

File No. 250484

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight

Date: October 2, 2025

Board of Supervisors Meeting:

Date: _____

Cmte Board

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Prepared by: Monique Crayton

Date: September 26, 2025

Prepared by: _____

Date: _____

Prepared by: _____

Date: _____

1 [Settlement Agreement - Castagnola's - \$300,000]

2
3 **Resolution authorizing the Port of San Francisco to execute the settlement agreement**
4 **between the Port Commission and Castagnola, Inc. of San Francisco and associated**
5 **parties ("Castagnola") to resolve outstanding litigation, satisfy two terminated**
6 **agreements, settle debt in excess of \$1,123,884 and allow Castagnola to continue its**
7 **tenancy under Lease L-7493 for premises at 286 Jefferson Street ("Premises") in**
8 **exchange for Castagnola: paying Port \$300,000 within 180 days, expending no less**
9 **than \$900,000 for physical improvements to the Premises, and reopening the**
10 **restaurant to the public within one year unless extended by the Port Commission,**
11 **which obligations are enforceable through stipulated judgments in: CITY AND COUNTY**
12 **OF SAN FRANCISCO VS. CASTAGNOLA, INC. OF SAN FRANCISCO, A CAL. CORP ET**
13 **AL, Superior Court of San Francisco County, Case No. CUD24674725; and CITY AND**
14 **COUNTY OF SAN FRANCISCO VS. LOLMAN ENTERPRISES, INC., ET AL, Superior**
15 **Court of San Francisco County, Case No. CGC23606678.**

16
17 WHEREAS, California Statutes of 1968, Chapter 1333 (as amended, the "Burton Act")
18 and Charter Sections 4.114 and B3.581 empower the San Francisco Port Commission ("Port"
19 or "Port Commission") with the power and duty to use, conduct, operate, maintain, manage,
20 regulate and control the lands within Port Commission jurisdiction in the City and County of
21 San Francisco; and

22 WHEREAS, Castagnola, Inc. of San Francisco, a California corporation, (collectively,
23 with its successors and assigns described below, "Tenant") leases premises under Lease L-
24 7493 ("Restaurant Lease") for premises at 286 Jefferson Street; and

1 WHEREAS, Tenant was party to Storage Premises Lease L-13524 dated August 1,
2 2003, and terminated June 30, 2021, and Parking Permit dated February 15, 2007, and
3 terminated effective June 30, 2021, both with balances due (collectively, the Storage
4 Premises Lease L-15524, Parking Permit, and the Restaurant Lease are referred to as the
5 “Agreements”); and

6 WHEREAS, Port commenced litigation against Castagnola, Inc. of San Francisco,
7 Lolman Enterprises, Inc., Kathrine Higdon, and Cynthia Foxworth, including a civil action filed
8 on May 22, 2023, seeking surrender of the Premises, payment of all back rent under the
9 Agreements, and compensation for failure to correct unsafe deferred maintenance (the “Civil
10 Action”), and an unlawful detainer action filed on April 3, 2024 to seek outstanding amounts
11 owed and to regain possession of the restaurant Premises (the “Unlawful Detainer”); and

12 WHEREAS, At its April 22, 2025 meeting, the Port Commission adopted Resolution 25-
13 23, to approve the “Settlement Agreement” described below, subject to approval by the Board
14 of Supervisors (“Board”); and

15 WHEREAS, Port and Tenant now wish to enter into a settlement agreement requiring
16 Tenant to: (1) pay a settlement fee totaling \$300,000 within 180 days of Port’s execution of
17 the settlement agreement, which will fully satisfy the debts related to Storage Lease L-13524
18 and the Parking Permit, and reduce the outstanding balance under the Restaurant Lease, (2)
19 expend no less than \$900,000 for physical improvements to the Restaurant Lease Premises,
20 (3) promptly request construction permits for the Restaurant Lease Premises, (4) commence
21 construction within one month of the issuance of any building permits, and (5) reopen the
22 restaurant within one year of Port’s execution of the settlement agreement unless extended by
23 the Port Commission in its sole and absolute discretion, all as described in the memorandum
24 accompanying Port Commission Resolution 25-23 and more particularly detailed in the
25 settlement agreement on file with the Clerk of the Board in File No. 250484; and

1 WHEREAS, Tenant provided to Port a draft Lease Purchase Agreement through which
2 an entity to be formed by or for Lou Giraudo, Seth Hamalian, and Chris McGarry (the
3 "Purchaser") will be Tenant's exclusive agent until the Restaurant Lease can be transferred.
4 Purchaser will act on Tenant's behalf by (1) paying the settlement fee to Port, (2) expending
5 funds and physically improving the Restaurant Lease Premises, (3) reopening to the public
6 and operating the restaurant, all in compliance with the Settlement Agreement and in order to
7 attain good standing with the Port in anticipation of seeking Port's consent of Tenant's transfer
8 of the Restaurant Lease to Purchaser; and

9 WHEREAS, The Settlement Agreement will amend the Restaurant Lease by (1)
10 increasing the security deposit to be held by Port for use in event of a Tenant default from the
11 equivalent of one months' base rent to two months' base rent, and (2) forgiving back rent due
12 to Port in excess of \$1,123,884 upon Tenant's compliance with all of the terms of the
13 Settlement Agreement, including reopening the restaurant to the public and continuously
14 operating the restaurant for six months, each as more particularly described in the Settlement
15 Agreement and memorialized in the draft Fourth Amendment to Lease L-7493 attached as
16 Exhibit C to the Settlement Agreement (the "Amendment"); and

17 WHEREAS, The Amendment require approval by the Board of Supervisors in
18 accordance with Charter, Section 9.118; and now, therefore be it

19 RESOLVED, That the Board hereby approves the Settlement Agreement and the
20 Amendment, and authorizes the Executive Director of the Port, or the Executive Director's
21 designee, to execute the Settlement Agreement within 30 days of the effective date of this
22 Resolution, and to execute the Amendment, each in the form approved by the City Attorney
23 and in substantially the same form on file with the Clerk of the Board in File No. 250484; and,
24 be it

1 FURTHER RESOLVED, That approval of and authorization by the Board to enter into
2 and execute the Settlement Agreement shall expire and have no further force or effect unless
3 exercised within 30 days of the effective date of this Resolution; and be it

4 FURTHER RESOLVED, That the Board of Supervisors authorizes the Port Executive
5 Director to enter into any other additions, amendments, or other modifications to the
6 Restaurant Lease that the Executive Director, in consultation with the City Attorney,
7 determines, when taken as a whole, to be in the best interest of the Port, do not materially
8 increase the obligations or liabilities of the City or the Port, and are necessary or advisable to
9 complete the transactions which this Resolution contemplates and effectuate the purpose and
10 intent of this Resolution, such determination to be conclusively evidenced by the execution
11 and delivery by the Executive Director of such documents; and, be it

12 FURTHER RESOLVED, That within 30 days of the execution of the Settlement
13 Agreement by all parties, the Port shall provide a copy of the Settlement Agreement to the
14 Clerk of the Board for inclusion in the official file; and, be it

15 FURTHER RESOLVED, That within 30 days of the execution of the Amendment by all
16 parties, the Port shall provide a copy of the Amendment to the Clerk of the Board for inclusion
17 in the official file.

SETTLEMENT AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

AGREEMENT

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

Table 1: Agreements Outstanding Balances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

With a courtesy copy to:

cmcgarry11@gmail.com

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

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

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

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

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

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

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

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

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

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

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

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

Initials:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. **Miscellaneous.**

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

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

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

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

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

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

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

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

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

[Signatures contained on following pages.]

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

Castagnola:

CASTAGNOLA, INC. OF SAN FRANCISCO,
a California corporation

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

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

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

KATHRINE HIGDON, an individual

Date Signed: _____

CYNTHIA FOXWORTH, an individual

Date Signed: _____

[Signatures continue on following page.]

