

File No. 120987

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date November 19, 2012

Board of Supervisors Meeting Date _____

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- Lease
- Recreation and Park Commission Resolution No. 1209-006
- General Plan Referral Letter, dtd 10/18/12
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- _____
- _____
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- _____

Completed by: Alisa Miller Date November 15, 2012

Completed by: _____ Date _____

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

1 [Lease - Woodhouse Marina Green, LLC - Marina Degaussing Station Restaurant]

2
3 **Resolution authorizing the Recreation and Park Department General Manager to enter**
4 **into a lease with Woodhouse Marina Green, LLC, for the operation of a restaurant at the**
5 **Marina Degaussing Station at the Marina Green with a term of ten years.**

6
7 WHEREAS, The City owns the land and improvements commonly known as the
8 Marina Green, including the building known as the Marina Degaussing Station; and

9 WHEREAS, The City desires to contract with Woodhouse Marina Green, LLC,
10 ("Woodhouse") for the lease of the Marina Degaussing Station for the operation of a
11 restaurant and Woodhouse desires to lease the premises from the City; and

12 WHEREAS, The Recreation and Park Commission ("Commission") authorized the
13 Recreation and Park Department (the "Department") on April 21, 2011 to issue a Request for
14 Proposals ("RFP") to solicit responses from qualified entities for the lease and operation of the
15 Marina Degaussing Station, and on December 15, 2011, the Commission authorized staff to
16 begin negotiations with Woodhouse Marina Green, LLC; and

17 WHEREAS, On September 20, 2012, by Resolution No. 1209-006, on file with the
18 Clerk of the Board of Supervisors in File No.120987, the Commission recommended that the
19 Board of Supervisors approve the Lease, on file with the Clerk of the Board of Supervisors in
20 File No.120987 ("Lease"), between the City and Woodhouse for the lease and operation of a
21 restaurant at the Marina Degaussing Station from November 1, 2012, through October 31,
22 2022, with two (2) potential five (5)-year extensions, which has an anticipated revenue of
23 more than one million dollars, and potential term, including extensions, of over ten years; and

24 WHEREAS, Pursuant to San Francisco Charter, Article IX, Section 9.118, Subsections
25 (a) and (b), the Board of Supervisors must approve the Lease by resolution; and

1 WHEREAS, The Lease requires Woodhouse to make improvements to rehabilitate and
2 renovate the Marina Degaussing Station Building as required to operate a first class casual
3 restaurant, retaining the envelope of the historic building, and to perform improvements to the
4 other areas adjacent to the Marina Degaussing Station Building; and

5 WHEREAS, The Lease includes conceptual drawings depicting the proposed
6 improvements, which may include relocating the Marina Degaussing Station Building to
7 improve the configuration of the Bay Trail to permit continuous public access along the
8 shoreline adjacent to the Building, and Woodhouse will cause detailed architectural drawings
9 consistent with such conceptual drawings to be prepared for the proposed improvements
10 following the execution of the Lease; and

11 WHEREAS, The Commission will consider and approve or disapprove the
12 improvements shown in the architectural drawings after such drawings are complete, in
13 accordance with the requirements of Section 8 of the Lease; and

14 WHEREAS, In order to partially offset the upfront estimated \$650,000 investment in the
15 Marina Degaussing Station Building to be paid by Woodhouse to bring the building up to code
16 in connection with the proposed improvements, the Lease provides for Woodhouse to receive
17 \$160,000 in front loaded rent credits; and

18 WHEREAS, The City and Woodhouse acknowledge the possibility of unknown
19 expenses associated with this project such as, by way of example only, unavailability of gas
20 and electric service adjacent to the site, the necessity to relocate the building's electrical
21 panel, unknown permit or other requirements mandated by other public agencies, unknown
22 conditions present at site due to the location of the building, its relocation, or the historic
23 nature of the building that may require extraordinary expenses that are not reasonably
24 foreseeable; and
25

1 WHEREAS, The Lease provides that Woodhouse will be liable for the initial \$50,000 in
2 unknown expenses associated with the project, the Department will issue a rent credit for up
3 to \$50,000 for unknown expenses above the initial \$50,000, and Woodhouse shall have the
4 right to terminate the Lease should the unknown expenses exceed \$100,000; and

5 WHEREAS, In a Certificate of Determination, a copy of which is on file with the Clerk of
6 the Board of Supervisors in File No. 120907, the City's Planning Department
7 determined that the Lease is categorically exempt from environmental review under CEQA
8 State Guidelines Section 15301(a), or Class 1; now, therefore, be it

9 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
10 hereby finds that the Lease is consistent with the General Plan and with the Eight Priority
11 Policies of City Planning Code Section 101.1, and is exempt from environmental review for
12 the same reasons as set forth in the Planning Department's Certificate of Determination; and,
13 be it

14 FURTHER RESOLVED, That the Board of Supervisors hereby approves the lease
15 dated September 20, 2012, for the lease and operation of a restaurant at the Marina
16 Degaussing Station commencing on November 1, 2012, through October 31, 2022; and for a
17 potential extension period of up to ten (10) years commencing on November 1, 2022, through
18 October 31 2032, subject to the approval of the Commission; and be it

19 FURTHER RESOLVED, That the Board understands that it is not approving any of the
20 improvements described in Section 8 and Exhibit D or Exhibit F of the Lease at this time, and
21 the Board finds that the City, including the General Manager and Commission, retains
22 absolute discretion to approve or disapprove such improvements, and that the approval of
23 such improvements shall be subject to all applicable laws and regulation, including review
24 under the California Environmental Quality Act, at such time as they are proposed; and be it
25

1 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
2 Manager to enter into additions, amendments, or other modifications to the Lease (including,
3 without limitation, preparation and attachment of, or charges to, any or all of the exhibits) that
4 the General Manager, in consultation with the City Attorney, determines are in the best
5 interest of the City, do not materially decrease the benefits of the Lease to the City, do not
6 materially increase the obligations or liabilities of the City, do not authorize the performance of
7 any activities without pursuing all required regulatory and environmental review and
8 approvals, and are necessary or advisable to complete the transactions which the Lease
9 contemplates and effectuate the purpose and interest of this resolution, such determination to
10 be conclusively evidenced by the executions and delivery by the General Manager of the
11 Lease and any such additions, amendments, or other modifications that that document; and
12 be it

13 FURTHER RESOLVED, That the Board of Supervisors approves, confirms, and ratifies
14 all prior actions taken by the officials, employees, and agents of the City with respect to the
15 Lease.
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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

November 15, 2012

TO: Government Audit and Oversight Committee

FROM: Budget and Legislative Analyst 

SUBJECT: November 19, 2012 Government Audit and Oversight Committee Meeting

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Item 3 File 12-0987	Department: Recreation and Park Department (RPD)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve and authorize a new ten-year lease of the 1,170 square-foot Marina Degaussing Station at the Marina Green between the City on behalf of the Recreation and Park Department (RPD), as landlord, and Woodhouse Marina Green, LLC (Woodhouse Marina Green), as tenant, commencing on November 1, 2012 with two options to extend the lease by an additional five years each, resulting in a total 20-year lease term if both options are exercised. Under the proposed lease, Woodhouse Marina Green would operate a 25 seat café restaurant, with additional seating of up to 50 people on the restaurant's outdoor patio. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • Monthly Rent to be paid by Woodhouse Marina Green to RPD's Marina Yacht Harbor Fund would be equal to the greater of either (a) base rent of \$9,167 per month (\$110,000 annually), which is \$94 per square foot per year, or (b) percentage rent of 10 percent of gross receipts under \$2,000,000 and 12 percent of gross receipts of \$2,000,000 or more. • Gross receipts are defined as all amounts received and receivable from all sales and business conducted in, from, or attributable to the premises. The term gross revenue, which appears on pages 2 and 16 in the proposed lease, is not defined. RPD advises that gross revenue is the same as gross receipts. Therefore, the lease should be amended on pages 2 and 16 to reflect the term gross receipts rather than gross revenue so all terms in which payments are dependent are consistent and fully defined. RPD concurs and advises they will make this correction in the lease. • Woodhouse Marina Green would be required to make certain tenant improvements estimated to cost \$655,172 to rehabilitate and renovate the Marina Degaussing Station building to allow for the operation of a restaurant while retaining the envelope of the historic building. • Rent payments would begin the day after the Woodhouse Marina Green receives the final permits required for the proposed tenant improvements, which is currently estimated to occur by March 1, 2013, or approximately four months after the lease commencement date of November 1, 2012. • Once rent payments commence, RPD will provide Woodhouse Marina Green a rent credit of \$160,000. In addition, RPD is proposing to defer rent payments by Woodhouse Marina Green for approximately four months from November 1, 2012, or an additional \$36,668 in rent (4 times \$9,167), until all permits for the tenant improvements are secured. If additional unanticipated tenant improvements are required, RPD would provide Woodhouse Marina Green with additional rent credits of up to a maximum of \$50,000. • Beginning in the sixth year of the lease, Woodhouse Marina Green is required to deposit an amount into a maintenance fund equal to the lesser of (a) one percent of the total gross revenue (receipts) for the prior lease year, or (b) \$20,000, which would be expended solely on capital improvements or major building repairs to the leased premises. 	

Fiscal Analysis

- RPD would receive an estimated \$1,723,368 in percentage rent over the initial 10-year term of the proposed lease.
- Under the proposed lease, RPD would not receive an estimated \$196,668, including \$160,000 in negotiated rent credits for tenant improvements plus \$36,668 as a waiver of rent pending the obtaining of needed permits. If unanticipated tenant improvements, necessitate RPD to issue an additional \$50,000 in rent credits, RPD would not receive up to an estimated \$246,668 in rent under the proposed lease (\$196,668 plus \$50,000).
- Woodhouse Marina Green would be required to deposit an estimated \$99,053 into a maintenance fund between years 6 and 10, as required by the proposed lease.

Recommendations

- The lease should be revised on page 2 and 16 to reflect the term gross receipts instead of gross revenue. RPD concurs and advises that this correction in the subject lease document will be made.
- Approve the proposed resolution contingent upon the lease correction noted above.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

Charter Section 9.118(c) requires that any new lease, which extends for ten or more years or has anticipated revenue to the City and County of \$1,000,000 or more, must first be approved by resolution of the Board of Supervisors.

Background

The Marina Degaussing Station¹, originally built by the United States Navy in 1943, is a one-story 720 square foot building with a 450 square foot patio on the west side of the building, for a total of 1,170 square feet. The Marina Degaussing Station sits along the pedestrian walkway on the northern edge of the Marina Green on the Marina Green seawall. In the 1980s, the US Navy transferred ownership of the Marina Degaussing Station to the City, under the auspices of the Recreation and Park Department (RPD) and has sat vacant since the transfer.

Ms. Cassandra Costello, Property Manager for RPD, advises that, on April 22, 2011, RPD issued a Request for Proposal (RFP) seeking a qualified restaurateur to operate a café restaurant in the Marina Degaussing Station based on the criteria shown below in Table 1.²

¹ The Marina Degaussing Station was used during World War II to demagnetize a large boat's natural magnetic field, thus making it less likely to be detected by a nautical mine.

² According to Ms. Costello, the RFP was (a) posted on the RPD website, (b) sent to hundreds of restaurants and cafes in San Francisco, (c) sent to local restaurant groups, (d) was announced in articles in the Marina Times and Curbed SF, and (e) advertised through the Marina Merchants' Association. RPD also conducted additional outreach regarding the RFP to the surrounding community and neighborhood organizations.

Table 1: Evaluation Criteria for Marina Degaussing Station RFP

Evaluation Criteria	Points
Experience, Qualifications, and Financial Capability	35
Business and Marketing Plan	35
Proposed Financial Terms	30
Total Points	100

RPD convened a selection panel to review the proposals submitted. The three-member selection panel was composed of one member of the community, one RPD employee, and the Chief Financial Officer (CFO) of the Port. RPD received 2 proposals and selected Woodhouse Marina Green in December, 2011. Lease negotiations began shortly thereafter.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve and authorize a new ten-year lease of the 1,170 square-foot Marina Degaussing Station at the Marina Green between the City on behalf of the Recreation and Park Department (RPD), as landlord, and Woodhouse Marina Green, LLC (Woodhouse Marina Green), as tenant, commencing on November 1, 2012 and expiring on October 31, 2022 with two options to extend the lease by an additional five years each, resulting in a total 20-year lease term if both options are exercised.

Under the proposed lease, Woodhouse Marina Green would operate a 25 seat café restaurant, with additional seating of up to 50 people on the restaurant’s outdoor patio. The restaurant would be required to serve “affordably priced and fresh food featuring seasonal and sustainable ingredients using organic products when possible” with minimum hours of operation between 11 a.m. and 7 pm. Operations of the Woodhouse Marina Green’s restaurant would be monitored for the first six months and business hours would be subject to change by the General Manager of RPD based upon that monitoring.

Key provisions of the proposed lease include:

Monthly Rent would be equal to the greater of either (a) Base Rent of \$9,167 per month or \$110,000 annually, equal to approximately \$94 per square foot per year, or (b) Percentage Rent equal to a percentage of the following gross receipts³:

<u>Annual Gross Receipts</u>	<u>Percentage</u>
Under \$2,000,000	10%
\$2,000,000 or More	12%

- Every month, Woodhouse Marina Green would deliver a statement showing Sales Taxes paid and the gross receipts from the preceding calendar month along with the aggregate gross receipts for the current lease year in order to determine the percentage rent payable for that month.

³ In the proposed lease, gross receipts are defined as all amounts received and receivable from all sales and business conducted in, from, or attributable to the premises.

- Base rent would increase on an annual basis by the Controller-certified Consumer Price Index (CPI).
- Woodhouse Marina Green would be required to make certain tenant improvements to rehabilitate and renovate the Marina Degaussing Station building to allow for the operation of a restaurant while retaining the envelope of the historic building. The tenant improvements would include (1) foundation upgrades, (2) upgrades to the electrical, heating, ventilation, and air conditioning (HVAC), and plumbing systems, (3) utility service upgrades, (4) roof improvements, and (5) the relocation of the Marina Degaussing Station Building away from the seawall to allow for the creation of a pedestrian walkway in line with the current path of travel along the Marina Green. Ms. Costello advises that the tenant improvements, subject to final approval by the Recreation and Park Commission once the lease has been executed, are currently estimated to cost a total of \$655,172. Under the proposed lease, these tenant improvements, currently estimated to take between 3 and 5 months, would be required to be completed within 8 months of the November 1, 2012 commencement date, or by June 30, 2013, and, if not completed, would constitute a breach of the lease terms. The restaurant's opening is currently estimated for the summer of 2013.
- Although the lease would commence on November 1, 2012, rent payments would not begin until the day after the Woodhouse Marina Green receives the final permits required for the proposed tenant improvements. Ms. Costello advises that the process of securing all final permits is currently estimated to be completed by March 1, 2013, approximately four months after the lease's commencement date of November 1, 2012. Therefore, RPD would waive approximately four months' rent from Woodhouse Marina Green, resulting in \$36,668 in waived rent payments to RPD (four times the monthly base rent of \$9,167).
- Once rent payments are due to commence, RPD would provide Woodhouse Marina Green with a rent credit of \$160,000, equal to approximately 17.5 months of current monthly Base Rent of \$9,167. The \$160,000 rent credit amount was negotiated based on the estimated total cost of \$655,172 in tenant improvements to be completed by Woodhouse Marina Green. If, during construction of the tenant improvements, Woodhouse Marina Green determines the need for additional unanticipated improvements⁴, including additional foundation work beyond the currently incorporated standard foundation work⁵ that is estimated to cost over \$50,000, RPD would provide Woodhouse Marina Green with an additional rent credit in an amount by which the unanticipated improvements exceed \$50,000 with a maximum additional RPD rent credit of \$50,000 for unanticipated improvements of \$100,000 or more. Therefore, RPD could provide Woodhouse Marina Green with a maximum of \$210,000 (\$160,000 plus \$50,000) in rent credits should unanticipated improvements reach \$100,000. If the cost of unanticipated improvements exceeds \$100,000, Woodhouse Marina Green would also have the right to terminate the lease.

⁴ Unanticipated improvements do not include normal increases in the cost of materials or labor, cost overruns, or budgeting errors.

⁵ The lease stipulates that standard foundation work is a 6 inch slab on grade with perimeter footing.

- Beginning in the sixth year of the lease, Woodhouse Marina Green would commence depositing a sum into a maintenance fund that is equal to the lesser of (a) one percent of the total gross revenue (receipts) for the prior lease year, or (b) \$20,000, which would be expended solely on capital improvements or major building repairs. Any expenditure from this maintenance fund would require approval by the General Manager of RPD.
- The term gross revenue, which appears on page 2 and 16 in the proposed lease, is not defined. However, Ms. Costello advises that gross revenue is the same as gross receipts, which is defined in the proposed lease as all amounts received and receivable from all sales and business conducted in, from, or attributable to the premises. Therefore, the lease should be amended on page 2 and 16 to reflect the term gross receipts rather than gross revenue so all terms in which payments are dependent are consistent and fully defined.
- Woodhouse Marina Green would be responsible for paying all utilities.
- Woodhouse Marina Green would be required to cooperate with RPD to prevent any interference by the restaurant with the America's Cup event and activities taking place in the summer/fall of 2013, with the understanding that areas adjacent to the property may be used for temporary structures, housing/hospitality services, general merchandise sales, food and beverage concessions, sponsor displays, first aid stations, or restrooms. Woodhouse Marina Green would also be prohibited from selling or promoting any product unduly seeking to capitalize on the America's Cup unless authorized by the America's Cup Event Authority⁶. All food, drink, and merchandise sold would be subject to review and approval by RPD in order to meet special operating requirements during the America's Cup events, which have yet to be determined.
- If Woodhouse Marina Green decides that it will not be able to profitably operate due to those yet-to-be-determined special operating requirements pertaining to the America's Cup, Woodhouse Marina Green may elect to close during the days that those special operating requirements are in effect and that month's rent will be prorated to reflect the restaurant's closure on those dates.

FISCAL ANALYSIS

Table 2 below summarizes Woodhouse Marina Green's total estimated tenant improvement budget of \$655,172 to renovate and relocate the Marina Degaussing Station building.

⁶ The America's Cup Event Authority is responsible for the professional organization, management and financing of the 34th America's Cup, including any exhibition matches, the challenger series, and the final America's Cup match in San Francisco.

Table 2: Estimate of Tenant Improvements

Tenant Improvement	Cost
General Conditions (fencing, toilets, supervision)	\$28,700
Site Work (demolition, asphalt, landscape)	38,425
Concrete (foundation, curbs)	42,500
Carpentry	76,270
Thermal and Moisture (roof, insulation)	11,925
Doors and Windows	18,400
Finishes (paint, wall treatments, flooring)	33,660
Millwork and Specialty (cabinets, trim, awning)	43,010
Furnishings	8,050
Plumbing	47,150
Mechanical (HVAC system)	44,750
Electrical	25,800
Utilities	24,320
Equipment (Kitchen Cooking Equipment)	40,610
Contractor Overhead	101,602
Architecture, Engineering, Soils, and Miscellaneous	65,000
Replacement of Public Right of Way	5,000
Total	\$655,172

Ms. Costello advises that many of the \$655,172 in tenant improvements shown above in Table 2, which are required to be performed by Woodhouse Marina Green under the proposed lease, would typically be paid for by the landlord, in this case RPD, in order to make the property usable by a tenant. Ms. Costello notes that RPD will continue to own the subject property and \$650,172, or 99.2 percent, of the \$655,172 in tenant improvements to be paid for by Woodhouse Marina Green would remain the property of RPD upon expiration of the subject lease. The remaining \$5,000 (\$655,172 less \$650,172) in kitchen equipment and furniture would be considered Woodhouse Marina Green's property and be removed at the end of the proposed lease.

As noted above, because RPD does not have sufficient capital funds to perform the necessary tenant improvements to convert the subject vacant property into a cafe, according to Ms. Costello, RPD negotiated a rent credit of \$160,000 to be provided to Woodhouse Marina Green to partially offset the estimated cost of \$655,172 that Woodhouse Marina Green would incur for the tenant improvements. In addition, RPD is proposing to waive rent payments by Woodhouse Marina Green from November 1, 2012 until February 28, 2013, or approximately four months⁷, which is equal to an estimated additional \$36,668 in rent payments, until all needed permits for the tenant improvements are secured by Woodhouse Marina Green. This \$36,668 will also partially offset Woodhouse Marina Green's estimated cost of \$655,172 to make the needed tenant improvements.

⁷ Approximately four months' base rent x \$9,167 per month during construction would be equal to \$36,668.

Therefore, RPD would not receive a total of approximately \$196,668 (\$160,000 plus \$36,668) of rent under the proposed lease. In addition, if unanticipated tenant improvements of \$100,000 are necessary by Woodhouse Marina Green, beyond the \$655,172 shown in Table 2 above, RPD would provide up to \$50,000 in additional rent credits to Woodhouse Marina Green. If the maximum additional \$50,000 of rent credits are provided by RPD, RPD would not receive a total of \$246,668 (\$160,000 plus \$36,668 plus \$50,000) in rent under the proposed lease.

Table 3 below summarizes the total \$1,723,368 in estimated rent which RPD's Marina Yacht Harbor Fund would receive during the 10-year term of the proposed lease. As shown in Table 3 below, percentage rent is projected to be received in all years because gross receipts are estimated to exceed the amount of the base rent in all 10 years of the proposed lease.

Table 3: Summary of \$1,723,368 in Estimated Rent Received by RPD Under the Proposed Lease

Year of Lease	Estimate of Woodhouse Marina Green's Gross Receipts	Estimate of Base Rent	Base Rent Rate Per Square Foot	Estimate of Percentage Rent	Percentage Rent Rate Per Square Foot
1	\$1,425,000	\$0	\$0	\$0	\$0
2	1,567,500	63,300	54.10	139,250	119.02
3	1,645,875	65,199	55.73	164,588	140.67
4	1,728,169	67,155	57.40	172,817	147.71
5	1,814,577	69,170	59.12	181,458	155.09
6	1,905,306	71,245	60.89	190,531	162.85
7	2,000,571	73,382	62.72	200,069	171.00
8	2,100,600	75,584	64.60	212,072	181.26
9	2,205,630	77,851	66.54	224,676	192.03
10	2,315,911	80,187	\$68.54	237,909	\$203.34
Total	\$18,709,139	\$643,071		\$1,723,368	

Ms. Costello advises that the revenue received from the proposed lease would be deposited directly into RPD's Marina Yacht Harbor Fund⁸, per State legal requirements which state that all revenues generated in the Marina by the City must be used exclusively to finance annual facilities maintenance projects and capital improvement projects in the Marina.

Table 4 below summarizes the current estimate of \$99,053 that Woodhouse Marina Green would be required to deposit into the maintenance fund from year six through 10 of the proposed lease.

⁸ RPD's Marina Yacht Harbor Fund is the repository for all revenue generated at the Marina and the Fund is required to be used to finance annual facilities maintenance projects and capital improvement projects in the Marina.

Table 4: Estimate of Deposits in a Maintenance Fund

Year of Lease	Estimate of Woodhouse Marina Green's Gross Revenues (Receipts)	Estimate of Amount to Be Deposited into Maintenance Fund
6	\$1,905,306	\$19,053
7	2,000,571	20,000
8	2,100,600	20,000
9	2,205,630	20,000
10	2,315,911	20,000
Total	\$10,528,018	\$99,053

As previously noted, the term gross revenue which appears on page 2 and 16 of the proposed lease is not defined but is equivalent to gross receipts, which is defined. Therefore, the proposed lease should be revised on page 2 and 16 and the term gross revenue should be removed and replaced with the term gross receipts. RPD concurs and advises that this correction will be made in the subject lease.

