area by Developer pursuant hereto; or

(c) there shall be adopted or promulgated by any agency or other unit of the State of California or the City and County of San Francisco or any other governmental body having jurisdiction any laws, rules, regulations, or executive orders, or if an order, decision, or judgment of any court is rendered or entered which would prohibit or would render economically unfeasible the use or occupancy of the Project Area or any part thereof, or of any improvements thereon, for the purposes and upon the terms herein contemplated.

4. Port Improvements. Reasonable access to Developer's improvements will be provided. The platform surrounding the BARTD Ventilating Building roof will be devoted to paid public parking during the term of this lease with the intent to serve the developed premises, except that portions of the platform shall also provide public access as required by BCDC. Ceremonial ships may also be tied to the platform and the platform may also provide ingress and egress to ferries, as well as the aforesaid ships.

5. Compliance with Conditions. Port and Developer agree, unless excused pursuant to other provisions hereof, to perform all acts necessary to the execution of the lease in sufficient time to permit execution thereof in accordance with the provisions of this Development Agreement.

6. Taxes. Developer shall have no obligation to pay any real estate or other taxes and assessments levied, assessed, or imposed upon the Project Area, or any portion thereof, prior to the commencement of the term of the lease upon the Project Area.

7. Deposits. Developer shall, simultaneously with the delivery of the executed lease, deliver to Port the good faith deposit called for by paragraph 3 of the lease.

8. Notices and Demands. A notice, demand or other communication under this Development Agreement by either party to the other shall be sufficiently given or delivered if it is deposited by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) in the case of Developer, is addressed to or delivered personally to
and

(b) in the case of Port, is addressed to or delivered personally to the Port Director at the Ferry Building, San Francisco, California 94111;
or at such other address with respect to either party as that party

may from time to time designate in writing and forward to the other as provided in this paragraph.

9. Effect of Defaults. The injured party shall give written notice of any default or alleged default under this Development Agreement to the other party, specifying the default complained of. The other party thereafter shall have sixty (60) days (or such longer period as reasonably may be required therefor) in which to remedy such default, and the injured party may not institute a suit or other proceedings against the party in default until sixty (60) days (or until the end of such longer period as is reasonable) after giving such notice.

10. Force Majeure. Performance by Developer shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, labor difficulties, riots, floods, earthquakes, fires or other casualty, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, government restrictions or priorities, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the City and County of San Francisco, California, or any other public or governmental agency, bureau, department or officer, or any cause not specified above which is beyond the reasonable control of Developer. Developer shall be entitled to an extension of time for any such cause, which extension shall commence to run from the time of commencement of the cause if Developer gives notice to Port claiming such extension within thirty (30) days after commencement of the cause.

11. Law Governing. The laws of the State of California shall govern the interpretation and enforcement of this Development Agreement.

12. Remedies. In addition to any other rights or remedies provided in law and equity, both Port and Developer shall be entitled to specific performance of this Development Agreement or and provisions thereof.

13. Waivers and Amendments. All waivers of the provisions of this Development Agreement, and all amendments hereto, must be in writing signed by both parties hereto in the case of an amendment and by the party waiving a provision in the case of a waiver.

14. Assurance of Performance. Developer, upon the execution hereof, shall deliver to Port security in the penal sum of \$5,000. Said security shall assure Port that Developer shall well and truly perform all of the undertakings, covenants, terms, and agreements herein contained, and shall fully indemnify and save harmless Port from all costs and damages which it may suffer by reason of Developer's failure to perform. Said security may be reduced to reflect that portion, if less than all, that Developer by the terms of this Development Agreement agrees to lease. Said security may be in the form of a certified check, bidder's bond, security bond, negotiable notes or bonds, negotiable certificates of deposit, or any combination thereof. If said security is in the form of a bidder's bond or surety bond, it shall name Port as obligee and be executed by Developer as the principal and a company, as surety, licensed as such under the Insurance Code of the State of California. Said surety bond or bidder's bond shall provide that if Developer shall well and truly perform all of the undertakings, covenants, terms, and agreements herein contained and shall fully indemnify and save harmless the Port from all costs and damages which it may suffer by Developer's failure to do so, then the obligation of the surety bond shall be void, otherwise to remain in full force and effect.

If Developer shall be in default in the performance of this Development Agreement and Port shall not have committed a material breach of the Development Agreement, then Port shall be entitled forthwith to retain said security or recover under the terms of the surety bond or bidder's bond. In no event shall

Developer be liable for any damages for any breach hereof or otherwise under this Development Agreement in excess of the penalty amount of said security, in the aggregate, but this provision shall not limit or affect the provisions of paragraph 12 providing for specific performance. Said security or surety bond shall be maintained in full force and effect until the execution of the lease covering the entire Project Area contemplated by Developer's proposal, or until the earlier termination of this Development Agreement; provided, however, that no such termination shall relieve Developer or the surety for liability to Port by reason of a breach occurring at or prior to the time of termination.

IN WITNESS WHEREOF, Port and Developer have executed this Development Agreement on the day and year first above written.

ATTEST:

Bill Perry
Secretary

(If Bidder is a corporation)

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating through the SAN FRANCISCO PORT COMMISSION.

By [Signature]
Port Director

Barbary Coast Development, Inc.
Name of Corporation

ATTEST:

(If Bidder is a partnership)

By [Signature]
Title PRESIDENT

(L.S.)

WITNESS:

By _____

(If Bidder is an individual or group of individuals)

WITNESS:

(L.S.)

(L.S.)

(Certificate of Authority
if Bidder is a corporation)

I, the undersigned, as Secretary of the corporation submitting this bid, hereby certify that under and pursuant to the bylaws and resolutions of said corporation, each officer who has signed said bid on behalf of the corporation is fully and completely authorized so to do.


Secretary

(Corporate Seal)

Bid of _____