

ORIGINAL

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Castagnola

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RESTAURANT LEASE

THIS LEASE, made on the 1st day of May, 1970, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating through the SAN FRANCISCO PORT COMMISSION, hereinafter called "Port", Landlord, and TOMASO CASTAGNOLA, ANDREW CASTAGNOLA, ANTHONY J. FERRARI and JOSEPH J. BORRUSO, dba CASTAGNOLA'S RESTAURANT, a Co-Partnership, jointly and severally, hereinafter called "Tenant";

WITNESSETH:

1. Letting. Port does hereby lease, demise and let to Tenant the real property and improvements thereon situated in the City and County of San Francisco, State of California, more particularly described on Exhibit "A" attached hereto, and all replacements of and additions to said improvements made during the term hereof, to have and to hold for the term of sixty-six (66) years, commencing on May 1, 1970. Said real property and the improvements thereon and all replacements thereof and additions thereto are hereinafter collectively called "leased premises."

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

(a) Minimum Rental. Tenant agrees to pay a minimum rental for the first five (5) years of the term in the amount of \$3,174.23 per month, payable in advance on the 1st day of each month. (If Tenant goes into occupancy, or if this lease commences on other than the 1st day of the month, the rent for that month will be apportioned as the number of days of occupancy bears to the month. The anniversary date of this lease

will, however, in that case, be the 1st day of the month following the date of actual occupancy. If the lease commences on the 1st of the month the anniversary date will be that date.) At the end of the fifth year of the lease, and at the end of every five-year period thereafter, the minimum rental shall be adjusted for the succeeding five-year period, commencing with the anniversary date, in direct proportion to any increase or decrease in the cost of living index from the base date to the last date prior to the anniversary date for which the index is published. The cost of living index shall mean the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index (all items) San Francisco-Oakland, California. If the aforesaid index is no longer published, the Port shall use such index as is substantially similar in nature to the present publication, and appropriate adjustment shall be made, if necessary. The date on which the base shall be determined shall be the quarter ending the month of December 1969, and the parties agree that the index was 134.5 for that month.

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

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

<u>Use</u>	<u>Percentage Rental For That Use</u>
Alcoholic beverages and all other items sold through the bar	<u>6½%</u>
Food	<u>5%</u>
All Other Uses	<u>6½%</u>

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

within twenty (20) days after Tenant ceases to make sales on the premises, but in the event this lease terminates for fault of Tenant, including insolvency thereof, any amounts due hereunder shall be payable forthwith. At the time of paying percentage rental Tenant shall furnish a statement showing the computation of percentage rental for the period covered by such payment. Tenant agrees to make available to Port, or any City auditor, all of its books and records, which books and records shall be maintained in San Francisco, for the purposes of auditing or re-auditing these accounts for three (3) years, except that if audit is made within that time and the Port claims errors or omissions have occurred, the books shall be retained and made available until the matter is finally determined. Sales tax returns shall be made available for purposes of conducting the audit. Port shall keep confidential, so far as legally possible, all such information obtained from Tenant and Tenant shall not be required to keep records for more than three (3) years. If Tenant understates its gross sales for any month by more than three percent (3%), the cost of the audit for that month shall be borne by Tenant. If Tenant understates its gross sales for any month with knowledge of such understatement or by reason of gross negligence or gross carelessness in addition to the foregoing, on the first such occasion Tenant shall pay Port ten (10) times the amount Port should have received. A second such understatement made with knowledge or by reason of gross negligence or gross carelessness shall result in cancellation of this lease. The percentage rental used in this paragraph will be reviewed on or before the anniversary date every twenty-five (25) years during

the term of this lease. If it is determined that the percentages for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the date of determination, the percentages provided for herein shall likewise be increased or decreased. In the event that Tenant does not agree with Port as to the proper percentage, it shall so advise Port, and in the event the parties are unable to agree Tenant may terminate this lease within six (6) months after the final setting of percentage rent by Port.