RECOMMENDATIONS

1. The lease should be revised on page 2 and 16 to reflect the term gross receipts rather than gross revenue. RPD concurs and advises that they will make this correction in the subject lease.
2. Approve the proposed resolution contingent upon the lease correction noted above.



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

Woodhouse Fish Co., Lessee

For the Lease and Management of the

Marina Degaussing Station

at

**The Marina Green,
San Francisco, California**

November 20, 2012

CITY AND COUNTY OF SAN FRANCISCO

Edwin M. Lee, Mayor

SAN FRANCISCO RECREATION and PARK COMMISSION

Mark Buell, President

Tom Harrison, Vice President

Gloria Bonilla, Commissioner

Meagan Levitan, Commissioner

Lawrence Martin, Commissioner

Paige Arata, Commissioner

Allan Low, Commissioner

Philip A. Ginsburg, General Manager



**RECREATION AND PARK DEPARTMENT
LEASE
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EXHIBITS

- EXHIBIT A – Depiction of Premises
 - Exhibit A-1 – Depiction of Initial Premises
 - Exhibit A-2 – Depiction of Interim Premises
 - Exhibit A-3 – Depiction of Future Premises and Surrendered Premises
- EXHIBIT B – Rules and Regulations
- EXHIBIT C – Approved Management Plan
- EXHIBIT D --Proposed Improvements
- EXHIBIT E – Menu
- EXHIBIT F- Conceptual Drawings

RECREATION AND PARK DEPARTMENT

LEASE

THIS LEASE (this "Lease") dated for reference purposes only as of November 20, 2012, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and WOODHOUSE MARINA GREEN, a California limited liability company ("Lessee").

City and Lessee hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: November 20, 2012

Landlord: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Lessee: Woodhouse Marina Green, a California limited liability
company

Premises (Section 3.1): The Marina Degaussing Station, located at the Marina Green in San Francisco, California, owned by City and under the jurisdiction of its Recreation and Park Department (the "Department"), and certain real property surrounding the Marina Degaussing Station from time to time, as more fully described in **Section 3.1** and delineated in **Exhibit A**.

Term (Section 4): The initial term of this Lease shall be approximately ten (10) years, as described in **Section 4.1**.

Estimated Commencement Date: December 1, 2012.

Expiration Date: November 30, 2022.

Options to Extend (Section 4.5): Lessee shall have the option to request an extension of the term of this Lease for two consecutive five (5)-year extension periods, commencing on the date immediately following the Expiration Date or the expiration of the first extension period, as applicable. The Commission in its sole discretion, may grant or deny such request. The terms and conditions for the extension are set forth in **Section 4.5**.

Rent (Section 5) Commencing on the Rent Commencement Date, Lessee shall pay the greater of Monthly Base Rent or the Percentage Rent.

Base Rent (Section 5.1): Annual Base Rent: \$110,000 per year
Monthly Base Rent: \$9,167.00 per month
Base Rent shall be payable in monthly installments as provided in **Section 5.1**.

Base Rent Adjustment Dates (Section 5.3): Beginning on the first anniversary of the Commencement Date of this Lease and continuing on each subsequent anniversary date (each, an "Adjustment Date"), the Annual Base Rent and Monthly Base Rent payable hereunder shall increase according to **Section 5.3**.

Percentage Rent (Section 5.3): Percentage Rent shall be a percentage of Gross Receipts made in any Lease Year, in accordance with the following schedule:

<u>Level of Gross Receipts</u>	<u>Percentage</u>
Under Two Million Dollars (\$2,000,000)	10%
Two Million Dollars (\$2,000,000) and above	12%

Rent Commencement Date (Section 5.1): The Rent Commencement Date shall be the date immediately following the date on which Lessee receives the final permit required for Lessee to commence the Proposed Improvements, as accelerated by any Lessee Permit Delay, as provided in **Section 5.1**.

Rent Credits (Section 5.2): Commencing on the Rent Commencement Date, Lessee shall receive a rent credit in the amount of \$160,000, on the terms and conditions set forth in **Section 5.2**.

Maintenance Fund (Section 5.11): Commencing on the tenth (10th) day of the sixth (6th) Lease Year, and continuing on the tenth (10th) day of each Lease Year thereafter throughout the Term, including any extensions, Lessee shall deposit into a maintenance fund in a separate bank account a sum equal to the lesser of one percent (1%) of the total Gross Receipts for the prior Lease Year or Twenty Thousand Dollars (\$20,000). Such funds shall be expended solely on capital or major building repairs or maintenance of the Premises with prior approval from the General Manager, as provided in **Section 5.11**. The Maintenance Fund shall not be used for regular cleaning or maintenance or for improvements to or replacement of Lessee's equipment or personal property.

Use (Section 7.1): Operation of a restaurant at the Marina Degaussing Station, as more particularly described in **Section 7.1**.
Use of the Outdoor Patio for food and beverage service, as

provided in **Section 7.1**.

Minimum Required Hours
(Section 7.3(a)):

11am-7pm, seven days a week, excluding holidays

Permitted Operating Hours
(Section 7.3(a) and Section 7.3(c))

Lessee shall be permitted to operate during the Permitted Operating Hours specified in Section 7.3(a), provided that during the first six (6) months that Lessee is open to the public for business Department staff will monitor Lessee's operations in the Premises using the Measurement Criteria set forth in **Section 7.3(c)**, and the General Manager may elect to revise the Permitted Operating Hours based on the results of such monitoring, in the manner described in **Section 7.3(c)**.

Security Deposit (Section 23):

\$20,000

Notice Address of City
(Section 27.1):

Recreation and Park Department
Property Management
McLaren Lodge Annex
510 Stanyan Street
San Francisco, CA 94117

Re: **Marina Degaussing Station**

with a copy to

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate/Finance Team

Key Contact for City:

Cassandra Costello

Telephone No.:

415-831-2791

Email Address:

Cassandra.Costello@sfgov.org

Address for Lessee (Section 27.1):

1914 Fillmore Street
San Francisco, CA 94115

Key Contact for Lessee:

Dylan MacNiven

Telephone No.:

650-714-3533

Brokers (Section 27.8):

None.

Other Noteworthy Provisions:

Lessee's Improvements and
Alterations (Section 8.4):

Lessee has the obligation to perform the Proposed Improvements, subject to the terms and conditions of Section 8.4. Lessee has the right to receive a rent credit of up

to \$50,000 or to terminate this Lease if Lessee encounters certain unknown conditions or unanticipated costs, as set forth in **Section 8.4**.

Limitations on Lighting
(Section 7.4):

There are limitations on Lessee's use of outside lighting, as set forth in **Section 7.4**.

America's Cup Events
(Section 7.7):

Certain impacts or restrictions on Lessee's operations in the Premises may apply during America's Cup Events, as set forth in **Section 7.7**.

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"Additional Charges" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described in hereof or otherwise payable by Lessee under this Lease.

"Adjustment Date" means the annual date for adjusting the Base Rent as specified in Basic Lease Information and **Section 5.2** hereof.

"Adjustment Index" means the Index which is published most immediately preceding a particular Adjustment Date.

"Affiliate of Lessee" means any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Lessee. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

"Agents" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"Alterations" means any alterations, installations or additions to any Improvements or to the Premises, including but not limited to any interior alterations or renovations.

"Anniversary Date" means the annual anniversaries of the Commencement Date.

"Annual Base Rent" means the minimum annual rent specified in the Basic Lease Information.

"Assignment" has the meaning given in **Section 16.1** hereof.

"**Award**" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"**Base Index**" means the Index published most immediately preceding the Commencement Date.

"**Base Rent**" means the Base Rent specified in the Basic Lease Information and described in Section 5.1 hereof.

"**Basic Lease Information**" means the information with respect to this Lease summarized in Article 1 hereof.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**Commencement Date**" means the date on which the Term of this Lease commences as described in Section 4.1 hereof.

"**Commission**" means the City and County of San Francisco Recreation and Park Commission or its successor.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Lessee is dispossessed.

"**Department**" means City's Recreation and Park Department.

"**Department Facilities**" means any and all surface and subsurface facilities owned by the City and now or later located in, under, on or about the Premises, including, without limitation, sidewalks, plazas and street improvements.

"**Effective Date**" means the date on which this Lease becomes effective pursuant to Section 4.4 hereof.

"**Encumber**" means create any Encumbrance; "**Encumbrance**" means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"**Encumbrancer**" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"**Environmental Laws**" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"**Event of Default**" means any one of the events of default described in Section 16.1 hereof.

"**Expiration Date**" means the date on which the Term of this Lease expires as described in Section 4.1 hereof.

"General Manager" means the General Manager of the Recreation and Park Department.

"Gross Receipts" means all amounts received and receivable from all sales and business conducted in, from or attributable to the Premises by Lessee, or by any other person, firm, partnership or corporation conducting sales or performing services of any sort in, upon, or from any part of the Premises as a sublessee, licensee, concessionaire, contractor or subcontractor of Lessee, including amounts received from orders or bookings for rental or sales of merchandise made by telephone, mail or online or through tour operators or third parties. The following items shall be excluded from Gross Receipts for purposes of calculating the Percentage Rent: (a) returns and refunds and (b) the amount of any sales tax, parking tax, or similar tax or imposition, imposed on all sales or charges where such sales tax, similar tax or imposition is billed to the purchaser as a special item.

"Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Lessee, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

"Hazardous Material Claims" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the Department, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

"Improvements" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Lessee pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping.

"Indemnify" means indemnify, protect, defend and hold harmless forever.

"Indemnified Parties" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation,

the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"Invitees" when used with respect to Lessee means the clients, customers, invitees, guests, members and licensees, assignees and sublessees of Lessee.

"Landlord" means the City and County of San Francisco.

"Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"Lease" means this Lease as it may be amended in accordance with its terms.

"Lease Year" shall be determined as follows: the first "Lease Year" shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month thereafter, and each twelve (12) calendar month period thereafter shall also constitute a "Lease Year," provided that the final Lease Year shall end on the expiration or termination date of this Lease.

"Lessee" means the Party identified as Lessee in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Lessee shall also refer to the successors and assigns of Lessee's interests under this Lease, provided that the rights and obligations of Lessee's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"Lessee's Personal Property" means the personal property of Lessee described in **Section 8.3** hereof.

"Losses" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and

expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"Monthly Base Rent" means the minimum monthly base rent payable as described in **Section 5.1**.

"Official Records" means the official records of the county(ies) in which the Premises are located.

"Outdoor Patio Area" means the outdoor area as depicted in **Exhibit A**.

"Party" means City or Lessee; **"Parties"** means both City and Lessee.

"Percentage Rent" means a sum equal to the stated percentages of Lessee's Gross Receipts made from or upon the Premises during each calendar month of the Term in the respective percentage amounts set forth in the Basic Lease Information.

"Permitted Uses" has the meaning given in **Section 7.1** hereof.

"Premises" has the meaning given in **Section 3.1** hereof. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include Department Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Lessee, or in, on, under or about the Premises or Department Facilities or any portion thereof.

"Remediation" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or Department Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"Rent" means the Base Rent, as adjusted pursuant to the provisions of **Section 5.3**, together with any and all Percentage Rent and Additional Charges, whether or not any such amounts are specifically characterized as rent.

"Restaurant" means the Marina Degaussing Station building and interior, excluding the outdoor elements of the Premises.

"Sublease" has the meaning given in **Section 16.1** hereof.

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur

pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"**Term**" means the term of this Lease as determined under **Section 4.1** hereof.

"**Transfer**" means any Assignment or Sublease.

"**Transferee**" means any recognized assignee of any part of Lessee's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with **Article 16** hereof.

"**Unmatured Event of Default**" means any default by Lessee under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. PREMISES

3.1. Leased Premises. "Premises" shall mean the real property from time to time leased to Lessee pursuant to the terms of this Lease, together with the Improvements thereon. The "Premises" shall initially mean the real property shown delineated on **Exhibit A-1**, attached hereto, located in the City and County of San Francisco, State of California, together with the Improvements thereon (the "Initial Premises"). Upon commencement of the Proposed Improvements described in **Section 8.4**, the Premises leased hereunder shall be modified by the addition of certain additional adjacent real property required for the performance of the Proposed Improvements, and the "Premises" leased hereunder shall mean the real property shown delineated on **Exhibit A-2** (the "Interim Premises") together with the Improvements thereon. Upon completion of the Proposed Improvements, including the pedestrian walkway to be created in line with the present path of travel along the Bay, Lessee shall surrender to City that portion of the Interim Premises shown crosshatched and labeled Surrendered Premises on **Exhibit A-3** (the "Surrendered Premises"), and the "Premises" leased hereunder shall mean the real property shown delineated on **Exhibit A-3**, other than the Surrendered Premises (the "Future Premises"), together with the Improvements thereon. If minor boundary adjustments or other modifications are required in connection with the performance of the Proposed Improvements, such minor adjustments shall be memorialized by written agreement of the Parties and the "Premises" leased hereunder shall be the real property as so memorialized, together with the Improvements thereon.

3.2. Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises at all times:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Lessee, without Lessee's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any Department Facilities;

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way;

(f) Without limiting the generality of **Section 3.2(e)** above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Lessee's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(g) All rights of access provided for in **Article 20** below.

3.3. Subject to Public and Municipal Uses and Rules. Lessee acknowledges that the property of which the Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. Lessee's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Lessee outstanding hereunder and subject to the terms and conditions of this Lease, City shall use its best efforts to avoid interfering with Lessee's quiet use and enjoyment of the Premises. Lessee shall comply with the Department's rules and regulations relating to its park property, as the same may change from time to time (the "Rules and Regulations"). A copy of the current Rules and Regulations can be downloaded from the web address provided in the attached **Exhibit B**.

3.4. As Is Condition of Premises.

(a) **Inspection of Premises.** Lessee represents and warrants that Lessee has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Lessee's own choosing, of the Premises and the suitability of the Premises for Lessee's intended use. Lessee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) As Is; Disclaimer of Representations. Lessee acknowledges and agrees that the Premises are being leased and accepted in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Lessee acknowledges and agrees that neither City, the Department, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Lessee's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Lessee's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

4. TERM

4.1. Term of Lease; Commencement Date and Expiration Date. The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date (the "Commencement Date"), subject to this Lease becoming effective pursuant to **Section 4.4** below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

4.2. Delay in Delivery of Possession. If City is unable to deliver possession of the Premises to Lessee on or before the scheduled Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Lessee for any Losses resulting therefrom. Lessee waives all provisions of any Laws to the contrary. In the event of any such delay in delivery of possession, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Premises. If the Term commences later or earlier than the Commencement Date in accordance with the terms hereof, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease.

4.3. Delays Caused by Lessee. Notwithstanding anything to the contrary above, if City's inability to deliver possession of the Premises on the Commencement Date results from the acts or omissions of Lessee or any of Lessee's Agents, then the Base Rent and Additional Charges payable by Lessee hereunder shall commence on the date when City would have delivered possession of the Premises but for such acts or omissions.

4.4. Effective Date. This Lease shall become effective on the date (the "Effective Date") which is the later of the date upon which (i) the Parties hereto have duly executed and delivered this Lease or (ii) each of the following have occurred: (a) the Commission shall have passed a resolution recommending that the Board of Supervisors approve this Lease, and (ii) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution.

4.5. Extension Options. Lessee shall have two (2) options (each, an "Extension Option") to extend the Term of this Lease for consecutive five (5)-year periods (each, an "Extension Term"), commencing on the date immediately following the Expiration Date of the Initial Term or the expiration of the initial Extension Term, as applicable, upon the following terms and conditions. If Lessee elects to exercise an Extension Option it must give written notice to City no earlier than five hundred and forty seven days (547) and no later than three hundred and sixty five days (365) prior to the then-scheduled expiration date of the Term. Within ninety (90) days after City's receipt of such exercise notice, City shall provide Lessee with written notice of City's election to approve or reject Lessee's request for the Extension Term. Such approval shall be at the City's sole and absolute discretion. If Lessee exercises and City approves an Extension Option, then the Lease for the Extension Term shall be upon all of the terms, covenants and conditions of this Lease.

5. RENT; ACCOUNTING REQUIREMENTS; MAINTENANCE FUND

5.1. Base Rent; Rent Commencement Date. Lessee shall pay to City monthly during the Term of this Lease, beginning on the Rent Commencement Date, the *greater of* (A) the monthly Base Rent, or (B) Percentage Rent calculated using the applicable percentages of Gross Receipts specified in the Basic Lease Information. Base Rent or Percentage Rent shall be payable monthly on or before the tenth (10th) day of each month, for the previous month's business operations, without prior demand and without any deduction, set off or counterclaim whatsoever, except as provided in **Section 5.2** or **Section 8.4(c)(ii)** below. As used herein the "Rent Commencement Date" shall be the date immediately following the date on which Lessee receives the final permit required for Lessee to commence the Proposed Improvements, as accelerated by any Lessee Permit Delay, as defined in **Section 8.4** below.

5.2. Rent Credit. In consideration of Lessee's performance of its obligation to rehabilitate the Premises to first class standards in accordance with the provisions of **Section 8.4** and the other covenants set forth in this Lease, Lessee shall receive a credit against the Base Rent and Percentage Rent first payable hereunder in the amount of One Hundred and Sixty Thousand Dollars (\$160,000), provided that the credit applicable during any calendar month shall not exceed the Monthly Base Rent scheduled under this Lease for such calendar month.

5.3. Adjustments in Base Rent. On the Anniversary Date each year (each, an "Adjustment Date"), the Base Rent payable by Lessee shall be adjusted in the following manner. The Adjustment Index shall be compared with the Base Index. If the Adjustment Index has increased over the Base Index, then the Base Rent payable on and after such Adjustment Date shall be set by multiplying Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index. In no event shall the Base Rent on or after the Adjustment Date be less than the Base Rent in effect immediately prior to the Adjustment Date.

5.4. Payment; Generally. Rent shall be paid in lawful money of the United States, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. If Lessee pays by check and such check is not honored, then City may require Lessee to make all future payments in cash or by cashier's check. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

City reserves the right to direct Lessee, upon 30 days written notice, to deposit all payments required under this Lease from Lessee's account into the City designated revenue account by bank or wire transfer.

5.5. Monthly Gross Receipts Statements; Determination of Percentage Rent Payable. On or before the tenth (10th) day of each full calendar month of the Lease Term following the date Lessee opens for business in the Premises, and on and or before the tenth (10th) day of the calendar month immediately following the expiration or termination of this Lease, Lessee shall deliver to City a statement certified as correct by an officer or owner of Lessee and otherwise in form satisfactory to City, showing taxes paid and the Gross Receipts during the last preceding calendar month, and the aggregate Gross Receipts for the then-current Lease Year, as required to determine the Percentage Rent payable for such calendar month (a "Monthly Gross Receipts Statement"). Percentage Rent (as shown in the Basic Lease Information) shall be calculated for such calendar month based on the Monthly Gross Receipts Statement and, if the amount so calculated exceeds the monthly Base Rent, such Percentage Rent shall be payable in accordance with **Section 5.1** above. In the event this Lease terminates during a month at no fault of Lessee, payment of Percentage Rent for that portion of the final month during which sales are made on the Premises shall be determined and reported by Lessee to City within ten (10) days after Lessee ceases to make sales on the Premises, but in the event this Lease terminates as a result of Lessee's default, including insolvency thereof, any amounts due hereunder shall be payable immediately.

5.6. Cash Register Requirements.

(a) Lessee shall install on the Premises at least one cash register. Lessee shall accept cash and all major credit cards. Lessee shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals. Such cash register(s) used on the Premises shall be of a type approved by General Manager in writing and shall register every transaction made in, on, about or from the Premises, including every type of Gross Receipts, and the tape or digital record of each such cash register shall be accessible to and subject to inspection by the General Manager or his/her agent, provided that such inspection shall be conducted in a manner reasonable designed to minimize interference with the conduct of Lessee's business at the Premises, and City shall not perform such inspection unless a manager of Lessee's business is present. Lessee shall make a manager available to City for such inspection during business hours upon request (which may be oral) by City.

(b) Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or grater, as determined by the General Manager based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash register(s).

(c) Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and Lessee shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register types. All cash receipts must include

Lessee's identification thereon. Each cash register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by General Manager. At General Manager's request, Lessee must furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by General Manager.

(d) Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used on the Premises, Lessee must immediately furnish to General Manager notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used). City shall have the right during business hours to examine the totals of the cash register(s) (including computerized cash registers other similar electronic devices if used) used on the Premises and to inspect for compliance with this section.

5.7. Reporting; Books and Records; Audits

(a) **Monthly Reporting.** Along with each monthly rent payment, Lessee shall be responsible for submitting via email to the City contact listed in the Basic Lease Information section a copy of a "Concessionaires' Payment Statement", detailing a true and factual accounting of all Gross Receipts, taxes paid and rent figures calculated for that month.

(b) **Books and Records.** Lessee agrees to keep accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Lessee utilizes in its business operations. Lessee shall not co-mingle personal funds with business funds. Lessee shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals.

(c) **Annual Gross Receipts Report; Annual Income and Operations Report.** On or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Lessee shall deliver to City a statement (the "Annual Gross Receipts Statement"), certified as correct by an officer or owner of Lessee, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Annual Gross Receipts Statement shall set forth the Gross Receipts, as defined above and shown on Lessee's books, for the Lease Year just concluded broken down by category. Further, on or before the date which is ninety (90) days following the close of each fiscal year during the Term and ninety (90) days following the end of the Term, Lessee shall deliver to City an itemized income statement for such year, certified as correct by an officer or owner of Lessee, with (i) supporting tables that include Gross Receipts by department, distributed departmental expenses and undistributed expenses, and (ii) a cash flow table that itemizes expenditures

on capital improvements and personal property and indicates which of the improvements and acquisitions represent replacements.

(d) Audit. Lessee agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of Lessee's earnings from Lessee's business. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within such four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Lessee has understated its Gross Receipts, Lessee shall pay City, promptly upon demand, the difference between the amount Lessee has paid and the amount it should have paid to City. If Lessee understates its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne by Lessee. If Lessee understates its Gross Receipts with knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Lessee shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement made with knowledge of or by reason of gross negligence shall be considered an Event of Default.

(e) Patrons Audit. Lessee shall participate in the City's Patrons Audit program whereby signs provided by the City will be clearly posted at each point of sale, stating that receipts are to be given for each purchase, and that if a receipt is not given, the patron shall be allowed some form of compensation as mutually agreed upon by the City and Lessee.

5.8. Late Charge. If Lessee fails to pay any Rent and/or fails to submit a Monthly Gross Receipts Statement by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the amount due, in each instance. The late payment charge has been agreed upon by City and Lessee, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Lessee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Lessee shall promptly pay such charge to City together with such unpaid amount.

5.9. Default Interest. If any Rent is not paid on the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid by Lessee to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Lessee.