Port:

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

By: _____

Name: Scott Landsittel

Title: Deputy Director of Real Estate and Development

Date Signed: _____

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____

Name: Justin Bigelow

Deputy City Attorney

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

Port Commission Reso. _____, Date _____

Board of Supervisors Reso. _____, Date _____

EXHIBIT A

STIPULATED JUDGMENT

EXHIBIT B

LEASE NO. L-7493

EXHIBIT C

FORM

FOURTH AMENDMENT TO LEASE NO. L-7493

**FOURTH AMENDMENT TO
LEASE NO. L-7493**

This Fourth Amendment to Lease No. 7493 (“**Amendment**”) is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), operating through the SAN FRANCISCO PORT COMMISSION (“**Port**”), as landlord, and Castagnola, Inc. of San Francisco, a California corporation, and Lolman Enterprises, Inc., a California corporation doing business as Castagnola’s Restaurant (jointly and severally with Castagnola, Inc. of San Francisco, “**Tenant**”) and is dated for reference purposes only as of [REDACTED]. Port and Tenant may be referred to in this Amendment individually as a “**Party**” or collectively as the “**Parties.**”

RECITALS

A. Port and Castagnola’s predecessor in interest entered Lease No. L-7493 dated May 1, 1970, in which the predecessor in interest agreed to lease from the Port, and the Port agreed to lease to the predecessor in interest certain premises that are referred to therein as 286 Jefferson Street, in San Francisco, California, as amended by that certain Amendment to Fisherman’s Wharf Leases document dated as of September 3, 1970 (“**First Amendment**”), as assigned pursuant to that certain Second Amendment to Fishermens’ Wharf Lease dated as of December 24, 1971 (“**Second Amendment**”), as further assigned pursuant to that certain Third Amendment to Castagnola’s Restaurant Lease dated as of April 14, 1976 (“**Third Amendment**”), and as amended by that certain Extension Agreement dated as of August 14, 1995 (“**Extension**”). Collectively, the Original Lease as amended and assigned by the First Amendment, Second Amendment, Third Amendment, and Extension are the “**Original Lease.**” The premises that the Port leased pursuant to the Original Lease is more specifically described and depicted in the Original Lease (the “**Premises**”). The Original Lease commenced on May 1, 1970 and will expire on April 30, 2036.

B. To settle disputes and litigation regarding rent and other alleged defaults under the Original Lease, the Parties entered that certain Settlement Agreement dated as of [REDACTED], in accordance with Port Commission Resolution [REDACTED] and Board of Supervisors Resolution [REDACTED] (“**Settlement Agreement**”).

C. Pursuant to the Settlement Agreement, alleged heirs and/or successors of a predecessor in interest to the Original Lease have expressly disclaimed and otherwise waived any and all right, title, and interest in the Original Lease, including via certain quitclaim deeds.

D. whether Higdon and Foxworth are also heirs or successors of a predecessor in interest to the Castagnola Lease. The Castagnola Lease has been assigned and amended from time to time and expires on April 30, 2036. A true and correct copy of the Castagnola Lease was filed with the unlawful detainer action that gave rise to this Agreement under docket number CUD-24-674725 in the Superior Court of California County of San Francisco Division, the terms of which are incorporated herein by reference.

E. The Original Lease and this Amendment shall collectively be referred to as the “**Lease.**” All capitalized terms used in this Amendment but not otherwise defined have the meanings given to them in the Original Lease.

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

AGREEMENT

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

2. **Affirmation of Lease.**

2.11. The Parties affirm that the Original Lease, which is attached and incorporated into this Amendment as Exhibit A and includes Lease No. L-7493 dated May 1, 1970, the First Amendment, Second, Amendment, Third Amendment, and Extension, is presently in full force and effect and has not been modified, transferred, assigned, supplemented, or amended except as provided for in this Amendment.

2.12. The Parties agree that, in accordance with the regularly scheduled rent increases contemplated in the Original Lease, the monthly base rent as of May 1, 2025 is [REDACTED] (\$ [REDACTED]).

3. **Increasing Security Deposit.** The first sentence of Section 3 of the Original Lease is hereby amended and restated as follows.

“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 two 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.”

4. **Memorializing Rent Forgiveness.** Pursuant to the terms of the Settlement Agreement, the Parties agree upon and memorialize the financial status of the Lease, as follows.

4.11. As of January 1, 2025, the outstanding balance under the Lease was One Million Fifty Thousand Four Hundred Dollars and Eighty-Four Cents (\$1,050,400.84), which amount was reduced to Eight Hundred Eighty-Five Thousand Three Hundred Sixty-Five Dollars and Eighty-Three Cents (\$885,365.83), after application by Port of Tenant’s Settlement Fee (the “**Initial Balance**”). Tenant’s obligation to pay the Initial Balance and any related late fees and interest is hereby waived and forgiven.

4.12. For purposes of this Amendment, the Deferral Period is that period beginning on February 1, 2025 and ending on [REDACTED]. Tenant’s obligation to pay rent and any late fees and interest on past due amounts is hereby waived and forgiven during the Deferral Period.

4.13. Tenant is solely responsible for seeking advice from its own legal and financial counsel on the relief provided in this Amendment, and for any liabilities that arise therefrom. No such advice has been given by City in any manner and City is not in any way liable for any tax consequences incurred by Tenant arising directly or indirectly from the agreements, terms and/or conditions of this Amendment.

5. **Disclosures.** Tenant has received and reviewed the disclosures included in Exhibit B.

6. **City and Port Requirements.** Sections 18 and 22 of the Original Lease are hereby deleted and replaced with the following.

“ 18. **Compliance with Laws and Regulations.** Tenant, at Tenant’s sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and shall comply with all Laws relating to Tenant’s specific use of the Facility and all Rules and Regulations, if any, in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties. Tenant further understands and agrees that it is Tenant’s obligation, at Tenant’s sole cost and expense, to cause the Premises and Tenant’s activities and operations conducted thereon, to be in compliance with the ADA. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Alterations and Improvements strictly complies with all requirements of the ADA. If Tenant’s use or occupancy of the Premises triggers a requirement to remove barriers or perform other work to any part of the Facility outside of the Premises to comply with the ADA, then, at Port’s sole election, Port or Tenant will perform the work at Tenant’s sole cost and expense.

The parties acknowledge and agree that Tenant’s obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant’s obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, 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 Tenant or Port, the degree to which the curative action may interfere with Tenant’s use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant’s particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13 below. Except as otherwise expressly set forth 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 Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Tenant 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 Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.”

“ 22. **City and Port Requirements.** The provisions of the San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in ***Exhibit C*** attached hereto are incorporated by reference as though fully set forth in the Lease. The descriptions in ***Exhibit C*** are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of the Lease relating to any such code provision shall be deemed a material breach of the Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in the Lease shall have the meanings ascribed to them in the cited ordinance.”

7. **Authority.** If Tenant signs as a corporation, partnership, or other business entity, each of the persons executing this Amendment on behalf of Tenant does hereby covenant and warrant that Tenant is at the time of execution and at all times while the Lease is in effect will continue to

be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

8. Miscellaneous. This Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the Parties hereto. This Amendment will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Amendment. The terms of this Amendment are contractual and not a mere recital. The liability of and all rights, powers, and remedies of the Parties under this Amendment shall be cumulative and not alternative. Each Party acknowledges that the other Party has made no representations, express or implied, to induce that Party to enter into this Amendment, other than as expressly set forth herein. This Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third-party beneficiary or otherwise. This Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment. This Amendment shall be governed by the laws of the State of California. Neither this Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the Parties hereto.

9. Effective Date. This Amendment is effective upon the date of Port's execution as indicated below.

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

Tenant:

CASTAGNOLA, INC. OF SAN FRANCISCO,
a California corporation

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

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

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

Port:

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

By: _____
Name: Scott Landsittel
Title: Deputy Director of Real Estate and Development
Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Name: Justin Bigelow
Deputy City Attorney

EXHIBIT A
Original Lease

FORM

EXHIBIT B

Disclosures

1. Accessibility Inspection Disclosure. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and Port shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

2. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. Tenant further understands and agrees that it is Tenant’s obligation, at no cost to Port, to cause the Premises and Tenant’s use thereof to be conducted in compliance with the ADA and any other federal or state disability access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3. FEMA-National Flood Insurance Program Disclosure Notice.

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:

<https://onesanfrancisco.org/san-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA’s NFIP website:

www.FloodSmart.gov.

4. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, Hazardous Materials described in the reports listed in **Schedule [x]** copies of which have been delivered to or made available to Tenant are known to be present at or near the Premises. By execution of this Amendment, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 78700 and related Laws. Tenant must disclose the information contained in this Section to any subtenant, licensee, transferee, or assignee of Tenant’s interest in the Lease. Tenant also

acknowledges its own obligations pursuant to California Health and Safety Code Section 78700 as well as the penalties that apply for failure to meet such obligations.