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

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

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

deem advisable with the right to make alterations and repairs to said premises; upon each such reletting (a) Tenant shall be immediately liable to pay to Port, in addition to any indebtedness other than rent due hereunder, the cost and expense of such reletting incurred by Port, including the cost of alterations or repairs to the extent that Tenant was obligated by this lease to make such alterations or repairs, and the amount, if any, by which the rent reserved in this lease for the period of such reletting (up to but not beyond the term of this lease) exceeds the amount agreed to be paid as rent for the leased premises for such period on such reletting; or (b) at the option of Port, rents received by Port from such reletting shall be applied, first, to the payment of any indebtedness, other than the rent due hereunder from Tenant to Port; second, to the payment of said costs and expenses of such reletting, third, to the payment of rents due and unpaid hereunder; and the residue, if any, shall be held by Port and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting under option (b) during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Port. Such deficiency shall be calculated and paid monthly. In calculating value of percentage rental it shall be deemed the rent payable for the previous twelve (12) months prior to breach is the yearly rental value of the premises. If the breach occurs before twelve (12) months of percentage rent is due, the monthly amount payable as percentage rent shall be averaged and extended on a twelve-month basis. Monthly rent shall be one-twelfth (1/12th) of

the yearly amount. No such re-entry or taking possession of said premises by Port shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, the Port may at any time thereafter elect to terminate this lease for such previous breach. Should Port at any time terminate this lease for any breach, in addition to any other remedy it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the premises and including the worth at the time of such termination of the excess, if any, of the amount of rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Port.

5. Use of Premises. To conduct a restaurant of a kind and class presently on the premises, and other uses reasonably related and auxiliary thereto, and such other uses as Tenant has heretofore made of or conducted on the leased premises. Changes in kind or class of restaurant or changes in other uses shall be made only on express written consent of Port.

6. Requirement That Premises Be Used. Tenant shall operate to secure maximum economic return based on the uses specified. If Tenant fails to use the property for the purposes for which the property is leased, or in the manner set forth, and such failure shall continue for a period of thirty (30) days

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

7. Standard of Condition of Premises. Tenant shall keep said premises and appurtenances, including glazing, in good and sanitary order, condition and repair. Except as more fully provided in paragraph 21 hereof, Tenant shall maintain the premises at all times to the extent and in the manner to insure first class restaurant operation as heretofore maintained in keeping with the operation on the premises when Tenant takes possession under this lease. Port agrees to maintain the character of Fisherman's Wharf in the same general manner as it exists at the date of this lease. In this connection, the parties recognize that the area of Fisherman's Wharf is a major tourist attraction and that it is to the benefit of both the Port and Tenant that such condition be maintained throughout the term of this lease. Nothing contained herein shall guarantee continuance of general automobile traffic onto the Wharf.

8. Alterations and Improvements. Except for non-structural changes, Tenant shall not make, nor suffer to be made, any alterations or improvements to the said premises (including the installation of any trade fixtures affixed to the premises or whose removal, if not affixed, will cause injury to the premises) without the written consent of the Port first had and obtained, and any additions to or alterations

of or installations to the said premises shall become at once a part of the realty and belong to the Port unless the Port waives its rights hereunder in writing, and except that the Port can require Tenant to make removal of the alterations, improvements or installations upon termination of this lease, and to repair the damage occasioned by such removal at Tenant's sole cost and expense, regardless of whether title has vested in the Port. Tenant hereby waives the provisions of Civil Code Section 1019.

Tenant shall leave the premises at the expiration or termination of this lease, free and clear of all debris, and shall repair and restore any damage to the improvements on the premises owned by the Port resulting from either construction or removal by Tenant or resulting from causes for which Tenant is liable under this lease, subject to such adjustments as may be made by mutual agreement in writing supplementary to this lease. In the event that Tenant fails to comply with Port's demands that it remove the improvements erected by Tenant, or movable furniture or trade fixtures, or to leave the property in the condition provided for herein, the Port may make such removal or place the property in such condition and Tenant agrees to pay all of the costs involved therein.