5.10. Net Lease. This Lease is a "net lease." Accordingly, Lessee shall pay to City all Rent (including the Base Rent, Percentage Rent, Additional Charges and any other payments hereunder) free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any

kind whatsoever with respect to Lessee's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Lessee shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Lessee from any of its obligations under this Lease, or shall give Lessee any right to terminate this Lease in whole or in part. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

5.11. Maintenance Fund. In addition to Rent as described above and in the Basic Lease Information, Lessee shall establish and maintain a separate depository account (the "Maintenance Account") and commencing on the tenth (10th) day of the sixth (6th) Lease Year, and on the tenth (10th) day of each Lease Year thereafter, Lessee shall deposit a sum equal to the lesser of (i) 1% of the total Gross Receipts for the prior Lease Year or (ii) Twenty Thousand Dollars (\$20,000). The sums in the Maintenance Account are referred to as the "Maintenance Fund." Any interest accruing on the funds in the Maintenance Account shall be added to the Maintenance Fund. Lessee shall use the Maintenance Fund solely for capital or major maintenance and repair of the Premises, and for no other purpose unless Lessee obtains the prior written consent of the General Manager, which consent may be withheld in the General Manager's sole discretion. Without limiting the foregoing, the Maintenance Fund shall not be used for regular cleaning or maintenance or for improvements to or replacement of Lessee's equipment or personal property. Lessee shall annually submit a routine maintenance plan, detailing anticipated maintenance expenditures from the Maintenance Fund for City's approval. Lessee must obtain the approval of the General Manager prior to making any expenditures from the Maintenance Account, Lessee shall provide City with invoices, receipts, or other documentation related to such expenditures, as reasonably requested by City. Upon termination of this Lease, any unexpended monies in the Maintenance Account shall become the property of the City. The insufficiency of any balance in the Maintenance Account shall not abrogate Lessee's obligation to fulfill all preservation and maintenance covenants in this Lease. Lessee shall deliver to City annually a statement from the depository institution in which the Maintenance Account is held, showing the then current balance in the Maintenance Account and any activity on the Maintenance Account which occurred during the immediately prior twelve (12) month period. Lessee hereby grants to City a lien and security interest in the Maintenance Account. Lessee shall execute, deliver, file and refile any instruments that may be requires from time to time to confirm the lien granted herein if requested by City, including, without limitation, a security agreement and a depository account control agreement.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) Payment Responsibility. Lessee shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Lessee's Personal Property, the leasehold estate or any subleasehold estate, or Lessee's use of the Premises or any Improvements. Lessee shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Lessee's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Lessee shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest. Without limiting the foregoing, Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

(c) No Liens. Lessee shall not allow or suffer a lien for any taxes payable by Lessee hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Lessee may have a reasonable opportunity to contest the validity of any such taxes provided Lessee, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Lessee be unsuccessful in any such contest. Lessee shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement. Lessee agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2. Other Expenses. Lessee shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Lessee's use.

6.3. Evidence of Payment. Lessee shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1. Lessee's Permitted Use. Lessee shall continuously use the Premises and Improvements for the following uses (collectively the "Permitted Uses"), and for no other use or purpose:

(a) **Operation of a Restaurant.** Lessee shall occupy and use the Premises to provide food and beverages to serve the public. Lessee shall serve affordably priced and fresh food featuring seasonal and sustainable ingredients using organic products when possible. If Lessee obtains a liquor license, Lessee may serve beer and wine, but Lessee shall not serve hard alcohol. Subject to compliance with applicable Laws, Lessee shall provide seating for up to 25 people inside the Restaurant, and Lessee shall provide additional seating in the Outdoor Seating Area as described in **Section 7.1 (b)** below. Lessee's proposed initial menu is attached **Exhibit E**. Due to the nature of the food served and the seasonality of the ingredients and variability with the seafood market, this menu and pricing may be changed from time to time at the discretion of Lessee.

(b) **Outdoor Seating Area.**

- i. **Furniture.** During Lessee's hours of operation Lessee may provide tables and chairs for seating of for use of its customers of up to 50 people in the area generally depicted in **Exhibit A** and labeled as the Outdoor Seating Area. The furniture used in the Outdoor Seating Area shall be of good quality, attractive and in keeping with the image and operation of the Restaurant. Lessee acknowledges, in particular, that the Premises is in a highly visible area in The Marina Green, accordingly, the furniture, equipment and fixtures used on the Premises must maintain and complement the park surroundings, and City's prior written approval shall be required for any furniture, garbage receptacles, fixtures and equipment used in the Outdoor Seating Area and the placement thereof, and such approval shall be at City's sole discretion. Lessee shall repair or replace the furniture used in the Outdoor Seating Area from time to time as required to maintain such furniture in a first class condition. The tables and chairs in the Outdoor Seating Area shall be configured so that there are walkways and sufficient area for pedestrian and ADA ingress and egress on either side of the tables and to minimize any potential tripping or other hazards. Lessee, at Lessee's sole cost and expense, shall remove any temporary tables and chairs and other equipment from the Outdoor Seating Area each day at close of business and shall store such items in the Restaurant. Should Lessee install permanent benches with a connected table and chair in the Outdoor Seating Area, such benches may remain in the Outdoor Seating Area over night.
- ii. **General Use and Operation of Outdoor Seating Area.** Lessee shall not do anything in the Outdoor Seating Area which will conflict with any Law, and shall not use the Outdoor Seating Area in a manner which has been identified in writing as being unsafe by Lessee's or City's insurance carrier. During Lessee's hours of operation, Lessee shall keep the Outdoor Seating Area and the furniture free of dishes, utensils, food, debris and spills and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage, compost and recycling receptacles serving such area. If Lessee fails to maintain the Outdoor Seating Area in the condition required hereunder, the City

may provide written or oral notice to Lessee, describing such deficiency (the "Cleaning Default"), and Lessee shall promptly correct the deficiency. Failure to comply with this Section shall constitute a breach of this Lease which may result in termination pursuant to **Section 17** below.

(c) **Deliveries.** Produce, dry goods, seafood and vegetables will be delivered daily.

The Permitted Uses shall be generally conducted in accordance with the description of such Permitted Uses set forth in Lessee's Management Plan attached to this Lease as **Exhibit C**. In the event of a conflict between the provisions of Lessee's Management Plan and the provisions of this Lease, the provisions of this Lease shall control. If Lessee desires to engage in an additional use not enumerated above, or desires to materially change the manner in which Lessee conducts a Permitted Use from the manner described in the Management Plan, Lessee shall request such additional use or modification in writing, and such addition or modification shall be subject to the approval of the General Manager, which may be withheld in his or her sole discretion.

7.2. Appropriate Operations, Goods, and Services. Lessee has developed the Management Plan attached to this Lease as **Exhibit C**, as Lessee's proposed manner to market, promote and manage the restaurant at the Premises, and the Department approves the Management Plan for such purpose, except to the extent inconsistent with the Permitted Uses or other provisions of this Lease. Upon written notice from the Department that the operations, goods or services provided at the Premises are not in keeping with the approved Management Plan and the Department's vision outlined in the Request for Proposals, Lessee shall attempt in good faith to correct such deficiency within thirty (30) calendar days of such notice. If the deficiency cannot be corrected within the 30-day period, Lessee shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of the original notice from City. Lessee's proposal shall be subject to approval by the Department at Department's sole and absolute discretion. If the deficiency is not corrected by the end of the 30-day period, or if the Department has not accepted Lessee's plan for cure by such date, the Lessee shall be in default of this Lease.

7.3. Days and Hours of Operation; Initial Opening; Recapture.

(a) **Days and Hours of Operation.** Lessee shall actively operate the Premises and use its best business efforts to further the operations thereof and maximize its potential revenue and to serve the public. The minimum hours of operation shall be from 11am-7pm, seven days a week, excluding holidays (the "Minimum Required Hours"). The hours of operation may be as follows, seven days a week excluding Thanksgiving Day, Christmas Eve, and Christmas Day (the "Permitted Operating Hours), subject to the provisions of **Section 7.3(c)** below:

Optional Breakfast Service: 7am-11am

Lunch Service: 11am-4pm

Dinner Service: 4pm-9:00pm

The schedule may not be altered in any manner without prior written approval from the General Manager, and is subject to adjustment as set forth in **Section 7.3(c)** below.

(b) **Initial Opening; Continuous Operation; Recapture.** Lessee shall use diligent, good faith efforts to complete the renovation of the Marina Degaussing Station and open Lessee's business in the Premises as soon as reasonably possible after the

Commencement Date. City and Lessee acknowledge that Lessee's agreement to operate Lessee's business in the Premises during the hours and for the purposes contemplated hereunder is a material consideration for City's agreement to enter into this Lease, in order to make sure that the facility remains an open and active site for the community and visitors. Accordingly, without limiting any of City's rights or remedies under this Lease, City shall have the right to terminate this Lease early upon written notice to Lessee in the event: (i) Lessee fails to maintain or acquire all required licenses to operate its business according to the terms of this Lease, or (ii) Lessee fails to initially open its business in the Premises by the earlier of November 1, 2014 or the date which is six (6) months after Lessee acquires the final permit required for Lessee to commence the Proposed Improvements, or (iii) Lessee ceases its operation for more than fourteen (14) consecutive days except as expressly allowed hereunder, or (iv) Lessee fails more than ten (10) times in any calendar year to operate its business in the Premises for the Minimum Required Hours. In any such event, City may give Lessee written notice of such condition and in the event Lessee shall not have remedied same within thirty (30) days of such notice, then City may terminate this Lease early by additional written notice to Lessee specifying the date of such termination (which date of termination shall not be sooner than ten (10) days after the date of City's notice of such termination). In the event of any such termination Lessee shall peacefully surrender the Premises by the date specified in City's termination notice.

(c) Monitoring of Operations During Initial Operating Period; Possible Adjustment of Permitted Operating Hours. Notwithstanding the provisions of **Section 7.3(a)** above, during the first six (6) months that Lessee is open to the public for business in the Premises (the "Initial Operating Period"), Lessee shall close the Restaurant at 9 P.M. During the Initial Operating Period, Department staff will monitor Lessee's operations in the Premises using the following criteria (the "Measurement Criteria"): noise complaints from sounds above the Department of Public Health standards; failure to follow hours of operation; impact of Restaurant and Outdoor Seating Area lighting on the surrounding community; garbage in the vicinity of the restaurant; and Alcoholic Beverage Control violations. At the end of the Initial Operating Period, the General Manager will consider the history of Lessee's operations during the Initial Operating Period based on the Measurement Criteria, and the General Manager may elect, by written notice to Lessee (the "Operating Hours Change Notice"), to revise the Permitted Operating Hours, and the Permitted Operating Hours under this Lease shall thereupon be the hours stated in the Operating Hours Change Notice.

7.4. Exterior Lighting. Not later than one hour after sunset, Lessee shall close all blinds facing south. Lessee shall install blackout curtains on the south side of the building and lower them no later than one hour after sunset. In addition, Lessee shall only use only base flood lights or other base lights that have been approved by the Department in writing to illuminate the exterior of the building. All lighting shall be designed in a manner that minimizes the visibility of any lighting from the adjacent Marina Boulevard shall be used only after written approval by the General Manager.

7.5. Rates and Charges. The rates and charges for goods sold and services offered at the Premises shall be reasonable and competitively priced with similar businesses in San Francisco.

7.6. Logos, Website, Merchandise and Branded Products.

(a) Logos and Website. The City and Lessee have a mutual interest in the public's enjoyment, recognition and appreciation of the Marina Degaussing Station and its

amenities. In furtherance of this purpose and to promote Woodhouse Marina Green, the Lessee or its subcontractors, at the Lessee's expense, shall develop or create artwork, logos, trademarks or service marks, related to Woodhouse Marina Green, or Lessee's services or operations in or for Woodhouse Marina Green or on the Premises, or similar related mark or logo, artworks and/or words (collectively "Logo" or "Logos"), subject to the following conditions: If Lessee or its subcontractors create a Logo, the Department must pre-approve the Logo. The Lessee may, at Lessee's expense, and with Department's consent, develop and sell products including but not limited to clothing, postcards, mugs and other printed materials, that are "branded" with the Logo or Logos created by Lessee under this Agreement. Revenues from the sale of such products shall be subject to the terms and conditions of this lease.

(b) Lessee may, at Lessee's expense, and with Department's consent, develop and sell products including clothing that are "branded" with some form of artwork, logos, trademarks or service marks, related to **Woodhouse Marina Green** or similar/related logo, artwork and/or words (collectively "Logo").

7.7. America's Cup Special Events; Impact on Operation of Business in the Premises. City will be hosting a series of international sailing events collectively known as the 34th America's Cup in summer-fall 2012 and in summer-fall 2013. City anticipates that the America's Cup events may affect the operation of businesses along the race route, including businesses in or adjacent to the Marina Green and Crissy Field. Lessee acknowledges that the area immediately surrounding the Premises may be part of the spectator area for certain of the America's Cup events, and that areas adjacent to the Premises may be used for temporary structures housing hospitality services, general merchandise sales, food and beverage concessions, sponsor displays, first aid stations, restrooms, or the like. Lessee agrees, as material consideration for City's agreement to enter into this Lease, to cooperate with City to prevent any interference by Lessee's business in the Premises with America's Cup events and activities. Without limiting the foregoing, Lessee agrees that no product unduly seeking to capitalize on the America's Cup events (an "Unauthorized Product") shall be sold or promoted whatsoever from the Premises unless authorized by the America's Cup Event Authority. Further, notwithstanding City's prior approval of such matters under **Section 7.4** or **Section 7.5** above, all food, drink and merchandise offered for sale from the Premises during America's Cup events shall be subject to the review and approval of City, including product types, brands, and pricing of items, and marketing materials such as logos or brands on coffee cups and napkins and the like (the "Special Operating Requirements"). City shall use reasonable efforts to provide written notice of applicable Special Operating Requirements at least one week in advance of the date on which such Special Operating Requirements will be applicable. If Lessee in its good faith business judgment determines that it will not be able to profitably operate its business in the Premises during any date on which the Special Operating Requirements are in effect, Lessee may at its election provide written notice to City of such determination and (i) Lessee shall be excused from the requirement to be open for business in the Premises on the date(s) specified in such notice, and (ii) monthly Base Rent payable under this Lease for such month shall be prorated to reflect Lessee's closure during such date(s). Other than the adjustment to Base Rent pursuant to the preceding sentence, Lessee shall not be entitled to any compensation or other remedies on account of the Special Operating Requirements or the impact of America's Cup activities or events on Lessee's business. If, in the reasonable judgment of the General Manager, Lessee is in violation of any Special Operating Requirements or the prohibition against selling or promoting Unauthorized Products, and such violation is not cured within twenty-four (24)

hours of written notice of such violation, City shall have the right, in the sole discretion of the General Manager, upon written notice to Lessee, to require Lessee to close its business in the Premises for up to five (5) of the next dates on which Special Operating Requirements would be in effect, and Lessee shall not operate its business on such dates. . Lessee agrees, as material consideration for City's agreement to enter into this Lease, to cooperate with City to prevent any interference by Lessee's business in the Premises with America's Cup events and activities.

7.8. Closure and Use of Lawn Area of Marina Green. City reserves the right from time to time to grant permission to persons who are conducting activities under permits issued by the Department to temporarily close and use the entire lawn area and parking lot at the Marina Green. City shall have no liability in connection therewith. Additionally, the City may close nearby streets and roadways due to construction or special events. Lessee acknowledges that these events may affect Lessee's ability to generate revenues and accepts this practice as a condition of this Lease. Notwithstanding the foregoing, but subject to the provisions of **Section 7.7** above, Lessee shall be authorized to operate during all special events. Pedestrian access shall be retained to the Premises and Lessee shall have access to Premises for deliveries and garbage service outside of special event hours.

7.9. Covenants Regarding Use. As a material inducement to City to enter into this Lease, Lessee covenants with City as follows:

(i) No Unlawful Uses or Nuisances. Lessee shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Lessee shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(ii) Covenant Against Waste. Lessee shall not cause or permit any waste, damage or injury to the Premises.

(iii) Covenant to Protect Premises and Department Facilities. At all times during the Term of this Lease, Lessee shall protect the Premises and the Department Facilities, if any, from any damage, injury or disturbance. If Lessee or any of its Agents or Invitees damages, injures or disturbs any of the Premises or the Department Facilities, or any portion thereof, Lessee shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair the Department Facilities at Lessee's sole expense, and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Lessee's sole expense. Lessee shall promptly, upon City's request, remove or alter to City's satisfaction and at Lessee's sole cost, any Improvements, Alterations or Lessee's Personal Property placed on the Premises by or on behalf of Lessee as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at City's sole cost if the applicable Improvements or Alterations were approved by City in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Lessee's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the

Department Facilities and City's interests in the Premises. Lessee shall comply with all such rules and regulations upon receipt of a copy thereof.

(iv) Covenant Against Dumping; Waste Disposal. Lessee shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Lessee shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(v) Covenant to Protect Trees or Other Native Vegetation. Lessee shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the General Manager.

(vi) No Tree Planting. Lessee shall not plant any trees on the Premises, nor shall Lessee plant any other vegetation on the Premises without the prior written approval of the General Manager.

(vii) Covenant Against Hunting. Lessee shall not engage in or permit any hunting or, trapping on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager in writing, provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Lessee shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Lessee use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(viii) Pesticides Prohibition. Lessee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Lessee to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the terms of this Lease, (b) describes the steps Lessee will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. In addition, Lessee shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

(ix) Weed Control. Lessee shall not introduce any noxious weeds on or about the Premises. Lessee shall control noxious weeds, provided that Lessee may use chemical herbicides only if such use complies with the requirements of **Section 7.9(viii)** above.

(x) Covenant Against Burning. Lessee shall not burn any weeds, debris or other substances on or about the Premises.

(xi) Sewerage System. Lessee shall maintain and its sole cost and expense, and in accordance with the direction and to the satisfaction of the General Managers of the Recreation and Park Department and the SFPUC, the sewerage system now

installed on the Premises and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per such sewage system.

(xii) Soil Erosion. Lessee shall not cause any material erosion of soil on or around the Premises. Lessee shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Lessee engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager.

(xiii) Operating Covenants. Lessee shall use the Premises continuously for the permitted use specified in the Basic Lease Information and shall not allow the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. Lessee shall use and operate its business on the Premises in a first class and professional manner, and shall take all commercially reasonable steps to maximize revenue (and Percentage Rent) from its operations on the Premises.

(xiv) Recycling and Resource Conservation. The City of San Francisco has set ambitious recycling and composting goals for City Departments including 75% landfill diversion by 2010 and maximum participation the City's municipal composting program at all City Department locations where there is food service. In addition, the City has recently passed the Food Service Waste Reduction Ordinance (see **Section 26.42**) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City Departments and the City's contractors and lessee." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a). Lessee shall develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical. Lessee shall submit a recycling and composting plan at Commencement of Lease, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero waste goal.

(xv) Americans with Disabilities Act. Lessee acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Lessee further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of **Section 8.1** and **Article 12** below, Lessee warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease. City shall bear all responsibility and cost for mandated physical changes to the Property resulting from disability access laws.

8. ALTERATIONS AND IMPROVEMENTS

8.1. Construction of Alterations and Improvements. Lessee shall not construct, install or otherwise place any Improvements or make or permit any Alterations in, to or about the Premises, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in its sole and absolute discretion. Subject to the General Manager's consent as provided above, any permitted Improvements or Alterations shall be done at Lessee's sole expense (i) in strict accordance with designs, plans and specifications approved in advance by the General Manger in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances), and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion thereof, or the Department's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Lessee, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior written consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Lessee shall furnish City with a complete set of final as-built plans and specifications. Upon commencement of this Lease, Lessee shall furnish the Department with detailed drawings of the Proposed Improvements, as defined in **Section 8.4** below. The final description of the Proposed Improvements shall be subject to the approval of the Commission. Lessee shall require from each contractor and subcontractor performing any work on or about the Premises a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2**.

8.2. Ownership of Improvements. Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Lessee above shall be and remain Lessee's property during the Term. Upon the Expiration Date or any earlier termination hereof, Lessee shall, upon City's request, remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 22.1** hereof, unless City, at its sole option and without limiting any of the provisions of **Section 8.1** above, specifies at the time of City's approval of any such Improvements or Alterations that such Alterations or Improvements may remain on the Premises following the expiration or termination of this Lease.

8.3. Lessee's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Lessee that can be removed without structural or other material damage to the Premises (all of which are herein called "Lessee's Personal Property") shall be and remain the property of Lessee and may be removed by it subject to the provisions of **Section 22.1** hereof. At least ten (10) days prior to delinquency, Lessee shall pay all taxes levied or

assessed upon Lessee's Personal Property and shall deliver satisfactory evidence of such payment to City.

8.4. Proposed Improvements; Failure to Make Proposed Improvements; Lessee's Termination Option.

(a) Proposed Improvements. Upon the Effective Date of this Lease, Lessee shall promptly commence and diligently pursue to completion improvements to rehabilitate and renovate the Marina Degaussing Station Building as required to operate a first class casual restaurant, retaining the envelope of the historic building, shall perform improvements to the patio and other areas adjacent to the Marina Degaussing Station Building (collectively described in **Section 8.4(d)** below, the "Proposed Improvements"), and shall install in the building the equipment, fixtures and furnishings required to operate Lessee's restaurant in the building, all subject to the provisions of **Section 12.2** below and in accordance with the provisions of **Section 8.1** above. Certain assumptions of Lessee regarding the required elements of the Proposed Improvements and a rough order of magnitude budget for such elements is detailed in the attached **Exhibit D**, and Lessee's conceptual drawings of certain elements of the Proposed Improvements are attached hereto as **Exhibit E**. Lessee shall promptly commence and diligently pursue completion and approval of the plans for the Proposed Improvements and the permits required for the work. Approval of such plans shall be comply with the requirements of **Section 8.1** above. The date on which Lessee receives the permits required to commence performance of the Proposed Improvements is shall be the "Rent Commencement Date" of this Lease, provided that if the Rent Commencement Date is delayed due to Lessee's delay in commencing or diligently pursuing to completion the construction drawings, approvals, and permits required for construction of Proposed Improvements (any such delay, a "Lessee Permit Delay"), the Rent Commencement Date shall be accelerated by one day for each day by which the Rent Commencement Date was actually delayed by such Lessee Permit Delay.

(b) Performance of Proposed Improvements. City and Lessee understand, acknowledge and agree that prior to commencing the Proposed Improvements, Lessee shall be required to obtain the approval of the Commission, the Board of Supervisors and any other regulatory agency that may have jurisdiction. The Proposed Improvements shall be constructed in accordance with the requirements of **Section 8.1** above. Lessee and City agree that any such work shall be performed during the off-peak season, if possible, and that, subject to receipt of approval of all applicable regulatory agencies, such work shall be completed within eight (8) months of the Commencement Date. If Lessee does not complete each and every Proposed Improvement within eight (8) months following the Commencement Date and in the manner provided herein, such failure shall constitute a breach of the Lease. Notwithstanding the foregoing, if Lessee proposes performing the Proposed Improvements in two or more phases, and Lessee and City mutually agree in writing to a timeline for such work which extends beyond the eight months after the Commencement Date, then Lessee shall complete the Proposed Improvements in accordance with the deadlines established in such approved timeline. Lessee acknowledges that some or all construction activities may be suspended at the written direction of the General Manager to the extent reasonably necessary or advisable to accommodate America's Cup events in 2013.

(c) Unknown Conditions and Unforeseen Costs; Lessee's Termination Right.

(i) Unknown Conditions; Unanticipated Excess Cost. City and Lessee acknowledge that Lessee may encounter unforeseen conditions and unanticipated costs in developing plans for the Proposed Improvements, obtaining required approvals or permits, or constructing and installing the Proposed Improvements, due to matters such as, by way of example only, the unavailability of gas and electric service adjacent to the site, the necessity to relocate the building's electrical panel, unknown permit or other requirements mandated by other public agencies, unknown conditions present at Premises due to the location of the building, its relocation, or the historic nature of the building that require extraordinary expenses that are not reasonably foreseeable by Lessee as of the date of this Lease, and that such unforeseen conditions or unanticipated costs (the "Unknown Conditions") may result in the cost of the applicable category of work to exceed the rough order of magnitude budget for such category set forth in **Exhibit D** (an "Unanticipated Excess Cost"). Unanticipated Excess Cost shall not include normal increases in the cost of materials or labor, cost overruns or budgeting errors. City acknowledges and agrees that foundation work beyond a standard 6" slab on grade with perimeter footing will be considered an Unknown Condition and the cost of the extra foundation work shall be considered an Unanticipated Excess Cost. If Lessee reasonably anticipates that Lessee will encounter any Unknown Conditions that would result in Unanticipated Excess Cost, Lessee shall provide City with prompt written notice of such circumstance and Lessee and Department staff shall discuss whether feasible alternatives are reasonably available to avoid the projected Unanticipated Excess Cost.