FORM

EXHIBIT C

Port and City Requirements

22. City and Port Requirements.

22.1. *Nondiscrimination.*

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant 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, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of the Labor and Employment Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 22.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, sections 12B.2 (a), 12B.2(c) – (k) and 12C.3 of the Administrative Code) and shall require all subtenants and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Tenant 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, 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 (collectively “**Core Benefits**”) as well as any benefits other than the Core Benefits 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 131.2 of the Labor and Employment Code.

(d) CMD Form. On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the “Nondiscrimination in Contracts and Benefits” form approved by the CMD.

(e) Penalties. Tenant understands that pursuant to Section 131.2(h) of the Labor and Employment Code, a penalty of \$50.00 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 Tenant and/or deducted from any payments due Tenant.

22.2. *Requiring Health Benefits for Covered Employees.* Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q).

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 121.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a “small business” by the City pursuant to Section 121.3(e) of the HCAO, it shall have no obligation to comply with Section 22.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Article 121 of Division II of the Labor and Employment Code. Tenant shall notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 121.5 of the Labor and Employment Code against Tenant based on the Subtenant’s, Contractor’s, or Subcontractor’s failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant’s compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor’s or Subcontractor’s contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

22.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 *et seq.*) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Tenant acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this Lease.

22.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises (“LBEs”) in Tenant’s operations. Tenant agrees to consult with CMD to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

22.5. Indoor Air Quality. Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

22.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

22.7. Graffiti Removal. Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant’s: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. “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 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 that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Lease or the Port 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 (Calif. Civil Code §§ 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.*).

22.8. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “IPM Ordinance”) describes an integrated pest management (“IPM”) policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on

the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

22.9. *MacBride Principles Northern Ireland.* Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

22.10. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

22.11. *Preservative-Treated Wood Containing Arsenic.* Tenant 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. Tenant 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 Tenant 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.

22.12. *Notification of Limitations on Contributions.* If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this

Section 22.12 shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under 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 (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant 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 one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 22.12 applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

22.13. *Sunshine Ordinance.* In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port 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.

22.14. *Conflicts of Interest.* Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

22.15. *Drug-Free Workplace.* Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 *et seq.*), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

22.16. *Prevailing Wages and Working Conditions.* Tenant shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or the City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Labor and Employment Code Division II, Articles 101, 103 and 104 (formerly Administrative Code Section 23.61). Tenant shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work

performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Labor and Employment Code Division II, Articles 101, 103 and 104 (collectively, “**Prevailing Wage Requirements**”). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include and shall require its subtenants, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Labor and Employment Code Division II, Articles 101, 103 and 104. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Labor and Employment Code Division II, Articles 101, 103 and 104. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Labor and Employment Code Division II, Articles 101, 103 and 104 against the breaching party.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Labor and Employment Code Division II, Article 102 (formerly Administrative Code Chapter 21C): a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 102.3), a Show (as defined in Section 102.4), a Special Event (as defined in Section 102.8), Broadcast Services (as defined in Section 102.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 102.10), and Security Guard Services for Events (as defined in Section 102.11).

22.17. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Labor and Employment Code Division II, Articles 101 and 108 (formerly Administrative Code Section 23.62) (the “**Local Hiring Requirements**”). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than the Threshold Amount (as defined in San Francisco Administrative Code Section 6.1) per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City’s Office of Economic Workforce and Development (“**OEWD**”) to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Labor and Employment Code Division II, Articles 101 and 108. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Labor and Employment Code Division II, Articles 101 and 108 against the breaching party.

22.18. Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant 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 Facility and encouraging use of such facilities, all at Tenant's sole expense.

22.19. Food Service and Packaging Waste Reduction Ordinance. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a 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 amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

22.20. Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Tenant agrees to comply with and be bound by all of the provisions of San Francisco Labor and Employment Code Division II, Article 142 (formerly Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; "**Article 142**"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Article 142 in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

(f) Tenant and subtenants shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San

Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

If Tenant has any questions about the applicability of Article 142, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 142.8.

22.21. Prevailing Wage Rate Requirement For Theatrical Workers. City law entitles individuals engaged in theatrical or technical services related to the presentation of a Show at the Premises, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in San Francisco Labor and Employment Code Division II, Section 102.4(b) (formerly Administrative Code Section 21C.4(b)). Capitalized terms in this Section shall have the meanings provided in Section 102.4. Accordingly, Tenant, as a condition of this Lease, agrees that:

(a) Tenant shall comply with the obligations in San Francisco Labor and Employment Code Section 102.4, and shall require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 102.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, the City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in Section 102.7, together with the remedies set forth in this Lease.

(b) The City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the Premises, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the Premises.

(c) Tenant shall provide to the City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to the City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the Premises.

For current Prevailing Wage rates, see the Office of Labor Standard Enforcement's website or call the Office of Labor Standard Enforcement at 415-554-6235.

22.22. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the

right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

22.23. *Tenant's Compliance with City Business and Tax Regulations Code.* Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 28.27 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

22.24. *Consideration of Salary History.* Tenant shall comply with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K), the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

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THIRD AMENDMENT TO CASTAGNOLA'S
RESTAURANT LEASE

WHEREAS, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION (hereinafter referred to as "Landlord", and CASTAGNOLA, INC. OF SAN FRANCISCO, a California Corporation, are parties to a lease dated the first day of May, 1970, as amended December 24, 1971, and

WHEREAS, Tenant wishes to assign the lease pursuant to Paragraph 10 thereof, and

WHEREAS, Paragraph 10.C(d) requires in part that if Tenant holding substantial voting control loses said control by reason of sale or merger, then it shall be necessary to secure the written consent of the Port prior to any assignment of the lease.

WITNESSETH

Port does hereby consent to the assignment of the lease by and between Port and Castagnola, Inc. of San Francisco, California, a California Corporation, to Andrew R. Lolli, Dr. Maurice Mann, and Lolman Enterprises, Inc., upon the following terms.

1. In consideration of the authorization to assign said lease, the assignees Andrew R. Lolli and Maurice Mann, as well as Lolman Enterprises, Inc., a California Corporation controlled by Dr. Mann and Mr. Lolli, agree to be bound personally and to assume each and every of the covenants, conditions, and terms of the lease dated May 1, 1970, as amended.

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2. The terms of the lease and the first and second amendments thereto are continued in full force and effect except as specifically amended herein.

IN WITNESS WHEREOF, the parties have caused this assignment to be executed this 14th day of April, 1976, in San Francisco, California.

ATTEST

Andrew R. Lolli
ANDREW R. LOLLI

ATTEST

Maurice Mann
MAURICE MANN

ATTEST

LOLMAN ENTERPRISES, INC.

By Andrew R. Lolli

ATTEST

Edward L. David
~~THOMAS I. SOULES~~ EDWARD L. DAVID
ACTING Port Director

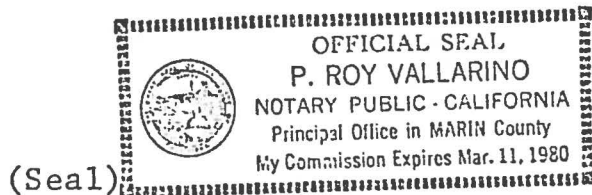
87-117

STATE OF CALIFORNIA)
) ss.
 City and County of San Francisco)

On May 12, 1976, before me P. Roy Vallarino, a
 Notary Public for the State of California, personally appeared
 EDWARD A. DAVID, known to me (or proved to me on the oath of _____
 _____, to be the person named in the within
 instrument, and whose name is subscribed thereto, and acknowledged
 to me that he executed the same.

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

P. Roy Vallarino
 NOTARY PUBLIC - California



LIBER C168 PAGE 227

RECORDED AT REQUEST OF
 ATTORNEY
 At 4:49 Min Past 11 AM

MAY 12 1976

City & County of San Francisco, Calif.

RECORDING FEE \$6.00

Y87-117

RECORDER

177-19

STATE OF CALIFORNIA
COUNTY OF San Francisco } ss.