9. Prohibited Uses. Tenant shall not use, or permit said premises, or any part thereof, to be used, for any purposes other than the purpose or purposes for which the said premises are hereby leased; and no act shall be permitted on the leased premises which will cause a cancellation of any insurance policy covering said building, or any part thereof, or which shall in any way conflict with any law, ordinance, rule or

regulation affecting the occupancy and use of said premises, which is or may hereafter be enacted or promulgated by federal, state, county or municipal authority having jurisdiction over the premises, including any rules and regulations of said building, or in any way obstruct or interfere with the rights of other tenants or licensees of the Port, or injure or annoy them, nor use, nor allow said premises to be used, for any improper, immoral, unlawful or objectionable purpose.

10. Assignment and Subletting. Subject to the provisions of this paragraph 10 hereinafter set forth, Tenant shall not assign this lease or any interest therein and shall not sublet the said premises or any part thereof or any right or privilege appurtenant thereto, or suffer any other person to occupy or use the said premises or any portion thereof without the written consent of the Port first had and obtained, which consent shall not be unreasonably withheld. A consent to one assignment, subletting, occupation or use by any person shall not be construed as a consent to a subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without consent shall be void and shall, at the option of the Port, terminate this lease. This lease shall not nor shall any interest therein be assignable as to the interest of the Tenant by operation of law without the written consent of the Port.

A. CONCESSIONAIRES.

The provision against subletting elsewhere contained in this lease shall not prohibit Tenant from granting concessions for the operation of one or more departments of the

business conducted in or upon the leased premises, provided, however, that:

(a) Each such concession which may be granted by Tenant shall be subject to all the terms and provisions of this lease;

(b) The gross sales (as herein defined) from the operation of each such concession shall be deemed to be a part of the gross sales of Tenant for the purpose of determining the additional rental payable to Lessor;

(c) All of the provisions hereof applying to the business of Lessee shall apply to each such concession; and

(d) Tenant shall at all times operate and there shall at all times belong to Tenant the majority in number of the departments of Tenant's business, except that Tenant may allow concessions so long as such concessions are less than the majority in number of the departments and do not exceed 10% of the gross sales in volume of all business on the leased premises, including concessions.

B. SECURITY INTERESTS.

The Port and the Tenant acknowledge that the Tenant may from time to time encumber Tenant's leasehold estate hereunder as to all or any portion of the leased premises by the lien of a mortgage, deed of trust or other instrument given by Tenant as security for indebtedness. For the express benefit of any such mortgagee, beneficiary under a deed of trust or any other secured party (hereinafter referred to

as "Lender"), the Port and the Tenant agree as follows:

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

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

(c) The Port hereby agrees with respect to any mortgage or deed of trust or other security instrument executed by the Tenant of a leasehold interest in all or part of the leased premises that the Lender may cause such mortgage, deed of trust or other security instrument to be recorded and may enforce said mortgage, deed of trust or other security instrument and upon foreclosure sell and assign said leasehold and

the interest of the Tenant in any improvements thereon to an assignee from whom it may accept a purchase price, or may acquire title to said leasehold and interest in improvements in any lawful way, and if the Lender shall become the assignee, may sell and assign said leasehold and said interest of the Tenant in any improvements thereon. Should the Lender acquire Tenant's leasehold estate hereunder by foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by any mortgage, deed of trust or other security instrument, or by a proper conveyance from Tenant, Lender shall take Tenant's leasehold estate subject to all of the provisions of this Lease, and shall, so long as and only so long as it shall be the owner of such estate, assume personally the obligations of Tenant.

(d) Should Lender acquire Tenant's leasehold estate hereunder by foreclosure or other appropriate proceedings in the nature thereof or as a result of any other action or remedy provided for by any mortgage, deed of trust or other security instrument, or by a conveyance from Tenant in lieu of foreclosure, the Lender may sublease such portion for any period or periods within the term of this Lease, or may assign Tenant's leasehold estate hereunder by sale or otherwise, provided that any assignee or purchaser of said leasehold estate or any person taking through any other means and their respective successors in interest, shall take said leasehold estate subject to all of the covenants and conditions herein contained on the part of the Tenant to be kept, observed and performed, and shall, as a condition of such assignment, purchase

or taking, assume and agree to perform all such covenants and conditions.