(ii) Obligation to Complete Below \$100,000 Threshold; Special Rent Credit. If Lessee determines that construction of the Proposed Improvements has resulted in or will result in Unanticipated Excess Cost, Lessee shall nevertheless be obligated hereunder to complete the construction of the Proposed Improvements, at Lessee's sole cost, if the Unanticipated Excess Cost is \$50,000 or less. If Lessee determines that construction of the Proposed Improvements has resulted in or will result in Unanticipated Excess Cost of \$100,000 or less, Lessee shall nevertheless be obligated hereunder to complete the construction of the Proposed Improvements, and City shall provide Lessee with a rent credit (the "Special Rent Credit") in the amount by which such Unanticipated Excess Cost exceeds \$50,000 (provided that such Special Rent Credit shall not exceed \$50,000). If the Unanticipated Excess Cost exceeds \$100,000, Lessee shall have the right to either complete the construction of the Projected Improvements, in which event City shall provide a Special Rent Credit in the amount of \$50,000, or terminate this Lease on written notice to City.

(iii) Unworkable Modifications. Further, the Parties acknowledge that other governmental agencies may impose certain unanticipated requirements in connection with the Proposed Improvements which may require mitigation or alterations to Lessee's proposed plan for the Proposed Improvements that would require modifications to such plan beyond operational feasibility ("Unworkable Modifications"), in which event Lessee shall have the right to terminate this Lease on written notice to City.

(iv) Notice to City. If Lessee requests a Special Rent Credit or elects to terminate the Lease pursuant to this **Section 8.4**, Lessee shall provide City with a written explanation of the Unworkable Modifications or Unknown Condition(s) and, if applicable, reasonable documentation of the Unanticipated Excess Cost (including reasonable detail regarding the other items in the relevant budget category as required to

show the extent to which such budget category was exceeded due to the Unknown Condition rather than due to other factors). City and Lessee shall use reasonable efforts to resolve any dispute regarding Unworkable Modifications, Unknown Conditions, or Unanticipated Excess Cost claimed by Lessee.

(iv) Exercise of Lessee Termination Right; Surrender

Condition. If Lessee elects to terminate the Lease pursuant to this **Section 8.4** following the date on which Lessee has taken possession of the Premises, then (i) if Lessee has commenced any improvements to or modifications of the Premises or the adjacent property, Lessee shall promptly restore the Premises to their previous condition, to the extent reasonably possible, (ii) Lessee shall surrender the Premises and the adjacent property to City free from hazards and clear of all debris, and free of Lessee's and Lessee's contractors' personal property, (iii) Lessee shall restore any walkways on Marina Green to their prior condition, and (iv) this Lease shall terminate on the date Lessee surrenders the Premises to City in the condition required hereunder, or such other date as mutually agreed by lessee and the General Manager in writing, provided that Lessee's indemnification obligations shall survive such termination with respect to all claims, injuries, losses, damages, costs and expenses, including attorneys' fees, arising from or connected with circumstances, actions or omissions that occurred on or about the Premises prior to midnight on the date on which Lessee vacates and surrenders the Premises in accordance with the provisions of this Section. If Lessee cannot reasonably restore the Premises to their previous condition, Lessee shall notify City in writing of the aspects of restoration that Lessee believes are unfeasible, and shall restore the Premises to such other condition as reasonably designated by the General Manager in consultation with Lessee. City and Lessee shall use reasonable efforts to resolve any dispute regarding the required surrender condition of the Premises.

8.5. Historic Preservation Guidelines. Lessee acknowledges that the Marina Degaussing Station may be a historically significant building. Any alterations to the Marina Degaussing Station shall be in keeping with the historic character of the building. Any alterations are subject to the approval of the Commission and any other regulatory agency that may have jurisdiction.

8.6. Notice to Proceed with Improvements. Lessee agrees that the alterations, improvements and repairs to be made by Lessee pursuant to the terms and conditions of this Lease shall not commence until Lessee obtains from City written approval to proceed.

9. REPAIRS AND MAINTENANCE

9.1. Lessee Responsible for Maintenance and Repair.

(a) Except as provided in **Section 9.2** below, City shall not under any circumstances be responsible for the performance of any Alterations or Improvements to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof.

(b) Lessee shall maintain the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Lessee or its Agents or Invitees hereunder, Lessee shall immediately, at its sole cost, repair

any and all such damage and restore the Premises or City's property to its previous condition.

(c) Lessee shall keep all fixtures and equipment on the Premises clean, neat, safe, sanitary and in good order at all times. Lessee shall remove all waste, trash, rubbish, papers, cartons and refuse from the Premises, pick up trash and debris in the immediate vicinity of the Premises and dispose of trash in containers provided by Lessee that are large enough to adequately serve the needs of the facility. If approved by the General Manager, Lessee shall provide a dumpster and Lessee shall keep any dumpster on the Premises in clean and orderly condition.

(d) Food Service and Seating Areas. During the hours Lessee is open for business, Lessee shall keep the food service and seating areas and any furniture free of dishes, utensils, debris and spills and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage receptacles serving such area. The tables and chairs in any seating areas shall be configured so that there are walkways and sufficient area for pedestrian ingress and egress on either side of the tables and to minimize any potential tripping or other hazards. See **Section 7.1** for additional details.

(e) Public Restroom. Lessee shall be responsible for the regular cleaning on the public restroom located on the Premises. The restroom shall be open to the public at all times the Premises are open to the public. The restroom shall be kept clean, neat, orderly and functioning properly at all times. Lessee, at its own expense, shall provide all necessary items for the restroom including, but limited to, toilet tissue, paper towels, seat covers and hand soap. Lessee shall provide, at its sole expense, all cleaning materials and supplies necessary to maintain the public restroom in the condition as described above. Restroom shall be thoroughly cleaned daily and inspected for supplies and neatness a minimum of two (2) times during each day Lessee's business is open to the public.

9.2. City's Maintenance and Repair Obligations. Notwithstanding **Section 9.1**, City shall maintain, repair and keep in good condition any adjoining property under the jurisdiction of the Commission (other than the Premises), including gardening and landscaping services, and exterior bathrooms. Lessee shall provide City with prompt written notice of any required repair or maintenance item. City shall maintain, repair and replace if necessary all structural elements of the Premises. City shall be responsible for the structural integrity of the roof and its structural members.

9.3. No Right to Repair and Deduct. Lessee expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Lessee to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of Lessee's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Lessee expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Lessee to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Lessee to make repairs or replacements and deduct the cost thereof from Rent.

10. UTILITIES

10.1. Utilities and Services. Lessee shall pay for water, gas and electricity to the Premises. If Lessee desires any upgrades to water, gas or electricity services in connection with the operation of Lessee's business at the Premises, such upgrades shall be subject to City's prior written consent, and shall be made at Lessee's sole cost and expense. Lessee shall pay for sewer charges billed to Lessee by the Water Department, charges for garbage and recycling disposal and all telephone, fax and internet connection charges, including the cost of bringing any such service(s) to locations in the Premises.

10.2. Interruption of Services. City's obligation to provide utilities and services for the Premises are subject to applicable Laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Lessee, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Lessee. Lessee hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

10.3. Water and Energy Conservation; Mandatory or Voluntary Restrictions. In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Lessee to any damages, relieve Lessee of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Lessee. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Lessee.

10.4. Antennae. No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Lessee agrees, at the request of City, to permit City to install, at City's sole cost, transmission equipment for City's emergency or 800 MHz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to Lessee.

11. LIENS

Lessee shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Lessee. In the event Lessee does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in

addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Lessee upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Lessee shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Lessee shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Lessee has failed to do so within ten (10) days after final determination of the validity thereof. Lessee shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

12. COMPLIANCE WITH LAWS

12.1. Compliance with Laws. Lessee shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Lessee's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Lessee's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Lessee's obligation under this Section shall include, without limitation, the responsibility of Lessee to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Lessee or City, the degree to which the curative action may interfere with Lessee's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Lessee's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its obligations hereunder, or shall give Lessee any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

12.2. Regulatory Approvals

(a) Responsible Party. Lessee understands and agrees that Lessee's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Lessee shall be solely responsible for obtaining any and all such regulatory approvals. Lessee shall not seek any regulatory approval without first obtaining the written consent of the General Manager. Lessee shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Lessee's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Lessee, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Lessee shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Lessee's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property. Lessee further understands and agrees that City, acting by and through the Commission, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Lessee's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Lessee's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

12.3. Compliance with City's Risk Management Requirements. Lessee shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Lessee shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

12.4. Reports. Lessee shall submit a report and provide such documentation to City as City may from time to time request regarding Lessee's operations and evidencing compliance thereof with this Lease and all Laws. In the event that Lessee prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, Lessee shall promptly deliver a copy of such report or document to City.

13. FINANCING; ENCUMBRANCES; SUBORDINATION

13.1. Encumbrance of City's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City. To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and

subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Lessee to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) Encumbrance By Lessee. Lessee shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

13.2. Leasehold Encumbrances. Without limiting **Article 15** hereof, Lessee shall not Encumber this Lease or Lessee's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

14. DAMAGE OR DESTRUCTION

14.1. Damage or Destruction to the Improvements. If the Premises or the Improvements are damaged by fire or other casualty, then this Lease shall remain in full force and effect, subject to City's termination right set forth below, except that Lessee shall be entitled to a proportionate reduction of Base Rent and Additional Charges during the period commencing on the date of such casualty and continuing until the damage is repaired, which reduction shall be based upon the extent to which such damage and the making of such repairs (if applicable) materially interferes with Lessee's use or occupancy of the Premises (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of Lessee or its Agents). City shall use good faith efforts to notify Lessee within ninety (90) days after the date of such damage of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent and Additional Charges shall be reduced as provided herein; or (b) City's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. In case of termination, the Base Rent and Additional Charges shall be reduced as provided above, and Lessee shall pay such reduced Base Rent and Additional Charges up to the date of termination. If at any time during the last twelve (12) months of the Term of this Lease, the Premises or the Improvements are damaged or destroyed, then either City or Lessee may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Lessee may terminate only if such damage or destruction substantially impairs its use of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

14.2. Lessee's Obligations. Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Premises or the Improvements in the event the damage or destruction is attributable to any act or omission of Lessee or its Agents. In no event shall City be required to repair any damage to Lessee's Personal Property or any Improvements or Alterations installed or made on the Premises by or at the expense of Lessee. With respect to any damage to or destruction by fire or any other casualty to any Alterations or Improvements permitted hereunder made by or on behalf of Lessee during

the Term hereof, Lessee shall, at its sole cost, restore, repair, replace or rebuild such Alterations or Improvements to the condition such Alterations or Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1** above, unless this Lease is terminated as provided in **Section 14.1** above. If this Lease is terminated as provided in **Section 14.1** above, then at City's written request Lessee shall promptly, at its sole cost, demolish such damaged Alterations and damaged Improvements or Alterations that were installed or made on the Premises by or at the expense of Lessee and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1** below.

14.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Lessee each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

15. EMINENT DOMAIN

15.1. General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Lessee intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

15.2. Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

15.3. Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Lessee, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Lessee elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Lessee agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 15** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

15.4. Rent; Award. Upon termination of this Lease pursuant to an election under **Section 15.3** above, then: (i) Lessee's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in **Section 15.5** below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Lessee shall have no claim against City for the value of any unexpired term of this Lease, provided that Lessee may make a separate claim for compensation, and Lessee shall receive any Award made specifically to Lessee, for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

15.5. Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3** above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Lessee shall have no claim against City for the value of any unexpired Term of this Lease, provided that Lessee may make a separate claim for compensation. Lessee shall retain any Award made specifically to Lessee for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

15.6. Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Lessee shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Lessee shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Lessee for the period of the Taking, and City shall be entitled to receive the balance of any Award.

16. ASSIGNMENT AND SUBLETTING

16.1. Restriction on Assignment and Subletting. Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon. (collectively, "Sublease"). Any Assignment or Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Lessee.

16.2. Effect of Transfer. No Sublease or Assignment by Lessee shall relieve Lessee, or any guarantor, of any obligation to be performed by Lessee under this Lease. Any Sublease or Assignment shall constitute a material Event of Default by Lessee under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee

shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Lessee or other transferor to comply with this Section.

16.3. Indemnity for Relocation Benefits. Without limiting Section 16.2, Lessee shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Lessee shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

17. DEFAULT; REMEDIES

17.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Lessee hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, provided Lessee shall have a period of three (3) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Lessee's failure to make such payments when due more than twice during any calendar year, and any such failure by Lessee after Lessee has received two such notices in any calendar year from City shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Lessee shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Lessee shall have a reasonable period to complete such cure if Lessee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Lessee uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation City shall not be required to provide any notice regarding Lessee's failure to perform such obligation, and any subsequent failure by Lessee after Lessee has received two such notices shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure;

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or an assignment by Lessee for the benefit of creditors, or any action taken or suffered by Lessee under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

17.2. Remedies. Upon the occurrence of an Event of Default by Lessee, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) Terminate Lease and Recover Damages. The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Lessee's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Lessee proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Lessee's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) Continue Lease and Enforce Rights. The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Lessee's right to possession, if Lessee has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Lessee's right to possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Lessee specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Lessee shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Lessee and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) Appointment of Receiver. The right to have a receiver appointed for Lessee upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

17.3. City's Right to Cure Lessee's Defaults. If Lessee defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Lessee's account and at Lessee's expense. Lessee shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such

Event of Default. Lessee's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Lessee is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Lessee's Event of Default shall not constitute a waiver of Lessee's Event of Default or any rights or remedies of City on account of such Event of Default.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1. Waiver of Claims. Lessee covenants and agrees that City shall not be responsible for or liable to Lessee for, and, to the fullest extent allowed by Law, Lessee hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Lessee expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Lessee's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Lessee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Lessee or other waivers contained in this Lease and as a material part of the consideration for this Lease, Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Lessee pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Lessee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Lessee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Lessee realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

18.2. Lessee's Indemnity. Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Lessee, or loss of or damage to property (including, without limitation, the Department Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises or any other City property; (b) any default by Lessee in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Lessee's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Lessee, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements constructed by or on behalf of Lessee, or Lessee's failure to properly repair or maintain any Improvements on the Premises; (e) any construction or other work undertaken by Lessee on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Lessee, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Lessee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Lessee by City and continues at all times thereafter. Lessee's obligations under this Section shall survive the expiration or sooner termination of the Lease.

19. INSURANCE

19.1. Lessee's Insurance. Lessee, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU). If the operation of Lessee's business includes food sales, such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence. If the operation of Lessee's business includes the sale of alcoholic beverages, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence.

(ii) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident.

(iii) Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury

and property damage, including owned and non-owned and hired vehicles, as applicable, if Lessee uses automobiles in connection with its use of the Premises.

(iv) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Lessee is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Rent during any such interruption of business, the Rent for the 12-month period immediately preceding the incident causing the business interruption shall be used.

(v) Fire Legal Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence

(vi) Construction Activities. At all times during any period of Lessee's construction of Improvements or Alterations subject to **Section 8**,

(A) Tenant shall require Tenant's contractor to maintain
(a) commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate;
(b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice.

(B) In addition, Tenant shall carry "Builder's All Risk" insurance on a form reasonably approved by City, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards.

(C) Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(vii) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require.

19.2. General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, Lessee shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

Name Lessee as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

(d) Each insurance policy required hereunder shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

19.3. Proof of Insurance. Lessee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Lessee shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Lessee, and the cost thereof shall be paid to City within five (5) days after delivery to Lessee of bills therefor.

19.4. Review of Insurance Requirements. Lessee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Lessee with respect to risks comparable to those associated with the Premises, then, at City's option, Lessee shall increase at its sole cost the amounts or coverages carried by Lessee to conform to such general commercial practice.

19.5. No Limitation on Indemnities. Lessee's compliance with the provisions of this Section shall in no way relieve or decrease Lessee's indemnification obligations under **Sections 18.2** and **23.2** hereof, or any of Lessee's other obligations or liabilities under this Lease.

19.6. Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Lessee.

19.7. Lessee's Personal Property and Alterations and Improvements. Lessee shall be responsible, at its expense, for separately insuring Lessee's Personal Property, Alterations, and Improvements made by or on behalf of Lessee.

19.8. City's Self Insurance. Lessee acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

19.9. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Lessee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by Lessee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Lessee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

20. ACCESS BY CITY

20.1. Access to Premises by City.

(a) General Access. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Lessee (except in the event of an emergency) for any of the following purposes:

To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

To determine whether Lessee is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 17.3** hereof;

To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" or "coming soon" signs in connection therewith.

(b) Emergency Access. In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Lessee's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Lessee from the Premises or any portion thereof.

(c) No Liability. City shall not be liable in any manner, and Lessee hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Lessee, its Agents or Invitees.

(d) No Abatement. Lessee shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Lessee's use hereunder.

20.2. Department Facilities and Utility Installations. Without limiting **Section 20.1** above, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Department Facilities, if any, or any public park or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Lessee, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Lessee's use of the Premises occasioned by any such facility installations or other activities.

20.3. Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City desires.

20.4. Rights of Public. Lessee shall keep the Premises open to the public at all times consistent with the uses permitted hereunder, subject to the Rules and Regulations or as otherwise approved by the General Manager in writing.

21. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

22. SURRENDER

22.1. Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Lessee shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Lessee. On or before the Expiration Date or any earlier termination hereof, or later upon City's request, Lessee shall, at its sole cost, remove any and all of Lessee's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises requested by City to be removed (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above). In addition, Lessee shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations. In connection therewith, Lessee shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Lessee's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Lessee's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 *et seq.* of the California Civil Code or in any other manner allowed by Law. If Lessee fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Lessee shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Lessee resulting from Lessee's failure to surrender the Premises.

22.2. Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Lessee or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Lessee shall promptly deliver to City, without charge, a quitclaim deed to the Premises

suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Lessee's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above.

23. HAZARDOUS MATERIALS

23.1. No Hazardous Materials. Lessee covenants and agrees that neither Lessee nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Lessee shall immediately notify City if and when Lessee learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Lessee to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Lessee shall promptly provide all such information. Without limiting **Article 20** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Lessee (except in the event of an emergency).

23.2. Lessee's Environmental Indemnity. If Lessee breaches any of its obligations contained in **Section 23.1** above, or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Lessee's general Indemnity contained in **Section 18.2** above, Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Lessee shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Lessee shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23.3. Hazardous Substance Disclosure. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Lessee is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, cleaning fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Lease, Lessee acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

24. SECURITY DEPOSIT

Lessee shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Lessee agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises, the Improvements, or the Department Facilities (if any) caused by Lessee, its Agents or Invitees, or any failure of Lessee to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Lessee hereunder, Lessee shall immediately replenish the security deposit to the original amount, and Lessee's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. If the Base Rent is increased pursuant to any of the provisions of this Lease, Lessee shall increase the amount of the security deposit accordingly. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Lessee shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Lessee's liability for the performance of any of its obligations under this Lease.

25. HOLDING OVER

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a monthly Base Rent equal to one hundred ten percent (110%) of the Monthly Base Rent or Percentage Rent payable under this Lease for the final month of the Term, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Lessee and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate equal to one hundred fifty percent (150%) of the Monthly Base Rent or Percentage Rent payable under this Lease for the final month of the Term of this Lease.

26. GENERAL PROVISIONS

26.1. Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Lessee (i) at Lessee's address set forth in the Basic Lease Information, if sent prior to

Lessee's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Lessee's taking possession of the Premises, or (iii) at any place where Lessee or any Agent of Lessee may be found if sent subsequent to Lessee's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Lessee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 26.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

26.2. No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Lessee under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Lessee of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

26.3. Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Lessee, and City's agreement may be made upon the sole approval of the General Manager of the Department provided such amendment or modification does not (i) decrease the amount of rental income payable by Lessee to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

26.4. Authority. If Lessee signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Lessee does hereby covenant and warrant that Lessee is a duly authorized and existing entity, that Lessee has

and is qualified to do business in California, that Lessee has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Lessee are authorized to do so. Upon City's request, Lessee shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

26.5. Joint and Several Obligations. The word "Lessee" as used herein shall include the plural as well as the singular. If there is more than one Lessee, the obligations and liabilities under this Lease imposed on Lessee shall be joint and several.

26.6. Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Lessee hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

26.7. Successors and Assigns. Subject to the provisions of **Article 16** hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Lessee and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

26.8. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

26.9. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the

remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

26.10. Governing Law. This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

26.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Lessee hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

26.12. Attorneys' Fees. In the event that either City or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

26.13. Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

26.14. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

26.15. Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Lessee specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Lessee has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Lessee by City and continues at all times thereafter.

26.16. Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Lessee's business, or joint venturer or member in any joint enterprise with Lessee. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Lessee on, in or relating to the Premises.

26.17. Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Lessee shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Lessee shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Lessee, with regard to any future sale or other disposition of the Premises, or any portion thereof.

26.18. Recording. Lessee agrees that it shall not record this Lease in the Official Records.

26.19. Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Lessee, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Lessee, its successors and assigns, or for any obligation of City under this Lease or otherwise.

26.20. Wages and Working Conditions. With respect to the construction of any Improvements or Alterations, any employee performing services for Lessee shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the City and County of San Francisco. Lessee shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.

26.21. Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Section 21.25-3, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Section 21.25-3. Lessee agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Administrative Code Section 21.25-3 are hereby incorporated by reference and made a part of this Lease. Lessee shall cooperate

fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Section 21.25-3, including, without limitation, any investigation of noncompliance by Lessee or its Subcontractors. Lessee agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Lessee's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection. Lessee may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Lessee acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Lessee and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

26.22. Intellectual Property; Music Broadcasting Rights. Lessee shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Lessee: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers (“ASCAP”) at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)

26.23. Supervision of Minors.

(a) Records Request. If any person applies for employment or for a volunteer position with Lessee, or any sublessee or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Lessee, and any sublessee or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) Restriction on Hires for Recreational Sites. If Lessee, or any sublessee or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, “Recreational Site”), Lessee shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) Notice Required for Sites Other Than Recreational Sites. If Lessee, or any of its sublessees or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Lessee shall comply, and cause its sublessees and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Lessee shall provide, or cause its sublessees or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) General Requirements. Lessee shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of the Lease as a condition of its contract with the subcontractor. Lessee acknowledges and agrees that failure by Lessee or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Lessee further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Lessee any amounts paid under this Lease, and to withhold any future payments to Lessee. The remedies provided in this Section shall not be limited to any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

26.24. Employee Signature Authorization Ordinance. City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "Ordinance"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The terms of the Ordinance are expressly incorporated herein by reference. To the extent Lessee or its successors or assigns employ employees in a hotel or restaurant in the Premises within the scope of the Ordinance, Lessee hereby agrees as a material condition of this Lease to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Lessee's employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance. Lessee recognizes that, if the Ordinance applies to Lessee's operations on the Premises, Lessee must enter into a Card Check Agreement with a Labor Organization(s) as specified by the Ordinance before executing this Lease, and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this Lease.

26.25. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Lease, Lessee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Lessee, in any of Lessee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Lessee.

(b) Subleases and Other Subcontracts. Lessee shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Sublessee or other subcontractor in substantially the form of subsection (a) above. In addition, Lessee shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sublessees and other subcontractors to comply with such provisions. Lessee's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Lessee does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in

the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Lessee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Lessee shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Lessee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Lessee and/or deducted from any payments due Lessee.

26.26. No Relocation Assistance; Waiver of Claims. Lessee acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Taking.

26.27. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Lessee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

26.28. Conflicts of Interest. Through its execution of this Lease, Lessee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation

of such provisions, and agrees that if Lessee becomes aware of any such fact during the term of this Lease Lessee shall immediately notify City.