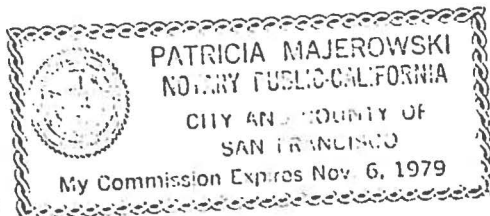


LIBER C168 PAGE 229
On this 14th day of April in the year one thousand nine hundred and 76, before me, Patricia Majerowski a Notary Public, State of California, duly commissioned and sworn, personally appeared Andrew R. Lolli known to me to be the President of the corporation described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the City & County of San Francisco the day and year in this certificate first above written.

Patricia Majerowski
Notary Public, State of California

STATE OF CALIFORNIA
COUNTY OF San Francisco } ss.



On this 14th day of April in the year one thousand nine hundred and 76, before me, Patricia Majerowski, a Notary Public, State of California, duly commissioned and sworn, personally appeared Andrew R. Lolli and Maurice Mann known to me to be the person S... whose name S... subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the City & County of San Francisco the day and year in this certificate first above written.

Patricia Majerowski
Notary Public, State of California

My commission expires November 6, 1979

SECOND AMENDMENT TO FISHERMENS' WHARF LEASE

WHEREAS, the CITY AND COUNTY OF SAN FRANCISCO, operating through the SAN FRANCISCO PORT COMMISSION, hereinafter called "Port", Landlord, and TOMASO CASTAGNOLA, ANDREW CASTAGNOLA, ANTHONY J. FERRARI, and JOSEPH J. BORRUSO, a co-partnership, jointly and severally, hereinafter called "Tenant", made and entered into a lease on the 1st day of May, 1970 and

WHEREAS, the Tenant to said lease desires to assign the lease pursuant to paragraph 10 thereof;

WITNESSETH the following agreement:

1. Port does hereby consent to the assignment of the lease executed on the 24th day of December, 1971, by and between the Port and Tomaso Castagnola, Andrew Castagnola, Anthony J. Ferrari, Joseph J. Borruso, to CASTAGNOLA, INC. OF SAN FRANCISCO, a California corporation.

2. In consideration of this permission to assign said lease, set forth herein in paragraph 1, the signators hereto agree to be bound personally to perform the obligations of CASTAGNOLA, INC. OF SAN FRANCISCO, a California corporation, both jointly and severally, and for each and every of the covenants, conditions, and promises of said lease.

3. The terms of the lease and the first amendment

to which this assignment was made are continued in full force and effect in all respects.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the _____ day of _____, 1971.

Tomaso Castagnola
TOMASO CASTAGNOLA

Andrew B. Castagnola
ANDREW CASTAGNOLA

Anthony J. Ferrari
ANTHONY J. FERRARI

ATTEST:

Joseph J. Borruso (Secy)
JOSEPH J. BORRUSO
CO-PARTNERSHIP

PORT OF SAN FRANCISCO

By Henry J. Schumann
HENRY J. SCHUMANN
Commercial Property Manager

APPROVED AS TO FORM:

Richard A. Bobier
Richard A. Bobier
Associate Counsel

AMENDMENT TO FISHERMAN'S WHARF LEASES

WHEREAS, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and 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, Tenant, did on the 1st day of May, 1970, enter into a lease for restaurant operation at Pier 49, San Francisco, California; and

WHEREAS, the parties to said lease desire to amend said lease pursuant to paragraph 25 thereof, and do amend said lease as follows:

1. Paragraph 32 is added to the lease to read as follows:

"32. Mineral Reservation. The State of California, pursuant to Section 2 of Chapter 1333, Statutes 1968, as amended by Chapter 1296, Statutes 1969, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the leased premises in accordance with the provisions of these Statutes. Landlord shall and hereby does grant to the State of California the right to explore and drill for and extract said subsurface minerals, including oil and gas deposits, from a point located by the California Grid System, Zone 3, at an intersection of x and y, where x equals 1,448,000 and y equals 482,700, which point was not improved on July 1, 1970, and is outside the boundaries

ORIGINAL

L-7493

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

of the leased premises."

2. The lease to which this amendment is being made is continued in full force and effect in all respects except for amendments contained herein in paragraph 1.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the 3rd day of Sept, 1970.

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

By

R. F. Hillman
Rental Manager

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

By

Tomaso Castagnola
Andrew B. Castagnola

ATTEST:

Secretary
(If Corporation)

Clifford J. Jernan
Joseph J. Borruso

TENANT

STATE OF CALIFORNIA,)
)ss.
COUNTY OF SAN FRANCISCO,)

On this 2nd day of September, 1970, before me,
a Notary Public of said county and state, duly commissioned and
sworn, personally appeared R. J. Meenan,
known to me to be the Rental Manager of the San Francisco
Park Commission that executed the within instrument,
and acknowledged to me that such corporation executed the same.

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

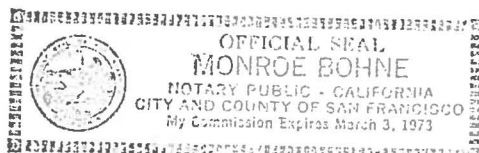
Margaret M. Lerby
Notary Public in and for said
County and State

My Commission Expires May 27, 1971

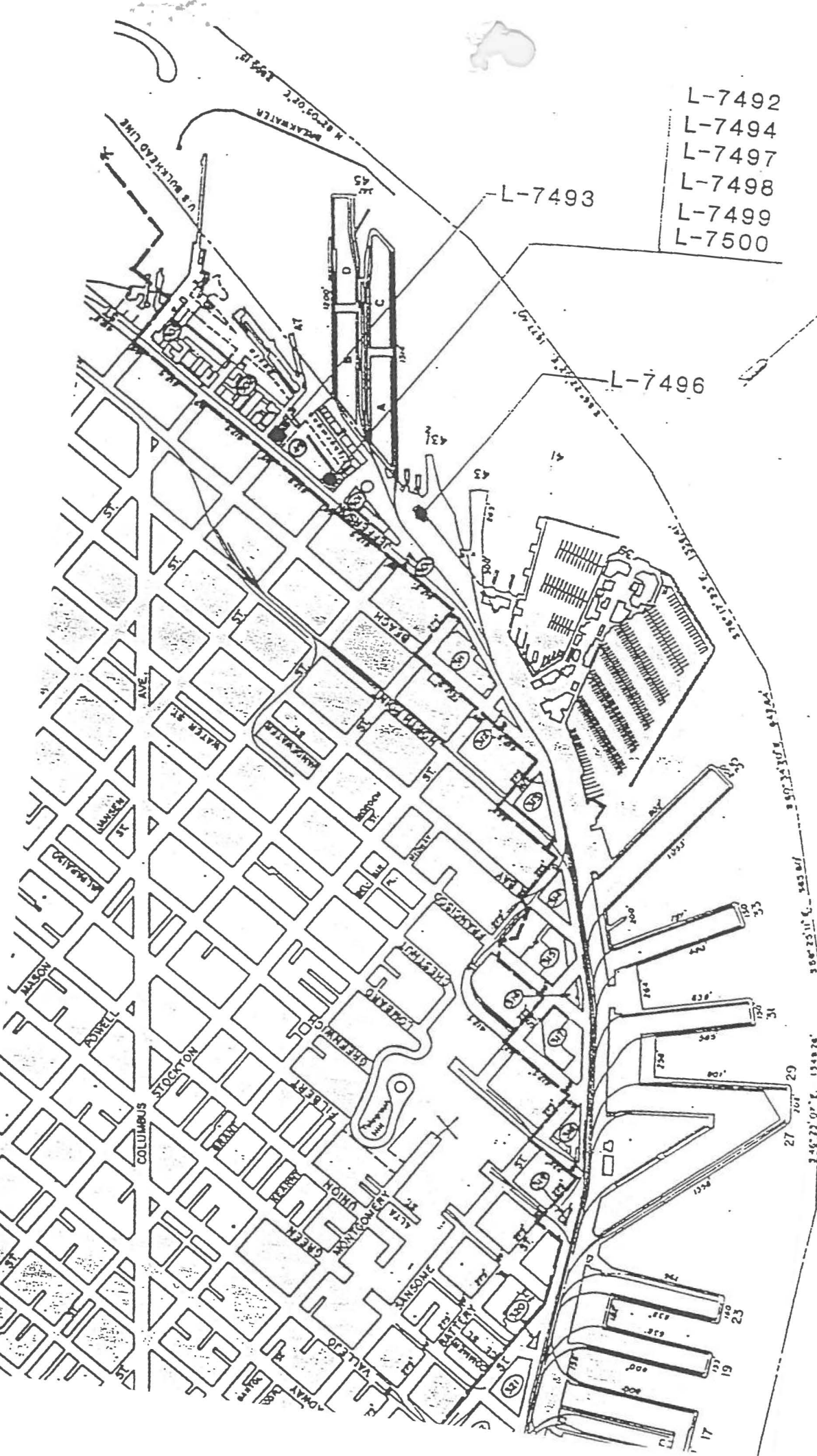
STATE OF CALIFORNIA,)
)ss.
COUNTY OF SAN FRANCISCO,)

On this 2nd day of September, 1970, before me,
a Notary Public in and for said county and state, duly commis-
sioned and sworn, personally appeared Tomaso Castagnola, Andrew Castagnola,
Anthony J. Ferrari & Joseph J. Borruso
known to me to be one of the partners of Castagnola's Restaurant,
the partnership that executed
the within instrument, and acknowledged to me that such partner-
ship executed the same.