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

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

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

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

C. CHANGE IN BUSINESS STATUS.

Notwithstanding the foregoing provisions Tenant may assign this lease:

(a) If Tenant as an individual or partnership incorporates Tenant's business and Tenant, either as an

individual or if formerly a partnership, jointly controls said corporation; or

(b) If Tenant is now a partnership and if the partnership dissolves or changes, provided one or more of the general partners or his heir or heirs continues to be the Tenant; or

(c) If the Tenant is now or becomes a corporation, and if Tenant or Tenants who are the major stockholders wish to dissolve said corporation and continue the business as an individual or partnership provided the major stockholder or stockholders continues to be the Tenant, or

(d) If Tenant is now or becomes a corporation during the term of this lease this lease shall be subject to forfeiture at the option of Port if Tenant (i) effects a statutory merger; or (ii) if Tenant now holding substantial voting control loses said substantial voting control by reason of sale or merger or reorganization provided, however, that if Tenant loses control by reason of death, his heirs may continue the operation as Tenant, subject to the limitations provided here;

(e) If Tenant is an individual this lease will continue to his heir or heirs on his death, provided the heir or heirs remain the Tenant.

11. Insolvency. Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of Tenant and not released within thirty (30) days, or (b) a general assignment by Tenant for the benefit of creditors, or (c) any action taken or suffered by Tenant under any

insolvency or bankruptcy act shall at the option of the Port constitute a breach of this lease by Tenant.

12. Comprehensive Public Liability Insurance.

Tenant shall maintain and pay premiums on a policy or policies of liability insurance, which name Port and the City and County of San Francisco, their officers, agents and employees, as additional, or co-insureds, with a company or companies acceptable to Port. Such policy or policies shall cover the leased premises and its operation against claims for personal injury and death in an amount of not less than \$250,000 for injury or death of any one person, and \$500,000 for injury or death of all persons in any one occurrence, and \$100,000 for property damage. Tenant shall furnish to Port a certificate evidencing the fact that the insurance described in this paragraph has been obtained and is in full force and effect and that such insurance cannot be cancelled or a change made affecting coverage without fifteen (15) days' prior notice to Port. Tenant shall promptly notify Port of any change in the terms of such policy or policies and shall provide Port with certificates evidencing such change. Said policy or policies shall either contain a broad form of contractual liability coverage, including leases, or there shall be attached to all policy or policies an endorsement providing that such insurance as is provided for therein shall apply to the obligations assumed by Tenant under this lease. The procuring of this policy or policies shall not be construed to be a substitute in any respect for Tenant's obligations under this lease. Tenant and Port shall periodically review the amount of public liability insurance

carried pursuant to this paragraph, but in any event not less than every ten (10) years during the term of this lease. If it is found to be the general commercial practice in the City and County of San Francisco to carry public liability insurance in an amount substantially greater or lesser than the amount then being carried by Tenant with respect to risks comparable to those associated with the leased premises, the amount carried by Tenant shall be increased or decreased to conform to such general commercial practice.

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

14. Waiver of Claims. Tenant, as a material part of the consideration to be rendered to Port, hereby waives all claims against Port, and agrees to hold Port harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment and persons in or upon said premises from any cause arising at any time, including all claims arising out of the

negligence of, but excluding intentional harm by, Port, its officers, agents or employees.

15. Liens. Subject to the provisions of paragraph 10(B) hereof, Tenant shall keep the demised premises and the improvements thereon free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant, provided, however, this paragraph shall not apply to any lien for the purchase or other acquisition of a removable fixture placed upon the premises by Tenant.