26.29. Tropical Hardwood and Virgin Redwood Ban. Lessee shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. In the event Lessee fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Lessee shall be liable for liquidated damages for each violation in any amount equal to Lessee's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Lessee acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Lessee from any contract with the City and County of San Francisco.

26.30. Tobacco Product Advertising Prohibition. Lessee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

26.31. First Source Hiring Ordinance. The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. As an essential term of, and consideration for, this Lease, unless exempted by the City's Office of Economic and Workforce Development, Lessee shall enter into a First Source Hiring Agreement with the City, on or before the effective date of the Lease. Lessee shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Program. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the Office of Economic and Workforce Development.

26.32. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

26.33. Counterparts. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

26.34. Vending Machine/Non-alcoholic Beverage Contract. Lessee hereby agrees to abide by any and all provisions of any contract entered into by City for the purpose of the sales of non-alcoholic beverages at City-owned facilities.

26.35. No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on City as landlord under this Lease.

26.36. City's Inability to Perform. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Lessee's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

26.37. Notification of Limitations on Contributions. Through its execution of this Lease, Lessee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Lessee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Lessee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Lessee's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Lessee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Lessee. Additionally, Lessee acknowledges that Lessee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Lessee further agrees to provide to City the name of the each person, entity or committee described above.

26.38. Public Transit Information. Lessee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Lessee employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Lessee's sole expense.

26.39. Drug-Free Workplace. Lessee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Lessee agrees that any violation of this prohibition by Lessee, its Agents or assigns shall be deemed a material breach of this Lease.

26.40. Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Lessee may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Lessee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Lessee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

26.41. Resource Efficiency. Lessee acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient buildings and resource-efficient pilot projects. Lessee hereby agrees that it shall comply with all applicable provisions of such code sections.

26.42. Food Service Waste Reduction Requirements. Lessee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Lessee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Lessee agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Lessee's failure to comply with this provision.

26.43. No Smoking in City Parks. Lessee agrees to comply with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

26.44. Prohibition of the Sale of Lottery Tickets. The selling of any lottery tickets on the Premises is expressly prohibited.

26.45. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of

graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Lessee shall remove all graffiti from the Property within forty eight (48) hours of the earlier of Lessee's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of Lessee to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

27. QUALITY OF SERVICES AND PRODUCTS OFFERED.

Lessee hereby agrees that any food and refreshments offered for sale hereunder shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. Department shall have the right to raise reasonable objections to the quality of the food, beverages, and service(s) provided and Lessee shall have the obligation to address those objections by modifying the causes of those objections until corrected to the satisfaction of the Department.

28. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM.

Lessee hereby agrees to participate in any customer satisfaction program developed by the City, provided that the participation requirements of the Customer Satisfaction Program shall be reasonable.

29. SIGNS AND ADVERTISING.

Lessee hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any signs without obtaining prior written consent from the General Manager. Unless otherwise directed by the Department, Lessee shall hire a Department approved designer to design professional signage, to be placed outside of the Marina Degaussing Station building, which describes the historical significance of the building and surrounding area. Such signage shall not be produced or erected without prior approval from the General Manager regarding content, design, placement, dimensions and all other aspects of signage. Additionally, Lessee shall place a sign in a prominent area inside restaurant that reads "Every Purchase Supports Our Parks." Such signage, including the placement thereof, shall be subject to the approval of the General Manager.

30. SUSTAINABLE FOODS.

Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones.

Lessee shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the Premises. City encourages Lessee to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims.

Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties.

Lessee shall also provide an annual report on each anniversary date of this Lease outlining how Lessee incorporated these sustainable food concepts into everyday operations of the food and beverage concession and how Lessee informed customers and the youth employed by the Lessee, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced.

[No further text this page.]

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL THE CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS THE SAN FRANCISCO RECREATION AND PARK COMMISSION AND CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

City and Lessee have executed this Lease as of the date first written above.

LESSEE:

**WOODHOUSE MARINA GREEN, ,
a California limited liability company**

By: _____
Its: _____

By: _____
Its: _____

CITY:

**CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation**

By: _____
PHILIP A. GINSBURG, General Manager
Recreation and Park Department

**APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. _____ DATED: _____**

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

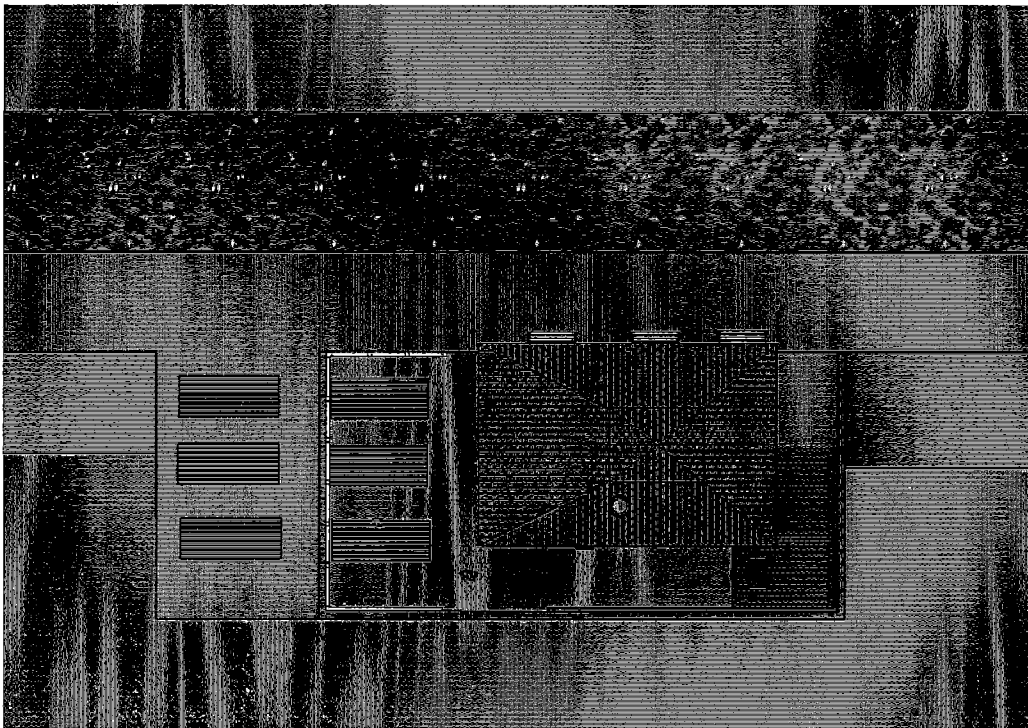
DENNIS J. HERRERA, City Attorney

By Anita L. Wood
Anita L. Wood
Deputy City Attorney

EXHIBIT A- PREMISES MAP

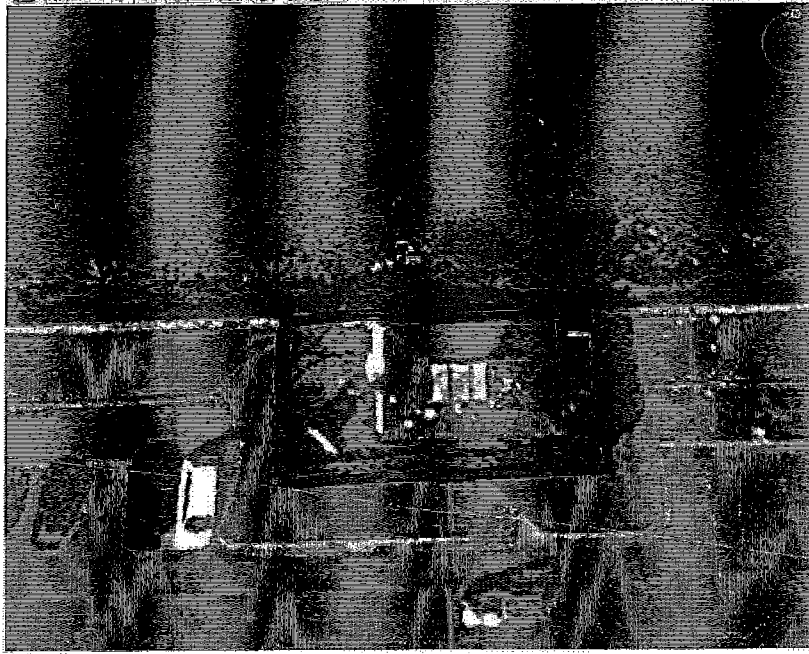


Marina Degaussing Station



Rendering of Proposed Marina Degaussing Station Restaurant

A1-Initial Premises



A2-Interim Premises

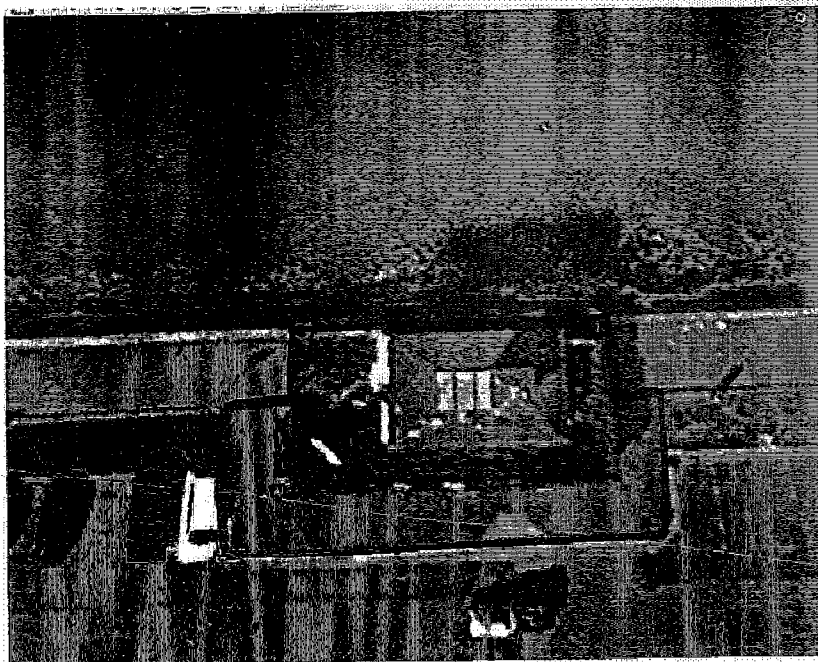
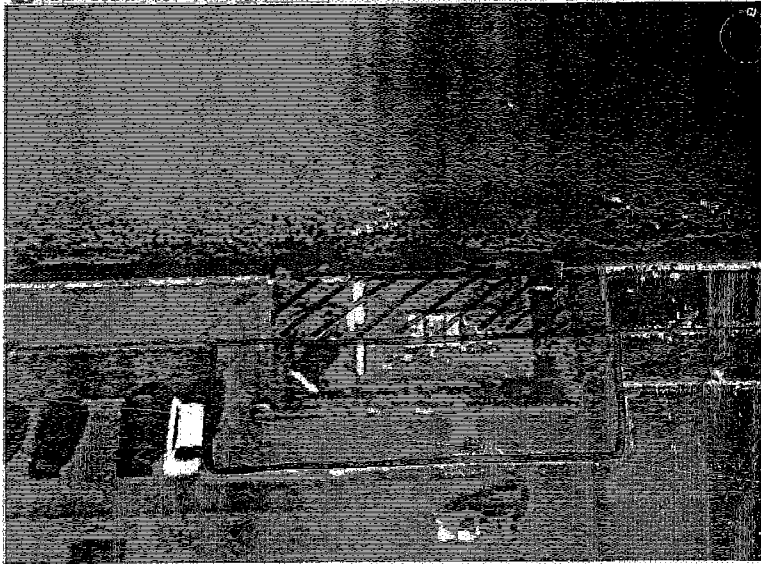


EXHIBIT A-3
Future Premises; Surrendered Premises

A3-Future Premises; Surrendered Premises



Surrendered
Premises

EXHIBIT B- DEPARTMENT RULES AND REGULATIONS

Please see following link for San Francisco Recreation and Park Department Park Code

<http://library.municode.com/index.aspx?clientId=14138&stateId=5&stateName=California>

EXHIBIT C-MANAGEMENT PLAN

Menu

The menu highlights healthy, simple and supremely local seafood. Most items will be adapted from the current popular Woodhouse Fish Co offerings and we will utilize our existing local relationships with A. LaRocca Seafoods, Drake's Bay Oyster Co, and Anchor Steam Beer. Prices and availability will fluctuate based on seasonal changes in seafood markets.

Style of Service

The restaurant will operate as a hybrid of fast casual and quick-serve. Most of the menu items will be prepared fresh within minutes so customers can order, pay, and immediately take their food away or after a short wait. The menu items that may take longer will be delivered at a specific pickup window minutes after having been ordered. There will be no table service, excepting the café personnel who will clear and clean tables after customers have vacated. All components of the to-go box lunches (utensils, napkin, the box itself) will be easy to dispose of and will be fully compostable.

Atmosphere and Decor

The interior will be warm and inviting with a long counter that looks out to the Bay. Our decor will highlight local fishing culture and history, to the point of celebrating the trade that defined San Francisco for so long. There will be pictures of local fisherman that we work with, and historical fishing artifacts. Outside there will be large communal picnic tables, protected from the wind, with heat lamps for colder days. We will have an outdoor crab boiling pot and grilling station, which is reminiscent of the kind used in San Francisco for over a century.

Seating

There will be seating for up to 25 patrons inside and up to 50 outside. There will be an area with a windbreak and heat lamps for colder days. There will be 6-8 picnic tables of varying sizes and benches that look out to the bay.

Alcoholic Beverages

Lessee will secure a type 41 on premise beer & wine license that will be used to serve local craft beers such as Anchor Steam, and wines from nearby Napa and Sonoma Valleys. There will be strict rules against over serving, no to go alcohol, and strict 21 and over monitoring.

No Amplified Sound

There will not be outdoor speakers of any kind or amplified music that interferes with the park setting. We will not have live entertainment.

Employment

The facility would create 15-20 full-time, jobs (cashiers, cooks, dishwashers, prep, bussers). We will utilize our existing employee base and adjust staffing based on events, demand and season.

Hours

The facility is to be open 7 days a week except Thanksgiving Day, Christmas Eve and Christmas Day. Morning service will open at 7am (should Lessee chose to open for breakfast, which is optional) or 11am and the restaurant will close no later than 9pm during the Initial Operation Period. We predict one hour for closing duties each night, with minimal

sound and light.

Deliveries & Trash

The majority of product deliveries will be made before 11am and done in a manner so as not disrupt park traffic. Waste pickups will be made daily in the morning according to schedule set by Recology Golden Gate, which handles all local service in the area. We propose to have our staff make frequent trips out to a substantial radius around the building to pickup any trash resulting from our foodservice.

Accounting Practices

Cash and major credit cards will be accepted as forms of payment. The restaurant will keep accurate books and records according to generally accepted accounting principles. This shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents the restaurant utilizes in its business operations. The restaurant shall not co-mingle personal funds with business funds.

Exhibit D-Proposed Improvements

The description of the Proposed Improvements will not be final until the conceptual designs have been approved by the Recreation and Park Commission after the execution of this Lease.

The following is Lessee's rough construction budget. Lessee represents that the rough construction budget is as accurate as Lessee can presently estimate it with the following caveats:

- Utilities are assumed to be useable as they stand as per Lessee's previous meeting with PG & E. In the event Lessee has to relocate the electrical panel Lessee may incur additional expense and it can be substantial.
- The soils are expected to be typical for a flat lot with this very light building load. If there are extraordinary conditions Lessee does not presently know them and cannot until there is a soils report and various private and public agencies have studied the results. Lessee does not expect extraordinary conditions and has had preliminary discussions with the soils engineering firm that has worked on the Dutra job at the Marina and has consulted with Dutra's field people. They have indicated that they believe that the compaction is actually good, but extraordinary conditions are still possible. Lessee's budget reflects a substantial foundation, but does not include costs attributable to unforeseen conditions atypical for a flat lot or the cost of foundation work beyond a standard 6" slab on grade with perimeter footing. Lessee has not included contingency funds for foundation work beyond a standard 6" slab on grade with perimeter footing or unforeseen conditions that may come to light as Lessee seeks approval that are beyond the disclosures and Lessee's discovery to date.
- Lessee agrees that relocating the structure some distance from its location adjacent to the seawall is a terrific solution to the request that a pedestrian walkway be created in line with the present path of travel.
- Lessee proposes to install public park amenities such as benches and bike racks around the vicinity.

Rough Budget Estimate by Category of Work:

Stabilizing building and relocating the building with new foundation and replacing the public right of way along the sea wall	\$150,000
Carpentry, roofing, windows and doors	\$100,000
Patio and landscaping including paving to match existing along the seawall and windscreens	\$75,000
Remaining trades, electrical, plumbing, painting, hood, stainless and all things attached to the building.	\$100,000
Upgrade sewer, water, gas and electric presuming they are adjacent to the current site but need new connections	\$30,000
Kitchen equipment and furnishings	\$75,000
All other costs of opening including architects, engineers, consultants for planning approval & permits	\$50,000

Budget Estimate Breakdown:

Tenant Improvement	Cost
General Conditions (fencing, toilets, supervision)	\$28,700
Site Work (demolition, asphalt, landscape)	38,425
Concrete (foundation, curbs)	42,500
Carpentry	76,270
Thermal and Moisture (roof, insulation)	11,925
Doors and Windows	18,400
Finishes (paint, wall treatments, flooring)	33,660
Millwork and Specialty (cabinets, trim, awning)	43,010
Furnishings	8,050
Plumbing	47,150
Mechanical (HVAC system)	44,750
Electrical	25,800
Utilities	24,320
Equipment (Kitchen Cooking Equipment)	40,610
Contractor Overhead	101,602
Architecture, Engineering, Soils, and Miscellaneous	65,000
Replacement of Public Right of Way	5,000
Total	\$655,172

Exhibit E-Menu



DRINKS	
	2.50
COCA-COLA / DIET COKE / SPRITE	
ICED TEA / HOT TEA / PEET'S COFFEE	
LEMONADE / ARNOLD PALMER	

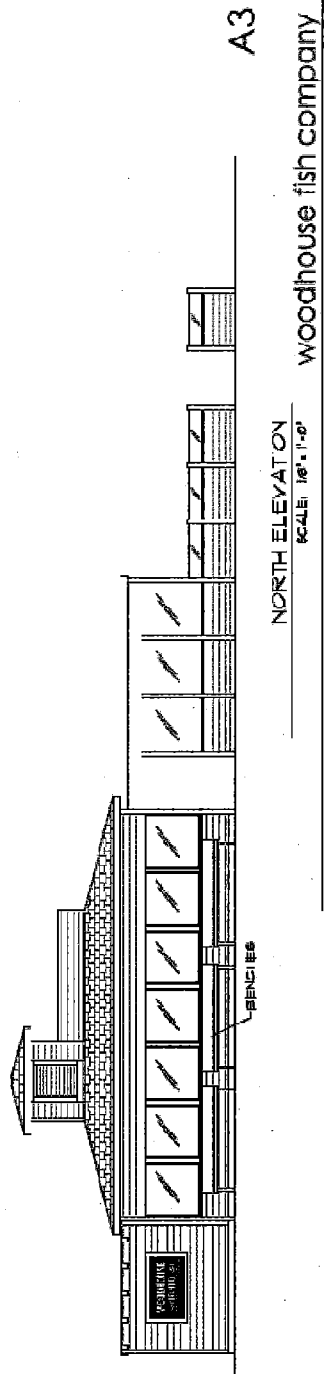
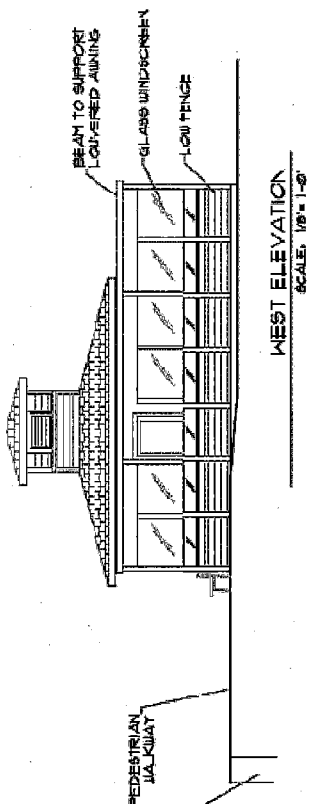
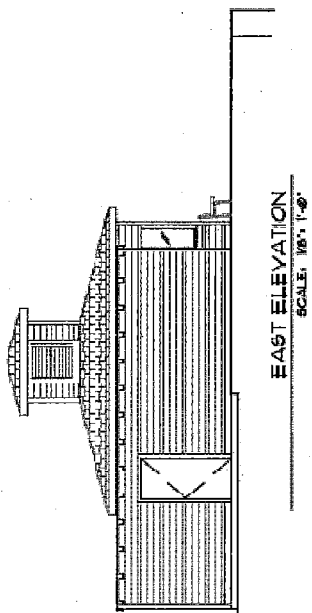
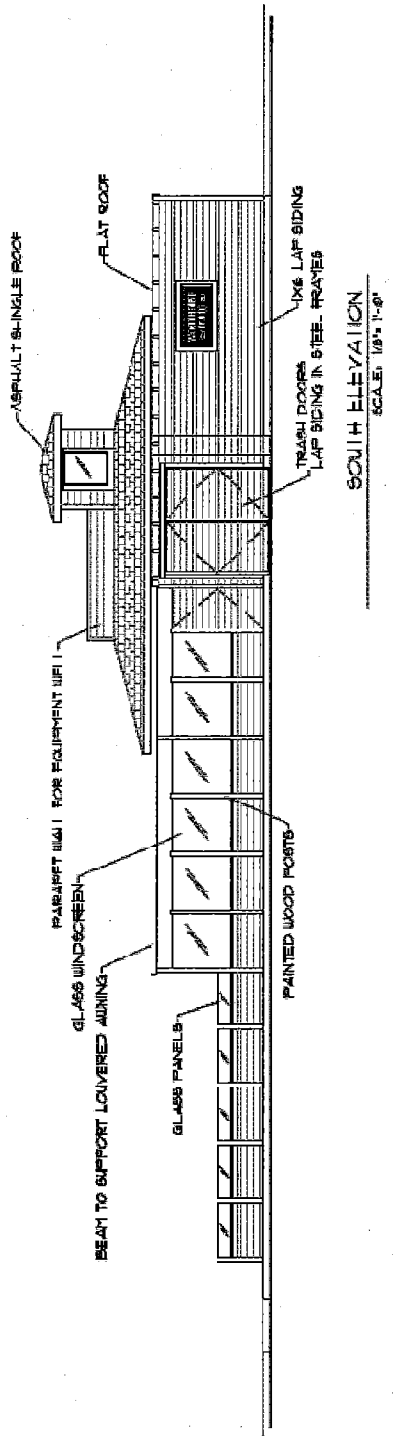
BEER & WINE	
ANCHOR STEAM.....	.6
BOTTLED BEERS5
WHITE WINES BY GLASS OR BOTTLE	
HOUSE WHITE	5.50/21
BERINGER CHARDONNAY	6/23
PINE RIDGE CHENIN BLANC	6/23
OYSTER BAY SAUVIGNON BLANC	7/27
CHATEAU ST. JEAN FUME BLANC	7/27
RED WINES BY THE OR BOTTLE	
HOUSE RED	5.50/21
8 ARMS TENTACLE SYRAH	8/30