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



Monroe Bohne
Notary Public in and for said
County and State



- L-7492
- L-7494
- L-7497
- L-7498
- L-7499
- L-7500



SAN FRANCISCO

BAY

L-7493

L-7496



REUBEN, WEINTRAUB & CERA

A PROFESSIONAL CORPORATION

655 MONTGOMERY STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111
TEL: (415) 567-9000
FAX: (415) 399-9480

JAMES A. REUBEN
WILLIAM P. WEINTRAUB*
KENNETH B. CERA
LISA ALTER**
JOEL YODOWITZ
SHERYL S. REUBEN*
MARK A. WAYNE
ANDREW J. JUNIUS
DAVID M. BERTENTHAL

*ALSO ADMITTED IN NEW YORK

**ALSO ADMITTED IN NEW YORK AND NEW JERSEY

LOS ANGELES

9720 WILSHIRE BOULEVARD, SUITE 500
BEVERLY HILLS, CALIFORNIA 90212-2014
TEL: (310) 273-4003
FAX: (310) 273-5158

NEW YORK

REUBEN, WEINTRAUB, CERA & ALTER
545 MADISON AVENUE
NEW YORK, NEW YORK 10022
TEL: (212) 644-8100
FAX: (212) 644-8105

August 29, 1995

VIA HAND-DELIVERY

Julie Van Nostern, Esq.
Port General Counsel
Office of the City Attorney
Ferry Building, Suite 3100
San Francisco, California 94111

**Re: Fisherman's Wharf Leases
Our File No. 1203.02**

Dear Julie:

Enclosed please find an original executed counterpart Extension Agreement. Please note that there is at least one original signature from each of the entities. The signature lines that you had appended must have been taken from the original leases or your records. In some cases, the individuals are either (1) no longer involved; or (2) deceased. The signatures I have enclosed are as you have received in the past. Let me know if you need anything further. Thank you for your help.

Very truly yours,

REUBEN, WEINTRAUB & CERA

James A. Reuben

JAR/amo

cc: Dennis P. Bouey
Kirk Bennett
Frederick White
Neil Sehkri, Esq.
Fisherman's Wharf Restaurant Owners

EXTENSION AGREEMENT

This Extension Agreement is made as of this 15th day of August, 1995, by and between the City and County of San Francisco, a municipal corporation, acting by and through its Port Commission (the "Port") on the one hand, and the following tenants on the other hand: Alioto Fish Company Ltd., a California corporation (Lease No. L-7495); Alioto Fish Company Ltd., a California corporation (Lease No. L-7491); Franciscan Restaurant, a California corporation (Lease No. L-7496); Cresci Brothers, Incorporated, a California corporation (Lease No. L-7494); Guardino's Souvenir & Gift Shop, Inc., a California corporation (Lease No. L-7497); Pollack Group Ltd., (Lease No. L-7492); Frank L. Sabella, Thomas LaTorre and Frank Raymond Sabella (Lease No. L-7499); Tarantino's Inc., a California corporation (Lease No. L-7500); Andrew R. Lolli, Dr. Maurice Mann, and Lolman Enterprises, Inc. (Lease No. L-7493); and Nino L. Gerald, Michael F. Gerald, Alphonse B. Gerald, Lawrence Gerald, and Josephine Gerald, dba Fisherman's Grotto, a co-partnership (Lease No. L-7498) (collectively, the "Tenants"), with reference to the following:

RECITALS

A. The Port entered into leases with 66-year terms with each of the Tenants in 1970. Each of the leases is referred to by the Port's lease number in the caption of this Agreement.

B. The Leases by their terms provide for an adjustment in the rate of percentage rent under certain circumstances on the anniversary date of the

Leases every 25 years. Under the terms of the Leases, the first adjustment in the rate of percentage rent is to be made, if at all, by May 1, 1995.

C. By prior agreement, the parties hereto have extended the date for the adjustment in the rate of percentage rent to August 31, 1995.

D. The parties hereto desire to enter into this Agreement to extend the deadline in the Leases for the final adjustment in the rate of percentage rent.

AGREEMENT

Based on the mutual consideration of this Agreement, the parties hereto stipulate and agree as follows:

1. Recitals True and Correct. The foregoing recitals are true and correct and are incorporated into this Agreement.

2. Extension of Deadline to Set Rate of Percentage Rent. The deadline under the Leases for the Port to make a final setting of the adjustment of percentage rent originally required by the Leases to be made on May 1, 1995, is hereby extended to 30 calendar days after the earlier of the following to occur: (i) the Port gives notice to the Tenants, in the manner provided in Paragraph 6, to terminate this extension, or (ii) the Tenants give notice to the Port, in the manner provided in Paragraph 6, to terminate this extension.

3. Adjustment of Rate of Percentage Rent Retroactive to May 1, 1995. The new rate of percentage rent finally set pursuant to the terms of the Lease as amended hereby shall be retroactive to May 1, 1995. In the event of an increase in the rate of percentage rent, the percentage rent owing retroactively from May

1, 1995 shall be payable by the Tenants within thirty days after the final setting of the new rate of percentage rent. The increase in percentage rent shall be payable by the Tenants regardless of their exercise of their right under their leases to terminate their leases within six (6) months after the final setting of percentage rent by the Port. In the event the new rate of percentage rent results in a decrease in percentage rent, Port shall grant Tenant a credit against the next minimum and/or percentage rent due from Tenant which equals the amount of any overpayment by Tenant, retroactive to May 1, 1995.

4. No Waiver of Rights. By extending the deadline to set percentage rental as provided herein, neither Port nor Tenant waives their respective rights under the Leases, including the Port's right to increase or decrease percentage rent in accordance with the applicable Lease provisions. Port and Tenant agree to this extension in reliance on the understanding asserted hereby that the other party shall not claim or allege that the other has waived any such rights.

5. Other Terms of Lease Remain in Full Force and Effect. Except for the extension of the deadline for setting percentage rent, all other terms and conditions of the Lease remain in full force and effect and unchanged.

6. Notice of Termination of Extension. Any notice to terminate the extension of the deadline to set the adjustment in percentage rent required by Paragraph 2 hereof shall be given in the following manner:

A. By Port to Tenants: If by Port to Tenants, such notice shall be deemed given when sent to Tenant's counsel by both facsimile and regular mail addressed as follows: James A. Reuben, Reuben, Weintraub & Cera, 655

Montgomery Street, 16th Floor, San Francisco, California 94111, Facsimile
Number (415) 399-9480.

B. By Tenants to Port: If by Tenants to Port, such notice shall
be deemed given when sent to Port's counsel by both facsimile and regular mail
addressed as follows: Julie Van Nostern, General Counsel to the San Francisco
Port Commission, City and County of San Francisco, 3100 Ferry Building, San
Francisco, CA 94111, Facsimile Number (415) 274-0494.

7. Headings for Reference Only. The headings used herein are for
reference only and are not a part of this Agreement.

8. Counterparts. This agreement may be executed in two or more
counterparts, each of which when taken together shall constitute a single
agreement.

TENANTS

Dated: 8/27/95

Alloto Fish Company Ltd., a California corporation
(Lease No. L-7495 and L-7491)

By *Luigi S. Alioto*

Its _____

Dated: _____

Franciscan Restaurant, a California corporation (Lease
No. L-7496)

By _____

Its _____

Montgomery Street, 16th Floor, San Francisco, California 94111, Facsimile
Number (415) 399-9480.

B. By Tenants to Port: If by Tenants to Port, such notice shall
be deemed given when sent to Port's counsel by both facsimile and regular mail
addressed as follows: Julie Van Nostern, General Counsel to the San Francisco
Port Commission, City and County of San Francisco, 3100 Ferry Building, San
Francisco, CA 94111, Facsimile Number (415) 274-0494.

7. Headings for Reference Only. The headings used herein are for
reference only and are not a part of this Agreement.

8. Counterparts. This agreement may be executed in two or more
counterparts, each of which when taken together shall constitute a single
agreement.

TENANTS

Dated: _____ Alioto Fish Company Ltd., a California corporation
(Lease No. L-7495 and L-7491)

By _____

Its _____

Dated: _____ Franciscan Restaurant, a California corporation (Lease
No. L-7496)

By Len Burger

Its _____

Dated: 8-28-95

Cresci Brothers, Incorporated, a California corporation
(Lease No. L-7494)

By Anthony Cresci, Pres.

Its Cresci Bros Inc.

Dated: _____

Guardino's Souvenir & Gift Shop, Inc., a California
corporation (Lease No. L-7497)

By _____

Its _____

Dated: _____

Pollack Group Ltd., (Lease No. L-7492)

By _____

Its _____

Dated: _____

Frank L. Sabella, Thomas LaTorre and Frank Raymond
Sabella (Lease No. L-7499)

By _____
Frank L. Sabella

By _____
Thomas LaTorre

By _____
Frank Raymond Sabella

Dated: _____

Cresci Brothers, Incorporated, a California corporation
(Lease No. L-7494)

By _____

Its _____

Dated: 8-26-95

Guardino's Souvenir & Gift Shop, Inc., a California
corporation (Lease No. L-7497)

By Salvatore Guardino

Its Pres-Treas.

Dated: _____

Pollack Group Ltd., (Lease No. L-7492)

By _____

Its _____

Dated: _____

Frank L. Sabella, Thomas LaTorre and Frank Raymond
Sabella (Lease No. L-7499)

By _____
Frank L. Sabella

By _____
Thomas LaTorre

By _____
Frank Raymond Sabella

Dated: _____

Cresci Brothers, Incorporated, a California corporation
(Lease No. L-7494)

By _____

Its _____

Dated: _____

Guardino's Souvenir & Gift Shop, Inc., a California
corporation (Lease No. L-7497)

By _____

Its _____

Dated: 8/26/95

Pollack Group Ltd., (Lease No. L-7492)

By [Signature]

Its President

Dated: _____

Frank L. Sabella, Thomas LaTorre and Frank Raymond
Sabella (Lease No. L-7499)

By _____

Frank L. Sabella

By _____

Thomas LaTorre

By _____

Frank Raymond Sabella

Dated: _____

Cresci Brothers, Incorporated, a California corporation
(Lease No. L-7494)

By _____

Its _____

Dated: _____

Guardino's Souvenir & Gift Shop, Inc., a California
corporation (Lease No. L-7497)

By _____

Its _____

Dated: _____

Pollack Group Ltd., (Lease No. L-7492)

By _____

Its _____

Dated: _____

Frank L. Sabella, Thomas LaTorre and Frank Raymond
Sabella (Lease No. L-7499)

By Frank L. Sabella
Frank L. Sabella

By Thomas LaTorre
Thomas LaTorre

By Frank R. Sabella
Frank Raymond Sabella

Dated: 8/29/95

Tarantino's Inc., a California corporation (Lease No. L-7500)

By

Timothy J. McDonald

Its

V.B.

Dated: _____

Andrew R. Lolli, Dr. Maurice Mann, and Lolman Enterprises, Inc. (Lease No. L-7493)

By _____

Andrew R. Lolli

By _____

Dr. Maurice Mann

By _____

Lolman Enterprises, Inc.

Dated: _____

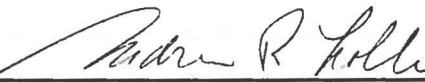
Tarantino's Inc., a California corporation (Lease No. L-7500)

By _____

Its _____

Dated: 8/28/95

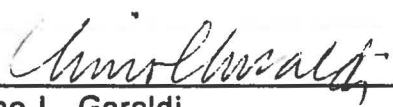
Andrew R. Lolli, Dr. Maurice Mann, and Lolman Enterprises, Inc. (Lease No. L-7493)

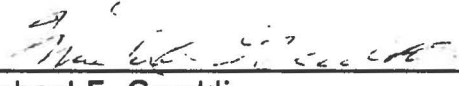
By 
Andrew R. Lolli

By _____
Dr. Maurice Mann

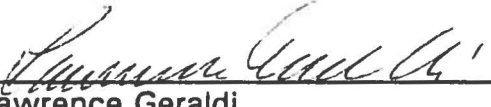
By _____
Lolman Enterprises, Inc.

Dated: AUGUST 29, 1996 Nino L. Gerald, Michael F. Gerald, Alphonse B. Gerald,
Lawrence Gerald, and Josephine Gerald, dba
Fisherman's Grotto, a co-partnership (Lease No. L-
7498)

By 
Nino L. Gerald

By 
Michael F. Gerald

By _____
Alphonse B. Gerald

By 
Lawrence Gerald

By _____
Josephine Gerald

PORT

Dated: _____

PORT OF SAN FRANCISCO

By _____
DENNIS P. BOUEY
Executive Director

G:\JVN\LETTERS\REUB4A.LTR

PORT OF SAN FRANCISCO



April 19, 1995

General Andrew Lolli
Castagnola's
Fisherman's Wharf
San Francisco, CA 94133

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

Re: Lease No. L-7493 ("Lease"), by and between Port of San Francisco ("Port"), and Andrew R. Lolli, Dr. Maurice Mann, and Lolman Enterprises, Inc. ("Tenant")

Dear General Lolli:

Under the above-referenced Lease, the Port is required to review and set the percentage rent periodically during the term to reflect the percentages for like uses in San Francisco in the vicinity of the leased premises. The next anniversary date on which the percentage rent is to be set under the Lease is May 1, 1995.

In order to facilitate continuing dialogue between Port tenants and the Port regarding the percentage rent adjustments, Port and Tenant, by acknowledging below, hereby stipulate that the Port's May 1, 1995 deadline for setting percentage rents shall be extended through June 30, 1995, **subject to all of the following terms and conditions:**

1. Port shall set the new percentage rent pursuant to the terms of the Lease at any time between the date hereof and June 30, 1995.

2. The new percentage rent set by Port and agreed by Tenant, shall be retroactive to May 1, 1995. In the event the new percentage rent results in an increase to the existing percentage rent, Tenant shall pay such increased amount retroactive to May 1, 1995, within thirty days after the new percentage rent has been agreed to by Port and Tenant. In the event the new percentage rent results in a decrease in percentage rent, Port shall refund any overpayment by Tenant retroactive to May 1, 1995, within thirty days after the new percentage rent has been agreed to by Port and Tenant.

3. By extending the deadline to set percentage rent from May 1, 1995 through June 30, 1995, neither Port nor Tenant waives their respective rights under the Lease, including Port's right to increase or decrease percentage rent in accordance with the applicable Lease provisions, and Port and Tenant agrees that they shall not claim or allege that the other has waived any such rights.

General Andrew Lolli
April 20, 1995
Page 2

4. Except for the extension of the deadline for setting percentage rent, all other terms and conditions of the Lease remain in full force and effect and unchanged.

— If you agree with all of the terms and conditions of this letter extending the deadline for setting the percentage rent, please acknowledge this letter where indicated below, and return the fully executed letter to me.

Very truly yours,

PORT OF SAN FRANCISCO



Frederick D. White
Director, Tenant and Maritime Services

ACKNOWLEDGED AND AGREED

"TENANT"


By:

Date: 4/21/95

1 DAVID CHIU, State Bar #189542
City Attorney
2 JENNIFER E. CHOI, State Bar #184058
Chief Trial Deputy
3 ABIGAIL H. WALD, State Bar #309110
Deputy City Attorney
4 Fox Plaza
1390 Market Street, Sixth Floor
5 San Francisco, California 94102-5408
Telephone: (415) 554-3901
6 Facsimile: (415) 554-3837
E-Mail: abigail.wald@sfcityatty.org
7

8 Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

13 CITY AND COUNTY OF SAN FRANCISCO
BY AND THROUGH THE SAN
14 FRANCISCO PORT COMMISSION,

15 Plaintiff,

16 vs.

17 CASTAGNOLA, INC. OF SAN
FRANCISCO, A CAL. CORP.; KATHRINE
18 HIGDON, AN INDIVIDUAL; LOLMAN
ENTERPRISES, INC. A CAL. CORP.;
19 CYNTHIA FOXWORTH, AN INDIVIDUAL;
DOES 1-50,
20

21 Defendants.
22

Case Nos. CUD-24-674725
CGC-23-606678

**STIPULATION FOR ENTRY OF JUDGMENT
UPON CONDITION**

Date Action Filed: April 3, 2024
Trial Date: Not Set

23 RECITALS

24 This Stipulation for Entry of Judgment upon Condition (hereinafter referred to as “Stipulated
25 Judgment”) is entered into by and between Plaintiff City and County of San Francisco by and through
26 the San Francisco Port Commission (“**Plaintiff**”) and Defendants Castagnola, Inc. of San Francisco
27 and Lolman Enterprises, Inc. (together, “**Stipulating Defendants**”), who are the sole remaining
28

1 occupants of Port of San Francisco premises located at 286 Jefferson Street, in San Francisco,
2 California (hereinafter referred to as the “**Premises**”), as further described in Lease No. L-7493 (as
3 assigned, amended, and transferred, the “**Castagnola Lease**”), which is the subject of the above-
4 captioned actions. The Parties also entered into Lease No. L-13524 (the “**Storage Lease**”), and
5 Application for San Francisco Port Commission Parking Permit (the “**Parking Permit**”) (collectively,
6 the “**Agreements**”), which are also the subject of one of the above-captioned actions. Defendants,
7 Kathrine Higdon and Cynthia Foxworth, have expressly disclaimed and otherwise waived any and all
8 right, title, and interest in the Castagnola Lease through fully executed and notarized quitclaim deeds
9 and are no longer tenants of the Premises.

10 Whereas, Stipulating Defendants wish to remain as tenants of the Premises for the remainder of
11 the applicable Castagnola Lease term or until a valid transfer of the Castagnola Lease can be
12 effectuated (whichever is sooner), and to settle these two actions without further litigation pursuant to
13 the terms of that certain Settlement Agreement and Release that was entered into on May __, 2025
14 (“**Settlement Agreement**”), attached hereto as **Exhibit A**, Plaintiff and Stipulating Defendants,
15 through their respective counsel, do hereby stipulate to the following:

16 1. Stipulating Defendants may remain in possession of the Premises for the remainder of
17 the applicable Castagnola Lease term, subject to the terms of the Castagnola Lease and the Settlement
18 Agreement.

19 2. As of the date of this Stipulated Judgment, there is no restaurant operating on the
20 Premises, in violation of Section 6 of the Castagnola Lease. Stipulating Defendants must reopen the
21 Premises as a restaurant, as further explained in the Settlement Agreement, within three hundred sixty-
22 five days of the full and final execution of the Settlement Agreement (the “**Reopening Deadline**”).
23 Upon written request by Stipulating Defendants, Plaintiff may, in its sole and absolute discretion and
24 subject to conditions described in the Settlement Agreement, extend the Reopening Deadline for up to
25 one year.

26 3. As of January 1, 2025, the monthly base rent for the Premises is \$25,741.15, which
27 amount is scheduled to increase periodically pursuant to the terms of the Castagnola Lease. Such rent
28 continues to be due monthly, and the monthly amount due in rent will increase on August 1, 2025

pursuant to the terms of the Castagnola Lease. The parties stipulate that Plaintiff will defer collection of such monthly base rent from February 1, 2025 through the Reopening Deadline (“**Deferred Rent**”). Beginning on the first day of the thirteenth month after execution of the Settlement Agreement, payment of rent must be delivered on the first day of the month or postmarked by the first day of the month, and rent payments must continue to be made pursuant to the terms of the Castagnola Lease. In the event that the Reopening Deadline is extended, upon written request by Stipulating Defendants, Plaintiff may, in its sole and absolute discretion and subject to conditions described in the Settlement Agreement, further extend the deferred collection of rent for up to one year.

4. The parties stipulate that Stipulating Defendants will pay Plaintiff a compromised settlement of past due rent in the total amount of \$300,000.00 (“**Settlement Fee**”). Stipulating Defendants will pay Three Hundred Thousand Dollars (\$300,000) in up to two payments: an “**Initial Payment**” of Two Hundred Thousand Dollars (\$200,000) prior to Port’s execution of this Agreement, and a “**Final Payment**” of One Hundred Thousand Dollars (\$100,000) on or before the day that is one hundred eighty (180) calendar days from Port’s execution of the Settlement Agreement. The Settlement Fee shall be paid in certified check or electronic funds transfer. The Settlement Fee will apply to fully satisfy Defendants’ outstanding debt under the Storage Lease and Parking Permit, and to reduce Defendants’ outstanding debt under the Castagnola Lease as of February 1, 2025, resulting in an outstanding balance of \$885,365.83 (“**Outstanding Balance**”) as shown in the table below:

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

1 5. The parties stipulate that in addition to payment of the Settlement Fee, Stipulating
2 Defendants will invest an amount equal to or greater than Nine Hundred Thousand dollars
3 (\$900,000.00) into the Premises prior to the Reopening Deadline (the “**Minimum Investment**”),
4 subject to the terms of the Settlement Agreement. In the event that the Reopening Deadline is
5 extended, as noted above and detailed in the Settlement Agreement, Plaintiff may, in its sole and
6 absolute discretion and subject to conditions described in the Settlement Agreement, extend the
7 deadline to make the Minimum Investment for up to one year.

8 6. Except as revised by the Settlement Agreement and this Stipulated Judgment, all other
9 terms and conditions of the Castagnola Lease remain in effect.

10 7. In the event Stipulating Defendants default on one or more of the obligations under the
11 terms of either the Settlement Agreement or the Castagnola Lease, for example, by failing to pay the
12 Final Payment of the Settlement Fee, failing to make the Minimum Investment, or failing to open the
13 restaurant by the Reopening Deadline, each as noted in the paragraphs above and detailed in the
14 Settlement Agreement, Stipulating Defendants agree to receive notice of default exclusively in email
15 format from the Plaintiff allowing Stipulating Defendants thirty (30) days from the date of
16 transmission of the notice of default email, to cure the noticed default. Stipulating Defendants agree to
17 receiving written notice of default sent only by email to the following email addresses:
18 Yobrooks@comcast.net and tmurray@tamurraylaw.com. After thirty (30) days elapse from the date of
19 transmission via email of the notice of default, Plaintiff may seek an *ex parte* application to the San
20 Francisco Superior Court at the regularly scheduled time for hearing *ex parte* applications to seek
21 relief stipulated hereto and obtain entry of judgment against Stipulating Defendants and in favor of
22 Plaintiff for: (a) immediate possession of the Premises; (b) termination and forfeiture of any right,
23 privilege or tenancy under which Stipulating Defendants occupied and/or possessed the Premises; (c) a
24 joint and several money judgment against Stipulating Defendants equal to the Minimum Investment
25 amount, plus Deferred Rent, less any verified payments toward the Minimum Investment that
26 permanently improve the physical condition of the Premises (as more particularly detailed in the
27 Settlement Agreement), which determination shall be made by Plaintiff in its sole and absolute
28 discretion, plus holdover rent, holdover damages, and prejudgment interest; and (d) all attorneys’ fees

1 and costs to which the Plaintiff is entitled to under the terms of the Agreements, which may include
2 the attorneys' fees accumulated over the course of filing the underlying above-referenced actions that
3 cumulated in this Agreement.

4 8. The parties stipulate that if there is a default under this agreement, the Minimum
5 Investment and any rent or other outstanding debt (collectively, the "**Default Debt**") will incur default
6 interest of ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an
7 individual is permitted to charge under Law, which will continue to accrue until paid in full.

8 9. A default by Stipulating Defendants under the Settlement Agreement or the Castagnola
9 Lease, as modified by the Settlement Agreement, will be deemed a default by Stipulating Defendants
10 of the entire Settlement Agreement and the Castagnola Lease, and will be sufficient to trigger the
11 enforceability of this Stipulated Judgment in full.

12 10. The Parties stipulate that Plaintiff can establish a showing that Stipulating Defendants
13 are in default (*i.e.*, because they failed to (a) provide the Final Payment of the Settlement Fee, (b) pay
14 rent, (c) comply with the Reopening Deadline, and/or (d) comply with the Minimum Investment
15 obligation), and Plaintiff is therefore entitled to judgment, by submitting a declaration under penalty of
16 perjury by a qualified Deputy City Attorney who has been assigned as counsel to handle this matter on
17 behalf of Plaintiff, setting forth facts establishing that Defendants are in default. The parties further
18 agree that the Court may immediately authorize the issuance of a writ of possession and any monetary
19 judgment as specified in Paragraphs [7] and [8].

20 11. Within five (5) business days of the San Francisco Superior Court's approval of the
21 Stipulated Judgment and the filing of the same, Plaintiff shall file a Conditional Notice of Settlement
22 of the Entire Case ("**Notice of Settlement**"). The Notice of Settlement will indicate that Plaintiff will
23 move to voluntarily dismiss the above-referenced actions within twelve (12) months of the Restaurant
24 Reopening, provided that Stipulating Defendants have complied in full with all the terms set forth in
25 the Settlement Agreement, including but not limited to full compliance with all obligations in
26 Paragraph 6 of the Settlement Agreement.

27 12. Nothing in this Stipulated Judgment shall be construed to prevent Plaintiff from
28 bringing an action for enforcement of this Stipulated Judgment. The Parties hereby agree and stipulate

1 that the Court shall retain jurisdiction of this matter pursuant to Civil Code of Procedure section 664.6.
2 The parties hereby agree that this Stipulated Judgment will be filed with the Court in the pending
3 unlawful detainer action before the filing of dismissals or stipulated judgments noting this Stipulated
4 Judgment and requesting that the trial court retain jurisdiction pursuant to CCP section 664.6.

5 13. If Defendant is in breach of this Stipulated Judgment, Defendant will seek no stays of
6 eviction and none may be granted by the Court.

7 14. Defendant enters into this Stipulated Judgment free of fraud, menace, duress, or undue
8 influence and hereby waives all rights to challenge plaintiffs right to possession.

9 15. Parties acknowledge that they were advised by counsel throughout these settlement
10 negotiations and in the drafting of this stipulated judgment.

11 Dated: May 5, 2025

12 DAVID CHIU
13 City Attorney
14 JENNIFER E. CHOI
15 Chief Trial Deputy
16 ABIGAIL H. WALD
17 Deputy City Attorney

18 By: _____
19 ABIGAIL H. WALD

20 Attorneys for Plaintiff
21 CITY AND COUNTY OF SAN FRANCISCO

22 TODD MURRAY
23 Attorney for Castagnola, Inc. of San Francisco, Kathrine
24 Higdon, Lolman Enterprises, Inc. and Cynthia Foxworth

25 By: _____
26 TODD MURRAY

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

By: _____
Name: _____

Title: _____
Date Signed: _____

CASTAGNOLA, INC. OF SAN FRANCISCO,
a California corporation

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

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

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



MEMORANDUM

April 18, 2025

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

FROM: Elaine Forbes
Executive Director

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

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

EXECUTIVE SUMMARY

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

THIS PRINT COVERS CALENDAR ITEM NO. 7D

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

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

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

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

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

STRATEGIC PLAN ALIGNMENT

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

Economic Recovery

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

Equity

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

Evolution

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

Engagement

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

BACKGROUND

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

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

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

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

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

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

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

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

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

PROPOSED TERMS OF SETTLEMENT AGREEMENT

Negotiated settlement terms include the following:

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

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

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

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

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

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

STAFF ANALYSIS AND DISCUSSION

Port staff considered two paths to resolution.

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATION

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

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

For: Scott Landsittel, Deputy Director
Real Estate and Development

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

RESOLUTION NO. 25-23

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate, and control the Port area of the City and County of San Francisco; and
- WHEREAS, Castagnola, Inc. of San Francisco, a California corporation, (with its successors and assigns, "Tenant") leases premises under Lease L-7493 ("Lease") for premises at 286 Jefferson Street; and
- WHEREAS, Tenant was party to Storage Premises Lease L-13524 dated August 1, 2003, and terminated June 30, 2021, and Parking Permit dated February 15, 2007, and terminated effective June 30, 2021, both with balances due (collectively, the Storage Premises Lease L-15524, Parking Permit, and the Lease are referred to as the "Agreements"); and
- WHEREAS, Port commenced litigation against Tenant, including a civil action filed on May 22, 2023, seeking surrender of the Premises, all back rent under the Agreements, and compensation for failure to correct unsafe deferred maintenance (the "Civil Action"), and an unlawful detainer action filed on April 3, 2024 to see outstanding amounts owed and to regain possession of the restaurant Lease premises (the "Unlawful Detainer"); and
- WHEREAS, Port and Tenant now wish to agree on a settlement agreement that requires Tenant to: (1) pay a settlement fee totaling \$300,000 within 180 days of Port's execution of the agreement to resolve certain accounts and pay down debt under the Lease, (2) request construction permits for the restaurant Lease premises on or before six (6) months after Port's execution of the agreement, (3) commence construction on or before one (1) month after the building permit is issued, (4) invest into the Lease premises a sum equal to \$900,000, and (5) reopen the restaurant on or before one (1) year after Port executes the agreement, which dates may only be extended by the Port in its sole and absolute discretion for up to one year each, all as described in the memorandum accompanying this Resolution and more particularly detailed in the Settlement Agreement on file with the Commission Secretary (the "Settlement Agreement"); and
- WHEREAS, The Settlement Agreement requires approval by the Board of Supervisors; now, therefore be it
- RESOLVED, That the Port Commission approves the Settlement Agreement on file with the Commission Secretary, subject to approval by the Board of Supervisors; and be it further

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

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

DocuSigned by:

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

Secretary

2A9BEF9AAF934F9...



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 250484

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Don Kavanagh	415.274.0501
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PRT Port of San Francisco	don.kavanagh@gmail.com

5. CONTRACTOR	
NAME OF CONTRACTOR Castagnola, Inc. of San Francisco	TELEPHONE NUMBER 916.952.5194
STREET ADDRESS (including City, State and Zip Code) 286 Jefferson St., SF, CA 94133	EMAIL yobrooks@comcast.net

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 250484
DESCRIPTION OF AMOUNT OF CONTRACT \$0		
NATURE OF THE CONTRACT (Please describe) Settlement of \$1,123,884 in past due rent (as of February 2025) plus additional rent accrued through restaurant opening. Castagnola is contracting with an operator to reopen the restaurant, including a \$900,000 capital investment to resolve deferred maintenance. After reopening and payment of rent for six months, Port will dismiss active civil suit and unlawful detainer action and waive past due rent. Settlement terms include a stipulated judgement (awarding possession and monetary judgement) in case there is a default under settlement terms.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
☐	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
☒	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
☐	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Higdon	Katherine	Other Principal Officer
2	Foxworth	Cynthia	Other Principal Officer
3			
4			
5			
6			
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9. AFFILIATES AND SUBCONTRACTORS

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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50			

☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK

DATE SIGNED

BOS Clerk of the Board

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Boris Delepine, Port of San Francisco
DATE: May 16, 2025
SUBJECT: Settlement Agreement
GRANT TITLE: Castagnola's Restaurant

Attached please find the original* and 1 copy of each of the following:

☒ Proposed grant resolution; original* signed by Department, Mayor, Controller

☐ Grant information form, including disability checklist

☐ Grant budget

☐ Grant application

☐ Grant award letter from funding agency

☐ Ethics Form 126 (if applicable)

☐ Contracts, Leases/Agreements (if applicable)

☐ Other (Explain):

Special Timeline Requirements:

Departmental representative to receive a copy of the adopted resolution:

Name: Boris Delepine Phone: 415-571-6626

Interoffice Mail Address: Pier 1, The Embarcadero, San Francisco, Ca 94111

Certified copy required Yes ☐ No X

(Note: certified copies have the seal of the City/County affixed and are occasionally required by funding agencies. In most cases ordinary copies without the seal are sufficient).