16. Fire Insurance. Tenant shall maintain and pay premiums on a policy or policies of fire and extended coverage insurance on the improvements on the leased premises which name Port and the City and County of San Francisco as additional insureds, with a company or companies acceptable to Port. Such policy or policies shall cover the improvements on the leased premises, except the substructure, in an amount of at least 80% replacement value of the improvements insured, except that if Tenant cannot obtain insurance of 80% replacement value at a cost which is reasonable in prudent business judgment, then Tenant shall so notify Port and shall carry such lesser insurance as is prudent. Tenant shall furnish to Port a certificate evidencing the fact that the insurance described in this paragraph has been obtained and is in full force and effect and that such insurance cannot be cancelled or a change made affecting coverage without fifteen (15) days prior notice to Port. Tenant shall promptly notify Port of any change in the terms of such policy or policies and shall provide Port with copies thereof. Any funds received by Tenant from any damage which occurs and is

covered by said policy or policies shall be immediately deposited by Tenant in a separate trust account in the names of the Tenant and the Port. The funds in said account shall be used solely for repairs and replacements on the premises. Tenant shall make such repairs and replacements to the full extent of the funds recovered under the policy or policies. Plans and specifications for such repairs and replacements shall be submitted to and approved by the Chief Engineer of Port. In the event that Tenant declines to repair or replace to the full extent of the proceeds of the policy, that portion of the proceeds of the policy that is payment for damage to the improvements or trade fixtures where title had vested in Port shall be conveyed to Port free of any claim by Tenant or any third party. If Tenant fails to repair as provided herein, Port may, if it wishes to do so, elect to make such repairs and replacements itself out of these funds, but Port is not required to use the funds for repair or replacement. Tenant may, if it elects, repair and replace in an amount greater than the funds derived from the policy, but in that event it shall have no claim against Port for any excess funds spent. Title to improvements, including trade fixtures, other than trade fixtures removable without injury to the premises, shall immediately vest in Port on repair or replacement. Rent for the premises shall abate only in the event of a substantial loss, and then only for that period of time reasonably required for the repair of the damage, assuming that Tenant commences such repairs as soon as practicable under the circumstances, and makes such repairs with due diligence.

17. Taxes. Tenant agrees to pay to the proper

covered by said policy or policies shall be immediately deposited by Tenant in a separate trust account in the names of the Tenant and the Port. The funds in said account shall be used solely for repairs and replacements on the premises. Tenant shall make such repairs and replacements to the full extent of the funds recovered under the policy or policies. Plans and specifications for such repairs and replacements shall be submitted to and approved by the Chief Engineer of Port. In the event that Tenant declines to repair or replace to the full extent of the proceeds of the policy, that portion of the proceeds of the policy that is payment for damage to the improvements or trade fixtures where title had vested in Port shall be conveyed to Port free of any claim by Tenant or any third party. If Tenant fails to repair as provided herein, Port may, if it wishes to do so, elect to make such repairs and replacements itself out of these funds, but Port is not required to use the funds for repair or replacement. Tenant may, if it elects, repair and replace in an amount greater than the funds derived from the policy, but in that event it shall have no claim against Port for any excess funds spent. Title to improvements, including trade fixtures, other than trade fixtures removable without injury to the premises, shall immediately vest in Port on repair or replacement. Rent for the premises shall abate only in the event of a substantial loss, and then only for that period of time reasonably required for the repair of the damage, assuming that Tenant commences such repairs as soon as practicable under the circumstances and makes such repairs with due diligence.

17. Taxes. Tenant agrees to pay to the proper

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

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

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

20. Condemnation. In the event the demised premises are condemned (other than by the Port or the City, to which this paragraph shall not apply), the Port shall be entitled to receive in such proceeding the then fair market value of the land and the improvements existing on the premises, without deduction for the value, if any, of Tenant's lease, and

Tenant shall have no claim against the Port nor be entitled to any part of such amount. Tenant shall have the right to claim against the condemnor any other value attributable to the leased premises, including but not limited to Tenant's trade fixtures, any removable structures and improvements made by Tenant to or upon the leased premises, if title is in Tenant, and the value of Tenant's leasehold interest, over and above the amount paid to Port.

21. Maintenance by Tenant. Title to the real property, substructure, and all buildings and improvements located thereon, are in Port. The term "improvements" shall include all trade fixtures where title has vested in Port, but shall exclude trade fixtures where title has not vested in Port and where removal may be had without structural injury to the premises. Despite the fact that title is in Port, Port shall have no obligation to maintain either the substructure or the leased premises or any part thereof. If, however, the substructure is damaged by fire, acts of war, or acts of God, ^{with minor} (or any other cause) ^{per dam} other than wear and tear or deterioration, Tenant will not be required to replace or repair the substructure. If the damage to the substructure for which Tenant has no responsibility for repair hereunder substantially affects Tenant's use, and Port does not elect to repair, this lease may be cancelled at the option of either party. If, however, Port does elect to repair, the lease will be continued but rent will be abated to the extent and during the period, Tenant's use is affected. In the event of damage to the substructure or the improvements by ordinary wear and

tear or deterioration, or, in the case improvements do not meet the high standards of maintenance required under Section 7 of this lease, then in that event Tenant shall promptly undertake such maintenance or repair and complete the same with due diligence. Port will make periodic inspections of the premises and will advise Tenant when maintenance or repair of either the substructure or the improvements is required. Tenant shall thereupon promptly undertake such maintenance or repair and complete the same with due diligence. If Tenant fails to do so after reasonable notice in writing from Port, Port, in addition to the remedies it has hereunder, may make such maintenance or repairs and Tenant shall reimburse Port therefor. Nothing contained herein, however, shall require either Tenant or Port to repair or replace the improvements as a result of damages caused by acts of war, earthquake, tidal wave, or other acts of God, except that this proviso shall not affect the obligations of Tenant to make repair to improvements for damages required to be covered by insurance by Tenant under paragraph 16 hereof. In the event of damages in this category, Tenant's obligations shall be as set forth in paragraph ^{first in} 16. In the case of damage by third persons, the party receiving such reimbursement shall devote such reimbursement to the repairs. If reimbursement for damage by third persons is made to Tenant, Tenant shall deposit the proceeds and use the funds in the same manner as required in paragraph 16 hereof. Port does not warrant that either the substructure or the improvements will last during the term of this lease and Tenant takes this lease with knowledge that he must throughout the entire term of this lease,

repair, replace, maintain, and rebuild. On termination of the lease, the premises, including the substructure, must be usable and in as good condition as when the premises were first tendered to Tenant hereunder and if Tenant fails to leave the premises or substructure in such condition, Port may make such repairs or replacements and Tenant shall pay the cost therefor. Nothing herein contained shall relieve Tenant of its obligation to submit plans to the Chief Engineer of Port and obtain approval therefor or to obtain such other permits from governmental bodies as may be required.

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

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

24. Successors. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

25. Modification of Lease. Whenever it appears to be in the public interest, the parties hereto, by mutual agreement in writing, may alter or modify the terms of this lease, or may terminate the same, with such adjustments and for such considerations as may be fair and equitable in the circumstances.

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

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

persons claiming under Tenant, of the termination of this lease.

28. Outdoor Stands. The premises leased herein currently operate stands on the sidewalk area. These stands are and will continue to be part of the leased premises, but must be so operated that they do not interfere unduly with pedestrian traffic. In the event that congestion results, some or part of the stands may have to be eliminated in order to provide reasonable access to the entire area. The stands may continue to sell the items now sold, including food now sold, but may not add food items without express written permission of the Port. No object may be sold either from the stands or elsewhere on the premises which the Port feels to be in bad taste, or which otherwise lowers either the standards or changes the characteristics of the area.

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

Rental Manager
San Francisco Port Commission
Ferry Building
San Francisco, California 94111

and if to Tenant to:

Castagnola's Restaurant

286 Jefferson Street, Fisherman's Wharf

San Francisco, California 94133

or as may from time to time otherwise be directed in writing by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid and deposited, postage prepaid, in a post office or branch post office regularly maintained by the United States Government.

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

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

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

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

By *WJ Thiemann*
Rental Manager

PORT

TOMASO CASTAGNOLA, ANDREW CASTAGNOLA,
ANTHONY J. FERRARI and JOSEPH J. BORRUSO,
dba CASTAGNOLA'S RESTAURANT, a Co-
Partnership, jointly and severally

Tomaso Castagnola
Joseph J. Borruso
Andrew J. Castagnola
Anthony J. Borruso

ATTEST:

Secretary
(If Corporation)

TENANT