CA Sales Tax not included -
All items are subject to seasonal availability

DRAKE'S BAY OYSTERS	2 Raw / 3 BBQ
NEW ENGLAND CLAM CHOWDER	4 CUP / 7 BOWL
MARINA GREEN SALAD9
<i>SEASONAL VEGGIES AND LETTUCES FROM NEARBY FARMS</i>	
DUNGENESS CRAB COCKTAIL	12
DUNGENESS CRAB LOUIE SALAD	16
STUFFED ARTICHOKE HALF	
DUNGENESS CRAB	14
BAY SHRIMP	10
NOT FOR KIDS ONLY GRILLED CHEESE6
<i>SERVED WITH HOUSE-MADE COLE SLAW AND SHOESTRING FRIES OR SALAD</i>	
FRESH ALBACORE TUNA BURGER	12
<i>SERVED WITH HOUSE-MADE COLE SLAW AND SHOESTRING FRIES OR SALAD</i>	
FISH & CHIPS	11
<i>ANCHOR STEAM BEER-BATTERED WILD ALASKAN COD WITH SHOESTRING FRIES</i>	
TOASTED DUNGENESS ROLL	18
<i>SERVED WITH HOUSE-MADE COLE SLAW AND SHOESTRING FRIES OR SALAD</i>	
SPLIT-TOP MAINE LOBSTER ROLL	19
<i>SERVED WITH HOUSE-MADE COLE SLAW AND SHOESTRING FRIES OR SALAD</i>	
STEAMED & CRACKED DUNGENESS CRAB	HALF OR WHOLE A.Q
<i>SERVED WITH HOUSE-MADE COLE SLAW AND LEMON WEDGES</i>	
SEASONAL FRESH CATCH	A. Q
<i>BBQ SALMON, COLE SLAW AND SWEET POTATO FRIES</i>	
<i>LOCAL PETRALE SOLE, FINGERLING POTATOES AND SEASONAL VEGGIES</i>	
<i>BAKED HALIBUT SANDWICH, TARTAR SAUCE AND GREEN SALAD</i>	
<i>DUNGENESS CRAB CAKES, CHIPOTLE SAUCE AND VEGGIES</i>	

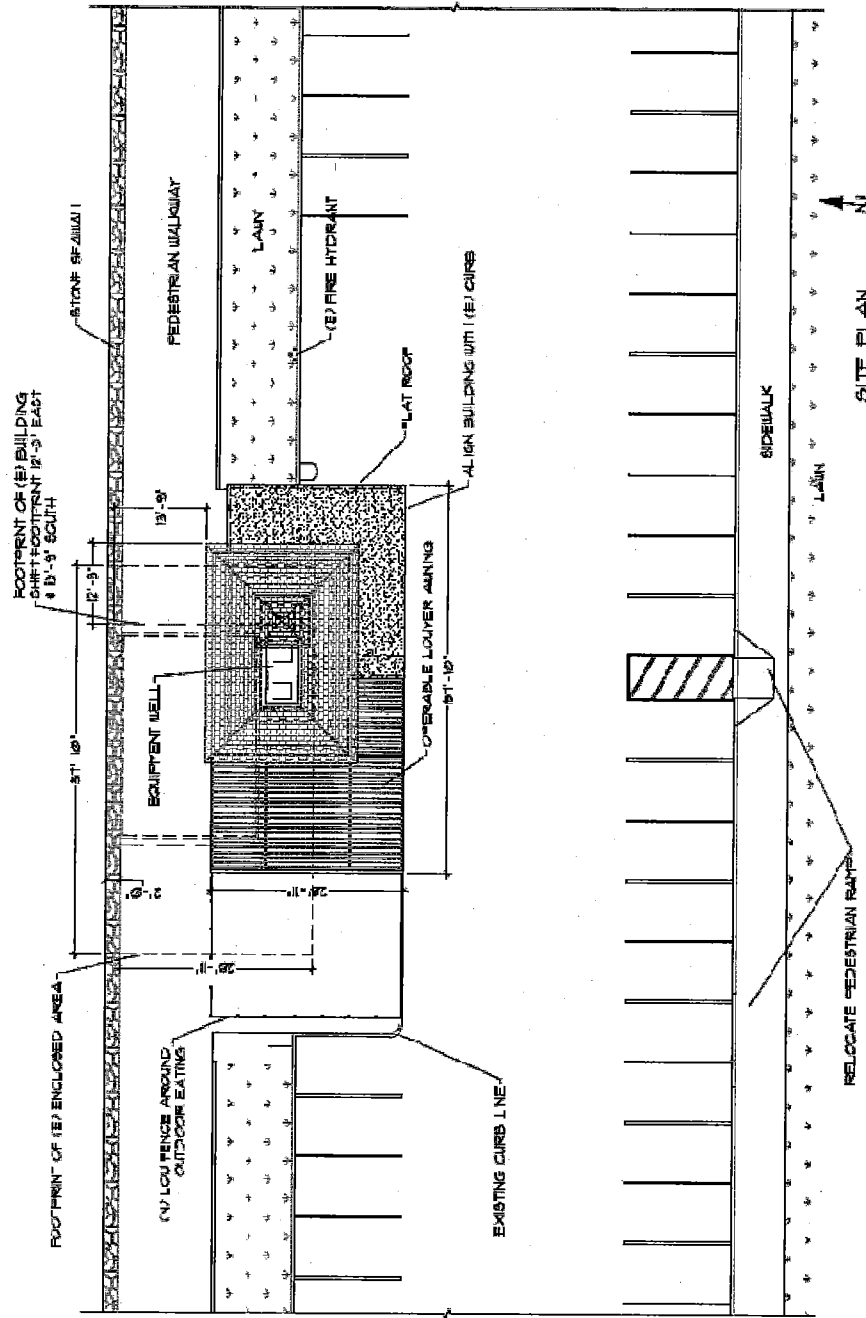


EXHIBIT F- Conceptual Drawings



CURRUI 29, 2012
 THE ARCHITECTS
 WILLIAM AUBREY PATRICK
 ARCHITECTS
 10000 WOODLAND AVENUE
 ANAHEIM, CALIFORNIA 92814
 LICENSE 04747-0174-00
 WILLIAM AUBREY PATRICK
 ARCHITECT
 LICENSE 04747-0174-00

A3
 woodhouse fish company
 marina green, san francisco, ca



August 20, 2012

THE ARBORELL STUDIO
 WILLOW ARBORELL PATRICK
 LANDSCAPE ARCHITECTS
 1000 STEVENSON PARKWAY
 ALBUQUERQUE, NEW MEXICO 87102
 TEL: 505.263.1100
 WWW.ARBORELLSTUDIO.COM

A1

woodhouse fish company
 marina green, san francisco, ca

RECREATION AND PARK COMMISSION
City and County of San Francisco
Resolution No. 1209-006

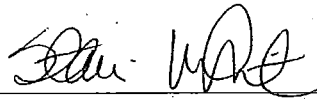
MARINA DEGAUSSING STATION

RESOLVED, That this Commission does recommend to the Board of Supervisors approval of a lease agreement between the City and Woodhouse Marina Green, LLC, for the operation of a restaurant at the Marina Degaussing Station at the Marina Green.

Adopted by the following vote:

Ayes	6
Noes	0
Absent	1

I hereby certify that the foregoing resolution was adopted at the Special Meeting of the Recreation and Park Commission held on September 20, 2012.



Staci L. White for
Margaret A. McArthur, Commission Liaison



SAN FRANCISCO PLANNING DEPARTMENT

General Plan Referral

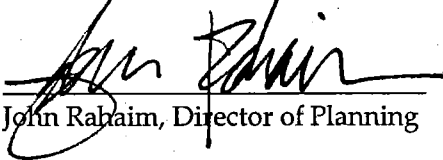
Date: October 18, 2012
Case No. Case No. 2012.1264R
Lease of Degaussing Station

Block/Lot No.: 0900/003
Project Sponsor: Cassandra Costello
San Francisco Recreation and Park Department
501 Stanyan Street
San Francisco, CA 94117

Applicant: Same as Above

Staff Contact: Paul Chasan – (415) 575-9065
paul.chasan@sfgov.org

Recommendation: Finding the project, on balance, is in conformity with the General Plan

Recommended By: 
John Rahaim, Director of Planning

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION

The Department of Recreation and Parks proposes to lease the abandoned building along Marina Green Drive to Woodhouse Marina Green, LLC. to operate a counter service seafood restaurant.

SITE DESCRIPTION AND PRESENT USE

The project involves renovating a vacant building sited wholly within Marina Green Park. The building, a historic structure sits along the northern edge of the park directly fronting the water. The building is a former degaussing station which has been vacant for years. It is a fenced-in facility which occupies a total area of 1,070 square feet, 720 square feet of which is a building sitting on the northern edge of the Marina Green where Fillmore Street would cross the park. Originally the property of the US Navy, the building was gifted to the City in the 1980s and has sat idle for many years.

Woodhouse Fish Co. is a family-owned seafood restaurant with two locations in San Francisco (one on Fillmore Street and one on Market at St.). Woodhouse Fish Company won a competitive

bidding process and was the entity chosen to operate a restaurant at this site by the Recreation and Park Commission.

ENVIRONMENTAL REVIEW

The proposed project is exempt by CEQA Guidelines Section 15301, Existing Facilities: change of use and lease.

GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

Based on a review of the application, the Planning Department finds that the proposed leasing an existing, historic building owned by the Recreation and Parks Department that is sited within Marina Green on the City's northern waterfront is, on balance, in conformity with the Objectives and Policies of the General Plan.

RECREATION AND OPEN SPACE ELEMENT

Policy 3.1 Assure that new development adjacent to the shoreline capitalizes on its unique waterfront location, considers shoreline land use provisions, improves visual and physical access to the water, and conforms with urban design policies.:

...Priority Land Uses. The most important uses of the shoreline should be those providing substantial long-term public benefits that cannot be provided on other sites within the city. Maritime shipping and freight handling facilities, ship repair; water-related public recreation, open space including shoreline public access and water-dependent habitat areas; commercial fishing; and commercial and recreational maritime activities (e.g. ferries, excursion boats, water taxis, historic ship and visiting ship berthing, recreational boating) and maritime support services are included in this category.

Restricted Land Uses. Office, residential, public assembly and recreational sports facility with associated commercial uses, water oriented commercial recreation and public assembly uses such as restaurants, hotels and shops, museums, visitor centers, theaters and other activities such as non-water-oriented community facilities and industrial uses are appropriate in the areas designated in the General Plan. These uses may provide limited public benefits and should be restricted to areas which are not needed for priority uses. Parking accessory to these uses should be in structures or otherwise screened from view. Recreation-oriented commercial services should be permitted where appropriate on land adjacent to open space areas...

Comment: Policy 3.1 makes allowance for limited commercial uses including restaurants along the shoreline.

Policy 3.1 of the recreation and open space element continues with a discussion about for urban design guidance for adding new structures like buildings, parking garages and roads to existing open spaces.

- Maximize direct physical access to the water;

GENERAL PLAN REFERRAL
CITY LEASE AND/OR PURCHASE OF 1 NEWHALL
STREET FOR USE BY THE DEPT. OF TECHNOLOGY

CASE NO. 2004.0245R

- Preserve and enhance the natural shoreline, where it exists;
- In windy areas incorporate design features which will make shoreline open spaces more pleasant and usable;
- Avoid shadowing areas of public use;
- Maintain visual access to the water from more distant inland areas by preserving view corridors and lowering the profile of buildings; higher buildings should provide such associated amenities as publicly accessible overlooks;
- Restrict uncovered parking beyond the seawall (over water) that is visible from adjacent public areas;
- Screen development from view from the shoreline if it will detract from the natural setting of the shoreline;
- Provide ample natural landscaping;
- Meet the more specific design policies and principles in the Urban Design Element and Western, Northeastern, Central Waterfront and South Bayshore Plans of the General Plan.

Comment: While these guidelines apply to new construction rather than renovation of existing structures, the proposed development is consistent with the intent of the above guidelines as impacts existing views, not add additional shadows, reduce access to the water etc. will remain essentially unchanged.

RECOMMENDATION:	Finding the Project, on balance, in-conformity with the General Plan
------------------------	---

cc: Cassandra Costello, Department of Recreation and Parks



FW: Board File 120987

Dennis-Phillips, Sarah to: dm567@pacbell.net

10/24/2012 02:26 PM

Cc: "Miller, Alisa", "Chasan, Paul" , "Pereira, Monica", "Tam, Tina"

Mr. Maionchi-

Paul Chasan is out of the office on vacation; I wanted to provide you with some responses in his absence.

It seems from your query below that we need to clarify that this General Plan Referral, and the accompanying CEQA determination, applies only to the proposed lease of the building. It does not cover the full range of projects that may arise from this lease in the future. Any actual changes to the building, including movement, construction or even simple improvements to the structure, would require another General Plan Referral, as well as further CEQA review and historic evaluation.

Regarding your question about an appeal, please note that a General Plan Referral is not a "decision." It is written report provided to the Board of Supervisors by the Planning Department regarding conformity with the General Plan, as required by the San Francisco Charter Section 4.105. The decision will be made by the Board of Supervisors when they hear the request to approve this lease. You should direct your efforts regarding appeal to the Board.

Finally, while future projects related to the Degaussing Station and Woodhouse Marina Green will not require any actual Planning approvals or permits, Planning staff in our Environmental and Historic divisions will review the proposals under the previously mentioned CEQA review and historic evaluation.

Thank you,
Sarah Dennis Phillips, AICP

Manager, Plans and Programs

T: 415.558.6314

F: 415.558.6409

sarah.dennis-phillips@sfgov.org



Re: Board File 120987
 dominic maionchi to: Paul.chasan
 Cc: Alisa.Miller

10/22/2012 11:29 AM

Dear Paul,

Comments:

1. I believe that you may have neglected to consider the exceptions to categorical exemptions under CEQA. CEQA Guidelines, Section 15300, and Public Resources Code, Section 21084, namely:

1. The project site is environmentally sensitive as defined by the project's location. A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.
2. The project and successive projects of the same type in the same place will result in cumulative impacts;
3. There are "unusual circumstances" creating the reasonable possibility of significant effects;
4. The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock, outcroppings, or similar resources, within an officially designated scenic highway, except with respect to improvements required as mitigation for projects for which negative declarations or EIRs have been prepared;
5. The project is located on a site that the Department of Toxic Substances Control and the Secretary of the Environmental Protection have identified, pursuant to Government Code section 65962.5, as being affected by hazardous wastes or clean-up problems; or
6. The project may cause a substantial adverse change in the significance of an historical resource.

2. Also, as part of your documentation of a CEQA exemption, have you filled out the appropriate CE/CE form which must include:

- A brief description of the project.
- A finding that the project is exempt from CEQA, including documentation of which class, rule, or statute.
- A brief statement of reasons to support the finding.
- Document signatures by the Project Manager and the District/Region Senior Environmental Planner.

If so, please send me a copy. (immediate request under sunshine ordinance)

If not, why not?

3. The environmental review is incomplete in the letter. Merely stating a project is exempt without explanation does not meet state law.

4. You mention that the building is existing. Have you considered that the building is being moved? This in effect makes it a new building at a new location for CEQA consideration. It is no longer an existing building. In addition, exterior lighting and an outside eating area will be added with a paved surface. This qualifies as new construction. It is currently a grassy area. Have you seen it?

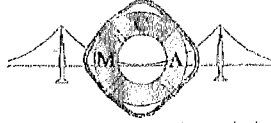
Lastly, if you are not prepared to correct the above mentioned items, how do we appeal your decision? and will the project require going through the regular planning department before it goes to the building department?

Regards,

dom

dominic maionchi
dm567@pacbell.net

This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. This message is sent from a computer that is not secure and the authenticity of the sender may be in question.



Marina Community Association
1517 North Point Street, Box #531
San Francisco, CA 94123

www.sfmca.org

August 16, 2012

MCA Directors
2012

Ariel Kelley
President

Kat Anderson
Vice President

Brad Andersen
Corporate Secretary

Brian Davis
Treasurer

Thomas Abramo
Donald Carmignani
John Farrell
Suki Kott
Laura Lanzone
Alan Silverman
Jennifer Stuart

President Mark Buell.
Recreation and Park Commission
McLaren Lodge, Golden Gate Park
501 Stanyan Street
San Francisco, CA 94117

Re: Marina Green Degaussing Station Project

Dear Commissioners:

The Marina Community Association (MCA) is pleased to provide this letter in support of the Woodhouse Fish Company operating a restaurant at the Degaussing Station on Marina Green. The MCA has met with Dylan MacNiven of Woodhouse Fish Company on several occasions and feel that his family's restaurant will be a benefit to our community. The MCA is happy to see a building that has fallen into disrepair now has an opportunity to be restored and maintained. The MCA is pleased that the Recreation and Park Department (RPD) has engaged in genuine outreach with our community on this project and are thankful for the staff time and effort to make this project a success for the Marina.

The MCA asks your commission to recognize that because this is such a drastic change of use, certain safeguards must be built into the lease agreement between RPD and Woodhouse to make sure that the community is not being negatively impacted by this project. We strongly urge your commission to include language in the lease that adopts a "trial period" of six months after opening, where the specific mechanisms below are evaluated to confirm that Woodhouse is operating as a good neighbor to our community:

- Noise complaints from sounds above the Department of Public Health standards
- Failure to follow hours of operation, i.e. remaining open after 9:00 pm during six-month trial period
- Impact of restaurant lighting on surrounding community at night
- Garbage in vicinity of restaurant
- ABC violations
- Compliance with SF City code on the control of rodents and such around eating establishments

After six months, we would like to have a community meeting with RPD staff, the neighbors and Woodhouse to measure how Woodhouse's operations have impacted the neighborhood based on the above standards. If it is determined at this community meeting that Woodhouse is not operating as a good neighbor based on the above issues and all other items called out within the lease, we ask that your Commission and RPD immediately work to create a plan to remediate the negative impacts on our community and implement such a plan immediately. It is extremely beneficial that all complaints first be verified before remedial action is required. However, if it is determined at the community meeting that Woodhouse is operating as a good neighbor, the MCA supports allowing Woodhouse to stay open until 10pm seven nights per week going forward.

Again, we are pleased to support this project and thank you for your service to our community and City.

Regards,

Ariel

Ariel Ungerleider Kelley
President, Marina Community Association

cc: Supervisor Mark Farrell
Capt. Ann Mannix
Phil Ginsburg
Cassandra Costello
Lev Kushner
Nicholas Kinsey
Dylan MacNiven
Phil Ginsburg



GASHOUSE COVE MARINA, INC.

10 MARINA BOULEVARD, SAN FRANCISCO, CALIF. 94123 415/567-3695

August 11, 2011

To: The Supervisors - City of San Francisco

Regarding: Proposal for Degaussing Station Marina Green

To Whom It May Concern:

It has come to my attention that there is the possibility of rescuing the Degaussing Station on the Marina Green and using the site for a small restaurant.

First, let me applaud the City for considering this option.

I am acquainted with one applicant, Mr. Jamis MacNiven. I believe the City would benefit greatly by his involvement in the project. Mr. MacNiven is highly regarded in the business community and an expert in developing successful eating establishments in our City. He has the reputation of being a careful and considerate neighbor and employer. He has an acute sensitivity to the special environment of this location and its history.

My business of 42 years is also in the Marina District and I would welcome him without hesitation.

I would like to recommend The City consider his proposal very favorably.

Sincerely,

Christine Kaplan
Gashouse Cove Marina, Inc.
10 Marina Blvd.
San Francisco, CA 94123
chrissy@citysf.com
415-567-8880



FORT MASON CENTER

SAN FRANCISCO

ADDRESS

LANDMARK BUILDING A, FORT MASON CENTER
SAN FRANCISCO, CALIFORNIA 94123-1362

WEBSITE

www.fortmason.org

TEL

415.346.7500

FAX

415.441.3405

August 30, 2012

President Mark Buell
President, San Francisco Recreation and Park Commission
San Francisco, CA

Dear President Buell,

I am writing to urge you to approve the lease agreement of the restaurant at the Marina Degaussing Station on the Marina Green.

We at Fort Mason Center, the immediate neighbor to the Marina Green, are thrilled that the derelict Marina Degaussing Station building will be activated with such a high quality and professional tenant. Renovation of the Degaussing Station will offer an amenity that greatly enhances the visitor experience to the area. The proposed restaurant will provide a unique dining experience.

On behalf of Fort Mason Center, I would like to express our support for recommending the lease agreement to the Board of Supervisors.

Sincerely,

Jessica Reilly
for

Fort Mason Center



FOR THE PRESIDENT OF THE BOARD OF SUPERVISORS
CITY AND COUNTY OF SAN FRANCISCO

President Buell
President, Recreation and Park Commission
San Francisco

August 10, 2012

Dear President Buell,

I am writing to support the proposal for Woodhouse Fish Company to operate a restaurant at the Marina Degassing Station at the Marina Green and urge you to recommend approval of the lease agreement to the Board of Supervisors.

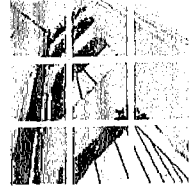
As a neighbor to the Marina Green area, the Presidio YMCA is thrilled that the vacant Marina Degassing Station building will be activated with a high quality and professional tenant like the Woodhouse Fish Company. Renovation of the Degassing Station will offer an amenity that greatly enhances the visitor experience to area.

On behalf of the Presidio Y, I would like to express my support for recommending the lease agreement with Woodhouse Fish Company to the Board of Supervisors.

Sincerely,

Robert Sindelar
Executive Director, Presidio Community YMCA
District Vice President, YMCA of San Francisco

San
Francisco
Travel



August 23, 2012

Mr. Mark Buell
President, San Francisco Recreation and Park Commission
McLaren Lodge, Golden Gate Park
501 Stanyan Street
San Francisco, CA 94117

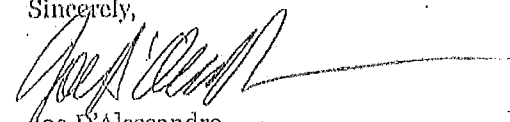
Dear President Buell:

On behalf of the Board of Directors of the San Francisco Travel Association, I strongly urge the San Francisco Recreation and Park Commission to recommend the establishment of a seafood dining destination at the Marina Green to the Board of Supervisors.

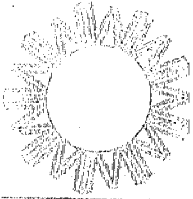
San Francisco Travel is committed to supporting developments that enhance the visitor experience. The Marina Green is an active and vibrant area that would greatly benefit from the establishment of a quality dining offering. Transforming an abandoned building along our waterfront into a restaurant will be an immense boon for the area and offer our visitors another beautiful place to enjoy waterside dining with one of the best views of the Golden Gate Bridge our City has to offer.

For these reasons, San Francisco Travel urges your Commission to recommend the lease agreement for the establishment of a seafood dining experience at the Marina Degaussing Station to the Board of Supervisors.

Sincerely,



Joe D'Alessandro
President & CEO



MISSION MERCHANTS ASSOCIATION
P.O. Box 40280 • San Francisco, CA 94140 • (415) 979-4171 • www.missionmerchants.com

2012 OFFICERS

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DON ALAN
Casanova Lounge
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- Vice President Government
& Media Relations*
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DYLAN MacNEVIN
West of Pecos Restaurant
- Special Events*
ROBERTO HERNÁNDEZ
LatinZone Productions
- Public Relations Vice President*
JEAN FEILMOSE
JWalks.com

2012 AFFILIATES

- S.F. CONVENTION AND
VISITORS BUREAU
- S.F. COUNCIL OF
DISTRICT MERCHANTS

August 23, 2012

President Buell
Recreation and Parks Commission
City & County of San Francisco

Re: Endorsement of the MacNiven Family Operating a Restaurant in the
Degaussing Station

Honorable President Buell,

San Francisco is extremely fortunate to have the MacNiven family, proven
restaurateurs and developers, interested in finding a wonderful adaptive reuse
for the defunct Degaussing Station at the Marina.

This summer the MacNivens opened a restaurant at 550 Valencia Street. The
building at this location had been red-tagged prior to their taking possession. In
less than a year, they tastefully transformed it into a full-service restaurant
called West of Pecos.

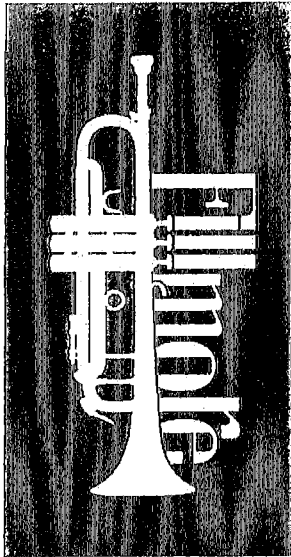
Anyone interested in seeing that the MacNivens are capable of transforming an
eyesore into a vibrant eating establishment need only go to West of Pecos.

We are extremely proud to have the MacNivens in our midst in the Mission
district.

For the betterment of San Francisco's waterfront, please accept the Park and
Recreation Department's recommendation to approve the MacNiven family's
proposed adaptive reuse of the Degaussing Station into a restaurant.

Sincerely,

Philip Lesser
Vice President of Government & Media Relations
Mission Merchants Association



**FILLMORE
MERCHANTS
ASSOCIATION**

2130 Fillmore Street #155
San Francisco, CA 94115
415.441.4093

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still better place to live and do business*

www.FillmoreStreetSF.com

August 28, 2012

Mr. Mark Buell
Recreation and Parks Commission
City Hall
San Francisco, CA 94102

Re: Woodhouse Fish Co.

Dear Mark:

I write to sing the praises of our neighbor the Woodhouse Fish Company, which has been an active and involved member of the Fillmore community. I hope you will give them every positive consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom', written in a cursive style.

Thomas R. Reynolds
President



President Buell
President, Recreation and Park Commission
San Francisco

August 9, 2012

Dear President Buell,

I am writing on behalf of the over 1,000 member locations of the Golden Gate Restaurant Association in support of the Woodhouse Fish Company as a restaurant operator for the Marina Degaussing Station and urge you and the Commission to recommend approval of the lease agreement to the Board of Supervisors.

As a former legislative aide to Supervisor Alioto-Pier, and having worked extensively on improvements to both the Marina Yacht Harbor and the Degaussing Station I am personally excited about the opportunity for a well regarding local business to inject some much needed energy into the Degaussing Station – The Woodhouse Fish Company is just what the doctor ordered. Woodhouse is a family run business that will operate a professional high quality restaurant at the Marina Degaussing Station. They have demonstrated their capacity to run an exceptional business in their two other popular San Francisco locations on Fillmore Street and Market Street.

Woodhouse has an approachable menu catering to locals, visitors and families, which is a must in the proposed location which hosts a variety of activities and interests. Their impeccably fresh and local seafood will be a huge benefit to the restaurant scene in the area and offer a prime bay view dining opportunity.

On behalf of the Golden Gate Restaurant Association, I urge you to recommend the lease agreement with Woodhouse Fish Company to the Board of Supervisors.

Sincerely,

Rob Black
Executive Director
Golden Gate Restaurant Association



SAN FRANCISCO
CHAMBER OF COMMERCE

Honorable Mark Buell
President, San Francisco Recreation and Park Commission
McLaren Lodge-Golden Gate Park
501 Stanyan St
San Francisco, CA 94117

August 16, 2012

Dear Commissioner Buell,

The San Francisco Chamber of Commerce, representing over 1,500 businesses, urges the Recreation and Park Commission to recommend the lease agreement with the Woodhouse Fish Company for the operation of a restaurant at the Marina Degaussing Station to the Board of Supervisors for their approval.

Woodhouse operates a number of professionally owned family restaurants in San Francisco that serve high quality food and beverages with a neighborhood feel. A restaurant at the Marina Degaussing Station at the Marina Green location is a huge benefit to the general area and, not to mention, the upcoming America's Cup races next summer. It will provide an important source of income for the Department's park maintenance and restoration programs.

On behalf of the San Francisco Chamber of Commerce, I urge you to recommend the lease agreement with Woodhouse Fish Company to the Board of Supervisors.

Sincerely,

A handwritten signature in cursive script, reading "Jim Lazarus".

Jim Lazarus
Senior Vice President
Public Policy

A. La Rocca Sea Food, Inc.

*Wholesale Dealer in Sea Food
since 1906*

To Whom It May Concern,

August 9, 2011

My name is Nick La Rocca and I am Vice President of A. La Rocca Sea Food Inc. located on Pier 45 in San Francisco, and I am writing on behalf of The Woodhouse Fish Company. A. La Rocca Sea Food is a fourth generation San Franciscan family business and we are very fortunate to have been doing business with the MacNiven family through the Woodhouse Fish Company for the past five years. We deliver fresh seafood daily to both the Market and Fillmore Street Woodhouse locations. I have dined at both locations and can say from personal experience that both restaurants add value to their neighborhood. Everything about the Woodhouse Restaurants including the food, the service, and the atmosphere is executed with the consumer in mind.

A. La Rocca Sea Food and the Woodhouse Restaurants work together to ensure that their patrons receive the best quality and freshest sea food available. The MacNiven family continues to work closely with our company to maintain the quality of our business partnership. Payments for both Woodhouse locations have always been received in a timely manner. We value our partnership with the MacNiven family and look forward to expanding our business relationship with the addition of their new Woodhouse location.

Sincerely,



Nick La Rocca

Vice President, A. La Rocca Sea Food Inc.

Karen Kidwell
965 Baker Street
San Francisco, CA 94115

September 7, 2011

Lev Kushner
Assistant Director, Strategic Partnerships
Recreation & Park Department
501 Stanyan
San Francisco, CA 94117

Dear Lev,


This letter is to express my personal support for the MacNiven family's proposal to the Recreation & Park Department for a restaurant at the Marina Degaussing Station. From what I have observed, they have made community involvement and giving back a core part of their business strategy, and they are ethical and honest. The food at their restaurants is good too!

I have had the pleasure of knowing Margaret MacNiven for over ten years, and served with her on the board of directors of Committee for Green Foothills in Palo Alto. She gives generously of her time and energy to advocate for wise land use and to protect open space for use as park land and for sustainable agriculture. When I joined the Bay Area Ridge Trail Council in 2004, I was pleasantly surprised to find out that the MacNiven Family were supporters of the Ridge Trail, and they donated Buck's Restaurant gift certificates for our annual auction. Then when I joined the San Francisco Parks Trust I found that the MacNivens were also members of SFPT.

The MacNiven family has long-time roots in San Francisco and the Peninsula, and they care about the communities in which they work and live. They know how to run profitable businesses that appeal to San Francisco residents, including our interest in sustainable and local foods. They are exactly the kind of entrepreneurs who can successfully create a special restaurant for a unique location.

Once again, this is my personal opinion, offered independently of my work at San Francisco Parks Trust

Sincerely,



Karen Kidwell

Edward Kwuan
P.O. Box 281616
San Francisco, CA94128

July 20, 2011

Property Management
Recreation and Park Commission
City and County of San Francisco

RE: Woodhouse Fish Company

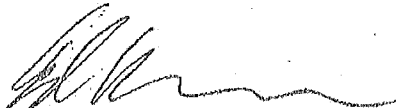
Dear Sir/Madam:

I am owner and landlord of the mixed-used commercial property located at 1908-1912 Fillmore Street in San Francisco. I have had the great pleasure of having Jamis MacNiven and his three fantastic sons as tenants operating one of their wildly successful restaurants, Woodhouse Fish Company, since 2008.

The MacNivens, who are also owner of the famous Silicon Valley hot-spot Buck's of Woodside, bring with them years of successful operational experience in the incredibly challenging restaurant business. Jamis, who has also been a well-known contractor, notably built the first Hard Rock Café in San Francisco, supervised the entire construction project at the Fillmore Street location. They invested huge sum in capital improvements in strengthening the structural integrity of our hundred-year old building, and built a fantastically charming restaurant. Since its opening in October 2008, this restaurant has been a sensational hit drawing diners from near and afar. I've heard countless praises of their food and ambiance from neighbors and my customers where I have also operated a retail fine jewelry two doors down for the past thirteen years.

Equally important for every landlord, rent payment from Woodhouse Fish Company has never been late. They have continued to maintain and operate a top-notch operation with great details to quality. The MacNivens are simply every landlord's dream. Please feel free to contact me with any question.

Sincerely,



Ed Kwuan

Cc: Jamis MacNiven

FEL PROPERTIES B14, DE, LLC
2099 MARKET STREET
SAN FRANCISCO, CA 94114
415-861-1160

August 15, 2011

RE: Dylan MacNiven

To Whom It May Concern:

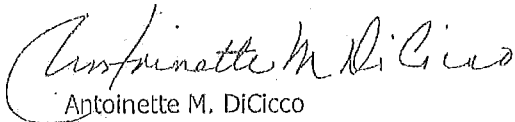
It is an honor and a great pleasure to write this letter on behalf of Dylan MacNiven who has been leasing the property located at 2077A Market Street (Known as Woodhouse Fish Co) since March of 2004.

He has built a charming restaurant serving a diverse clientele and some of the best seafood in San Francisco.

We could not have asked for a better tenant and we look forward to many more years of his continued tenancy.

Please feel free to contact me if you have any questions.

Sincerely,



Antoinette M. DiCicco
Commercial Leasing Manager



August 8, 2011

Mr. Jamis MacNiven
Woodhouse Fish Company
2073 Market Street
San Francisco, CA 94114

Dear Mr. MacNiven,

Thank you for our recent meeting at Drakes Bay Oyster Company (DBOC) where you and your son, Dylan, were kind enough to visit and take the time to learn about our family's mission and current oyster growing practices in Drakes Estero. We thoroughly enjoyed your visit with us, and sincerely appreciate your thoughtful attention to the need for providing local sustainable products in your new restaurant venture, The Fish House. Your interest in DBOC is a significant acknowledgement of our successful track record of delivering superior quality, locally grown shellfish products to restaurants and grocery stores throughout the North Bay area.

The Lunny family, fifth generation ranchers on the Point Reyes Peninsula, has truly embraced the opportunity to be stewards of the pristine waters of Drakes Estero. Since our involvement in DBOC, beginning in 2005, we have initiated several successful changes to the oyster growing practices that had been in place in Drakes Estero for the past eighty years. For example, we have built the first (and currently only) on-farm remote seed-setting hatchery in the State, further reducing any possibility of introducing non-native, invasive species into Drakes Estero. Additionally, in an effort to reduce consumables in our hanging cultch method of growing cluster oysters, we have begun replacing the "wire strings" (limited to a one-year-life span) with "French tubes" (with a reusable 8-10 year life span):

We work in close partnership, on the State level with the California Department of Fish & Game and the California Department of Public Health and on the Federal level with the Food & Drug Administration, to ensure the ecological health of the resource and its inhabitants, as well as human health and safety.

Over the past six years, DBOC has participated in numerous ecological outreach programs, including donating our shell for the restoration of native Olympia oysters in San Francisco Bay and habitat restoration for endangered species (such as the snowy plover--please see attached SF Bay Bird newsletter story--and the western tern). We're pleased to provide sustainable farming educational outreach at no charge to students from kindergarten to graduate school, to culinary students and chefs, and to the thousands of Point Reyes National Seashore visiting public, many of which are families.

17171 Sir Francis Drake Boulevard Inverness CA 94937 Phone 415-669-1149 Fax 415-669-1262



that have been generational oyster farm patrons. Additionally, during our weekly deliveries to restaurants, DBOC is currently launching a service program to pick up used shell from restaurants to either reuse the shells on the farm (for seeding new oysters) or for use in the above-referenced restoration efforts.

All DBOC product stays local to the San Francisco Bay Area... none of our oysters get on an air plane. All our farm practices and distribution decisions are made with a healthy planet in mind. According to the Monterey Bay Aquarium's State of Seafood Report, "The highest (carbon) emissions are associated with seafood that is transported by plane; air-freight emissions are... more than 90 times those of local transportation (when fish is consumed within 250 miles of where it was caught) (FAO, 2008). In addition, farmed oysters have been identified by the MBA as "Super Green" seafood, meaning they are low in environmental contaminants and a good source of long-chain omega-3 fatty acids. For the complete report, please see http://www.montereybayaquarium.org/cr/cr_seafoodwatch/report/.

In sum, DBOC's aspiration is to provide SF Bay Area restaurants the opportunity to include shellfish on their menus that is regionally appropriate, healthy, local and responsibly grown within its environs. Shellfish farmed in this manner celebrates the connection of our Bay Area lands and waters with our Bay Area food system, conservation, history and culture.

Thank you for your support of and interest in Drakes Bay Oyster Company. We look forward to working with you in the future and will be pleased to submit additional information at your request. Please do not hesitate to contact me at 415-669-1149.

Sincerely,

Ginny Cummings
Drakes Bay Oyster Company
Farm Manager

BIRITE

FOODSERVICE DISTRIBUTORS

UNIFORM
FOODSERVICE, Inc.

123 South Hill Drive • Brisbane, CA 94005 • Tel: 415.656.0254 • 800.227.5373 • Fax: 415.656.0755

19 August 2011

To Whom It May Concern:

Buck's of Woodside has been a customer of BIRite Foodservice Distributors for over 20 years. For the last 5 years we have also serviced their Woodhouse Fish Company restaurants in San Francisco. In addition to being one of the legendary restaurants in Silicon Valley Buck's has been a great customer for BIRite over the years.

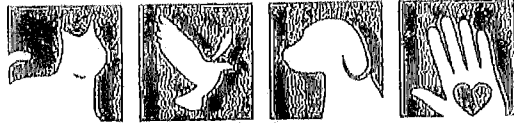
Buck's and the Woodhouse Restaurants have always demonstrated a deep commitment to their business and a high degree of professionalism. All three restaurants have always maintained their payment status within the agreed upon credit terms.

Buck's and the Woodhouse Fish Company are the type of customers that represent the backbone of our business and we are proud to be able to say that we have them as our customers.

Sincerely,



William Barulich
CEO



Peninsula Humane Society & SPCA

August 5, 2011

Jamie MacNiven/Woodhouse Fish Company

3062 Woodside Road

Woodside, CA 94062

Dear Jamie:

Thanks for taking the time to help me understand the big and frankly exciting vision for the planned-for Woodside On The Bay. Having had a long, positive relationship with your Woodside restaurant, I know that this new restaurant will both please the diners and be a true asset to the community.

As you may recall, in addition to our work with dogs and cats, the Peninsula Humane Society & SPCA is responsible for the care and rehabilitation of injured and orphaned native wildlife from San Francisco (under contract with the City), as well as San Mateo and northern half of Santa Clara counties. From that perspective, I especially wish to commend your planned reuse of oyster shells for helping to rebuild native oyster beds. Seen through the lens of animal welfare and environmental stewardship, this is an interesting and very positive development. I look forward to hearing about its success.

With all best wishes!

Ken White

President

August 28, 2012

To Whom It May Concern:

I am a local small business owner and long time San Francisco resident who spends most of my time in the Marina of San Francisco, and I am writing to provide my full support for Dylan MacNiven and Woodhouse Fish Co. joining the Marina neighborhood.

I cannot say enough about Dylan's character and his restaurant operation. Additionally I think that his concept is the perfect fit for the Marina Green water front.

I request as both a San Franciscan and fellow small business owner that you grant Dylan and Woodhouse the ability to move forward with their project and support them in their endeavor in every way.

Thank you,

A handwritten signature in black ink, appearing to read "Nate Valentine", written over a large, faint, oval-shaped watermark or stamp.

Nate Valentine



President Buell
President, Recreation and Park Commission
San Francisco

September 4, 2012

Dear President Buell,

As a neighbor of the Marina Green, I urge you to support the lease agreement with Woodhouse Fish Company to operate a restaurant at the Marina Degaussing Station and urge you to recommend approval of the lease to the Board of Supervisors.

It is important to us to offer the best visitor experience in the Marina-Green and Northern Waterfront Area. Providing for a use and public access to the abandoned Marina Degaussing Station will add a much needed amenity to the area and relieve the bay view of a boarded up and fenced off eyesore. We believe that the proposed restaurant to be operated by Woodhouse Fish Company offers the perfect use for the site. Woodhouse Fish Company proposes to run a high quality and professional business that we, as neighbors, feel will reinvigorate the Marina Green area.

We urge you to support Woodhouse Fish Company to operate a restaurant at the Marina Degaussing Station and urge you to recommend approval of the lease agreement to the Board of Supervisors.

Sincerely,

Bob Mulhern

General Manager
Golden Gate Yacht Club

415.346.2628

generalmanager@ggyc.com



PARKS FOR ALL FOREVER™

September 4, 2012

Phil Ginsburg
General Manager
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan Street
San Francisco, CA 94117

Dear Phil,

The Golden Gate National Recreation Area serves park visitors on lands directly adjacent to the Marina Green, managed by the San Francisco Recreation and Parks Department. So the proposal for a new food service facility at the Marina Degaussing Station at the Marina Green attracted our attention.

At both Crissy Field and Fort Mason, park visitors are able to find accessible and healthy food to enhance their experience in our parks. In each location, a combination of restaurant, café, and take-out services are very well received by park visitors.

Therefore, we see the merit in converting a building on the Marina Green to this new use and we support the recommendation by the Recreation and Park Commission for approval of the lease agreement to the Board of Supervisors.

We share the Recreation and Park Department's interest in serving the visitors and community members in San Francisco's parks. We are committed to offering healthy, fresh, local and sustainable food options at national park locations including the Beach Hut and Warming Hut at Crissy Field, and we are encouraged to see this goal being pursued in a growing number of public spaces.

We believe that repurposing the Marina Degaussing Station to offer high quality food options will be a complementary service for park visitors on the northern waterfront, helping enhance the visitor experience to the area.

Sincerely,

A handwritten signature in black ink that reads "Greg Moore".

Greg Moore
President and CEO

File # 120987
RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2012 NOV 15 PM 3:33
FVV

November 13, 2012

Mr. David Chiu, President
SF Board of Supervisors
City Hall
San Francisco, CA

Dear David and Members of the Board:

My name is Greg Harris and I reside with my wife and two young children at 335 Marina Blvd.

We are strongly opposed to the proposed conversion of the old Degaussing Station on the Marina Green to a commercial restaurant use.

I spoke in opposition to the use at the recent Parks and Rec hearing, amid the parade of Woodhouse Fish Company employees and restaurant suppliers who endorse the project. Several community groups also oppose the project, yet none were acknowledged.

The proposed change is totally inconsistent with the Recreation and Open Space Element of the General Plan. The manner in which Parks and Rec is forcing this conversion through in really unbelievable. The last thing needed on the Marina Green is the serving of alcohol in the evening. After the building is moved to the South, a bottleneck will be created within the already narrow parking lot. None of these issues have been addressed properly..

We would love to see the building converted into a less intense use, such as a community soccer clubhouse, Bay environment exposition, or museum.

Amid the highly "regulatory" world in which we live, it amazes me that so little care and so little community outreach has been exhibited here.

We urge you to oppose this project, it sets a terrible precedent for our open space.

Thank you,



Greg Harris
(415) 500-1583

Arthur Scampa
Attorney-at-Law

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2012 NOV 14 PM 4:09

BY AK

325 Marina Boulevard
San Francisco, CA 94123
Phone (415) 673-9000
Fax (415) 673-3500

File 120987
Bos-11
cpage
GAO
clerk

14 November 2012

Mr. David Chiu
President
SF Board of Supervisors
City Hall
San Francisco, CA

Re: File #120987

Request to Deny Proposed Restaurant Lease with Woodhouse Marina Green LLC

Dear President Chiu and Members of the Board,

My name is Arthur Scampa. I have been a resident on Marina Boulevard for close to thirty years and reside at 325 Marina Boulevard. My neighbors and myself urgently request that the proposed lease at the old Degaussing Station on the Marina Green with Woodhouse Marina Green LLC be denied for the following reasons:

1. **Lack of Notice to impacted Residents**
2. **No Finding of Consistency with General Plan before Rec & Park Approval**
3. **In Conflict with the Recreation and Open Space Element of the General Plan**
4. **No HRER – Historic Evaluation Report**
5. **Historic Building – Request for a Historic Preservation Commission Finding**
6. **Environmental Impact – Bird Life – Request for Environmental Impact Report**
7. **Increased Traffic Flow, Circulation – Request for Traffic Study**
8. **Nuisance Impact to Marina Boulevard Residents**
9. **Serving Alcohol in a Public Playground against Public Policy**
10. **Opposed by the Coalition for SF Neighborhoods, comprising 48 Neighborhood Organizations**
11. **Conflict of Interest – Request for Supervisor Farrell to recuse himself**

Please see detailed explanation attached.

We, the Marina Boulevard residents and adjacent neighbors, are quite tolerant of all the activities on the Marina Green on the weekends and enjoy most of them. However, it is not too much to ask that we also deserve a few days of rest during the week, particularly since most of the bedrooms face directly towards the Marina Green. To put a commercial restaurant there is just WRONG.

We urge you to oppose this project.

Respectfully submitted,



Re: File #120987

Request to Deny Proposed Restaurant Lease with Woodhouse Marina Green LLC

1. Lack of Notice.

The immediately affected neighbors were *not* notified by the Department of Rec & Park about this proposed venture. Neither were the two traditional neighborhood associations notified, i.e., the Marina Neighborhood Association and the Marina Civic Improvement and Property Owners Association. It can only be assumed that this was a strategic reason to blindside the affected and surrounding property owners.

An after the fact PR write-up in the throw away paper Marina Times, which most everybody discards and not reads, cannot be considered a legal notice. Why is it when a property owner wants to change a small window in a home, everyone in the neighborhood has to be notified, but not so for a change of use of a Public Recreational Open Space Shoreline to a commercial use?

It seems that the majority of spokespeople which were paraded before the Rec & Park Commission in support of this project were folks associated with the hospitality industry, restaurant suppliers, restaurant employees and the operator and his sons.

The directly affected neighbors were cavalierly brushed aside.

2. No Finding of Consistency with General Plan before Rec & Park Approval.

There was no Finding of Consistency with the General Plan before the Rec & Park Commission approved this lease.

For 77 years the City has respected the original 1935 legislation for the Marina Green. It is truly a unique and historic Public Recreational Open Shoreline in an urban setting. Why would anyone want to spoil it with a commercial restaurant? It is not that we are short of restaurants in the Marina.

3. In Conflict with the Recreation and Open Space Element of General Plan

Notwithstanding the vaguely reasoned General Plan Referral by the Planning Department, dated October 18, 2012, this restaurant project is in *direct conflict* with the Recreation and Open Space Element of the SF General Plan for the western portion of the north waterfront:

- **Policy 2.2 – Preserve existing Public Open Space**
- **Para 4** – “Proposals for *nonrecreational* uses in public parks and playgrounds may arise in the future Development of this kind in parks and playgrounds *should, without exceptions, be prohibited.*”
- **Policy 2.4 – Gradually Eliminate Nonrecreational Uses**
- **Para 2** – “In cases where it is possible to provide services elsewhere it should be the City’s policy to *eliminate nonrecreational uses* in parks and playgrounds, *demolish* the facility and *return the site to open space use.*”
- **Shoreline Objective 3 – Provide Continuous Public Open Space along the Shoreline** unless public access conflicts with Maritime uses or other uses requiring a waterfront location.

- **Para 2** – “The western and northwestern shoreline should function as a long unbroken stretch of open space; its natural qualities should be preserved”
- **Para 3**- “On the northeastern and eastern shoreline the objective is different.”
- **Policy 3.1 – Priority Land Uses** – “The most important uses of the shoreline should be those providing substantial longterm public benefits *that cannot be provided on other sites* within the City.”
- **Policy 3.1 – Prohibited Land Uses** – “More specifically, industry or commercial uses that are not dependent upon use of or proximity to the water, or which do not further maritime, commerce, or public recreation or enjoyment of the waterfront, *should not be permitted*”

4. HRER – Historic Resource Evaluation Response

According to the Assessor’s office, the Marina Green is a Zoning A – High Historic Resource Category. To allow a commercial restaurant operation there should require a HRER – Historic Resource Evaluation Response, which was not provided before the Rec & Parks Commission approval.

5. Historic Building – Request for a Historic Preservation Commission Finding

The Degaussing Station has always been considered a historic building in the past. It was built by the Navy for *temporary* use and was to be *demolished* afterwards and the shoreline restored to its original condition, the preference for the majority of nearby residents. Short of demolition, there are certainly better uses for this building to serve the public besides a commercial restaurant. A children’s playground, a children’s soccer club house to support the children soccer activities on the Marina Green or sailing center or other water oriented recreational activity center would make more sense in keeping with the character of the Marina Green Open Space Shoreline purpose.

There have been no architect drawings presented showing how the operator intends to put an ADA accessible kitchen, an ADA accessible patron’s bathroom and an ADA accessible public bathroom plus seating for 25 in this small building plus another seating for 60 in a non-existent patio. All that is being shown is some colored exterior drawing, which clashes with the existing building and the surrounding “Marina” architecture.

6. Environmental Impact – Bird Life – Request for Environmental Impact Report

It would seem outrageous to approve such a change of use without a full Environmental Impact Report. No mention has been made how this project would affect the Marina Green bird life, such as the Black Crowned Night Herons, Blue Herons, Killdeers, Pelicans and other species. It certainly would attract more rats, which already is a big problem in the area. How would this negatively affect the meaning and spirit of the Board of Supervisors’ Urban Bird Refuge Resolution 18406, passed last year?

Further, it is the only part of the Marina shoreline without light pollution where one can enjoy and observe the night sky.

7. Increased Traffic Flow, Circulation – Request for Traffic Study

No information has been given how the restaurant operation would affect and

increase the traffic flow. Additionally, it seems that the proposed move of the building 13 feet south would eliminate the sidewalk and create a bottleneck.

8. Nuisance Impact on Marina Boulevard Residents

To have a seven days a week, 7:00AM to 9:00PM, operating commercial restaurant at this site, presents a great nuisance to the immediate neighbors, most of whom have spent considerable investment to live there because of this unique urban Open Space Public Shoreline environment.

It will create noise, smell and light pollution. Further, as the restaurant proposes to have a take-out counter, more in line with a fast food restaurant, it will create trash problems all along the Marina Green, already an ongoing problem for nearby residents.

9. Serving Alcohol in a Public Playground against Public Policy

The Marina Green is being used as a public playground by hundreds of children playing soccer on the weekends and dozens more during the week (one more reason to utilize this building as children's soccer clubhouse).

The Board of Supervisors' own ordinance prohibits the sale of alcoholic beverages in public children's playgrounds. It is our understanding that the operator is filing for a beer and wine license in order to serve alcoholic beverages at this proposed restaurant, only a few feet from where the children are playing.

10. Opposed by the Coalition for San Francisco Neighborhoods

The Marina Green belongs to all SF residents who should have a voice in the change of use of this important Public Open Shoreline Recreation Area. It should be noted that the Coalition for San Francisco Neighborhoods, an umbrella organization of 48 SF neighborhood organizations, strongly oppose this project.

11. Conflict of Interest – Request for Supervisor Farrell to recuse himself

With all due respect, Supervisor Farrell should recuse himself from any decision in this matter. Supervisor Farrell is or was a Managing Director of QV Hospitality and Thayer Ventures, which claim that their strategic limited partners own and operate over 10,000 restaurant locations. This manifests a clear conflict of interest.

Further, Supervisor Farrell's father is a director of the Marina Community Association, the only community association in favor of this project and the only association notified by Rec & Park. The omission of notice to other neighborhood associations and to the directly affected neighbors can only be perceived as an omission by design.

POLICY 2.2 Preserve existing public open space.

San Francisco's public open space system is fairly extensive. It ranges from large parks to undeveloped street rights-of-way. Much of the system is park land and other public open space under the jurisdiction of the Recreation and Park Department. In addition to this land, a significant portion of the public open space in San Francisco is only informally part of the city's park and recreation system. This open space is held by a number of public agencies and is also either used for recreation or appreciated for its natural qualities, but is neither a public park nor a playground. Open Spaces in this second category include certain shoreline areas under the jurisdiction of the Port of San Francisco shown in Maps 4 - 9, certain reservoirs, grounds of public institutions, forts, land for slope and view protection, roadway landscaping, alleys, dedicated public walkways and undeveloped street rights-of-way. Open spaces such as these are a very important part of the city's open space system. They supplement playgrounds and parks and are a major visual asset.

Development sometimes threatens public open spaces regardless of whether or not it is a formal part of the City's park and open space system. While few public open spaces have been lost in their entirety to other uses, almost all public open space at one time or another has been viewed as a source of vacant land for new construction. The shortage of vacant sites and the

intensity of development in San Francisco produce pressures on the city's public open space. These same factors generate considerable demand for open space and leave few opportunities to expand the open space system. Consequently, it is essential that the City preserve the public open space which remains.

Despite general agreement on the need to preserve public open space, over the years developments may indeed be proposed on public land designated as open space in this plan. It is anticipated that the most persuasive arguments in favor of development will be based on the "public value" of the proposed development. The public value will differ among proposals, and a determination, of this value as compared with the value of open space will be difficult. In order to assist in this determination, four types of potential development proposals have been identified. If proposals for these types of development occur, the following policies should be applied:

Nonrecreational Uses

Proposals for nonrecreational uses in public parks and playgrounds may arise in the future. Some may be for public facilities such as parking garages, streets and buildings, and for private or semi-public facilities.

Development of this kind in parks and playgrounds should, without exception, be prohibited.

Recreation and Cultural Buildings

POLICY 2.4 Gradually eliminate nonrecreational uses in parks and playground and reduce automobile traffic in and around public open spaces.

Nonrecreational Uses

The City should gradually eliminate nonrecreational uses in its public open spaces. In the past parks and playgrounds have been used as sites for public facilities such as libraries, fire and police stations, sewer plants and schools. Undoubtedly, the public need for them was great at the time of their construction and many are still essential. But as nonrecreational facilities such as these become obsolete, the City is faced with the decision to renovate them or to relocate them altogether.

In cases where it is possible to provide services elsewhere it **should be** the City's policy to eliminate nonrecreational uses in parks and playgrounds, **demolish the facility and return the site to open space use.** If the facility can be successfully converted to recreational use, then reuse could be an alternative to demolition. The City should not, however, permit the reuse of such facilities for other nonrecreational purposes. The same policy should apply to the reuse of obsolete recreational facilities.

In cases where it is not presently possible to provide services elsewhere, the City should simply maintain the facility and not permit its expansion.

SHORELINE

OBJECTIVE 3 PROVIDE CONTINUOUS PUBLIC OPEN SPACE ALONG THE SHORELINE UNLESS PUBLIC ACCESS CLEARLY CONFLICTS WITH MARITIME USES OR OTHER USES REQUIRING A WATERFRONT LOCATION.

The Pacific Ocean, San Francisco Bay and their respective shorelines are the most important natural resources in San Francisco. Their open space potential is considerable. Together they offer unlimited opportunities for water oriented recreation. They are the pride of San Francisco's views and the source of the city's agreeable climate. Furthermore, most of the property adjacent to the thirty-two mile shoreline is in public ownership. This offers an unparalleled opportunity to provide a variety of open space experiences.

The western and northwestern shoreline should function as a long unbroken stretch of open space; its natural qualities should be preserved and should complement the more urban character of new open spaces along the Bay.

On the northeastern and eastern shoreline the objective is different. Here the challenge is to provide more open space along the Bay and public access to the shoreline while maintaining active maritime and other essential waterfront uses.

POLICY 3.1 Assure that new development adjacent to the shoreline capitalizes on its unique waterfront location, considers shoreline land use provisions, improves visual and physical access to the water, and conforms with urban design policies.

In order to protect the shoreline and safeguard the public interest in it, the following policies should be applied to new shoreline developments.

Land Use

The Elements and Area Plans contained in the General Plan together define appropriate land uses for the City. Below is a general summary of these land use policies as they relate to shoreline areas. This general summary must be read in conjunction with the appropriate Elements and Area Plans to fully determine acceptable land uses on the shoreline.

Priority Land Uses. The most important uses of the shoreline should be those providing substantial long-term public benefits that cannot be provided on other sites within the city. Maritime shipping and freight handling facilities, ship repair; water-related public recreation, open space including shoreline public access and water-dependent habitat areas; commercial fishing; and commercial and recreational maritime activities (e.g. ferries, excursion boats, water taxis, historic ship and visiting ship berthing, recreational boating) and maritime support services are included in this category.

Restricted Land Uses. Office, residential, public assembly and recreational sports facility with associated commercial uses, water oriented commercial recreation and public assembly uses such as restaurants, hotels and shops, museums, visitor centers, theaters and other activities such as non-water-oriented community facilities and industrial uses are appropriate in the areas designated in the General Plan. These uses may provide limited public benefits and should be restricted to areas which are not needed for priority uses. Parking accessory to these uses should be in structures or otherwise screened from view. Recreation-oriented commercial services should be permitted where appropriate on land adjacent to open space areas.

Prohibited Land Uses. All developments which do not fall in the previous two categories are not acceptable shoreline land uses. More specifically, **industry or commercial uses** that are not dependent upon use of, or proximity to the water, or which do not further **maritime, commerce, or public recreation or enjoyment of the waterfront**, should not be permitted. Airports and at grade or elevated freeways should not be permitted. Uses such as these should be located away from the shoreline. Parking, unless it is accessory to a permitted use, should not be allowed at or near the waters edge. Finally, all land uses which do not comply with applicable water quality environmental laws and regulations should be prohibited.

Coalition for San Francisco



Neighborhoods

www.csfjn.net • PO Box 320098 • San Francisco CA 94132-0098 • 415.262.0440 • Est 1972

September 18, 2012

President
Judith Berkowitz 415.824.0617
1st Vice President
George Wooding
2nd Vice President
Rose Hillson
Recording Secretary
Penelope Clark
Treasurer/Corresponding Secretary
Dick Millet
Members-at-Large
Charles Head
Jeanne Quock

Mark Buell, President
Recreation & Park Commission
McLaren Lodge, Golden Gate Park
501 Stanyan Street
San Francisco CA 94117-1898.

Re: Proposed lease agreement with the Woodhouse Fish Company Restaurant for the Marina Green degaussing station.

Dear Mr. Buell,

The Coalition for San Francisco Neighborhoods (CSFN) is an "umbrella" organization comprised of 48 individual San Francisco neighborhood organizations representing thousands of the city's residents.

The General Plan's guidelines for the San Francisco shoreline are explicit. They state that if a facility doesn't need to be on the shoreline, then it should be located elsewhere.

We urge you to take into account these deeply felt concerns as well as the guidelines explicit in the General Plan.

The delegates from the CSFN member organizations voted unanimously in support the following resolution.

Whereas, the San Francisco General Plan states: "The shoreline is our most important natural resource;"

Whereas, the General Plan mandates that facilities which by their nature do not need to be sited on the shoreline, should not be sited on the shoreline;

Whereas, for 77 years the California Statutes of 1935 Chapter 437 forbidding commercial leases on the Marina Green have been respected by previous Recreation and Park Commissions and other governmental bodies;

Whereas, the immediate neighbors across the street from the Marina Green were not notified by RPD staff of the proposed change of use of the degaussing station from a former military use to a public use as a commercial restaurant and take-out food use; therefore be it

Resolved, that the Coalition for San Francisco Neighborhoods (CSFN) opposes the proposed lease agreement with the Woodhouse Fish Company Restaurant for the Marina Green degaussing station.

We therefore respectfully urge you to reject the proposed lease agreement the Woodhouse Fish Company Restaurant for the Marina Green degaussing station.

Thank you for your deliberations on this matter.

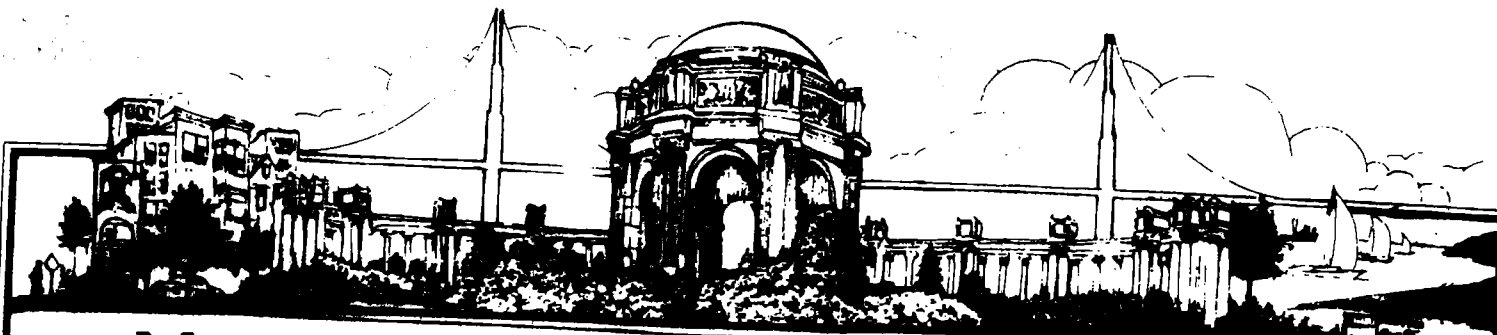
Sincerely,

Judith Berkowitz

President

Cc: Tom Harrison, Vice President; Paige Arata; Gloria Bonilla; Meagan Levitan; Larry Martin

Barbary Coast Neighborhood Assn
Buena Vista Neighborhood Assn
Cathedral Hill Neighbors Assn
Cayuga Improvement Assn
Cole Valley Improvement Assn
Cow Hollow Assn
Diamond Heights Community Assn
Dolores Heights Improvement Club
East Mission Improvement Assn
Ewing Terrace Neighborhood Assn
Excelsior District Improvement Assn
Fair Oaks Community Coalition
Forest Knolls Neighborhood Assn
Francisco Heights Civic Assn
Golden Gate Heights Neighborhood Assn
Greater West Portal Neighborhood Assn
Haight Ashbury Improvement Assn
Inner Sunset Park Neighbors
Inner Sunset Action Committee
Jordan Park Improvement Assn
Laurel Heights Improvement Assn
Liberty Hill Neighborhood Assn
Marina Civic Improvement & Property Owners Assn
Middle Peak Neighborhood Assn
Midtown Terrace Homeowners Assn
Miraflores Park Improvement Club
New Mission Terrace Improvement Assn
Nob Hill Neighbors
North Beach Neighbors
Oceanview, Merced Heights, Ingleside - Neighbors in Action
Outer Mission Merchants & Residents Assn
Pacific Heights Residents Assn
Parnassus Residents Organization
Stanyan-Fulton Parkmarced Action Coalition
Potrero Boosters Neighborhood Assn
Richmond Community Assn
Rincon Point Neighborhood Assn
Russian Hill Improvement Assn
Russian Hill Neighbors
Sunset Heights Assn of Responsible People
Sunset-Parkside Education & Action Committee
Telegraph Hill Dwellers
Twin Peaks Council & Open Space Conservancy
Twin Peaks Improvement Assn
University Terrace Neighborhood Assn



MARINA NEIGHBORHOOD ASSOCIATION

September 18, 2012

Mark Buell, President
Recreation and Park Commission
McLaren Lodge, Golden Gate Park
501 Stayan Street
San Francisco, CA 94117

RE: Item No.7-Sept.20,2012 Agenda
MARINA DEGAUSSING STATION

Dear Commissioners,

There has been grossly inadequate outreach in the Marina Neighborhood regarding the change of use of the vacant Naval DeGaussing Station from a non-profit, military use to a commercial, for-profit restaurant and take-out food establishment, with a liquor license.

A small, 8½" x 11" piece of paper attached inconspicuously to the chainlink fence does not constitute adequate public outreach.

The Marina neighbors directly across the street from the Marina Green were not notified by the Recreation and Park Department staff.

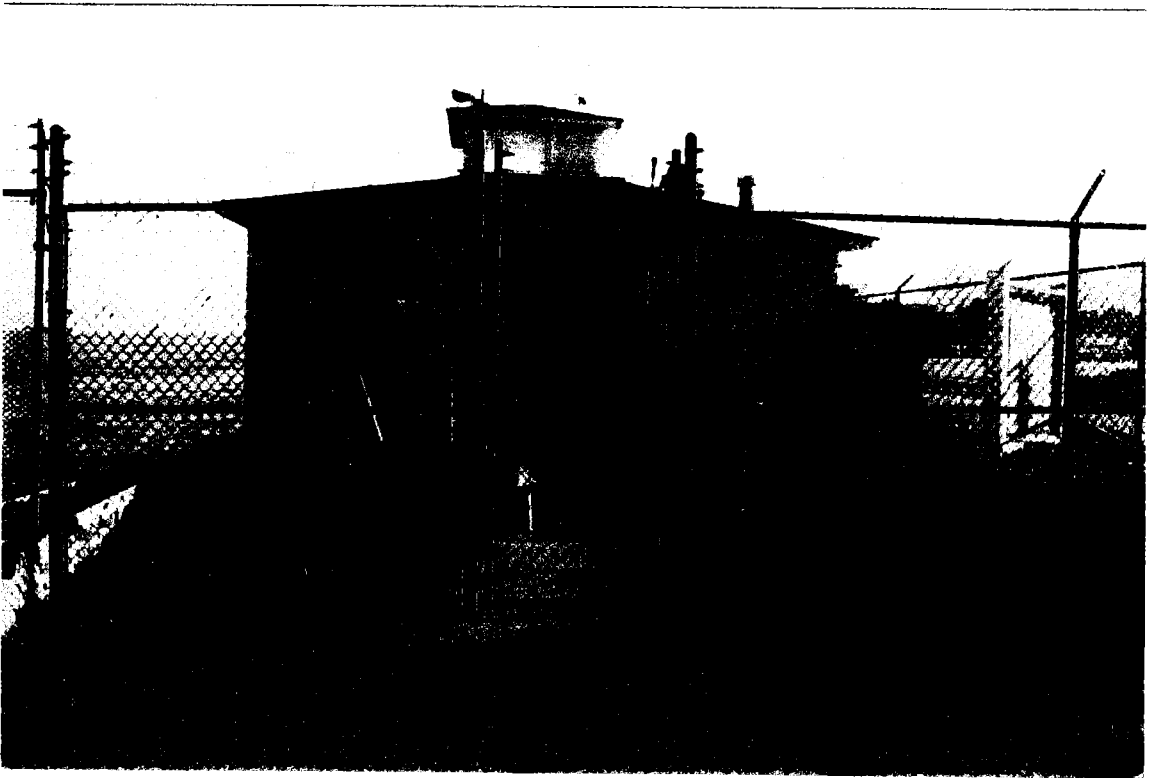
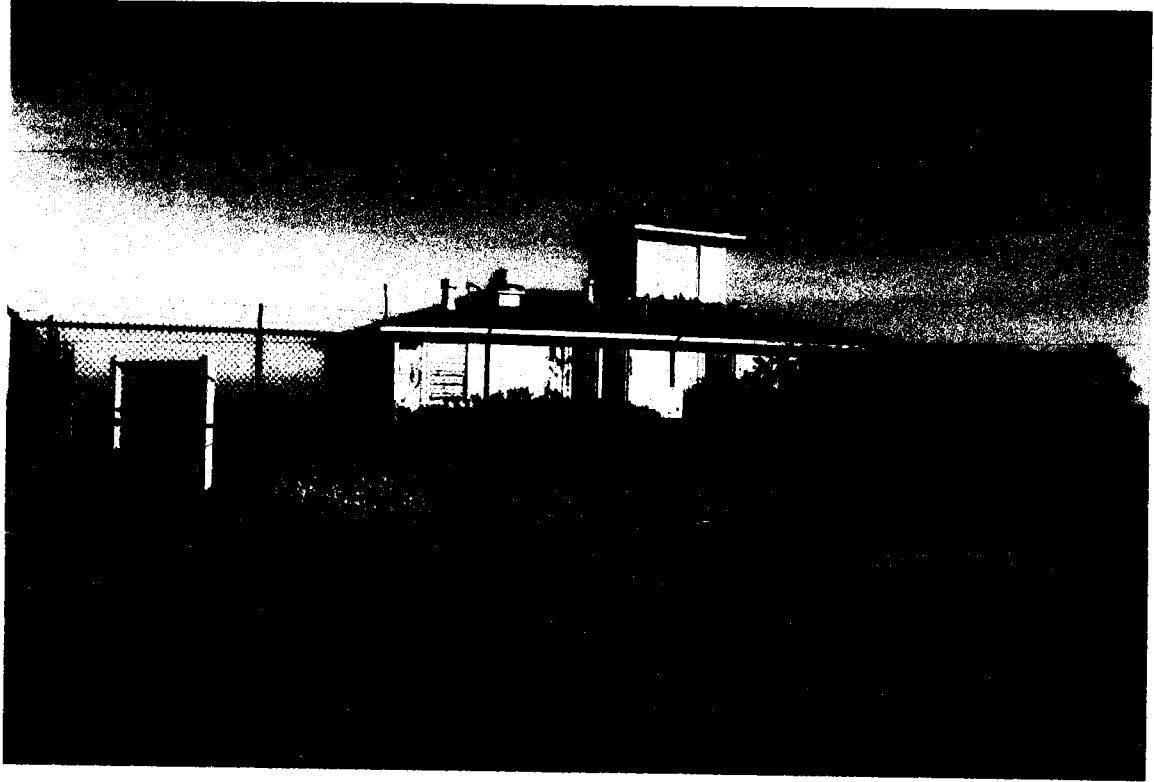
The Marina Neighborhood Association was not notified of this proposed change in use. We have a decades-long history of advocating for the preservation of our Marina Green Public Shoreline Open Space and opposing commercial leases to for-profit corporations.

We are opposed to the proposed lease agreement between the City and Woodhouse Marina Green LLC for the operation of a restaurant at the vacant Naval DeGaussing Station. We want the vacant structure demolished and the site returned to open space.

Sincerely,

Gloria Fontanello, President

cc: Board of Supervisors





0529

00017

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee: Government Audit & Oversight
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee:
- 4. Request for letter beginning "Supervisor inquires"
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.

Sponsor(s):

Supervisor Mark E. Farrell

Subject:

Lease – Woodhouse Marina Green, LLC, for the Operation of a Restaurant at the Marina Degaussing Station

The text is listed below or attached:

Attached

Signature of Sponsoring Supervisor: *Mark E. Farrell*

For Clerk's Use Only:

120987

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

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

Contractor Information (Please print clearly.)	
Name of contractor: Dylan MacNiven on behalf of Woodhouse Marina Green, LLC	
<p>(1) Please list the names of members of the contractor's board of directors: Dylan MacNiven</p> <p>(2) The contractor's chief executive officer: Dylan MacNiven The contractor's chief financial officer: Dylan MacNiven The contractor's chief operating officer: Rowan MacNiven</p> <p>(3) Any person who has an ownership of 20 percent or more in the contractor: Dylan MacNiven-65% ownership of Woodhouse Marina Green, LLC., Jamis MacNiven-25% ownership of Woodhouse Marina Green, LLC.;</p> <p>(4) Any subcontractor listed in the bid or contract: Subcontractor not hired as of date of this form.</p> <p>(5) Any political committee sponsored or controlled by the contractor: Lessee has no sponsored political committees nor do they control any political committees</p>	
Contractor address: 1914 Fillmore Street	
Date that contract was approved: The contract was recommended for approval to the Board of Supervisors by the Recreation and Park Commission on Thursday, September 20, 2012. This contract has not yet been approved by the Board of Supervisors.	Amount of contracts: The minimum rent to be paid to the City through this lease agreement in the first ten (10) year term is \$1,100,000.
Describe the nature of the contract that was approved: Lease would grant the Lessee the opportunity to operate and manage a restaurant in the Marina Degaussing Station at the Marina Green.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

Print Name of Board

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

Print Name of Board

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

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

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed