

File No. 250689

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date July 23, 2025

Board of Supervisors Meeting Date _____

Cmte Board

☐	☐	Motion
☒	☐	Resolution
☐	☐	Ordinance
☐	☐	Legislative Digest
☐	☐	Budget and Legislative Analyst Report
☐	☐	Youth Commission Report
☒	☐	Introduction Form
☒	☐	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Subcontract Budget
☒	☐	Contract/Agreement
☒	☐	Form 126 – Ethics Commission
☐	☐	Award Letter
☐	☐	Public Correspondence

OTHER (Use back side if additional space is needed)

☒	☐	<u>Lease No. L-9170 2/11/1976</u>
☒	☐	<u>Lease No. L-9170 Amend No. 1 6/16/1983</u>
☒	☐	<u>Lease No. L-9170 Lease Assignment 3/1/1995</u>
☒	☐	<u>Lease No. L-9170 Amendment No. 3 4/23/2021</u>
☒	☐	<u>Lease No. L-9175 2/11/1976</u>
☒	☐	<u>Lease No. L-9175 Amend No. 1 5/7/1979</u>
☒	☐	<u>Lease No. L-9175 Amend No. 2 2/6/1995</u>
☒	☐	<u>Lease No. L-9175 Amend No. 3 4/23/2021</u>
☒	☐	<u>Lease No. L-9175 - Premises Map</u>
☒	☐	<u>PRT Memo 2/13/1997</u>
☒	☐	<u>PRT Commission Resolution No. 97-13 021397</u>
☒	☐	<u>PRT Memo and PRT Comm Reso No. 25-22 4/18/2025</u>
☒	☐	<u>PRT Presentation 7/23/2025</u>
☐	☐	_____

Completed by: Brent Jalipa Date July 17, 2025

Completed by: Brent Jalipa Date _____

1 [Mutual Termination Agreement of Real Property - Smokehouse - Scoma's Restaurant]

2
3 **Resolution authorizing the Executive Director of the Port of San Francisco to execute a**
4 **Mutual Termination Agreement with Scoma's Restaurant, Incorporated, a California**
5 **corporation for Port Lease No. L-9170 and Port Lease No. L-9175 between the Port of**
6 **San Francisco and Scoma's Restaurant, for premises along Al Scoma Way over bay**
7 **waters ("Smokehouse"), effective upon approval of this Resolution; and to authorize**
8 **the Executive Director of the Port of San Francisco to enter into amendments or**
9 **modifications to the Mutual Termination Agreement that do not materially increase the**
10 **obligations or liabilities to the City and are necessary to effectuate the purposes of this**
11 **Resolution.**

12
13 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,
14 Sections 4.114 and B3.581, empower the Port Commission with the power and duty to use,
15 conduct, operate, maintain, manage, regulate and control the Port area of the City and County
16 of San Francisco; and

17 WHEREAS, Scoma's Restaurant, Incorporated, a California corporation ("Tenant")
18 leases premises under Lease L-9170 and Lease L-9175 ("Leases") for premises along Al
19 Scoma Way over bay waters ("Smokehouse"); and

20 WHEREAS, Smokehouse was deemed unsafe and red-tagged in 2019 and the sub-
21 tenant subsequently ceased operating and despite Tenant's efforts Smokehouse continues to
22 deteriorate; and

23 WHEREAS, Tenant has no financial ability or willingness to redevelop Smokehouse or
24 when the Leases expire return Smokehouse in as-good-as-received condition or demolish it;
25 and

1 WHEREAS, The Leases expire on April 30, 2036, and have no early termination option
2 and Port and Tenant desire to terminate the leases before the natural expiration; and

3 WHEREAS, Port and Tenant now wish to agree on an orderly termination of the
4 Leases per the terms of the Mutual Termination Agreement on file with the Commission
5 Secretary (the "Mutual Termination Agreement"); and

6 WHEREAS, On April 22, 2025, through Resolution No. 25-22, the Port Commission
7 approved the Mutual Termination Agreement; and authorized the Executive Director or her
8 designee to execute it, and

9 WHEREAS, Among other things, the Mutual Termination Agreement paves the way to
10 demolish the Smokehouse, does not require payment of a termination fee due to the benefits
11 that accrue to Port and public by such demolition, and Tenant's continued performance of the
12 obligations of the Leases, particularly payment of rent and maintaining insurance coverage,
13 and continues to require that the Tenant perform under Tenant's other leases, all as more
14 particularly described in the Memorandum to the Port Commission dated February 21, 2025;
15 and

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

19 RESOLVED, That the Board of Supervisors approves the Mutual Termination
20 Agreement and authorizes the Port Executive Director or her designee to execute the Mutual
21 Termination Agreement of Port Lease No. L-9170 and Port Lease No. L-9175 between the
22 Port of San Francisco and the Tenant; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors approves the proposed Mutual
24 Termination Agreement and authorizes the Executive Director of the Port or her designee to
25 execute such Mutual Termination Agreement in substantially the same form as the Mutual

1 Termination Agreement on file with the Clerk of the Board of Supervisors in File No. 250689;
2 and, be it

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

11 FURTHER RESOLVED, That within thirty (30) days of the Mutual Termination
12 Agreement being fully executed by all parties, the Port shall provide a copy of the Mutual
13 Termination Agreement to the Clerk of the Board for inclusion into the official file.
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**MUTUAL TERMINATION AGREEMENT FOR
LEASE NO. L-9170 and LEASE NO. L-9175**

This Mutual Termination Agreement (“**Agreement**”), dated for reference purposes as of _____, 2025 (the “**Reference Date**”), is made and entered into by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the “**Port**”) and Scoma’s Restaurant, Incorporated, a California corporation (“**Tenant**”), hereinafter, collectively, the “**Parties**,” and individually, a “**Party**”.

RECITALS

A. On February 11, 1976, Port and United Shellfish Co. entered into Lease No. L-9170 for use of that certain real property located at Wharf J-7 in the City and County of San Francisco, as amended by the First Amendment dated June 16, 1983 for reference purposes; as assigned and amended by the Assignment and Amendment of Leases dated February 6, 1995; and, as amended by the Third Amendment dated April 23, 2021 for reference purposes (“**L-9170 Lease**”).

B. On February 11, 1976, Port and Joseph Svedise entered into Lease No. L-9175 for use of that certain real property located at Seawall Lot 301 in the City and County of San Francisco, as amended by the First Amendment dated May 7, 1979 for reference purposes, and as assigned and amended by the Assignment and Amendment of Leases dated February 6, 1995; and, as amended by the Third Amendment dated April 23, 2021 for reference purposes (“**L-9175 Lease**”).

C. The L-9170 Lease and the L-9175 Lease are collectively referred to as the “**Terminating Leases**”. The Terminating Leases commenced on April 1, 1975 and expire on April 30, 2036.

D. While not making any concessions on any underlying issues or potential disputes or making any admissions of any kind, the Parties now wish to cooperatively terminate the Terminating Leases and resolve any claims. Each of the Parties have determined that entering into this Agreement is in their respective best interests.

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

AGREEMENT

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

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

3. Effective Date; Lease Termination Date.

3.1. This Agreement is subject to the approval of the San Francisco Port Commission (the “**Port Commission**”) and the San Francisco Board of Supervisors (the “**Board of Supervisors**”), each in its sole discretion. Notwithstanding anything to the contrary contained in this Agreement, Tenant acknowledges and agrees that any obligations or liabilities of City under this Agreement are contingent upon a duly adopted resolution of the Port Commission and the Board of Supervisors approving this Agreement, each in its sole discretion, and this Agreement will never become effective (i.e., the MTA Effective Date, as defined below, will not occur) and will be null and void if such approval bodies do not approve this Agreement and the Port does not sign this Agreement by the Outside Date (as defined below).

3.2. The Parties agree that Port has no obligation to present this Agreement to the Port Commission for its consideration until and unless all of the following conditions are satisfied:

(a) Tenant has delivered to Port its counterpart original executed signatures to this Agreement;

(b) Tenant has delivered to Port an executed estoppel certificate for the Terminating Leases as further described in **Section 6 (f)**;

(c) Tenant is not in default under the terms of its leases not subject to this Agreement which are: L-8996 (Restaurant), L-9174 (Storage), License No. 16926 (Outdoor Dining), License No. 9959 (Parking) and TRF 013 (landing fees) (collectively, the “**Continuing Port Leases**”).

Upon satisfaction of each of the foregoing requirements, Port staff will use commercially reasonable efforts to calendar this Agreement for the next regularly scheduled Port Commission meeting for Port Commission consideration and proposed approval of this Agreement and, upon approval of this Agreement by the Port Commission, Port staff will use commercially reasonable efforts to calendar this Agreement for Board of Supervisors consideration as soon as practicable, for its consideration and proposed approval of this Agreement.

3.3. The “**MTA Effective Date**” of this Agreement means the effective date of this Agreement and is the date of Port’s signature as indicated in the Port’s signature block below, which date must be after Port Commission and Board of Supervisors approval of this Agreement, each in its sole discretion. Unless extended by the mutual written agreement of the Parties, if the MTA Effective Date has not occurred by October 1, 2025 (the “**Outside Date**”), this Agreement shall terminate automatically and be null and void, and the Parties will have no obligations to each other hereunder.

3.4. The final termination date of the Terminating Leases (the “**Lease Termination Date**”) is the earlier of (i) the day before Port commences demolition of the premises covered by the Terminating Leases and is otherwise in compliance with the terms and conditions of this Agreement or (ii) December 31, 2025, and is otherwise in compliance with the terms and conditions of this Agreement. Promptly following the Lease Termination Date, Port and Tenant shall execute a countersigned memorandum confirming the Lease Termination Date, but either Party's failure to do so shall not affect the termination of the Terminating Leases. The Parties acknowledge the Port’s right of entry onto the Premises for the purpose of reasonable inspection and inventory, and when otherwise deemed reasonably necessary for the protection of its interests. The entry onto the Premises for the purpose of staging equipment or materials for the purpose of later demolition shall constitute the Port commencing demolition of the Premises covered by the Terminating Leases, under clause (i) above.

3.5. The Parties will reasonably consider, but shall not be obligated to modify the terms of this Agreement to address issues and concerns raised by the Port Commission or the Board of Supervisors.

4. Outstanding Rent.

4.1. As of April 1, 2025, there is no balance due from Tenant to Port under the Terminating Leases. Provided Tenant complies with all the terms and conditions of this Agreement and the Terminating Leases up to and including the Lease Termination Date, including without limitation, rent payments (subject to section 4.2) and all other amounts due to Port, and Tenant’s release of Port, all as described in this Agreement, Port agrees to refund or credit the security deposit under the Terminating Leases to Tenant’s account of its choosing.

4.2. Tenant’s obligation to pay Rent under the Terminating Leases shall terminate on the MTA Effective Date.

4.3. If Tenant fails to timely comply with all the terms and conditions of this Agreement, and the security deposits are not enough to pay off any balance due or Tenant refuses to pay off any balance due, and Tenant does not cure such failure after notice and a reasonable opportunity to cure, then this Agreement shall be null and void, all Rent, late charges and interest will continue to accrue after the Lease Termination Date, and Port will have all remedies available under the Terminating Leases under law to pursue any outstanding Rent, late charge and interest and any other defaults of Tenant under the Terminating Leases. For the avoidance of doubt, if Tenant fails to timely comply with all the terms and conditions of this Agreement, then Port may pursue all remedies at equity or law including, but not limited to, unlawful detainer and civil litigation.

5. Surrender Condition of the Premises.

5.1. No later than the Lease Termination Date, Tenant will surrender the Premises in their as-is condition, free of loose Hazardous Materials (including but not limited to the removal and disposal of all waste, bottles, perishables, condiments, and any other items not affixed to the Premises) and free and clear of all liens and encumbrances, excluding liens and encumbrances (i) created by or through Port, (ii) existing prior to the commencement date of the Terminating Leases, and (iii) as otherwise required in the Terminating Leases. At mutually agreeable times prior to the Lease Termination Date and as close as possible to the Lease Termination Date, the Parties will conduct a joint inspection of the Premises to review the surrender condition of each of the Premises and identify any and all conditions of the Premises which do not meet the requirements of this section.

5.2. As of the MTA Effective Date and as of the Lease Termination Date, each of the Parties acknowledges there are material conditions at the Premises rendering the Premises unsafe and that major portions of the Premises are “red-tagged”. Tenant shall have no obligation from and after the MTA Effective Date to make any repairs or improvements to the Premises.

5.3. Any items that remain at the Premises as of the Lease Termination Date shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of any such personal property remaining on the Premises, and Tenant’s waiver of all claims in **Section 8** includes claims against Port for any damages resulting from Port’s retention, removal and/or disposition of such personal property. Tenant agrees that Port may elect to sell Tenant’s personal property remaining on the Premises and retain any revenues therefrom without notice to Tenant and without compliance with the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.

6. Obligations of the Parties Prior to Termination of the Terminating Leases. From and after the MTA Effective Date and through the Lease Termination Date, the Port and Tenant shall each comply with all of the terms and conditions of this Agreement and the Leases, as material consideration for this Agreement and as a condition precedent for any performance by the other Party under this Agreement. More specifically, with respect to Tenant, and as a condition to the obligation of the Port to perform its obligations under this Agreement, Tenant agrees as follows:

(a) Financial Obligations. Other than the obligation to pay Rent (as defined in the Terminating Leases) and to make any repairs or improvements to the Premises, which shall abate as provided in Sections 4.2 and 5.2, Tenant shall continue to comply with its financial obligations hereunder and under the Terminating Leases through the Lease Termination Date.

(b) Third Party Payments. Tenant shall be responsible for all services provided to the Premises by all contractors, third party vendors and utility providers for which Tenant is legally obligated under the Terminating Leases until the Lease Termination Date.

(c) Insurance. Until the Lease Termination Date, Tenant shall obtain and maintain insurance coverage in the same amounts and types as required in the Terminating Leases.

(d) **Permits.** Tenant will reasonably cooperate as needed to ensure all regulatory permits and ongoing third-party contractual obligations relating to the Terminating Leases are disclosed and assigned to Port as appropriate. Tenant is not aware of any such regulatory permits affecting the Premises.

(e) **Tenant Representations and Warranties.** As of the Reference Date and as of the Lease Termination Date, Tenant represents and warrants to Port that:

(i) Tenant has or will have paid for all goods, materials, or services provided by contractors, third party vendors and utility providers for goods, materials, or services provided to each Premises, which are legally due, until the Lease Termination Date;

(ii) Tenant holds only regulatory permits and third-party contracts related to operation of the restaurant and there are no regulatory permits issued by the state or federal government with respect to the Premises that must be maintained by Tenant absent restaurant operations;

(iii) To Tenant's actual knowledge, the undersigned is not in default or in breach of the Terminating Leases or the Continuing Port Leases (collectively with the Terminating Leases, the "**Port Leases**") , nor has the undersigned, to its knowledge, committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Port Leases;

(iv) Tenant holds title to the personal property located on the Premises free of any liens, encumbrances or interests;

(v) To its knowledge, (a) Tenant did not handle Hazardous Materials (except *de minimus* amounts thereof or as lawfully stored and maintained in amounts of such substances as are reasonable and customary for Tenant's business), and (b) there is no existing presence, release or threatened release of hazardous materials or environmental contamination on, under or about the Premises as of the Lease Termination Date; and

(vi) There are is no pending liabilities, claims for damages, or suits, or to Tenant's knowledge, threatened claim or suit, against Tenant for or by reason of any injury or injuries to any person or persons or property in any way connected with any of the Premises or the Terminating Leases.

Tenant acknowledges and agrees that its representations and warranties in this Agreement are material and with the intent that Port will fully rely on them in entering this Agreement. From the MTA Effective Date and continuing until the Lease Termination Date, Tenant agrees to notify Port immediately of the occurrence of any event or the discovery of any fact that, to its knowledge, would make any representation contained in this Agreement inaccurate as of the date made. Tenant's liability for a breach of a representation and warranty made hereunder shall extend for a period of twelve (12) months from the Lease Termination Date.

(f) **Estoppel Certificates.** The Parties agree that Port has no obligation to execute this Agreement until Tenant executes and delivers to Port an estoppel certificate in the form attached hereto as **Exhibit B** for the Terminating Leases. No sooner than three (3) days prior to the actual Lease Termination Date, Tenant must provide an updated estoppel certificate in the form attached hereto as **Exhibit B** for the Terminating Leases. The obligation to accurately complete the Estoppel Certificate is a condition precedent for Port's performance of all terms under this Agreement. Any misrepresentation or omission by Tenant in the Estoppel Certificate constitutes an unexcused failure to comply with a material condition precedent, regardless of whether the misrepresentation or omission was intentional.

7. Intellectual Property and Removal of Signage. Tenant has no obligation to transfer any intellectual property to Port, which remains the sole property of Tenant. Accordingly, Tenant, at its sole cost and expense, must remove and properly dispose of all branded signage it wants to

keep, in and around the Premises no later than the Lease Termination Date. If signage remains on the Premises as of the Lease Termination Date, then Tenant agrees that such signage will be deemed abandoned property as described in Section 5.3 and Port may take any and all actions described in such section, including the destruction, disposal, or sale of any signage. Tenant further releases any and all Claims (as defined below) related to the use, destruction, disposal or sale of any signage that remains on or around the Premises as of the Lease Termination Date.

8. Tenant Release. Provided that the Port complies with the terms and conditions of this Agreement, except with respect to its rights under this Agreement and to claims in connection with possessory interest taxes and personal property taxes which claims have not otherwise been waived or expired, to the maximum extent allowed by law, Tenant, in its own capacity and on behalf of its partners, members, officers, employees, owners, successors, and assigns, if any, hereby agrees to fully and forever release and discharge the City and County of San Francisco, together with its elective and/or appointive boards, servants, employees, departments, commissioners, officers, successors, and assigns, including without limitation the San Francisco Port Commission (collectively, the “**Released Parties**”) from any and all claims, actions, causes of action, liabilities, damages, demands, attorneys’ fees, expenses and costs (including without limitation court costs) (“**Claims**”) of any kind or nature whatsoever, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions set forth or alleged in this Agreement, the Terminating Leases, or any correspondence or documentation related to this Agreement or the Terminating Leases, each as of the Lease Termination Date.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to the Claims released in this Agreement, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

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

Initials: _____
Tenant

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

9. Port Release. Except as expressly provided below and provided that Tenant complies with the terms and conditions of this Agreement, to the maximum extent allowed by law, the San Francisco Port Commission, in its own capacity and on behalf of its commissioners, officers, successors, and assigns, hereby agrees to fully and forever release and discharge Tenant, together with its partners, members, officers, employees, owners, successors, and assigns, if any, from the following Claims which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions set forth or alleged in this Agreement, the Terminating Leases or any correspondence or documentation related to this Agreement or the Terminating Leases, each as of the Lease Termination Date: (1) any Claim by Port for outstanding Rent, and (2) subject to the immediately following sentence, any Claim in favor of Port arising under the Terminating Leases for which the Port releasors had actual or constructive knowledge (collectively, “**Released Claims**”) to the extent such loss or damage from a Released Claim is not covered by insurance

which was required to be maintained by Tenant under the Terminating Leases or is otherwise actually covered by insurance obtained by Tenant. Released Claims do not include Claims filed by Tenant; Port reserves any and all defenses it may have to Claims filed by Tenant. Notwithstanding anything to the contrary in this Agreement, the Released Claims do not include any claims by Port in connection with possessory interest taxes and personal property taxes which claims have not otherwise been waived or expired or claims for payment for utility services provided to the Premises.

Port understands and expressly accepts and assumes the risk that any facts concerning the Released Claims might be found later to be other than or different from the facts now believed to be true and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to the Released Claims, Port waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

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

Initials: _____
Port

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

10. No Representation or Warranty by Port. Except as explicitly stated herein, nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

11. Rights Are Cumulative. Except as may otherwise be provided herein, all liabilities and the rights and remedies of either Party as set forth in this Agreement shall be cumulative and in addition to any and all other rights or remedies of each Party now or later allowed by applicable law or in equity. No Implied Waiver. No failure by either Party to insist upon the strict performance of any obligation of the other Party under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and during the continuance of any such breach shall constitute a waiver of such breach or of the Party's rights to demand strict compliance with such term, covenant or condition. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Agreement.

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

13. Litigation Expenses. The Prevailing Party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other Party by reason of a claimed default, or otherwise arising out of a Party's performance or alleged non-performance under this Agreement shall be entitled to recover from the other Party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or

not such action is prosecuted to judgment. "**Prevailing Party**" within the meaning of this Section shall include, without limitation, a Party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other Party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this Agreement, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

14. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Agreement are superseded in their entirety by this Agreement. No prior drafts of this Agreement or changes between those drafts and the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any Party or other person, and no court or other body should consider such drafts in interpreting this Agreement.

15. Miscellaneous. This Agreement shall bind, and shall inure to the benefit of, the successors and assigns of the Parties hereto. This Agreement is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third-party beneficiary of otherwise. This Agreement may be executed in counterparts with the same force and effect as if the Parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Agreement that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. In the event of any inconsistencies between the terms of this Agreement and the Terminating Leases, the terms of this Agreement shall prevail. Time is of the essence of this Agreement. 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. This Agreement has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, the provisions of this Agreement must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the Parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this Agreement.

16. California Law; Venue. This Agreement is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall 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.

17. Leases in Full Force and Effect. Until the Lease Termination Date, except as otherwise provided in this Agreement, this Agreement shall not be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Terminating Leases by either Party.

[SIGNATURES ON FOLLOWING PAGE]

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

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

By: _____
Scott Landsittel
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **SCOMA'S RESTAURANT, INCORPORATED,**
a California corporation

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

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

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Name: A. Mathai-Jackson
Deputy City Attorney

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

Port Commission Reso. 25-22, approved April 22, 2025
Board of Supervisors Reso. ____-25, approved [insert date]

EXHIBIT B
FORM ESTOPPEL CERTIFICATE

The undersigned ("**Undersigned**") hereby certifies, represents and warrants as of _____, 2025 to THE CITY AND COUNTY OF SAN FRANCISCO OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION ("**Port**"), the following in this estoppel certificate (this "**Certificate**"):

1. The Undersigned certifies, represents and warrants:

(a) That there is presently in full force and effect (i) Lease No. L-9170 dated as of February 11, 1976, as amended by the First Amendment dated June 16, 1983 for reference purposes; as assigned and amended by the Assignment and Amendment of Leases dated February 6, 1995; and, as amended by the Third Amendment dated April 23, 2021 for reference purposes (the "**L-9170 Lease**") between the Undersigned and Port, covering the real property described therein having an address at SWL 302, Al Scoma Way, as further described in the Lease (the "**L-9170 Premises**"), and (ii) Lease No. L-9175 dated as of February 11, 1976, as amended by the First Amendment dated May 7, 1979 for reference purposes, and as assigned and amended by the Assignment and Amendment of Leases dated February 6, 1995; and, as amended by the Third Amendment dated April 23, 2021 for reference purposes (the "**L-9175 Lease**") between the undersigned and the Port covering the real property described therein having an address at SWL 302, Al Scoma Way, as further described in the Lease (the "**L-9175 Premises**"). The L-9170 Lease and the L-9175 Lease are collectively, the "**Agreements**"

(b) That the Agreements represent the entire agreement between Port and the Undersigned with respect to the Property.

(c) That both the L-9170 Lease and the L-9175 Lease commenced on April 1, 1975 and that both expire on April 30, 2036.

(d) That the present minimum monthly Base Rent under the L-9170 Lease is \$330.73 and \$2,579.91 under the L-9175 Lease.

(e) That the present Security Deposit under the L-9170 Lease is \$249.57 and \$2,579.91 under the L-9175 Lease; and, Port holds no other deposit from the Undersigned for security or otherwise.

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

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

4. From the date of this Certificate and continuing until the Lease Termination Date (as defined in the Mutual Termination Agreement for L-9170 Lease and L-9175 Lease), the Undersigned agrees to notify Port immediately of the discovery of any fact or occurrence that, to its knowledge, would make any representation contained in this Certificate inaccurate as of the date made.

SCOMA'S RESTAURANT, INCORPORATED, a California corporation

By: _____

Name: _____

Title: _____

Item 25-0689: Scoma's Mutual Termination Agreement

Request approval of a Mutual Termination Agreement with Scoma's Restaurant, Incorporated for Lease No. L-9170 and Lease No. L- 9175 for Premises at Al Scoma Way SWL 302 San Francisco, CA 94111, subject to Board of Supervisor's approval

July 23, 2025

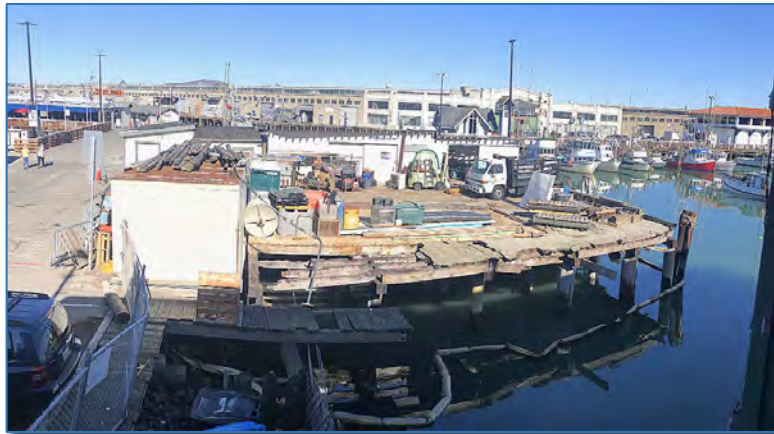
Presented by: Scott Landsittel, Deputy Director, Real Estate & Development



Smokehouse Summary - Scoma's Leases L- 9170 and L-9175



Circa 2019



Summer 2024

In 2019, the Smokehouse was designated as unsafe (red-tagged) and is not financially feasible to repair. Port and Scoma's arrived an agreement to terminate the Smokehouse leases as follows:

- No termination fee is required due to the benefits derived for Port Real Estate, Resilience, and Planning purposes
- Scoma's obligation to pay rent terminates on full execution of the mutual termination agreement, saving Scoma's approximately \$480,000 over the 11 years remaining in the lease.
- The day before demolition commences both leases will be terminated. This structure was negotiated to reduce Port's liability before demolition commences.
- The removal of the structures will ease Wharf J-9 Phase 2 construction issues for improvements to Al Scoma Way and a new raised seawall protecting against sea level rise and earthquake risk.

REFERENCE DATE: 2/11/76

ID: L-9170

TENANT A: United Shellfish
Company

TENANT/No.: 062440

RESOLUTION: Original --(Minutes)
1st Amend 83-23 (6/16/83-Substitute
Site

USE: Wholesale fish processing fish,
storage, marine food preparation

BOARD SUPV. ORD: 1st Amendment 268-83(5/16/83)

CONTACT: Joseph Svedise

TITLE: Owner

PHONE: 474-6845

LEGAL: Joseph Svedise,
dba, United Shellfish Co.

NOTICES: Pier 47, Foot of Jones Street
San Francisco, California 94133

BILLING ADDRESS: Pier 47, Foot of
Jones Street
San Francisco, CA.
94133

PREMISES & LOCATION: ~~276 Square Feet Wharf J-7 (Fish Alley Vicinity) in front of~~
~~Seema's Restaurant.~~ Out per Amend #1 (6/16/83)
Substitute Site: 339 Sq. Ft. Wharf ~~26~~ J6

TERM: 61 Years (4/1/75-4/30/2036)

OPTION: None

RENT: a) Next 5 years (4/1/80-3/31/85) @\$86.40
Next 5 years (4/1/85-3/31/90) @\$

b) CPI Adjustment every 5 years (next 4/1/85)
with base being quarter ending March 1975 @156.0

CANCELLATION: Failure on the part of tenant to submit working drawings by April 30,
1980 and specifying a time schedule for improvements.

DEPOSIT: One month's rent (as adjusted)

UTILITIES:

Supplier

Payment

Systems
Repairs

Fixtures
Repairs

(All by Tenants)

MAINTENANCE
& REPAIR

Premises - Good operating condition by Tenant; to be surrendered in "as-good-
as-received" condition

Substructure - Port not responsible "force majeure" premises; tenant to main-
tain as needed

JANTORIAL: By tenant

TAXES: By tenant

HOLD HARMLESS: Tenant to hold Port harmless

LIABILITY INSURENCE: \$500,000/\$1,000,000 - \$100,000

FIRE INSURANCE: 90% replacement (15 days cancellation); income protection

SUBLEASE: Only prior written consent of Port and only for fish processing purposes

ASSIGNMENT: Only by prior written consent of Port, and only for fish processing pur-
poses.

SPECIAL: 1) Conduct business to preserve and enhance fishing oriented uses at the
Wharf.

Amend #1:

- 1) Port reserves access for utilities
- 2) Purpose of amendment to relocate icehouse: ALL AT NO PORT EXPENSE.

L-9170

INDEX

	<u>Page</u>
1. Letting	1
2. Rental.	1
3. Guarantee Deposit	2
4. Default and Re-entry	3
5. Use of Premises	6
6. Requirement that Premises be Used	6
7. Maintenance of Improvements and Atmosphere	7
8. Alterations and Improvements	8
9. Prohibited Uses	9
10. Assignment and Subletting	10
11. Security Interests	10
12. Insolvency	13
13. Comprehensive Public Liability Insurance	14
14. Indemnification	15
15. Waiver of Claims	15
16. Liens	16
17. Fire Insurance	16
18. Taxes	19
19. Compliance with Law	19
20. Entry	19
21. Condemnation	19
22. Maintenance by Tenant	21
23. Nondiscrimination Provisions	23
24. Waiver of Breach	23
25. Successors	24

	<u>Page</u>
26. Modification of Lease	24
27. Holding Over	24
28. Quit Claim	25
29. Mineral Reservation	25
30. Notices	25
31. Time is of Essence	26
32. Captions	26

THIS LEASE, made on the 11th day of February, 1976 between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the SAN FRANCISCO PORT COMMISSION, hereinafter called "PORT," Landlord, and JOSEPH SVEDISE, doing business as UNITED SHELLFISH CO., hereinafter called "TENANT;"

WITNESSETH:

1. Letting. PORT hereby leases 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 incorporated herein by this reference, and all replacements of and additions to said improvements made during the term to have and to hold for the term of sixty-one (61) years, commencing on April 1, 1975, and terminating April 30, 2036. Said real property and the improvements thereon, and all replacements thereof and additions thereto, are hereinafter collectively called the "leased premises."

2. Rental. TENANT agrees to pay to PORT a ground rental for that area described in Exhibit "A" for the first five (5) years of the term hereof in the amount of \$56.00 per month, payable in advance on the first day of each month. (If TENANT goes into occupancy, or if this lease commences on other than the first day of month, the rent for that month will be apportioned as the number of days of occupancy bears to the month. The anniversary date

of this lease will, however, in that case, be the first day of the month following the date of actual occupancy. If the lease commences on the first of the month the anniversary date will be that date). At the end of the fifth year of the lease, and at the end of every five-year period thereafter, the ground 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; 1967 = 100), 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 March 1975, and the parties agree that the index was 156.0 for that month.

3. Guarantee Deposit. TENANT shall, when the term commences, in addition to the advance payment of the

first month's ground 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 rent, which amount shall be held by PORT as a guarantee for the future payment of rent. Such amount shall guarantee also the 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 of this lease. If the ground 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. If 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. If 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.

4. Default and Re-entry. If any rental or other payment shall be due and unpaid for thirty (30) days, or if any other material default shall be made by TENANT in any of the conditions or covenants of this lease and said other material 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 it 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 may deem advisable under provisions set forth in Paragraph 7 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. Monthly rent shall be onetwelfth (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. The premises shall be used to conduct wholesale fish processing, fish storage, marine food preparations and such other uses as are reasonably related thereto. The rental provision set forth in paragraph 2 was determined in consideration of the specific use TENANT makes of the leased premises. PORT considers TENANT's use to be an important contributing activity to the character of Fishermen's Alley, therefore changes in the type or class of business conducted by TENANT hereunder shall be made only upon the express written consent of PORT.

6. Requirement That Premises be Used; Improvements. TENANT shall operate to secure the maximum economic return based on the uses specified. It is the intent hereof that a TENANT shall not acquire the use of the property through a lease and then not use it. Accordingly, if TENANT fails to use the property for the purposes for which the property is leased, or in the manner set forth herein, the PORT shall serve a written notice by certified mail upon TENANT personally or by mail, postage prepaid, to TENANT's address set forth hereinafter requesting that TENANT use the property as required. If such failure shall continue for thirty (30) days after the mailing of such notice and unless such failure shall be for reasons beyond the control of TENANT, then the PORT at its option may terminate this lease.

TENANT shall, as a material part of the consideration for this lease, submit working drawings of improvement to the premises before April 30, 1980 specifying a time

schedule in which improvements shall be made to the leased premises to enhance the use of the premises as set forth in paragraph 5 hereof. Failure to prepare, submit and observe said plan shall be cause for forfeiture of the within lease at the option of PORT.

7. Maintenance of Improvements and Atmosphere.

(a) Improvements on the leased premises shall be maintained by TENANT in good operating condition throughout the term of this lease. PORT shall have no obligation whatever to maintain the premises during the term of this lease, even though PORT elects to take title to the improvements at the termination of this lease.

(b) At PORT's election TENANT shall be obligated at its own expense to demolish and remove down to ground level, leaving the premises free from debris, such improvements that TENANT has made as are or will be, at the termination of this lease, not reasonably capable of continued occupancy for three or more years immediately following such termination without substantial repairs or renovations.

(c) Within ninety (90) but not less than sixty (60) days prior to the termination of this lease, unless termination should be the result of loss or destruction of the improvements, in which event written notice only shall be required of PORT, PORT shall advise TENANT as to which improvements or portions of improvements it elects to have demolished and removed in accordance with subparagraph (b). In the event that removal or demolition is required under subparagraph (b) but TENANT fails to make such demolition and removal within (60) days after the expiration or prior

termination of the lease, PORT may perform such work at TENANT's expense.

(d) Trade fixtures installed on the leased premises shall be and become a part of the realty and shall be maintained by TENANT, except that trade fixtures may be removed by TENANT at the termination of the lease, providing TENANT repairs any damage such removal may make to the leased premises and leaves the premises free and clear of debris. The buildings, fences, parking lots and similar structures shall not be regarded as trade fixtures but as "improvements."

(e) TENANT shall keep said premises and appurtenances, including all glazing, in good and sanitary order, condition and repair and TENANT shall perform such structural maintenance during the term hereof as is required in paragraph 22 hereof.

(f) The parties agree that the atmosphere and character of Fisherman's Wharf, its commercial fisherment, its fish processors, and fishing oriented businesses are a unique asset to San Francisco resulting in a major tourist attraction. Accordingly, TENANT agrees to conduct its business henceforth in a manner to preserve and enhance the present fishing-oriented uses at the Wharf.

8. Alterations and Improvements. Except for nonstructural 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 first obtaining

the written consent of the PORT. Any additions to or modifications to the said premises which may not be removed without substantial injury to the premises shall become a part of the realty and shall belong to the PORT unless the PORT waives its rights hereunder in writing. Notwithstanding paragraphs 7(b) and 7(d), PORT may require TENANT to remove any or all such additions or modifications not approved by the PORT upon termination of this lease, and PORT may require TENANT to repair any damage occasioned thereby at TENANT's expense. TENANT shall leave the premises at any termination of this lease, free and clear of all debris, and shall repair any damage to the premises for which TENANT is liable under this lease, subject to such adjustments as may be mutually agreed in writing. If TENANT fails to remove any improvements, furniture or trade fixtures when requested to do so by the PORT, or fails to leave the property in the condition required herein, the PORT may remove such items and correct such condition at TENANT's expense, and charge said costs against the guarantee deposit.

9. Prohibited Uses. TENANT shall not use, or permit said premises, or any part thereof, to be used, for any purposes other than the purposes for which the premises are leased. TENANT agrees not to perform any act on the premises which will cause a cancellation of any insurance policy covering the premises, or any part thereof. TENANT agrees not to violate any law, ordinance, rule or regulation affecting the occupancy and use of said premises of any governmental agency having jurisdiction over the premises.

TENANT further agrees not to obstruct or interfere with the rights of PORT's other tenants or licensees.

10. Assignment and Subletting. TENANT shall not assign this lease or any interest therein except as provided herein 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 any portion of the premises without first obtaining the written consent of the PORT, which consent shall not be unreasonably withheld. TENANT agrees that the uses set forth in paragraphs 5 and 6 shall apply in considering any request for assignment or subletting. A consent to one assignment, subletting, occupation or use by one person shall not be construed as a consent to a subsequent assignment, subletting, occupation or use by another. Each such assignment or subletting without consent shall be void. No interest in this lease shall be assignable as to TENANT's interest by operation of law without PORT's written consent.

11. Security Interests.

The parties acknowledge that the TENANT may from time to time encumber TENANT's leasehold estate to all or in part by the lien of a mortgage, deed of trust or other security instrument to institutional lenders. For the express benefit of all such secured parties (hereinafter referred to as "LENDER"), the parties agrees as follows:

(a) The execution of any mortgage, deed of trust or other security instrument, or the foreclosure thereof or any sale thereunder 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 lease terms or conditions or an assumption by LENDER, personally, of TENANT's obligations hereunder 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 (e) 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 to the portion of the leased premises encumbered by such lien. Any performance of TENANT's duties by the LENDER shall be effective to prevent the termination of this lease.

(c) The PORT hereby agrees with respect to any such security instrument that the LENDER may record such security instrument and may enforce such security instrument and upon foreclosure sell and assign TENANT's interest in the premises and improvements thereof to another from whom it may accept a purchase price subject, however, to first securing written approval from PORT Commission which which approval shall not be unreasonably withheld. LENDER, furthermore, may acquire title to the leasehold and improvements in any lawful way, and if the LENDER shall become the assignee, LENDER may sell or assign said leasehold and TENANTS interest in any improvements thereon. If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a proper conveyance

from TENANT, LENDER shall take subject to all of the provisions of this lease, and shall assume personally all the obligations of TENANT hereunder.

(d) If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings 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, after first having received approval in writing from Port Commission, which approval shall not be unreasonably withheld, provided that all others taking through the LENDER and their respective successors in interest shall take said leasehold estate and assume all of the covenants and conditions therefore and agree to perform all such covenants and conditions.

(e) No such foreclosure or other transfer of TENANT's leasehold estate nor the acceptance of rent by the PORT from another shall relieve, release or in any manner affect TENANT's liability hereunder.

(f) If an event of default under paragraph 4 hereof occurs, LENDER shall have thirty (30) days after receipt of written notice from the PORT specifying TENANT's default to remedy such default. If LENDER shall have commenced appropriate proceedings in the nature of foreclosure within such thirty (30) days' period and is diligently prosecuting the same, LENDER shall have a reasonable time beyond thirty (30) days within which to cure such default. PORT's right to exercise its rights pursuant to paragraph 4 hereof shall at all times, while the TENANT is indebted to the LENDER, be subject to and conditioned upon the PORT

furnishing LENDER such written notice and the LENDER having failed to cure such default as provided herein. The fact that the time has expired for performance of a covenant by the TENANT shall not render performance by the LENDER or a purchaser impossible. 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 the LENDER is prevented, by any process, injunction or other order issued by any court having jurisdiction in any legal proceedings, it shall be deemed to have prosecuted said proceedings for purposes of this subparagraph (e); 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 its address and the existence and nature of its security interest. Failure to give such notice shall constitute a waiver of LENDER's rights set forth in this paragraph 11.

12. Insolvency. If (a) the appointment of a receiver to take possession of all or substantially all of the assets of TENANT is made and such assets are not released within thirty (30) days, or if (b) a general assignment is made by TENANT for the benefit of creditors or if (c) any action taken or suffered by TENANT under any insolvency or bankruptcy act, unless TENANT within thirty (30) days cures or proceeds with diligence to cure, is taken; any of such

occurrences, shall, at the option of the PORT constitute a material breach of this lease.

13. 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 insureds, with a company or companies acceptable to PORT. Such policy or policies shall cover the leased premises and its operation against claims for personal injury and death in an amount of not less than \$500,000.00 for injury or death of any one person, and \$1,000,000.00 for injury or death of all persons in any one accident, and \$100,000.00 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 within 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. Said policy or policies shall either contain a broad form of contractual liability coverage, including leases, or there shall be attached to the 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 the public liability insurance carried pursuant to this paragraph, but in any event not less than every ten (10) years during the term of this lease. If it is found to be the general commercial practice in the City and County of San Francisco to carry public liability insurance in an amount substantially greater or lesser than the amount then being carried by TENANT with respect to risks comparable to those associated with the leased premises, the amount carried by TENANT shall be increased or decreased to conform to such general commercial practice.

14. Indemnification. PORT and the City and County of San Francisco, their officers, agents, and employees, shall, except as hereinafter provided, 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 except for intentionally harmful or negligent acts committed solely by PORT, or the City and County of San Francisco, or their officers, agents, or employees 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, and TENANT hereby covenants and agrees to save harmless the PORT and the City and County of San Francisco from all such liabilities, claims for damages, suits, and litigation expenses.

15. Waiver of Claims. TENANT, as a material part of the consideration to be rendered to PORT, hereby waives all claims against PORT, except for intentionally harmful or negligent acts committed solely by PORT, its officers,

agents, or employees, and agrees to hold PORT harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment and persons in, upon, or about said premises, except for intentionally harmful or negligent acts committed solely by PORT, its officers, agents, or employees, arising at any time from any cause.

16. Liens. TENANT shall keep the demised premises and the improvements thereof free from any liens arising out of any work performed, materials furnished, or obligations incurred by TENANT.

17. Fire Insurance.

(a) TENANT shall maintain fire and extended coverage insurance on the leased premises. Each policy shall name the PORT and the City and County of San Francisco as additional insureds. Each insurance company insuring the premises shall be acceptable to PORT. Each policy shall cover the improvements on the leased premises, except the substructure, in an amount of at least ninety (90%) percent of the replacement value thereof. If TENANT cannot obtain insurance covering ninety (90%) percent replacement value at a reasonable cost, then TENANT shall so notify PORT and shall be entitled to carry such lesser insurance as is prudent under the circumstances. TENANT shall furnish PORT with a certificate evidencing such insurance and stating that such insurance cannot be cancelled or a change made in coverage without the insurer first furnishing fifteen (15) days advance written notice to PORT.

TENANT agrees to notify PORT promptly of all changes in the terms of each policy and agrees to provide

PORT with copies thereof. Any funds received by TENANT from any damage which is covered by such insurance policy shall be immediately deposited by TENANT in a trust account in the names of the TENANT and the PORT for repair or replacement of the improvements on the leased premises. The funds in said account shall be used solely for repairs and replacements on the premises. TENANT agrees to further 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 shall be submitted to and approved by the Chief Engineer of PORT which approval shall not be unreasonably withheld. If TENANT declines to repair the damage or replace the improvements to the full extent of the proceeds, the portion of the proceeds representing payment for damage for which title has vested in PORT shall be conveyed to PORT free of all claims. If TENANT fails to repair as provided herein, PORT may elect to make such repairs and replacements itself from such funds, but PORT shall not be required to use the funds for such repair or replacement. TENANT may, if it so 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 all improvements, including trade fixtures, other than trade fixtures removable without injury to the premises, shall immediately vest in PORT on repair or replacement.

(b) TENANT shall cause to be maintained throughout the term of this lease a standard policy of

insurance against the loss of income or revenue to PORT as a result of the loss of use of the leased premises caused by the perils insured against in the policy or policies for fire and extended coverage on the improved premises. The income loss to PORT shall be, for each month, one-twelfth (1/12th) of the annual average rental paid by TENANT in the preceding twelve calendar months and said payment shall continue to PORT as rent due hereunder for the period from the date of the damage to the date business is recommenced on the premises.

(c) If (i) more than fifty (50) percent of the premises are destroyed or are so damaged by fire or other casualty insurable under full standard extended risk insurance as to become wholly untenable, or (ii) the premises shall be partially or totally destroyed by a cause or casualty other than those covered by fire and extended coverage risk insurance, then, in either event, PORT may, if it so elects, rebuild or put the premises in good condition and fit for occupancy within a reasonable time after such destruction or damage, or it may give notice terminating this lease as of a date not later than thirty (30) days after any such damage or destruction. In the event of such termination the fire insurance proceeds required per paragraph 17(a) shall be distributed between PORT and TENANT as their respective interest may appear. If PORT elects to repair or rebuild, it shall within thirty (30) days after such damage or destruction, give TENANT notice of its intention and then shall proceed with reasonable speed to make the repairs or to rebuild. Unless PORT elects to terminate this lease, this lease shall remain in full force and effect and the parties waive the provisions of any law to the contrary.

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

19. Compliance with Law. The premises 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. TENANT's substantial failure to abide by any law, ordinance, rule, or regulation imposed on the premises will be deemed a violation of a condition of this lease.

20. Entry. The right is hereby reserved to PORT, its officers, agents, and employees to enter upon the leased premises at any reasonable time for the purpose of reasonable inspection and inventory, and when otherwise deemed reasonably necessary for the protection of its interests. TENANT waives all claims against the PORT, or any officer, agent or employee thereof for damages caused in the PORT's reasonable exercise of its right hereunder. There shall be no rebate of rent or any claim against the PORT for any loss of occupation or quiet enjoyment of the premises occasioned by such inspection and inventory.

21. Condemnation.

(a) If title to the entire premises is taken for any public or quasi-public use under any statute, or by

right of eminent domain, or by private purchase in lieu of eminent domain, or if title to so much of the premises is taken that a reasonable amount of reconstruction of the premises will not result in the premises being a practical improvement and reasonably suitable for TENANT's continued occupancy for the uses and purposes for which the premises are leased, then, in either event, this lease shall terminate on the date that possession of the premises, or part of the premises is taken.

(b) If any part of the premises shall be so taken and the remaining part of the premises (after reconstruction of the then existing building in which the premises are located) is reasonably suitable for TENANT's continued occupancy for the purposes and uses for which the premises are leased, this lease shall, as to the part so taken, terminate as of the date that possession of such part is taken, and the minimum rent shall be reduced in the same proportion that the floor area of the portion of the premises so taken (less any additions to premises by reconstruction) bears to the original floor area of the premises. PORT shall, at its own cost and expense, make all necessary repairs or alterations to the building in which the premises are located so as to constitute the portion of the building not taken a complete architectural unit and the remaining premises a complete operating unit. There shall be no abatement of rent during such restoration except to the extent as otherwise provided herein.

(c) All compensation awarded or paid upon a total or partial taking of the fee title shall belong to the

PORT, whether such compensation be awarded or paid as compensation for diminution in value of the leasehold or of the fee; provided, however, that PORT shall not be entitled to any award made to TENANT for loss of business or unamortized improvements and depreciation to and costs of removal of stock and fixtures.

(d) TENANT shall have the right to claim against the condemnor any other value attributable to the demised 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.

22. 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 including utility service within the leased premises. If, however, the substructure is damaged by fire, acts of war, or acts of God, or any other cause 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 of the improvements by ordinary wear and tear or deterioration, or, if improvements do not meet the standard of maintenance required by PORT for such uses as TENANT is making of the leased premises, 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 provision shall not affect the obligations of TENANT to make repair to improvements for damages required to be covered by insurance by TENANT under paragraph 17 hereof. In the event of damages in this category, TENANT's obligations shall be as set forth in paragraph 17.

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 by TENANT, TENANT shall deposit the proceeds and use the funds in the same manner as required in paragraph 17 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 it must throughout the entire term of this lease repair, replace, maintain, and rebuild said substructure.

On termination of this lease, the premises, including the substructure, must be usable and in substantially as good condition as when the premises were first tendered to TENANT hereunder after adjustment is made for normal deterioration over the term. 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 therefore or to obtain such other permits from governmental bodies as may be required.

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

24. Waiver of Breach. The waiver by PORT of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition with respect to any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by PORT shall not be deemed to be a waiver of any term, covenant or

condition of this lease, other than the failure of TENANT to pay the particular rental so accepted, regardless of PORT's knowledge of such preceding breach at the time of acceptance of such rent. No act or omission by either the PORT or TENANT shall constitute a modification of this lease, it being understood by all parties that this lease may be changed or otherwise modified only by written agreement of all parties.

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

26. Modification of Lease. 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.

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

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

29. Mineral Reservation. The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the leased premises. In accordance with the provision of that Statute, the PORT 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 an area located by the California Grid System, Zone 3, beginning at a point where x equals 1,452,333 and y equals 481,666 which area was not improved on January 1, 1975.

30. Notices. All notices to be given pursuant to this lease shall be addressed, if to PORT to:

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

and if to TENANT to:

Mr. Joseph Svedise
dba United Shellfish Company
Pier 47, Foot of Jones Street
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 wrapped, addressed as aforesaid and deposited, postage prepaid, in a post office or branch post office regularly maintained by the United States Postal Service.

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

32. 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 PORT and the TENANT have executed this lease on this 11th day of February, 1976, in the City and County of San Francisco.

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

By

Thomas Houls
PORT

JOSEPH SVEDISE, doing business as
UNITED SHELLFISH COMPANY,

By

Joseph Svedise
TENANT

ADDENDUM TO ALL CITY AND COUNTY OF SAN FRANCISCO CONTRACTS

AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 12B.1, 12B.2 AND 12B.4 HEREOF, DEFINING LEASES, FRANCHISES, CONCESSIONS AND SUBORDINATE AGREEMENTS THEREUNDER AS CONTRACTS, AND PROHIBITING EMPLOYMENT DISCRIMINATION BECAUSE OF AGE.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Administrative Code is hereby amended by amending Sections 12B.1, 12B.2 and 12B.4 thereof, to read as follows:

SEC. 12B.1

All contracting agencies of the City and County of San Francisco, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts, franchises, leases, concessions or other agreements involving real or personal property, hereafter negotiated, let, awarded, granted, renegotiated, extended or renewed, in any manner or as to any portion thereof a provision obligating the contractor, franchisee, lessee, concessionaire, or other party to said agreement not to discriminate on the ground or because of race, color, creed, national origin, ancestry, age, sex or sexual orientation, against any employee of, or applicant for employment with, such contractor, franchisee, lessee, or concessionaire, and shall require such contractor, franchisee, lessee or concessionaire to include a similar provision in all subcontracts, subleases or other subordinate agreements let, awarded, negotiated or entered into thereunder.

(a) DEFINITIONS. As used in this chapter the term:

"Age" refers to and shall include any employee or applicant for employment who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years. For the purposes of this section, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty (40) years and has not attained the age of sixty-five (65) years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this section.

"Contract" shall mean and include an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded for and on behalf of the City and County of San Francisco.

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

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

"Subcontract" shall mean and include an agreement or contract under or subordinate to a prime contract, franchise, lease or concession granted, let or awarded for or on behalf of the City and County of San Francisco.

"Concession" includes a grant of land or other property by or on behalf of the City and County of San Francisco to a person for the purpose or use specified in said grant.

"Concessionaire" shall mean and include a person who is the grantee or beneficiary of a concession as herein defined.

"Franchise" shall mean and include a right or privilege conferred by grant from the City and County of San Francisco, or any contractor, upon a person, firm, partnership, corporation, or combination thereof, to conduct such business or engage in such activity as is specified in said grant.

"Franchisee" shall mean and include a person who is the grantee or beneficiary of a franchise as herein defined.

"Lease" shall mean and include a contract by which the City and County of San Francisco, or any contracting agency thereof, grants to a person the temporary possession and use of property, for reward, and the latter agrees to return the same to the former at a future time.

"Lessee" shall mean and include a person or tenant taking possession of property under a lease as herein provided, and further includes a bailee under a bailment agreement providing a rental for personal property.

"Sublease" shall mean and include a lease by which a lessee or tenant grants or lets to another person part or all of the leased property for a shorter term and under which said lessee or tenant retains some right or interest under the original lease.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the choice of human adult sexual partner according to gender.

"Supplier" means any person or persons, firm, partnership, corporation, or any combination thereof, who submits a bid or enters into a contract with the awarding agency of the City and County, or who submits a bid or enters into a contract with any contractor, subcontractor, lessee, sublessee, franchisee or concessionaire engaged in the performance of a contract let, awarded or granted by or on behalf of the city and county, for the supplying of goods, materials, services, equipment or furnishings.

SEC. 12B.2. NONDISCRIMINATION PROVISIONS OF CONTRACT.

Every contract or subcontract for or on behalf of the City and County of San Francisco for public works or for the purchase of goods or services, as provided in Sec. 12B.1 hereof, shall contain the provisions following, which shall be known as the nondiscrimination provisions of such contract.

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

(a) Wherever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor or supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, or sexual orientation. The contractor, subcontractor or supplier will take affirmative action to insure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, religion, ancestry, national origin, age, sex, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this ordinance shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor, subcontractor or supplier agrees to post in conspicuous places, available to employees and applicants or employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this section.

(b) Except as in this section provided, or in cases where the law compels or provides for such action, any provisions in any contract agreement or undertaking entered into on or after the effective date of this chapter which prevent or tend to prevent the employment of any person solely by reason of his age, who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years shall be null and void.

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

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

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

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

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

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

(3) Upon such finding by the Director of the Human Rights Commission, or other official design-

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

(4) The Human Rights Commission shall, within ten (10) days of the date of issuance of any finding by the Director of the Human Rights Commission or other official designated by the Commission in the enforcement of this chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of his right to appeal. Notice of appeal must be filed in writing with the Chairman of the Commission within 20 days of the date of mailing said copy and notice.

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

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

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

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

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

(10) There may be deducted from the amount payable to the contractor, subcontractor or supplier by the City and County of San Francisco under this contract a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this contract. In addition to any other penalties herein provided for the violation of the nondiscrimination provisions of this contract or for the failure of any contractor, subcontractor or supplier to abide by the rules and regulations herein contained, this contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding as set forth in Sec. 12B.2(f) that the contractor, subcontractor or supplier has discriminated contrary to the provisions of this contract, and all moneys due to or to become due hereunder may be forfeited to, and retained by, the City and County of San Francisco.

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

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

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

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

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

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

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

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

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

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

SEC. 12B.4. AFFIRMATIVE ACTION GUIDELINES.

In order to be eligible to bid or to have a bid considered by the awarding agency, the contractor in all public works contracts shall submit an affirmative action program which shall meet the requirements of the Human Rights Commission.

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

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

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

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

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

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

(3) Preapprenticeship education and preparation;

(4) Upgrading training and opportunities;

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

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

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

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

Wharf J-7

United Shell Fish

Description

Commencing at the intersection of the southerly line of Jefferson Street with the westerly line of Jones Street; running thence westerly along the southerly line of Jefferson Street for a distance of 53.36 feet; thence at a right angle northerly for a distance of 421.80 feet; thence at a deflection angle of $79^{\circ}37'$ to the left for a distance of 67.64 feet; thence at a right angle northerly for a distance of 12.65 feet to the true point of beginning; thence at a right angle westerly for a distance of 21.98 feet; thence at a right angle northerly for a distance of 17.80 feet; thence at a right angle westerly for a distance of 1.50 feet; thence at a right angle northerly for a distance of 4.54 feet; thence at a right angle easterly for a distance of 9.68 feet; thence at a right angle southerly for a distance of 7.02 feet; thence at a right angle easterly for a distance of 13.80 feet; thence at a right angle southerly for a distance of 14.20 feet to the true point of beginning, and containing 376 square feet of area, more or less.

EXHIBIT A

Sheet 1 of 2
See Dwg. 8769-J-7-6

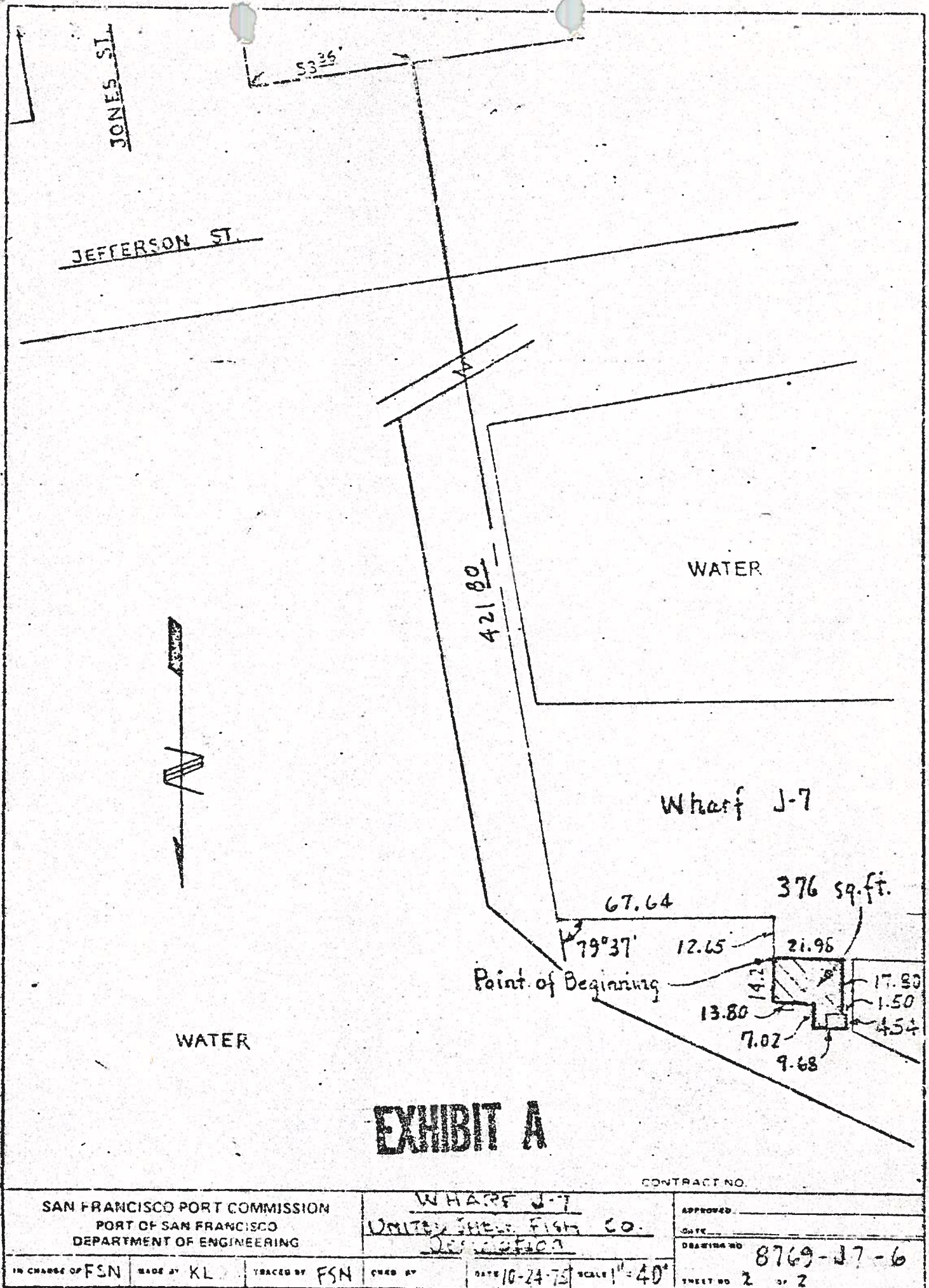


EXHIBIT A

CONTRACT NO.

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

WHARF J-7
UNITED SHIP FIRM CO.
DESIGNER

APPROVED _____
DATE _____
DRAWING NO. 8769-J7-6
SHEET NO. 2 OF 2

IN CHARGE OF FSN MADE BY KL TRACED BY FSN CHECKED BY DATE 10-24-75 SCALE 1"=40'

FIRST AMENDMENT TO LEASE NO. L-9170
JOSEPH SVEDISE dba UNITED SHELLFISH CO.

and

SAN FRANCISCO PORT COMMISSION

This Amendment is made on this 16th day of June, 1983, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION (hereinafter called "PORT") as Landlord, and JOSEPH SVEDISE, an individual doing business as UNITED SHELLFISH CO. (hereinafter called "TENANT").

WHEREAS, on the eleventh day of February 1976 PORT and TENANT entered into a lease for certain property located at Pier 47A, Wharf J-7, as described on Exhibit A of said lease;

WHEREAS, for good and sufficient consideration, the parties desire to amend said Lease, pursuant to Paragraph 26 thereof, to accomplish relocation of the fish processing storage/icehouse located thereon; and

WHEREAS, relocation of said storage/icehouse is in accord with the Fisherman's Wharf Action Plan;

NOW, THEREFORE, witnesseth the following amendments:

I. "EXHIBIT A" of said lease shall be deleted and "REVISED EXHIBIT A," dated October 20, 1982, consisting of Port Engineering Department drawing no. 9158-J6-6 and a metes and bounds



description, shall be substituted therefor, reserving to Port and an appropriate utility company reasonable access for purposes of meter installation, maintenance and repair.

II. The storage/icehouse relocation which is the subject of this Lease Amendment shall be accomplished at no cost whatsoever to the CITY AND COUNTY OF SAN FRANCISCO or PORT.

III. TENANT shall hold the CITY AND COUNTY OF SAN FRANCISCO, PORT, and their officers, employees and agents harmless and 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 of any kind whatsoever, from any cause or causes whatsoever, incurred in connection with the subject storage/icehouse relocation, including the sole, active, passive, joint and concurrent negligence of the CITY AND COUNTY OF SAN FRANCISCO, and TENANT shall defend against any such claim or lawsuit without cost to the CITY AND COUNTY OF SAN FRANCISCO, PORT and their officers, employees and agents.

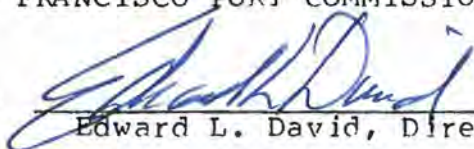
IV. This Amendment shall be effective on the date hereof provided that all necessary permits and regulatory agency approvals of agencies having jurisdiction over the subject relocation, including Bay Conservation and Development Commission, the Board of Supervisors of the City and County of San Francisco, and the Port Engineering Department, have been obtained. Otherwise the effective date of this Amendment shall be the date upon which such permits and approvals have been duly obtained.



V. Except as specifically amended herein, the terms, covenants and conditions of Lease No. L-9170 made the eleventh day of February 1976, shall be continued in full force and effect.

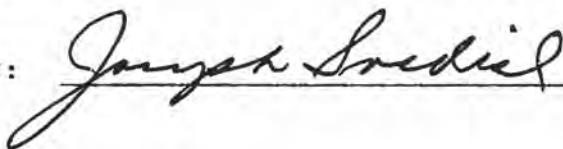
CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
operating by and through the
SAN FRANCISCO PORT COMMISSION

By:


Edward L. David, Director

JOSEPH SVEDISE dba UNITED SHELLFISH
CO.

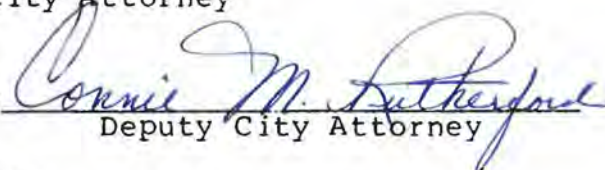
By:



APPROVED AS TO FORM:

GEORGE AGNOST
City Attorney

By:


Deputy City Attorney

1576P



1

Handwritten text, possibly a signature or name, located in the lower left quadrant.

DESCRIPTION
WHARF J 6
UNITED SHELLFISH

Commencing at the intersection of the monument line of Hyde Street with the monument line of Jefferson Street; running thence easterly along the monument line of Jefferson Street for a distance of 919.15 feet; thence at right angle northerly for a distance of 161.75 feet to the true point of beginning; thence at a right angle to the left westerly for a distance of 11.33 feet; thence at a right angle to the right northerly for a distance of 27.00 feet; thence at a right angle to the right easterly for a distance of 13.80 feet; thence at a deflection angle to the right of 93°07' southerly for a distance of 27.04 feet to the true point of beginning and containing 339 square feet of area more or less.

Reserving to Port and/or appropriate utility company reasonable access for purposes of meter installation, maintenance, repair and inspection.

Sheet 1 of 2
See Drawing No. 9158-J6-6
Dated 10/20/82



100-100-100

SAN FRANCISCO PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 83 - 23

WHEREAS an old storage/ice house presently under long term lease to United Shellfish on Wharf J-7 currently obstructs public access and the view amenity for patrons of Scoma's Restaurant;

WHEREAS United Shellfish is willing to relocate its storage/ice house facility to other space adjacent to United Shellfish's main fish processing plant on Wharf J-6;

WHEREAS Scoma's Restaurant is willing to demolish said storage/ice house, reconstruct the pier and deck area at the present site, reconstruct the pier substructure and deck at the substitute site to a condition suitable for construction of a new storage/ice house and bear all costs in connection therewith including pier, deck and utility expenses, excluding, however, the cost of constructing new storage/ice house itself which shall be borne by United Shellfish;

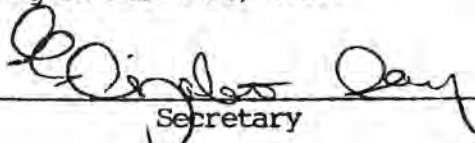
WHEREAS the proposal for relocation is in accord with the Fisherman's Wharf Action Plan;

WHEREAS a public hearing in this matter was held on January 12, 1983 following which meeting Resolution 82-34 was adopted approving the proposal and directing Port staff to prepare final form of document;

NOW THEREFORE BE IT RESOLVED that, this Commission hereby approves the terms and conditions of and authorizes the Port Director or his designee to execute that certain First Amendment To Lease L-9170 on file with the Commission Secretary and approved as to form by the City Attorney which will delete approximately 376 square feet of pier space from the present leasehold on Wharf J-7 to a substitute site on Wharf J-6 described in Revised Exhibit A attached to the lease amendment, subject to approvals by all governmental agencies with jurisdiction including, but not limited, to the Bay Conservation and Development Commission (BCDC)

BE IT FURTHER RESOLVED that, the Commission Secretary is directed to forward this amendment to the City's Board of Supervisors for consideration and approval.

I HEREBY CERTIFY that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting on March 23, 1983.


Secretary



1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a very important document, as it is the first official communication of the new President to the new Congress.

2. The second part of the document is a report from the Secretary of the Treasury, dated January 1, 1861. It is a very important document, as it is the first official communication of the new Secretary to the new Congress.

3. The third part of the document is a report from the Secretary of the Interior, dated January 1, 1861. It is a very important document, as it is the first official communication of the new Secretary to the new Congress.

4. The fourth part of the document is a report from the Secretary of the Navy, dated January 1, 1861. It is a very important document, as it is the first official communication of the new Secretary to the new Congress.

5. The fifth part of the document is a report from the Secretary of the War, dated January 1, 1861. It is a very important document, as it is the first official communication of the new Secretary to the new Congress.

6. The sixth part of the document is a report from the Secretary of the State, dated January 1, 1861. It is a very important document, as it is the first official communication of the new Secretary to the new Congress.

7. The seventh part of the document is a report from the Secretary of the Agriculture, dated January 1, 1861. It is a very important document, as it is the first official communication of the new Secretary to the new Congress.

8. The eighth part of the document is a report from the Secretary of the Commerce, dated January 1, 1861. It is a very important document, as it is the first official communication of the new Secretary to the new Congress.

9. The ninth part of the document is a report from the Secretary of the Education, dated January 1, 1861. It is a very important document, as it is the first official communication of the new Secretary to the new Congress.

10. The tenth part of the document is a report from the Secretary of the Public Works, dated January 1, 1861. It is a very important document, as it is the first official communication of the new Secretary to the new Congress.

SAN FRANCISCO PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 82- 133

WHEREAS an old storage/ice house presently under long term lease to United Shellfish on Wharf J7 currently obstructs the view for patrons of Scoma's Restaurant and additional public access;

WHEREAS United Shellfish is willing to have its storage/ice house relocated to other space adjacent to United Shellfish premises on Wharf J6;

WHEREAS Scoma's Restaurant is willing to demolish said storage/ice house, reconstruct the pier and deck area at the site, relocate and reconstruct a suitable storage/ice house for United Shellfish at the substitute site, and bear all costs in connection therewith including pier, deck and utility expenses;

WHEREAS Port policy requires that a public hearing be held prior to assigning additional property to existing tenants under long term lease;

NOW THEREFORE BE IT FURTHER RESOLVED that a public hearing be scheduled in Port Commission Meeting Room 283, World Trade Center, at 10:00 A.M. Wednesday January 12, 1983;

BE IT FURTHER RESOLVED that notice of a public hearing, be posted to the premises involved and disseminated to appropriate parties for purposes of considering this proposal;

BE IT FURTHER RESOLVED that Port staff is authorized to negotiate an agreement for the purposes stated above which will provide specifically that the City shall incur no cost whatsoever in connection with the transaction, that the agreement shall be subject to approvals by all agencies with jurisdiction including BCDC and the City's Board of Supervisors, and that all work be done under the Port permit in accord with Port standards.

BE IT FURTHER RESOLVED that the City Attorney shall prepare and approve a final form of agreement.

I HEREBY CERTIFY that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting on December 16, 1982.


Secretary



SAN FRANCISCO PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 82 - 134

WHEREAS Scoma's Restaurant on Wharf J-7 desires to improve the view for patrons and provide additional public access for visitors;

WHEREAS an old storage/ice house presently under long term lease to United Shellfish currently obstructs implementation of this open space amenity;

WHEREAS United Shellfish is willing to relocate its storage/ice house facility to other space adjacent to United Shellfish premises on Wharf J-6;

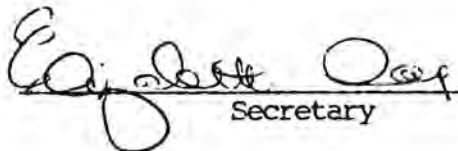
WHEREAS Scoma's Restaurant is willing to demolish United's existing storage/ice house, reconstruct the pier and deck area at the site, relocate and reconstruct the pier and platform at the substitute site and bear all costs in connection therewith including pier, deck and utility expenses but excluding the actual cost of the new ice house structure itself, its equipment and internal utility systems; and

WHEREAS Port policy requires that a public hearing be held prior to assigning additional property to existing tenants under long term lease;

NOW THEREFORE BE IT RESOLVED that, following a public hearing held this date, Port staff is authorized to complete negotiations with Scoma's Restaurant Incorporated to effect the purposes stated above, providing specifically that the City shall incur no cost whatsoever in connection with the transaction, that the agreement shall be subject to approvals by all agencies with jurisdiction including BCDC and the City's Board of Supervisors, and that all work will be done under the Port permit and in accord with Port's uniform construction code;

BE IT FURTHER RESOLVED that, the City Attorney shall prepare and approve a final form of agreement to be executed by the Tenant and resubmitted to this Commission for final consideration and action.

I HEREBY CERTIFY that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting on January 12, 1983.


Secretary



FILE NO. 65-8-1

ORDINANCE NO. 26883

(Lease of Property)
APPROVING THE FIRST AMENDMENT TO THE LEASE BETWEEN JOSEPH SVEDISE, AN
INDIVIDUAL DOING BUSINESS AS UNITED SHELLFISH CO., AND THE CITY AND COUNTY
OF SAN FRANCISCO, OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION.

Be it ordained by the People of the City and County of San
Francisco:

Section 1. Pursuant to Section 7.402-1 of the Charter, the Board
of Supervisors hereby approves the first amendment to the lease between
Joseph Svedise, an individual doing business as United Shellfish Co., and
the City and County of San Francisco, operating by and through the San
Francisco Port Commission. A copy of said amendment is contained in the
Board of Supervisors' file number 55-834.

Read for Second Reading
and of Supervisors, San Francisco

MAY 9 1983

Ayes: Supervisors Britt, Bongisto, Kennedy,
Kopp, Manner, Molinari, Nelson, Renne, Silver,
Walker, Ward.

Read Second Time and Finally Passed
Board of Supervisors, San Francisco

MAY 10 1983

Ayes: Supervisors Britt, ~~Manner~~, Kennedy,
Kopp, Manner, Molinari, Nelson, Renne, Silver,
Walker, Ward.

~~None Supervisors~~

Absent Supervisors **BONGISTO**

Absent Supervisors **MANNER MOLINARI**

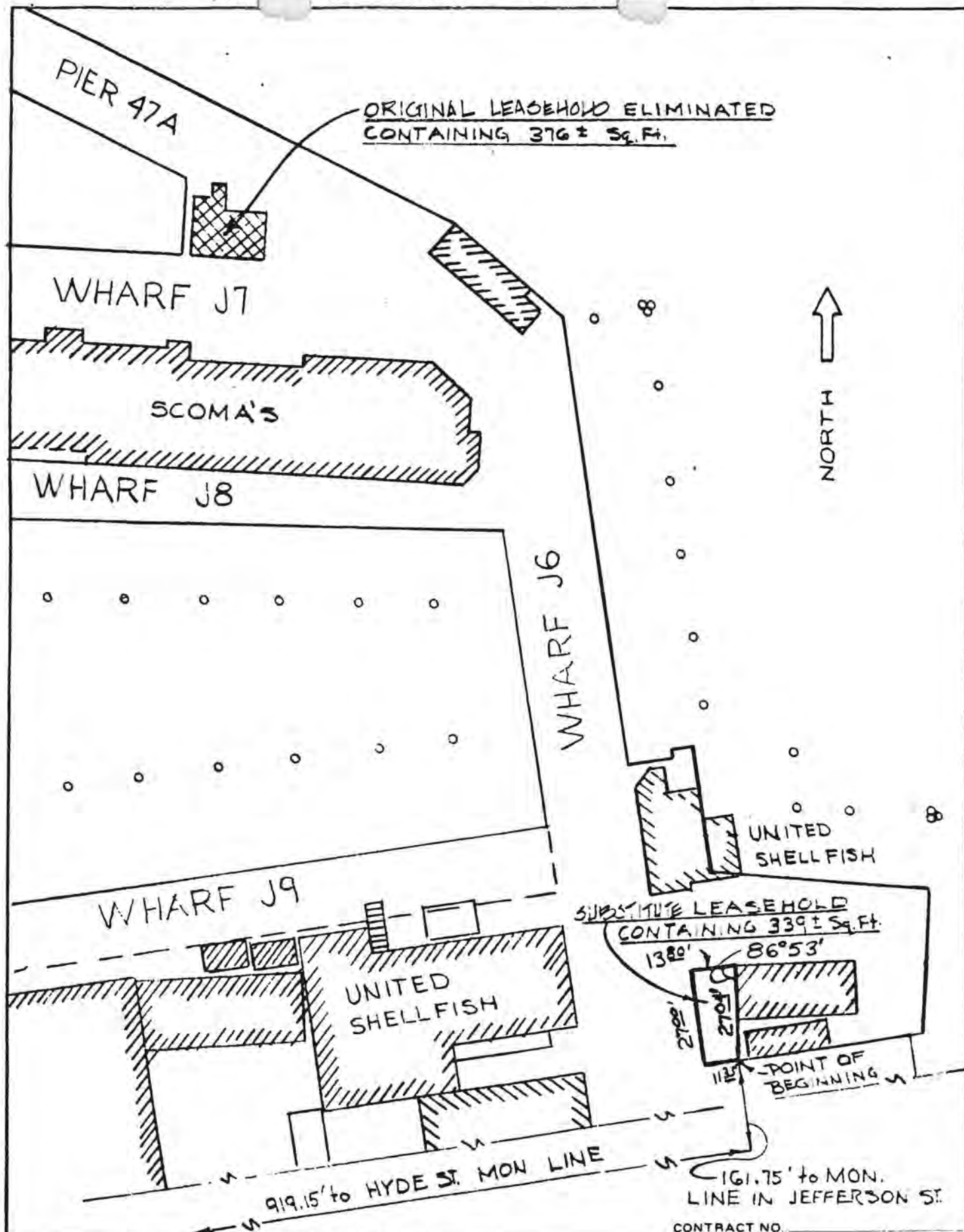
I hereby certify that the foregoing ordinance was
finally passed by the Board of Supervisors of the
City and County of San Francisco.

Clerk

Clerk

Approved

Mayor



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING			WHARF J6 - UNITED SHELLFISH LEASE			APPROVED _____ DATE _____ DRAWING NO. 9158-J6-6 SHEET NO. 2 OF 2	
IN CHARGE OF DLH	MADE BY DLH	TRACED BY DLH	CHECKED BY	DATE 10/20/82	SCALE 1" = 40'		



Port

ASSIGNMENT AND AMENDMENT OF LEASES

This Assignment and Amendment of Leases ("Assignment") is made by and between **Carola Svedise**, as successor in interest to Joseph Svedise, doing business as **United Shellfish Company** ("Assignor"), **Scoma's Restaurant, Inc.**, a California corporation ("Assignee"), and the **City and County of San Francisco**, a municipal corporation ("City") operating by and through the **San Francisco Port Commission** ("Port"), and as to the provisions of Paragraph 6 only, **Michael Svedise** ("Sublessee"), who agree as follows:

RECITALS

This Assignment and Amendment of Leases is made with reference to the following facts:

A. Port, as landlord, and Assignor, as tenant, entered into three written leases dated February 11, 1976, referred to as L-9170, L-9174 and L-9175, (collectively, the "Leases"), in which Port leased to Assignor and Assignor leased from Port premises located in the City and County of San Francisco, commonly known as Pier 47, foot of Jones Street, San Francisco, California and described in greater detail in Exhibit A to each of the Leases (collectively, the "Premises"). Lease L-9175 was amended on May 7, 1979. Lease L-9170 was amended on June 16, 1983. A map of the Premises is attached hereto as Exhibit 1.

B. Assignor wishes to assign all of its right, title and interest in the Leases to Assignee on the condition that Assignor be released from all of Assignor's obligations under the Leases.

C. Port shall consent to the proposed assignment on the conditions and subject to the lease amendments set forth in this Assignment.

Now, therefore, in consideration of their mutual covenants and agreements, the parties hereto agree as follows:

AGREEMENT

1. **Effective Date of Assignment.** This Assignment shall take effect upon the first day of the month immediately following the month in which this Assignment

is approved by the San Francisco Port Commission and the Board of Supervisors, and this Assignment is fully executed by the parties hereto ("Effective Date"). Assignor shall give possession of the Premises to Assignee on the Effective Date.

2. **Assignment and Assumption.** Assignor assigns and transfers to Assignee all its right, title and interest in the Leases, and Assignee accepts the Assignment and assumes and agrees to perform, from and after the Effective Date, as a direct obligation to Port, all the provisions of the Leases, and Port hereby consents to such assignment, upon all of the terms and conditions hereof. In particular, without limiting the foregoing, Assignee shall be bound by the use restrictions and terms set forth in Paragraph 5 of the Leases as amended hereby. Port's consent to this Assignment shall not waive the restriction concerning further assignment.

3. **Consideration.** In consideration of this Assignment, Assignee agrees to pay Assignor the sum of Sixteen Thousand Dollars (\$16,000.00). Assignee agrees to pay to Port on Assignor's behalf, on or before the Effective Date hereof, all outstanding bills charged to Assignor under the Leases through July 31, 1994, in the amount of \$26,336.60. Failure of Assignee to pay such sum to Port on or before the Effective Date shall be deemed a material default under the Leases. Assignor shall be responsible for any additional amounts due the Port for the period prior to the Effective Date, and in the event that said amounts are not paid prior to the Effective Date, this Assignment shall be null and void.

4. **Indemnity.** Assignee accepts the Premises "as is," and agrees to defend, indemnify and hold Assignor harmless from any liability, claims, actions, and damages (including attorney's fees) under Paragraphs 5, 6, 7, 8 and 22 of the Leases, whether or not arising prior to the Effective Date of this Assignment.

5. **Assignment Conditioned upon Consent to Sublease and Release.** Concurrent with this Assignment, Assignee hereby agrees to sublease certain of its rights and interests under the Leases to Michael Svedise, effective on the Effective Date, in the form set forth in Exhibit 2 attached hereto ("Sublease"). Port hereby consents to the Sublease in the form attached hereto.

6. **Indemnity by Sublessee.** Sublessee and any successor to Sublessee agrees to defend, indemnify and hold Assignor harmless from any and all liability, claims, actions and damages (including attorney's fees) not assumed by Assignee, it being the intent of this indemnity agreement by Sublessee that in consideration of the cancellation of said Leases, Assignor shall be fully indemnified from all liability, claims, action, and damages (including attorney's fees), of whatsoever kind or character

whether known or unknown arising prior to or after the Effective Date of this agreement.

7. **Guarantee Deposit.** The parties acknowledge that Port now holds a guarantee deposit from Assignor pursuant to the Leases in the amount of \$2,177.66. Assignor hereby releases all claims to that sum against Port, and that sum shall be held by Port for the benefit of Assignee, subject to the provisions of the Leases. On or before the Effective Date, Assignee shall reimburse Assignor for the amount of the actual guarantee deposit on the Leases in the approximate amount of \$2,177.66, plus any interest accumulated thereon.

8. **Attorneys' Fees.** If either party hereto brings an action or proceeding (including any cross-complaint or counterclaim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 8 shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. If any party commences an action against any of the parties arising out of or in connection with this Assignment, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.

9. **Successors.** This Assignment shall be binding on and inure to the benefit of the parties and their successors.

10. **Counterparts.** This Assignment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. **Notices.** All notices, requests, demands and other communications under this agreement shall be in writing and served personally on the party to whom notice is to be given, or upon transmission if delivered by facsimile, or on the third day after mailing if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Assignor at: Carola Svedise
2313 Cipriani Blvd.
Belmont, CA 94002

To Assignee at: Scoma's Restaurant, Inc.
Pier 47
San Francisco, CA 94133

To Port at: Manager, Fisherman's Wharf
Port of San Francisco
Ferry Building, Room 3100
San Francisco, CA 94111

12. **Governing Law.** This agreement shall be construed in accordance with and governed by the laws of the State of California as applied to contracts that are executed and performed entirely in California.

13. **Releases.**

a. **Release of Assignor and Port Under the Leases.** As of the Effective Date, Port and Assignor, its successors and assigns, shall fully and unconditionally release and discharge each other from their respective rights and obligations under the Leases and any oral or written modifications thereof.

b. **Release of Port by Assignor.** Assignor, after having consulted with their attorneys, hereby waives the benefit of, releases and forever discharges City, Port and their commissioners, officers, employees and agents (the "Releasees"), from any and all presently existing liabilities, claims, demands, damages, causes of action, rights of offset or defenses of every kind and nature (including without limitation, tort claims), whether known or unknown, which Assignor may have against the Releasees, or which they may be entitled to assert in connection with or arising in any way out of the Leases or the Premises defined therein, including without limitation any presently existing claim or defense (including any and all claims or defenses based upon the allegedly tortious or other conduct of the Releasees or on their behalf) with respect to the Leases or the Premises defined therein, whether or not presently suspected, contemplated or anticipated to the extent the events giving rise to the same shall have occurred on or prior to the date hereof. Assignor, after having consulted with their attorneys, hereby expressly waive the benefits of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at

the time of executing the release which, if known by him, must have materially affected his settlement with the debtor.

14. **Time is of the Essence.** Time is of the essence as to each and every provision of this Lease.

15. **Amendment of Leases.**

a. **Assignment and Subletting.** Paragraph 10 of each of the Leases is hereby deleted in its entirety and replaced by the following language:

10. **Assignment and Subletting.**

10.1 **Definition of Transfer.** The occurrence of any of the following (whether voluntarily, involuntarily or by operation of Law) shall constitute a "Transfer" of this Lease:

(a) any direct or indirect assignment, conveyance, alienation, sublease, or other transfer of Tenant's interest in this Lease or in the Premises, or any part thereof or interest therein; or

(b) the use of all or part of the Premises by any person or entity other than Tenant, except Tenant's authorized agents or invitees; or

(c) if Tenant is a privately-held corporation, the dissolution, merger, consolidation or other reorganization of Tenant, or any cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of the total capital stock of Tenant or any sale or cumulative sales of fifty percent (50%) or more of the value of the assets of Tenant; or

(d) if Tenant is a partnership or an unincorporated association, (i) the withdrawal or substitution (whether voluntarily, involuntarily or by operation of Law and whether occurring at one time or over a period of time) of any partner(s) owning fifty percent (50%) or more of said partnership or association, or (ii) the cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of any interest in the capital or

profits of such partnership or association, or (iii) the dissolution of the partnership or association.

As used herein, the term "Transfer" includes a transfer of any interest in this Lease held by any subtenant, assignee, or transferee, but does not include any hypothecation, encumbrance or mortgage of this Lease made in accordance with Section 11.

10.2 Port's Consent Required. Tenant shall not make or permit any Transfer of this Lease except with the prior written consent of Port in each instance as evidenced by Port Commission resolution and in full compliance with all of the terms and provisions of this Section 10. Any Transfer of this Lease occurring without full compliance with all of the terms and conditions hereof shall constitute an incurable breach by Tenant and shall be voidable at the option of Port.

10.3 Request for Transfer. Tenant shall give Port at least forty-five (45) days prior written notice of any desired Transfer (herein "Notice of Request to Transfer") and shall provide Port with the following information in writing: (1) the name, address, legal composition and ownership of the proposed transferee, (2) the current balance sheet and profit and loss statements (herein "financial statements") for the proposed transferee and for any other entity or person who is to be liable for Tenant's obligations under this Lease, such financial statements to be certified in writing to be true and correct and to be prepared in accordance with generally accepted accounting principles and to cover a period of three years prior to the proposed effective date of the Transfer (or for such shorter period as the proposed transferee or other person may have been in existence), (3) a full description of the terms and conditions of the proposed Transfer, including copies of any and all proposed sublease or assignment agreements or other documents and instruments concerning the proposed Transfer, (4) a description of the proposed use of the Premises by the proposed transferee, including any required or desired alterations or improvements to the Premises that may be undertaken by such transferee in order to facilitate its proposed use, (5) complete information regarding all payments to be made or other consideration to be given in connection with the Transfer; (6) a list of personal,

business and credit references of the proposed transferee, (7) a current financial statement of Tenant, and (8) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed Transfer and the prospective transferee. Tenant's Notice of Request to Transfer shall not be deemed to have been served or given until such time as Tenant has provided Port with all information set forth hereinabove. Tenant shall immediately notify Port of any modifications to the proposed terms of the Transfer.

10.4 Port's Consent/Refusal to Consent. Upon receiving a Notice of Request to Transfer, Port shall have the right to do any of the following:

(a) Port may consent to the proposed Transfer, subject to any reasonable conditions upon such Transfer, which conditions may include, without limitation: (i) that the proposed transferee expressly assume all obligations of Tenant under this Lease without, however, Port releasing Tenant therefrom; (ii) that in the event this Lease is terminated prior to the expiration of any sublease, at the election of Port, such termination shall operate to terminate all existing subleases entered into by Tenant without further notice from Port; and (iii) that the sublease or other Transfer agreement contain: (A) an indemnification clause and waiver of claims provisions in favor of Port and City identical to those contained in Section 14 of this Lease; (B) a clause requiring the proposed transferee to name City, Port and their agents as additional insureds under all liability and other insurance policies; and (C) a clause requiring the proposed transferee to acknowledge Port's right to demand increased insurance coverage to normal amounts consistent with the proposed transferee's business activities on the Premises.

(b) Port may deny its consent to the proposed Transfer on any reasonable ground. Reasonable grounds shall include, without limitation, any one or more of the following: (i) that the proposed transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (ii) that the use to which the Premises will be put by the proposed transferee is inconsistent with the terms of this Lease or otherwise will materially and adversely affect any interest

of Port; (iii) that the nature of the proposed transferee's intended or likely use of the Premises would involve an increased risk of the use, release or mishandling of hazardous materials or otherwise increase the risk of fire or other casualty; (iv) that the business reputation or character of the proposed transferee or any of its affiliates is not reasonably acceptable to Port; (v) that the proposed transferee is not likely to conduct on the property a business of a quality substantially equal to that conducted by Tenant; or (vi) that Port has not received assurances acceptable to Port in its sole discretion that all past due amounts owing from Tenant to Port (if any) will be paid and all other defaults on the part of Tenant (if any) will be cured prior to the effectiveness of the proposed Transfer.

If Port denies its consent to the proposed Transfer pursuant to this subsection (b), and if Tenant shall so request in writing, Port shall provide to Tenant a statement of the basis on which Port denied its consent.

(c) One hundred percent (100%) of all sums paid or payable to Tenant by the transferee in excess of the then-existing Rent payable by Tenant attributable to the portion of the Premises being transferred, including without limitation, any rent and all other sums or other consideration received by Tenant as a result of the Transfer, in whatever form (less expenses for verifiable, reasonable and customary brokerage commissions, Tenant Improvements, lease concessions, value of Tenant's trade fixtures conveyed and other expenses actually paid or obligations incurred by Tenant in connection with the Transfer and/or expenses of operating the Premises paid or incurred by Tenant) shall be paid by Tenant to Port immediately upon receipt thereof by Tenant as Additional Rent hereunder. Notwithstanding the foregoing, in the event this Lease is assigned in connection with a sale of Tenant's business, including the sale of Tenant's trade fixtures at the Premises and Tenant's goodwill, and the assignee will continue to operate the same business that Tenant operated at the Premises, then the sums payable by Tenant to Port pursuant to this Section 10.4(c) shall be limited to those amounts attributable to the value of Tenant's leasehold interest and shall not include amounts attributable to the value of Tenant's goodwill, as such amounts are determined by Port in Port's reasonable discretion.

(d) Tenant acknowledges and agrees that each of the rights of Port set forth in this Section 10 is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

(e) No consent to any proposed Transfer, whether conditional or unconditional, shall be deemed to be a consent to any other or further Transfer of this Lease, or any other Transfer of this Lease on the same or other conditions. No interest of Tenant in this Lease shall be assignable by operation of law.

10.5 Fees for Review. Tenant shall reimburse Port for all costs, including without limitation attorney's fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer.

10.6 No Release of Tenant. The acceptance by Port of Rent or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this Lease or to be a consent to any subsequent Transfer or to be a release of Tenant from any obligation under this Lease. No Transfer of this Lease shall in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease. The joint and several liability of Tenant and Tenant's successors or transferees and the obligations of Tenant under this Lease shall not be discharged, released or impaired by any agreement by Port modifying any provision of this Lease or extending time for performance hereunder or by any waiver or failure of Port to enforce any obligations hereunder.

10.7 Assignment of Sublease Rents. Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Transfer of all or any part of the Premises; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to receive, collect and enjoy such rents.

b. Use of Premises. Paragraph 5 of Lease No. L-9175 is hereby amended to include the following additional language:

The Premises may also be used for a bait and tackle retail business; charter boat booking office and/or related office uses; and/or services supporting commercial and sport fishing boats, and their owners, employees, and customers (for example, laundry, restroom, and shower facilities) (collectively, "Fishing Support Uses"). Fishing Support Uses shall be limited to the area designated by cross-hatches on Exhibit 1 attached hereto.

c. City Requirements. The following language is added to the Leases as new paragraph 33:

33. City Requirements.

33.1 Non-Discrimination. Tenant shall not, in the operation and use of the Premises, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by this reference and made a part hereof as though fully set forth herein. Tenant agrees to comply with all provisions of such Chapters 12B and 12C that apply to tenants of the City and County of San Francisco.

33.2 MacBride Principles-Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

33.3 Tropical Hardwood Ban. City urges Tenant not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood product.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Amendment of Leases in the City and County of San Francisco on the dates written below.

ASSIGNOR:

Date: 11-9-94

Carola Svedise
CAROLA SVEDISE

ASSIGNEE:

SCOMA'S RESTAURANT, INC.

Date: 11-4-94

By: Thomas W. Cradock
Its: President

AS TO PARAGRAPH 6 ONLY:

SUBLESSEE:

Date: 11-7-94

Michael Sved
MICHAEL SVEDISE

APPROVED AS TO FORM:

PORT:

**LOUISE H. RENNE
CITY ATTORNEY**

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

By: Neil H. Sekhri
NEIL H. SEKHRI
Deputy City Attorney

By: Dennis P. Bouey
DENNIS P. BOUEY
Executive Director

Port Commission Resolution No. 94-132

Date: 2-6-95

**Board of Supervisors Ordinance No.
16-95**

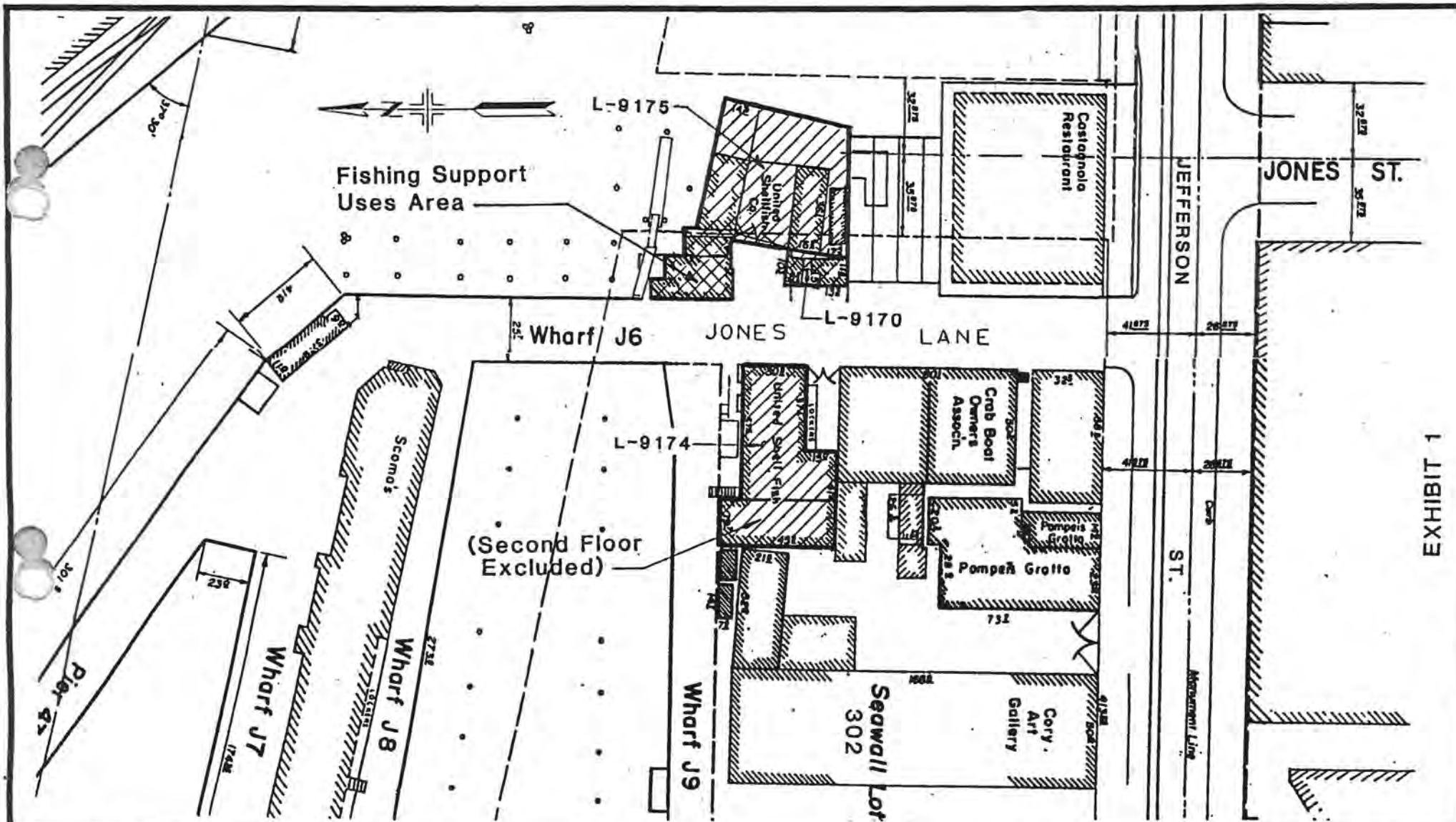


EXHIBIT 1

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE _____

CHIEF HARBOR ENGINEER

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

UNITED SHELLFISH/SCOMA'S
LEASES

DESIGNED BY:	CHECKED BY:
DRAWN BY: R.C.	DATE: 11-1-94
CONTRACT NO.	SCALE: 1"=40'
DRAWING NO. 1470	SHEET NO. OF SHEETS

EXHIBIT 2
Form of Sublease



MEMORANDUM

November 3, 1994

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Anne Halsted, Vice President
Hon. Frankie G. Lee
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Assignment and Amendment of Leases for United Shellfish Company at Fisherman's Wharf and Approval of Sublease

DIRECTOR'S RECOMMENDATION: APPROVE ASSIGNMENT AND AMENDMENT OF LEASES FOR UNITED SHELLFISH COMPANY AND APPROVAL OF SUBLEASE

BACKGROUND

United Shellfish Company occupies the premises at Fisherman's Wharf demised in the following three leases: L-9170, L-9174, and L-9175 ("Leases"). These premises are shown on the attached Exhibit 1.

The original Tenant of the Leases was Joseph Svedise, who operated United Shellfish Company at Fisherman's Wharf from the 1940s until he passed away in 1993. Since then, his widow, Carola Svedise, has been the Tenant, and United Shellfish Company has been operated by her nephew, Michael Svedise. United Shellfish Company has recently encountered some financial difficulties, and as of October 31, 1994, owed the Port \$34,212.43 under the Leases.

The terms of the Leases all commenced on April 1, 1975 and will expire on April 30, 2036. The size of the premises and the current monthly rents are shown in the table on the next page.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

<u>Lease No.</u>	<u>Size of Premises (Sq. ft.)</u>	<u>Current Monthly Rent</u>
L-9170	339	\$ 143.48
L-9175	<u>4,466</u>	<u>1,080.31</u>
Sub-total	4,805	\$1,223.79
L-9174	<u>2,310</u>	<u>955.70</u>
Total	7,115	\$2,179.49

The uses permitted by the Leases consist of "wholesale fish processing, fish storage, marine food preparations and such other uses as are reasonably related thereto". Lease No. L-9175 also provides that use of the Premises "shall not include any retail sales nor sales to any persons or entities who are not engaged in the retail sale of fish and marine food, who do not intend to transact retail sales of such items nor who intend to consume such items".

PROPOSED TRANSACTION

The proposed transaction involves three components: (1) assignment of the Leases; (2) amendment of the Leases; and (3) subleasing the premises demised in two of the Leases.

1. Assignment of Leases

The Leases will be assigned from Carola Svedise ("Assignor") to Scoma's Restaurant, Inc. ("Assignee"). The Effective Date of the assignment will be the first day of the month immediately following the month in which the transaction is approved by the San Francisco Port Commission and the Board of Supervisors, and the Assignment is fully executed by the parties. As of the Effective Date, the Assignor will be released from all obligations under the Leases. The consideration which will be paid to the Assignor by the Assignee will consist of \$16,000, plus payment of all outstanding charges due the Port under the Leases through July 31, 1994, which totaled \$26,336.60. (The balance due the Port will be paid by the Assignor prior to the Effective Date of this transaction).

2. Amendment of Leases

The Leases will be amended to include the assignment and subletting provisions of the current Port Standard Lease and to include City requirements involving Non-



Discrimination, MacBride Principles-Northern Ireland, and Tropical Hardwood Ban. In addition, the permitted use provisions of Lease No. L-9175 will be amended to include the following language:

"The Premises may also be used for a bait and tackle retail business; charter boat booking office and/or related office uses; and/or services supporting commercial and sport fishing boats, and their owners, employees, and customers (for example, laundry, restroom, and shower facilities) (collectively "Fishing Support Uses"). Fishing Support Uses shall be limited to the areas designated by cross hatches on Exhibit 1 attached hereto."

It is the intent of the Assignee and the Sublessee to renovate the area designated for Fishing Support Uses in order to offer much needed services to the fishing fleet at Fisherman's Wharf.

3. Sublease

The Assignee will sublease the premises demised in Lease Nos. L-9170 and L-9175 to Michael Svedise ("Sublessee"), who will continue to operate the United Shellfish Company on these Sublease Premises, as well as operate the Fishing Support Uses in conjunction with the Assignee. The term of the sublease will be five years, with three more options to extend the term by an additional five years each. The initial base rent for the Sublease Premises will be \$1,223.79 per month (which is identical to the amount paid by the Assignee to the Port for the Sublessee Premises, with the same future adjustments in the base rent as required by the Leases with the Port. The Sublessee will also pay fixed additional rent of \$352.69 per month for five years, constituting amortization at 8% interest of \$17,394.30, which represents a portion of the amount paid by the Assignee toward the balance owed the Port by the Assignor. The Sublessee will also be responsible for all other rent, charges, utilities and wharfage relating to the Sublease Premises, and the Sublessee will be responsible for maintenance and repairs to the Sublease Premises.

The first two components of this transaction will be documented in an Assignment and Amendment of Leases agreement, and the third component will be documented in a separate Sublease Agreement. Both of these documents have been approved as to form by the City Attorney.

Prepared by: Frederick White, Director
Tenant and Maritime Services



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

RESOLUTION NO. 94-_____

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Port Commission approval is being sought for the assignment of Leases L-9170, L-9174 and L-9175 and for an amendment of said Leases, as set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994; and

WHEREAS, Port Commission approval is being sought for the subleasing of the premises demised in Leases L-9170 and L-9175, as set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994; now therefore, be it

RESOLVED, that the Port Commission hereby approves the Assignment and Amendment of Leases, the business terms of which are set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994, and hereby authorizes the Executive Director of the Port to execute the same on behalf of the Port and forward said Assignment and Amendment of Leases to the San Francisco Board of Supervisors for approval by ordinance pursuant to City Charter Section 7.402-1; and be it further

RESOLVED, that the Port Commission hereby consents to the sublease of the premises demised in Leases L-9170 and L-9175, the business terms of which are set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 15, 1994

**THIRD AMENDMENT TO
LEASE No. L-9170**

Scoma's Restaurant, Incorporated, a California corporation

This Third Amendment to Lease No. L-9170 ("**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 Scoma's Restaurant, Incorporated, a California corporation, as tenant ("**Tenant**") and is dated for reference purposes only as of April 23, 2021.

RECITALS

A. On February 11, 1976, Port and United Shellfish Co. entered Lease No. L-9170 for use of that certain real property located at Wharf J-7 in the City and County of San Francisco, as amended by the First Amendment dated June 16, 1983 for reference purposes, and as assigned to Tenant and amended effective March 1, 1995 ("**Original Lease**"). The Original Lease commenced on April 1, 1975 and will expire on April 30, 2036 ("**Expiration Date**").

B. Consistent with Port Commission Resolution 20-41, the Port desires to forgive certain rent payments due to Port in order to address the devastating financial impacts of the COVID-19 pandemic on Tenant's business. Amending the Original Lease to forgive such amounts is of considerable value to both parties and is intended to improve the financial feasibility of the Lease and preserve Tenant's ability to continue operations at the Port, while at the same time meeting the Port's own goals, including protecting its revenue streams and assets; supporting the Port's maritime mission and its small local business tenants and aligning Port's and Tenant's interest in promoting a shared prosperity partnership, and is in the best interests of the Port's long-term financial health.

C. The Port's Executive Director has determined that this Amendment satisfies the requirements of Port Commission Resolution 20-41.

D. By Board of Supervisors Ordinance 244-20, the Board of Supervisors has waived the requirement to add certain City ordinances enacted after the effective date of the most recent Lease amendment.

E. As material consideration for this Amendment, Tenant must comply with all Original Lease provisions as modified by this Amendment. This Amendment is narrowly tailored to relieve certain Tenant's rent obligations only and is not intended to excuse, waive, suspend or modify any other provision or obligation of either party under the Original Lease. Except as explicitly provided in this Amendment as to rent, nothing in this Amendment is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of the Original Lease. The parties agree that each of the terms in this Amendment are material and that Port would not have agreed to this Amendment absent such terms.

F. The Original Lease and this Amendment shall collectively be referred to as the "**Lease**". All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Original Lease.

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

AGREEMENT

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

2. Lease Compliance. Except as explicitly provided in this Amendment, this Amendment does not excuse, waive, suspend or modify any provision or obligation of Tenant under the Original Lease, including without limitation the obligation to pay all amounts owed prior to the Effective Date and does not and shall not be construed to waive any breach of the Original Lease by Tenant, or any of Port's rights thereunder, or to enlarge or increase Port's obligations thereunder. Tenant shall comply with all terms and conditions of the Original Lease as modified by this Amendment, including provisions requiring compliance with applicable Laws, which shall include without limitation, all "back to work" requirements and other workforce-related ordinances, orders, and laws relating to the COVID- 19 pandemic, including those addressing workplace safety and employment rights. Tenant agrees that, in addition to any remedies under the Lease, upon an uncured default by Tenant of any term or condition of the Lease, including without limitation, the terms and conditions of this Amendment, the provisions of Sections 3 and 4 of this Amendment shall automatically terminate and be of no further force or effect as of the date of default. Tenant acknowledges and agrees that compliance with the Lease is a material condition of this Amendment and that Port would not have agreed to this Amendment absent such terms.

Tenant must resume normal timely payments of rent on January 1, 2021.

3. Rent Forgiveness.

(a) For purposes of this Amendment, the Forgiveness Period is that period beginning on March 1, 2020 and ending on August 31, 2020. Tenant's obligation to pay rent and any late fees and interest on past due amounts is hereby waived and forgiven during the Forgiveness Period.

(b) Notwithstanding any other provision of this Amendment, monies received by Tenant from any federal, regional, state or local government-funded financial aid, grant or loan program including without limitation the Paycheck Protection Program, Economic Injury Disaster Loan program, the San Francisco Hardship Emergency Loan Program (SFHELP), Port's Micro-LBE Hardship Emergency Loan Program, or Port's Crab Fisher Assistance Loan Program for the stated purposes of paying rent are not eligible for forgiveness and will be deducted from any forgiveness amount (whether or not actually used to pay rent). Tenant represents and warrants that it has provided and will continuously provide Port with accurate and complete information regarding such funds and further agrees to promptly make its records available to Port for the purpose of determining the accuracy of Tenant's disclosures. If an audit reveals that Tenant has misrepresented any amounts eligible for forgiveness, Tenant will immediately pay such amounts to Port plus interest from the original due date at ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable law. In addition, Tenant shall pay to Port Three Hundred Dollars (\$300.00) which the parties agree represents a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's misrepresentation. Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under the Lease, at law or in equity.

(c) Tenant agrees to keep Port apprised of its reopening plans and, if applicable, to provide prompt notice of its intent to permanently cease operations on Port property so that the parties can negotiate in good faith for a mutually acceptable termination agreement.

4. Rent Credits.

4.1. Rent Credit for Rent Paid.

(a) During the Forgiveness Period, the parties acknowledge that, Tenant paid the Port the amount of One Thousand Six Hundred Eighty-seven Dollars and Eighty-six Cents (\$1,687.86) in Rent, even though Tenant could have instead deferred such payments under the Port's Covid-19 tenant relief policies in Port Commission Resolutions 20- 18; 20-27 and 20-30 (the "**Excess Rent Amount**") and that Tenant is eligible for a rent credit in such amount, after subtracting any applicable deductions and applying the Excess Rent Amount to pay any balance outstanding prior to March 1, 2020 (the "**Rent Paid Rent Credit**"). The Rent Paid Rent Credit is One Thousand Six Hundred Eighty-seven Dollars and Eighty-six Cents (\$1,687.86).

(b) The Rent Paid Rent Credit shall be applied in the following manner: One-twelfth (1/12) of the Rent Paid Rent Credit (with no interest or escalation) (the "**Monthly Rent Paid Rent Credit**") will be applied against rent due beginning in the month of July 2021 and in each of the next eleven (11) months (through and including June 2022). The Monthly Rent Paid Rent Credit can be taken against any rent due (including percentage rent), but not against any other fee or charge under the Lease, including without limitation any amounts defined as Additional Rent. The Monthly Rent Paid Rent Credit is One Hundred Forty Dollars and Sixty-six Cents (\$140.66).

4.2. Expiration of Rent Credits. Notwithstanding any other provision of this Amendment, rent credits due but not applied ("**unused rent credits**") shall expire upon the earlier to occur of (x) a default by Tenant of any term or condition of the Lease; or (y) the expiration or earlier termination of the Lease, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credits.

5. Worksheet. The Worksheet attached as **Exhibit 1** documents the total applicable forgiveness amount (taking into account deductions) and any applicable rent credits. The parties will update the Worksheet as needed and any such revised Worksheet shall be incorporated into this Amendment by countersignature of the parties without further action.

6. Tax Consequences. 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.

7. Waiver and Release. Tenant, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge the Port, its agents, employees, departments, commissioners, and officers, from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the matters described in this Amendment.

As to such claims, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

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

Tenant understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Tenant should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Amendment, Tenant will not be permitted to make any claims to recover for such loss, damages or injury against 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. Tenant acknowledges that it intends these consequences even as to claims that may exist as of the date of this Amendment but which Tenant does not know exist, and which, if known, would materially affect Tenant's decision to execute this Amendment, regardless of whether Tenant's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Provided that Tenant strictly comply with the provisions of this Amendment, Port, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge Tenant, its agents and employees from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of rent forgiven under this Amendment.

The provisions of this Section 8 shall survive the expiration or earlier termination of the Lease.

8. **Disclosures.** Tenant has received and reviewed the disclosures included in *Exhibit 2*.

9. **City and Port Requirements.** The following is added as Sections 33.4 – 33.7:

“33.4. 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 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/sublicensee(s). Additionally, Tenant certifies that if this Section 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.

33.5. 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.

33.6. *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 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.

33.7. *Notice of Transfers to Port.* In addition to the obligations under the Lease with respect to reporting transfers, subleases and/or assignments, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and Assessor a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance)."

10. Entire Agreement. This Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Amendment are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment.

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

12. 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.

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

Exhibits and Schedules

Exhibit 1 Worksheet

Exhibit 2 Disclosures

Schedule 1 FEMA Disclosure Notice

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, Port and Tenant execute this Amendment at San Francisco, California, as of the last date set forth below.

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

DocuSigned by:
By: Rebecca Benassini
~~Rebecca Benassini~~
Deputy Director, Real Estate and Development

Date Signed: 5/13/2021

TENANT: SCOMA'S RESTAURANT, INCORPORATED,
A CALIFORNIA CORPORATION

DocuSigned by:
By: Mariann Costello
Name: EACE2382AF494AD ~~Mariann Costello~~
Title: President

Date Signed: 5/12/2021

By: _____
Name: _____
Title: _____

Date Signed: _____

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

DocuSigned by:
By: Rona H. Sandler
Name: Rona H. Sandler
Deputy City Attorney

Amendment Prepared By: Demetri Amaro, Commercial Property Manager Da (initial)

Port Commission Reso. No. 20-41

Board of Supervisors Ordinance No. 244-20

**EXHIBIT 1
WORKSHEET**

[Attachment on following pages]

RENT PAID RENT CREDIT WORKSHEET **EXHIBIT 1**

TENANT INFORMATION

1 TENANT NAME:	Scoma's Restaurant Inc ENTER TENANT NAME AS LISTED ON LEASE/LICENSE AGREEMENT(S)
2 LEASE/LICENSE #	L-9170 ENTER APPLICABLE LEASE/LICENSE NUMBER
3 SECTOR:	Maritime SELECT FROM EITHER PERCENTAGE RENT, MARITIME, LBE, OR CIVIC IMPACT
4 FORGIVENESS PERIOD:	March 1, 2020 - August 31, 2020 WILL AUTO-POPULATE BASED ON ENTRY BY LINE 3

TENANT BALANCES AS OF MAY 31

5 PRE-COVID BALANCE:	\$ - OUTSTANDING BALANCE AS OF FEBRUARY 29, 2020 MUST BE PAID PRIOR TO EXECUTION
6 FORGIVENESS PERIOD BALANCE:	\$ 1,687.86 TOTAL RENT DUE DURING FORGIVENESS PERIOD IN LINE 4
7 TOTAL OUTSTANDING BALANCE:	\$ 1,687.86 TOTAL OUTSTANDING BALANCE (AT END OF FORGIVENESS PERIOD) = LINE 5 + LINE 6

CALCULATIONS

8 BALANCE ELIGIBLE FOR FORGIVENESS	\$ 1,687.86 TOTAL RENT DUE DURING FORGIVENESS PERIOD IN LINE 4
9 TOTAL RENT PAID BY SUBTENANT TO TENANT	\$ - IF APPLICABLE, ENTER RENT PAID BY SUBTENANT TO MASTER TENANT
10 TOTAL GOV. AID FOR RENT:	\$ - ENTER AMOUNT FROM QUESTION #136 from LBC Application
11 FINAL FORGIVENESS:	\$ 1,687.86 TOTAL FORGIVENESS = LINE 8 - LINE 9
12 TOTAL RENT PAID :	\$ 1,687.86 ENTER TOTAL RENT PAID DURING FORGIVENESS PERIOD
13 TOTAL RENT PAID RENT CREDIT (RPRC):	\$ 1,687.86 TOTAL RPRC = LINE 11 - LINE 9
14 ADJUSTED PRE-COVID BALANCE DUE:	\$ - ADJUSTED PRE-COVID BALANCE DUE = LINE 5 - LINE 12
15 FINAL RPRC TO BE APPLIED FY 21-22:	\$ 1,687.86 FINAL RPRC = LINE 12 - LINE 5 OR (OR TOTAL AMOUNT DUE PRIOR TO AMENDMENT EXECUTION)
16 ADJUSTED MONTHLY RPRC	\$ 140.66 MONTHLY RENT CREDIT TO BE APPLIED JULY 1, 2021 - JUNE 30, 2022

SCHEDULE OF RENT CREDIT TO BE APPLIED

INVOICE MONTH	RENT CREDIT DEDUCTION
16 JULY 2021	\$ 140.66
17 AUGUST 2021	\$ 140.66
18 SEPTEMBER 2021	\$ 140.66
19 OCTOBER 2021	\$ 140.66
20 NOVEMBER 2021	\$ 140.66
21 DECEMBER 2021	\$ 140.66
22 JANUARY 2022	\$ 140.66
23 FEBRUARY 2022	\$ 140.66
24 MARCH 2022	\$ 140.66
25 APRIL 2022	\$ 140.66
26 MAY 2022	\$ 140.66
27 JUNE 2022	\$ 140.66

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EXHIBIT 2 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. Federal Emergency Management Agency. Tenant represents and warrants to Port that it has received and reviewed the FEMA disclosure notice attached hereto as *Schedule 1*.

3. 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 2* 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 25359.7 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 25359.7 as well as the penalties that apply for failure to meet such obligations.

Schedule 1

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/isan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:
<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:
www.FloodSmart.gov.

9175

INDEX

	<u>Page</u>
1. Letting	1
2. Rental	1
3. Guarantee Deposit	2
4. Default and Re-entry	3
5. Use of Premises	6
6. Requirement that Premises be Used	6
7. Maintenance of Improvements and Atmosphere	7
8. Alterations and Improvements	8
9. Prohibited Uses	9
10. Assignment and Subletting	10
11. Security Interests	10
12. Insolvency	13
13. Comprehensive Public Liability Insurance	14
14. Indemnification	15
15. Waiver of Claims	15
16. Liens	16
17. Fire Insurance	16
18. Taxes	19
19. Compliance with Law	19
20. Entry	19
21. Condemnation	19
22. Maintenance by Tenant	21
23. Nondiscrimination Provisions	23
24. Waiver of Breach	23
25. Successors	24

	<u>Page</u>
26. Modification of Lease	24
27. Holding Over	24
28. Quit Claim	25
29. Mineral Reservation	25
30. Notices	25
31. Time is of Essence	26
32. Captions	26

L-9175

THIS LEASE, made on the 11th day of February, 1976 between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the SAN FRANCISCO PORT COMMISSION, hereinafter called "PORT," Landlord, and JOSEPH SVEDISE doing business as UNITED SHELLFISH COMPANY, hereinafter called "TENANT;"

WITNESSETH:

1. Letting. PORT hereby leases 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 incorporated herein by this reference, and all replacements of and additions to said improvements made during the term to have and to hold for the term of sixty-one (61) years, commencing on April 1, 1975, and terminating April 30, 2036. Said real property and the improvements thereon, and all replacements thereof and additions thereto, are hereinafter collectively called the "leased premises."

2. Rental. TENANT agrees to pay to PORT a ground rental for that area described in Exhibit "A" for the first five (5) years of the term hereof in the amount of \$373.00 per month, payable in advance on the first day of each month. (If TENANT goes into occupancy, or if this lease commences on other than the first day of month, the rent for that month will be apportioned as the number of days of occupancy bears to the month. The anniversary date

of this lease will, however, in that case, be the first day of the month following the date of actual occupancy. If the lease commences on the first of the month the anniversary date will be that date). At the end of the fifth year of the lease, and at the end of every five-year period thereafter, the ground 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; 1967 = 100), 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 March 1975, and the parties agree that the index was 156.0 for that month.

3. Guarantee Deposit. TENANT shall, when the term commences, in addition to the advance payment of the

first month's ground 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 rent, which amount shall be held by PORT as a guarantee for the future payment of rent. Such amount shall guarantee also the 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 of this lease. If the ground 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. If 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. If 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.

4. Default and Re-entry. If any rental or other payment shall be due and unpaid for thirty (30) days, or if any other material default shall be made by TENANT in any of the conditions or covenants of this lease and said other material 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 it 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 may deem advisable under provisions set forth in Paragraph 7 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. Monthly rent shall be onetwelfth (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. The premises shall be used to conduct wholesale fish processing, fish storage, marine food preparations and such other uses as are reasonably related thereto. The rental provision set forth in paragraph 2 was determined in consideration of the specific use TENANT makes of the leased premises. PORT considers TENANT's use to be an important contributing activity to the character of Fishermen's Alley, therefore changes in the type or class of business conducted by TENANT hereunder shall be made only upon the express written consent of PORT.

6. Requirement That Premises be Used; Improvements. TENANT shall operate to secure the maximum economic return based on the uses specified. It is the intent hereof that a TENANT shall not acquire the use of the property through a lease and then not use it. Accordingly, if TENANT fails to use the property for the purposes for which the property is leased, or in the manner set forth herein, the PORT shall serve a written notice by certified mail upon TENANT personally or by mail, postage prepaid, to TENANT's address set forth hereinafter requesting that TENANT use the property as required. If such failure shall continue for thirty (30) days after the mailing of such notice and unless such failure shall be for reasons beyond the control of TENANT, then the PORT at its option may terminate this lease.

TENANT shall, as a material part of the consideration for this lease, submit working drawings of improvement to the premises before April 30, 1980 specifying a time

schedule in which improvements shall be made to the leased premises to enhance the use of the premises as set forth in paragraph 5 hereof. Failure to prepare, submit and observe said plan shall be cause for forfeiture of the within lease at the option of PORT.

7. Maintenance of Improvements and Atmosphere.

(a) Improvements on the leased premises shall be maintained by TENANT in good operating condition throughout the term of this lease. PORT shall have no obligation whatever to maintain the premises during the term of this lease, even though PORT elects to take title to the improvements at the termination of this lease.

(b) At PORT's election TENANT shall be obligated at its own expense to demolish and remove down to ground level, leaving the premises free from debris, such improvements that TENANT has made as are or will be, at the termination of this lease, not reasonably capable of continued occupancy for three or more years immediately following such termination without substantial repairs or renovations.

(c) Within ninety (90) but not less than sixty (60) days prior to the termination of this lease, unless termination should be the result of loss or destruction of the improvements, in which event written notice only shall be required of PORT, PORT shall advise TENANT as to which improvements or portions of improvements it elects to have demolished and removed in accordance with subparagraph (b). In the event that removal or demolition is required under subparagraph (b) but TENANT fails to make such demolition and removal within (60) days after the expiration or prior

termination of the lease, PORT may perform such work at TENANT's expense.

(d) Trade fixtures installed on the leased premises shall be and become a part of the realty and shall be maintained by TENANT, except that trade fixtures may be removed by TENANT at the termination of the lease, providing TENANT repairs any damage such removal may make to the leased premises and leaves the premises free and clear of debris. The buildings, fences, parking lots and similar structures shall not be regarded as trade fixtures but as "improvements."

(e) TENANT shall keep said premises and appurtenances, including all glazing, in good and sanitary order, condition and repair and TENANT shall perform such structural maintenance during the term hereof as is required in paragraph 22 hereof.

(f) The parties agree that the atmosphere and character of Fisherman's Wharf, its commercial fishery, its fish processors, and fishing oriented businesses are a unique asset to San Francisco resulting in a major tourist attraction. Accordingly, TENANT agrees to conduct its business henceforth in a manner to preserve and enhance the present fishing-oriented uses at the Wharf.

8. Alterations and Improvements. Except for nonstructural 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 first obtaining

the written consent of the PORT. Any additions to or modifications to the said premises which may not be removed without substantial injury to the premises shall become a part of the realty and shall belong to the PORT unless the PORT waives its rights hereunder in writing. Notwithstanding paragraphs 7(b) and 7(d), PORT may require TENANT to remove any or all such additions or modifications not approved by the PORT upon termination of this lease, and PORT may require TENANT to repair any damage occasioned thereby at TENANT's expense. TENANT shall leave the premises at any termination of this lease, free and clear of all debris, and shall repair any damage to the premises for which TENANT is liable under this lease, subject to such adjustments as may be mutually agreed in writing. If TENANT fails to remove any improvements, furniture or trade fixtures when requested to do so by the PORT, or fails to leave the property in the condition required herein, the PORT may remove such items and correct such condition at TENANT's expense, and charge said costs against the guarantee deposit.

9. Prohibited Uses. TENANT shall not use, or permit said premises, or any part thereof, to be used, for any purposes other than the purposes for which the premises are leased. TENANT agrees not to perform any act on the premises which will cause a cancellation of any insurance policy covering the premises, or any part thereof. TENANT agrees not to violate any law, ordinance, rule or regulation affecting the occupancy and use of said premises of any governmental agency having jurisdiction over the premises.

TENANT further agrees not to obstruct or interfere with the rights of PORT's other tenants or licensees.

10. Assignment and Subletting. TENANT shall not assign this lease or any interest therein except as provided herein 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 any portion of the premises without first obtaining the written consent of the PORT, which consent shall not be unreasonably withheld.

TENANT agrees that the uses set forth in paragraphs 5 and 6 shall apply in considering any request for assignment or subletting. A consent to one assignment, subletting, occupation or use by one person shall not be construed as a consent to a subsequent assignment, subletting, occupation or use by another. Each such assignment or subletting without consent shall be void. No interest in this lease shall be assignable as to TENANT's interest by operation of law without PORT's written consent.

11. Security Interests.

The parties acknowledge that the TENANT may from time to time encumber TENANT's leasehold estate to all or in part by the lien of a mortgage, deed of trust or other security instrument to institutional lenders. For the express benefit of all such secured parties (hereinafter referred to as "LENDER"), the parties agrees as follows:

(a) The execution of any mortgage, deed of trust or other security instrument, or the foreclosure thereof or any sale thereunder 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 lease terms or conditions or an assumption by LENDER, personally, of TENANT's obligations hereunder 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 (e) 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 to the portion of the leased premises encumbered by such lien. Any performance of TENANT's duties by the LENDER shall be effective to prevent the termination of this lease.

(c) The PORT hereby agrees with respect to any such security instrument that the LENDER may record such security instrument and may enforce such security instrument and upon foreclosure sell and assign TENANT's interest in the premises and improvements thereof to another from whom it may accept a purchase price subject, however, to first securing written approval from PORT Commission which approval shall not be unreasonably withheld. LENDER, furthermore, may acquire title to the leasehold and improvements in any lawful way, and if the LENDER shall become the assignee, LENDER may sell or assign said leasehold and TENANTS interest in any improvements thereon. If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a proper conveyance

from TENANT, LENDER shall take subject to all of the provisions of this lease, and shall assume personally all the obligations of TENANT hereunder.

(d) If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings 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, after first having received approval in writing from Port Commission, which approval shall not be unreasonably withheld, provided that all others taking through the LENDER and their respective successors in interest shall take said leasehold estate and assume all of the covenants and conditions therefore and agree to perform all such covenants and conditions.

(e) No such foreclosure or other transfer of TENANT's leasehold estate nor the acceptance of rent by the PORT from another shall relieve, release or in any manner affect TENANT's liability hereunder.

(f) If an event of default under paragraph 4 hereof occurs, LENDER shall have thirty (30) days after receipt of written notice from the PORT specifying TENANT's default to remedy such default. If LENDER shall have commenced appropriate proceedings in the nature of foreclosure within such thirty (30) days' period and is diligently prosecuting the same, LENDER shall have a reasonable time beyond thirty (30) days within which to cure such default. PORT's right to exercise its rights pursuant to paragraph 4 hereof shall at all times, while the TENANT is indebted to the LENDER, be subject to and conditioned upon the PORT

furnishing LENDER such written notice and the LENDER having failed to cure such default as provided herein. The fact that the time has expired for performance of a covenant by the TENANT shall not render performance by the LENDER or a purchaser impossible. 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 the LENDER is prevented, by any process, injunction or other order issued by any court having jurisdiction in any legal proceedings, it shall be deemed to have prosecuted said proceedings for purposes of this subparagraph (e); 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 its address and the existence and nature of its security interest. Failure to give such notice shall constitute a waiver of LENDER's rights set forth in this paragraph 11.

12. Insolvency. If (a) the appointment of a receiver to take possession of all or substantially all of the assets of TENANT is made and such assets are not released within thirty (30) days, or if (b) a general assignment is made by TENANT for the benefit of creditors or if (c) any action taken or suffered by TENANT under any insolvency or bankruptcy act, unless TENANT within thirty (30) days cures or proceeds with diligence to cure, is taken; any of such

occurrences, shall, at the option of the PORT constitute a material breach of this lease.

13. 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 insureds, with a company or companies acceptable to PORT. Such policy or policies shall cover the leased premises and its operation against claims for personal injury and death in an amount of not less than \$500,000.00 for injury or death of any one person, and \$1,000,000.00 for injury or death of all persons in any one accident, and \$100,000.00 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 within 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. Said policy or policies shall either contain a broad form of contractual liability coverage, including leases, or there shall be attached to the 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 the public liability insurance carried pursuant to this paragraph, but in any event not less than every ten (10) years during the term of this lease. If it is found to be the general commercial practice in the City and County of San Francisco to carry public liability insurance in an amount substantially greater or lesser than the amount then being carried by TENANT with respect to risks comparable to those associated with the leased premises, the amount carried by TENANT shall be increased or decreased to conform to such general commercial practice.

14. Indemnification. PORT and the City and County of San Francisco, their officers, agents, and employees, shall, except as hereinafter provided, 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 except for intentionally harmful or negligent acts committed solely by PORT, or the City and County of San Francisco, or their officers, agents, or employees 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, and TENANT hereby covenants and agrees to save harmless the PORT and the City and County of San Francisco from all such liabilities, claims for damages, suits, and litigation expenses.

15. Waiver of Claims. TENANT, as a material part of the consideration to be rendered to PORT, hereby waives all claims against PORT, except for intentionally harmful or negligent acts committed solely by PORT, its officers,

agents, or employees, and agrees to hold PORT harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment and persons in, upon, or about said premises, except for intentionally harmful or negligent acts committed solely by PORT, its officers, agents, or employees, arising at any time from any cause.

16. Liens. TENANT shall keep the demised premises and the improvements thereof free from any liens arising out of any work performed, materials furnished, or obligations incurred by TENANT.

17. Fire Insurance.

(a) TENANT shall maintain fire and extended coverage insurance on the leased premises. Each policy shall name the PORT and the City and County of San Francisco as additional insureds. Each insurance company insuring the premises shall be acceptable to PORT. Each policy shall cover the improvements on the leased premises, except the substructure, in an amount of at least ninety (90%) percent of the replacement value thereof. If TENANT cannot obtain insurance covering ninety (90%) percent replacement value at a reasonable cost, then TENANT shall so notify PORT and shall be entitled to carry such lesser insurance as is prudent under the circumstances. TENANT shall furnish PORT with a certificate evidencing such insurance and stating that such insurance cannot be cancelled or a change made in coverage without the insurer first furnishing fifteen (15) days advance written notice to PORT.

TENANT agrees to notify PORT promptly of all changes in the terms of each policy and agrees to provide

PORT with copies thereof. Any funds received by TENANT from any damage which is covered by such insurance policy shall be immediately deposited by TENANT in a trust account in the names of the TENANT and the PORT for repair or replacement of the improvements on the leased premises. The funds in said account shall be used solely for repairs and replacements on the premises. TENANT agrees to further 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 shall be submitted to and approved by the Chief Engineer of PORT which approval shall not be unreasonably withheld. If TENANT declines to repair the damage or replace the improvements to the full extent of the proceeds, the portion of the proceeds representing payment for damage for which title has vested in PORT shall be conveyed to PORT free of all claims. If TENANT fails to repair as provided herein, PORT may elect to make such repairs and replacements itself from such funds, but PORT shall not be required to use the funds for such repair or replacement. TENANT may, if it so 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 all improvements, including trade fixtures, other than trade fixtures removable without injury to the premises, shall immediately vest in PORT on repair or replacement.

(b) TENANT shall cause to be maintained throughout the term of this lease a standard policy of

insurance against the loss of income or revenue to PORT as a result of the loss of use of the leased premises caused by the perils insured against in the policy or policies for fire and extended coverage on the improved premises. The income loss to PORT shall be, for each month, one-twelfth (1/12th) of the annual average rental paid by TENANT in the preceding twelve calendar months and said payment shall continue to PORT as rent due hereunder for the period from the date of the damage to the date business is recommenced on the premises.

(c) If (i) more than fifty (50) percent of the premises are destroyed or are so damaged by fire or other casualty insurable under full standard extended risk insurance as to become wholly untenable, or (ii) the premises shall be partially or totally destroyed by a cause or casualty other than those covered by fire and extended coverage risk insurance, then, in either event, PORT may, if it so elects, rebuild or put the premises in good condition and fit for occupancy within a reasonable time after such destruction or damage, or it may give notice terminating this lease as of a date not later than thirty (30) days after any such damage or destruction. In the event of such termination the fire insurance proceeds required per paragraph 17(a) shall be distributed between PORT and TENANT as their respective interest may appear. If PORT elects to repair or rebuild, it shall within thirty (30) days after such damage or destruction, give TENANT notice of its intention and then shall proceed with reasonable speed to make the repairs or to rebuild. Unless PORT elects to terminate this lease, this lease shall remain in full force and effect and the parties waive the provisions of any law to the contrary.

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

19. Compliance with Law. The premises 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. TENANT's substantial failure to abide by any law, ordinance, rule, or regulation imposed on the premises will be deemed a violation of a condition of this lease.

20. Entry. The right is hereby reserved to PORT, its officers, agents, and employees to enter upon the leased premises at any reasonable time for the purpose of reasonable inspection and inventory, and when otherwise deemed reasonably necessary for the protection of its interests. TENANT waives all claims against the PORT, or any officer, agent or employee thereof for damages caused in the PORT's reasonable exercise of its right hereunder. There shall be no rebate of rent or any claim against the PORT for any loss of occupation or quiet enjoyment of the premises occasioned by such inspection and inventory.

21. Condemnation.

(a) If title to the entire premises is taken for any public or quasi-public use under any statute, or by

right of eminent domain, or by private purchase in lieu of eminent domain, or if title to so much of the premises is taken that a reasonable amount of reconstruction of the premises will not result in the premises being a practical improvement and reasonably suitable for TENANT's continued occupancy for the uses and purposes for which the premises are leased, then, in either event, this lease shall terminate on the date that possession of the premises, or part of the premises is taken.

(b) If any part of the premises shall be so taken and the remaining part of the premises (after reconstruction of the then existing building in which the premises are located) is reasonably suitable for TENANT's continued occupancy for the purposes and uses for which the premises are leased, this lease shall, as to the part so taken, terminate as of the date that possession of such part is taken, and the minimum rent shall be reduced in the same proportion that the floor area of the portion of the premises so taken (less any additions to premises by reconstruction) bears to the original floor area of the premises. PORT shall, at its own cost and expense, make all necessary repairs or alterations to the building in which the premises are located so as to constitute the portion of the building not taken a complete architectural unit and the remaining premises a complete operating unit. There shall be no abatement of rent during such restoration except to the extent as otherwise provided herein.

(c) All compensation awarded or paid upon a total or partial taking of the fee title shall belong to the

PORT, whether such compensation be awarded or paid as compensation for diminution in value of the leasehold or of the fee; provided, however, that PORT shall not be entitled to any award made to TENANT for loss of business or unamortized improvements and depreciation to and costs of removal of stock and fixtures.

(d) TENANT shall have the right to claim against the condemnor any other value attributable to the demised 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.

22. 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 including utility service within the leased premises. If, however, the substructure is damaged by fire, acts of war, or acts of God, or any other cause 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 of the improvements by ordinary wear and tear or deterioration, or, if improvements do not meet the standard of maintenance required by PORT for such uses as TENANT is making of the leased premises, 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 provision shall not affect the obligations of TENANT to make repair to improvements for damages required to be covered by insurance by TENANT under paragraph 17 hereof. In the event of damages in this category, TENANT's obligations shall be as set forth in paragraph 17.

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 by TENANT, TENANT shall deposit the proceeds and use the funds in the same manner as required in paragraph 17 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 it must throughout the entire term of this lease repair, replace, maintain, and rebuild said substructure.

On termination of this lease, the premises, including the substructure, must be usable and in substantially as good condition as when the premises were first tendered to TENANT hereunder after adjustment is made for normal deterioration over the term. 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 therefore or to obtain such other permits from governmental bodies as may be required.

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

24. Waiver of Breach. The waiver by PORT of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition with respect to any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by PORT shall not be deemed to be a waiver of any term, covenant or

condition of this lease, other than the failure of TENANT to pay the particular rental so accepted, regardless of PORT's knowledge of such preceding breach at the time of acceptance of such rent. No act or omission by either the PORT or TENANT shall constitute a modification of this lease, it being understood by all parties that this lease may be changed or otherwise modified only by written agreement of all parties.

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

26. Modification of Lease. 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.

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

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

29. Mineral Reservation. The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the leased premises. In accordance with the provision of that Statute, the PORT 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 an area located by the California Grid System, Zone 3, beginning at a point where x equals 1,452,333 and y equals 481,666 which area was not improved on January 1, 1975.

30. Notices. All notices to be given pursuant to this lease shall be addressed, if to PORT to:

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

and if to TENANT to:

United Shellfish Company
Pier 47, Foot of Jones Street
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 wrapped, addressed as aforesaid and deposited, postage prepaid, in a post office or branch post office regularly maintained by the United States Postal Service.

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

32. 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 PORT and the TENANT have executed this lease on this 11th day of February, 1976, in the City and County of San Francisco.

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

By Thomas Houls
PORT

JOSEPH SVEDISE, doing business as
UNITED SHELLFISH COMPANY

By Joseph Svedise
TENANT

AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 12B.1, 12B.2 AND 12B.4 THEREOF, DEFINING LEASES, FRANCHISES, CONCESSIONS AND SUBORDINATE AGREEMENTS THEREUNDER AS CONTRACTS, AND PROHIBITING EMPLOYMENT DISCRIMINATION BECAUSE OF AGE.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Administrative Code is hereby amended by amending Sections 12B.1, 12B.2 and 12B.4 thereof, to read as follows:

SEC. 12B.1

All contracting agencies of the City and County of San Francisco, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts, franchises, leases, concessions or other agreements involving real or personal property, heretofore negotiated, let, awarded, granted, renegotiated, extended or renewed, in any manner or as to any portion thereof, a provision obligating the contractor, franchisee, lessee, concessionaire, or other party to said agreement not to discriminate on the ground or because of race, color, creed, national origin, ancestry, age, sex or sexual orientation, against any employee of, or applicant for employment with, such contractor, franchisee, lessee, or concessionaire, and shall require such contractor, franchisee, lessee or concessionaire to include a similar provision in all subcontracts, subleases or other subordinate agreements let, awarded, negotiated or entered into thereunder.

(a) DEFINITIONS. As used in this chapter the term:

"Age" refers to and shall include any employee or applicant for employment who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years. For the purposes of this section, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty (40) years and has not attained the age of sixty-five (65) years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this section.

"Contract" shall mean and include an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded for and on behalf of the City and County of San Francisco.

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

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

"Subcontract" shall mean and include an agreement or contract under or subordinate to a prime contract, franchise, lease or concession granted, let or awarded for or on behalf of the City and County of San Francisco.

"Concession" includes a grant of land or other property by or on behalf of the City and County of San Francisco to a person for the purpose or use specified in said grant.

"Concessionaire" shall mean and include a person who is the grantee or beneficiary of a concession as herein defined.

"Franchise" shall mean and include a right or privilege conferred by grant from the City and County of San Francisco, or any contracting agency thereof, and vested in and authorizing a person to conduct such business or engage in such activity as is specified in said grant.

"Franchisee" shall mean and include a person who is the grantee or beneficiary of a franchise as herein defined.

"Lease" shall mean and include a contract by which the City and County of San Francisco, or any contracting agency thereof, grants to a person the temporary possession and use of property, for reward, and the latter agrees to return the same to the former at a future time.

"Lessee" shall mean and include a person or tenant taking possession of property under a lease as herein provided, and further includes a bailee under a bailment agreement providing a rental for personal property.

"Sublease" shall mean and include a lease by which a lessee or tenant grants or lets to another person part or all of the leased property for a shorter term and under which said lessee or tenant retains some right or interest under the original lease.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the choice of human adult sexual partner according to gender.

"Supplier" means any person or persons, firm, partnership, corporation, or any combination thereof, who submits a bid or enters into a contract with the awarding agency of the City and County, or who submits a bid or enters into a contract with any contractor, subcontractor, lessee, sublessee, franchisee or concessionaire engaged in the performance of a contract let, awarded or granted by or on behalf of the city and county, for the supplying of goods, materials, services, equipment or furnishings.

SEC. 12B.2. NONDISCRIMINATION PROVISIONS OF CONTRACT.

Every contract or subcontract for or on behalf of the City and County of San Francisco for public works or for the purchase of goods or services, as provided in Sec. 12B.1 hereof, shall contain the provisions following, which shall be known as the nondiscrimination provisions of such contract.

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

(a) Wherever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor or supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, or sexual orientation. The contractor, subcontractor or supplier will take affirmative action to insure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, religion, ancestry, national origin, age, sex, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this ordinance shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor, subcontractor or supplier agrees to post in conspicuous places, available to employees and applicants or employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this section.

(b) Except as in this section provided, or in cases where the law compels or provides for such action, any provisions in any contract agreement or undertaking entered into on or after the effective date of this chapter which prevent or tend to prevent the employment of any person solely by reason of his age, who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years, shall be null and void.

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

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

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

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

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

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

(3) Upon such finding by the Director of the Human Rights Commission, or other official design-

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

(4) The Human Rights Commission shall, within ten (10) days of the date of issuance of any finding by the Director of the Human Rights Commission or other official designated by the Commission in the enforcement of this chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of his right to appeal. Notice of appeal must be filed in writing with the Chairman of the Commission within 30 days of the date of mailing said copy and notice.

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

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

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

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

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

(g) There may be deducted from the amount payable to the contractor, subcontractor or supplier by the City and County of San Francisco under this contract a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this contract. In addition to any other penalties herein provided for the violation of the nondiscrimination provisions of this contract or for the failure of any contractor, subcontractor or supplier to abide by the rules and regulations herein contained, this contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding as set forth in Sec. 12B.2(f) that the contractor, subcontractor or supplier has discriminated contrary to the provisions of this contract, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City and County of San Francisco.

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

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

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

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

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

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

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

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

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

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

SEC. 12B.4. AFFIRMATIVE ACTION GUIDELINES

In order to be eligible to bid or to have a bid considered by the awarding agency, the contractor in all public works contracts shall submit an affirmative action program which shall meet the requirements of the Human Rights Commission.

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

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

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

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

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

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

(3) Preapprenticeship education and preparation;

(4) Upgrading training and opportunities;

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

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

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

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

Description

SWL 302

United Shell Fish

Commencing at the intersection of the monument line of Hyde Street,
and the monument line of Jefferson Street; running thence easterly along
the monument line of Jefferson Street for a distance of 795.03 feet;
thence at a right angle northerly for a distance of 206.89 feet to the true
point of beginning; thence continuing on the last aforesaid course for a
distance of 10.11 feet; thence at a right angle easterly for a distance of
19.5 feet; thence at a right angle northerly for a distance of 4.50 feet;
thence at a right angle easterly for a distance of 4.00 feet; thence at a
right angle southerly for a distance of 14.40 feet; thence at a right angle
easterly for a distance of 53.45 feet; thence at a right angle southerly for
a distance of 30.21 feet; thence at a right angle westerly for a distance
of 68.12 feet; thence at a right angle northerly for a distance of 30.00
feet; thence at a right angle westerly for a distance of 8.83 feet to the
true point of beginning, and containing 2310 square feet of area, more
or less.

EXHIBIT A

Sheet 1 of 2
See Drawing No. 8731-302-6
Rev. 1-19-76

San Francisco Bay

R

Edge of Deck

Point of Beginning

10.11

45 4.00

195 4.40

53.45

USF
2310 sq ft.

30.00

68.12

SWL 302

206.89

"Jones Alley"

R

EXHIBIT A

Jefferson St. Mon. Line

41.875'

343.75' to Mon Line of Beach St.

26.875'

R

Rev. 1-19-76

CONTRACT NO.

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

SWL 302
UNITED SHELL FISH
Description

APPROVED

DATE

DRAWING NO.

8731-302-6

IN CHARGE OF

MADE BY

TRACED BY

CHECKED BY

DATE

SCALE

SHEET NO

2 OF 2

13240-888-8167 800 05P

FIRST AMENDMENT TO LEASE

15th Amendment
L-9175

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 JOSEPH SVEDISE, doing business as UNITED SHELLFISH COMPANY, hereinafter called "TENANT," did on the 11th day of February 1978 enter into a lease commencing on April 1, 1978 for certain property fully described in said lease;

WHEREAS, TENANT desires to add approximately 800 square feet to the leased premises to allow for the expansion of his fish processing facilities;

NOW, THEREFORE, pursuant to paragraph 26 thereof, PORT and TENANT do hereby agree, and do hereby amend, said lease as follows:

A. Paragraph 1 is to be deleted and the following substituted therefore:

"1. Letting. PORT hereby leases to TENANT the real property and improvements thereon situated in the City and County of San Francisco, State of California, more particularly described on Exhibits "A" and "A-1" attached hereto and incorporated herein by this reference, and all replacements of and additions to said improvements made during the term to have and to hold for the term terminating on April 30, 2036. Said real property and improvements thereon, and all replacements thereof and additions thereto, are hereinafter collectively called the "leased premises"."

B. Paragraph 2 is to be deleted and the following substituted therefore:

"2. Rental. TENANT agrees to pay to PORT a ground rental for that area described in Exhibit "A" for the first five (5) years of the term hereof in the amount of \$325.00 per month, payable in advance on the first day of each

EXHIBIT B

TENANT agrees to pay to PORT a ground rental for that area described in Exhibit "A-1" for the first year of the term hereof in the amount of \$125.00 per month, payable in advance on the first day of each month. (If TENANT goes into occupancy, or if this lease commences on other than the first day of the month, the rent for that month will be apportioned as the number of days of occupancy bears to the month. The anniversary date of this lease will, however, in that case, be the first day of the month following the date of actual occupancy. If the lease commences on the first day of the month the anniversary date will be that date.) At the end of the fifth (5th) year of the lease, that is, on March 31, 1980, and at the end of every five (5) year period thereafter, the ground rental for that area described in Exhibit "A" 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. One year after the First Amendment to this lease commences and at the end of each year thereafter, the ground rental for that area described in Exhibit "A-1" shall be adjusted for the following year, 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: 1967=100), San Francisco-Oakland, California and its successor the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for All Urban Consumer (All Items: 1967=100), San Francisco-Oakland, California. If either of the aforesaid indices 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 for that area described in Exhibit "A" shall be the quarter ending the month of March 1975, and the parties agree that the index was 156.0 for that month. The date on which the base shall be determined for that area described in Exhibit "A-1" shall be the quarter ending the month of February 1975, and the parties agree that the index was 203.9 for that month.

TENANT guarantees to land 100 tons of San Francisco Port Commission Tariff 3-C item 860 cargo on the premises per month at the wharfage rates in effect; in the event 100 tons of said cargo is not landed TENANT shall pay, within ten (10) days after the end of the month, the amount of wharfage necessary to yield tariff charges that would have accrued to PORT if 100 tons of said cargo had been landed at the premises."

C. Paragraph 5 is to be deleted and the following substituted therefore:

"5. Use of Premises. The premises are to be used to conduct wholesale fish processing, fish storage and marine food preparation and such other uses as are reasonably related thereto. This shall not include any retail sales nor sales to any persons or entities who are not engaged in the retail sale of fish and marine food, who do not intend to transact retail sales of such items nor who intend to consume such items. The rental provision set forth in paragraph 2 was determined in consideration of the specific use TENANT makes of the premises. PORT considers TENANT's use to be an important contributing activity to the character of Fisherman's Alley. Any change in the use or in the type or class of business conducted by TENANT hereunder shall be made only upon the express written consent of PORT."

D. Except for the amendments expressly set forth herein, all other terms, covenants and conditions of said

lease, as amended, are to remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused
this Amendment to be executed this 17th day of May, 1979.

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

By Edward L. Dineen PORT

JOSEPH SVEDISE, doing business as
UNITED SHELLFISH COMPANY,

By Joseph Svedise TENANT

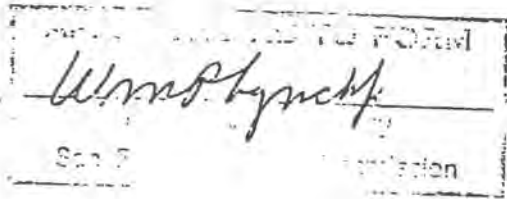


EXHIBIT B

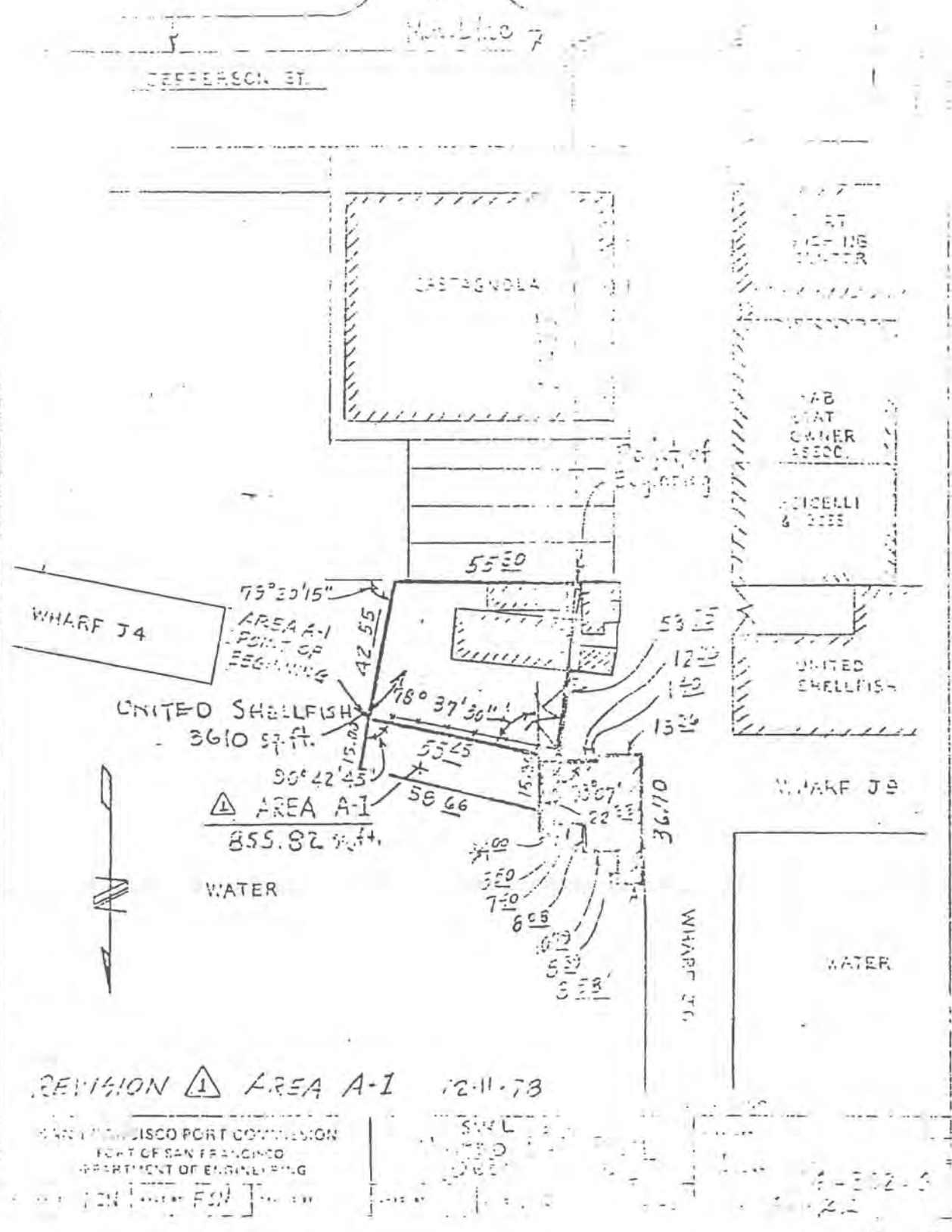


EXHIBIT B
EXHIBIT A-1

Description

SWL 302

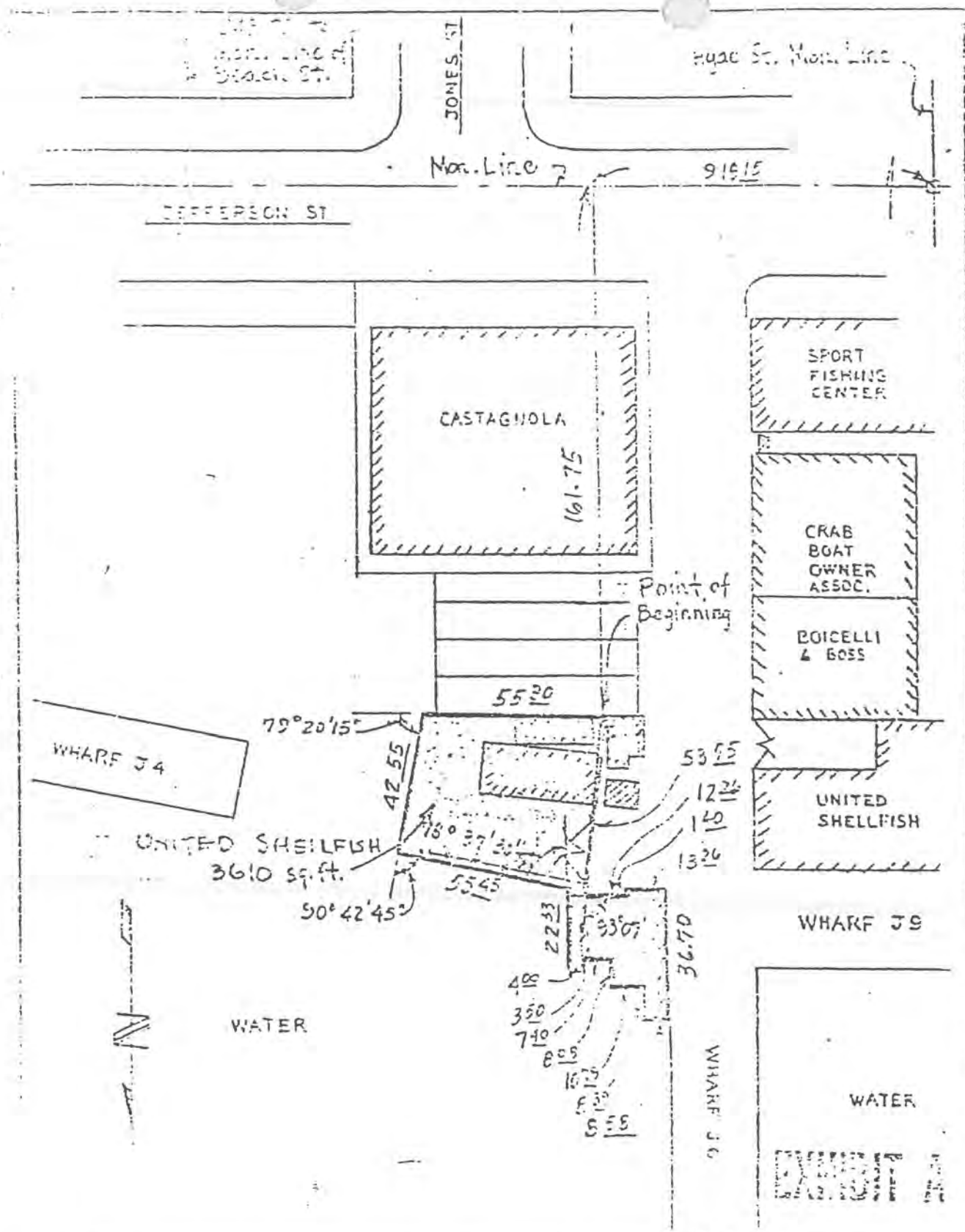
United Shellfish

Commencing at the intersection of the monument line of Maple Street with the monument line of Jefferson Street; running thence easterly along the monument line of Jefferson Street for a distance of 919.15 feet; thence at a right angle northerly for a distance of 161.75 feet to the true point of beginning; thence at a right angle easterly for a distance of 55.30 feet; thence at a deflection angle of $79^{\circ}20'15''$ to the left for a distance of 42.55 feet; thence at a deflection angle of $90^{\circ}42'45''$ to the left for a distance of 55.45 feet; thence at a deflection angle of $78^{\circ}37'30''$ to the right for a distance of 22.33 feet; thence at a right angle westerly for a distance of 4.00 feet; thence at a right angle southerly for a distance of 3.50 feet; thence at a right angle westerly for a distance of 7.40 feet; thence at a right angle northerly for a distance of 8.05 feet; thence at a right angle westerly for a distance of 10.79 feet; thence at a right angle northerly for a distance of 8.39 feet; thence at a right angle westerly for a distance of 8.58 feet; thence at a right angle southerly for a distance of 36.70 feet; thence at a right angle easterly for a distance of 13.26 feet; thence at a right angle northerly for a distance of 1.40 feet; thence at a right angle easterly for a distance of 11.26 feet; thence at a deflection angle of $93^{\circ}07'$ to the right for a distance of 53.75 feet to the true point of beginning and containing 1,610 square feet of area, more or less.

EXHIBIT A

Sheet 1 of 2

See Dwg. No. 3734-302-1



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING APPROVED: _____ DATE: _____	ENGINEER: _____ CHECKED BY: _____ DATE: _____	APPROVED: _____ DATE: _____ 8784-202-5 2 of 2
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Port

ASSIGNMENT AND AMENDMENT OF LEASES

This Assignment and Amendment of Leases ("Assignment") is made by and between **Carola Svedise**, as successor in interest to **Joseph Svedise**, doing business as **United Shellfish Company** ("Assignor"), **Scoma's Restaurant, Inc.**, a California corporation ("Assignee"), and the **City and County of San Francisco**, a municipal corporation ("City") operating by and through the **San Francisco Port Commission** ("Port"), and as to the provisions of Paragraph 6 only, **Michael Svedise** ("Sublessee"), who agree as follows:

RECITALS

This Assignment and Amendment of Leases is made with reference to the following facts:

A. Port, as landlord, and Assignor, as tenant, entered into three written leases dated February 11, 1976, referred to as L-9170, L-9174 and L-9175, (collectively, the "Leases"), in which Port leased to Assignor and Assignor leased from Port premises located in the City and County of San Francisco, commonly known as Pier 47, foot of Jones Street, San Francisco, California and described in greater detail in Exhibit A to each of the Leases (collectively, the "Premises"). Lease L-9175 was amended on May 7, 1979. Lease L-9170 was amended on June 16, 1983. A map of the Premises is attached hereto as Exhibit 1.

B. Assignor wishes to assign all of its right, title and interest in the Leases to Assignee on the condition that Assignor be released from all of Assignor's obligations under the Leases.

C. Port shall consent to the proposed assignment on the conditions and subject to the lease amendments set forth in this Assignment.

Now, therefore, in consideration of their mutual covenants and agreements, the parties hereto agree as follows:

AGREEMENT

1. **Effective Date of Assignment**. This Assignment shall take effect upon the first day of the month immediately following the month in which this Assignment

is approved by the San Francisco Port Commission and the Board of Supervisors, and this Assignment is fully executed by the parties hereto ("Effective Date"). Assignor shall give possession of the Premises to Assignee on the Effective Date.

2. **Assignment and Assumption.** Assignor assigns and transfers to Assignee all its right, title and interest in the Leases, and Assignee accepts the Assignment and assumes and agrees to perform, from and after the Effective Date, as a direct obligation to Port, all the provisions of the Leases, and Port hereby consents to such assignment, upon all of the terms and conditions hereof. In particular, without limiting the foregoing, Assignee shall be bound by the use restrictions and terms set forth in Paragraph 5 of the Leases as amended hereby. Port's consent to this Assignment shall not waive the restriction concerning further assignment.

3. **Consideration.** In consideration of this Assignment, Assignee agrees to pay Assignor the sum of Sixteen Thousand Dollars (\$16,000.00). Assignee agrees to pay to Port on Assignor's behalf, on or before the Effective Date hereof, all outstanding bills charged to Assignor under the Leases through July 31, 1994, in the amount of \$26,336.60. Failure of Assignee to pay such sum to Port on or before the Effective Date shall be deemed a material default under the Leases. Assignor shall be responsible for any additional amounts due the Port for the period prior to the Effective Date, and in the event that said amounts are not paid prior to the Effective Date, this Assignment shall be null and void.

4. **Indemnity.** Assignee accepts the Premises "as is," and agrees to defend, indemnify and hold Assignor harmless from any liability, claims, actions, and damages (including attorney's fees) under Paragraphs 5, 6, 7, 8 and 22 of the Leases, whether or not arising prior to the Effective Date of this Assignment.

5. **Assignment Conditioned upon Consent to Sublease and Release.** Concurrent with this Assignment, Assignee hereby agrees to sublease certain of its rights and interests under the Leases to Michael Svedise, effective on the Effective Date, in the form set forth in Exhibit 2 attached hereto ("Sublease"). Port hereby consents to the Sublease in the form attached hereto.

6. **Indemnity by Sublessee.** Sublessee and any successor to Sublessee agrees to defend, indemnify and hold Assignor harmless from any and all liability, claims, actions and damages (including attorney's fees) not assumed by Assignee, it being the intent of this indemnity agreement by Sublessee that in consideration of the cancellation of said Leases, Assignor shall be fully indemnified from all liability, claims, action, and damages (including attorney's fees), of whatsoever kind or character

whether known or unknown arising prior to or after the Effective Date of this agreement.

7. **Guarantee Deposit.** The parties acknowledge that Port now holds a guarantee deposit from Assignor pursuant to the Leases in the amount of \$2,177.66. Assignor hereby releases all claims to that sum against Port, and that sum shall be held by Port for the benefit of Assignee, subject to the provisions of the Leases. On or before the Effective Date, Assignee shall reimburse Assignor for the amount of the actual guarantee deposit on the Leases in the approximate amount of \$2,177.66, plus any interest accumulated thereon.

8. **Attorneys' Fees.** If either party hereto brings an action or proceeding (including any cross-complaint or counterclaim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 8 shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. If any party commences an action against any of the parties arising out of or in connection with this Assignment, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.

9. **Successors.** This Assignment shall be binding on and inure to the benefit of the parties and their successors.

10. **Counterparts.** This Assignment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. **Notices.** All notices, requests, demands and other communications under this agreement shall be in writing and served personally on the party to whom notice is to be given, or upon transmission if delivered by facsimile, or on the third day after mailing if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Assignor at: Carola Svedise
2313 Cipriani Blvd.
Belmont, CA 94002

To Assignee at: Scoma's Restaurant, Inc.
Pier 47
San Francisco, CA 94133

To Port at: Manager, Fisherman's Wharf
Port of San Francisco
Ferry Building, Room 3100
San Francisco, CA 94111

12. **Governing Law.** This agreement shall be construed in accordance with and governed by the laws of the State of California as applied to contracts that are executed and performed entirely in California.

13. **Releases.**

a. **Release of Assignor and Port Under the Leases.** As of the Effective Date, Port and Assignor, its successors and assigns, shall fully and unconditionally release and discharge each other from their respective rights and obligations under the Leases and any oral or written modifications thereof.

b. **Release of Port by Assignor.** Assignor, after having consulted with their attorneys, hereby waives the benefit of, releases and forever discharges City, Port and their commissioners, officers, employees and agents (the "Releasees"), from any and all presently existing liabilities, claims, demands, damages, causes of action, rights of offset or defenses of every kind and nature (including without limitation, tort claims), whether known or unknown, which Assignor may have against the Releasees, or which they may be entitled to assert in connection with or arising in any way out of the Leases or the Premises defined therein, including without limitation any presently existing claim or defense (including any and all claims or defenses based upon the allegedly tortious or other conduct of the Releasees or on their behalf) with respect to the Leases or the Premises defined therein, whether or not presently suspected, contemplated or anticipated to the extent the events giving rise to the same shall have occurred on or prior to the date hereof. Assignor, after having consulted with their attorneys, hereby expressly waive the benefits of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at

the time of executing the release which, if known by him, must have materially affected his settlement with the debtor.

14. **Time is of the Essence.** Time is of the essence as to each and every provision of this Lease.

15. **Amendment of Leases.**

a. **Assignment and Subletting.** Paragraph 10 of each of the Leases is hereby deleted in its entirety and replaced by the following language:

10. Assignment and Subletting.

10.1 Definition of Transfer. The occurrence of any of the following (whether voluntarily, involuntarily or by operation of Law) shall constitute a "Transfer" of this Lease:

(a) any direct or indirect assignment, conveyance, alienation, sublease, or other transfer of Tenant's interest in this Lease or in the Premises, or any part thereof or interest therein; or

(b) the use of all or part of the Premises by any person or entity other than Tenant, except Tenant's authorized agents or invitees; or

(c) if Tenant is a privately-held corporation, the dissolution, merger, consolidation or other reorganization of Tenant, or any cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of the total capital stock of Tenant or any sale or cumulative sales of fifty percent (50%) or more of the value of the assets of Tenant; or

(d) if Tenant is a partnership or an unincorporated association, (i) the withdrawal or substitution (whether voluntarily, involuntarily or by operation of Law and whether occurring at one time or over a period of time) of any partner(s) owning fifty percent (50%) or more of said partnership or association, or (ii) the cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of any interest in the capital or

profits of such partnership or association, or (iii) the dissolution of the partnership or association.

As used herein, the term "Transfer" includes a transfer of any interest in this Lease held by any subtenant, assignee, or transferee, but does not include any hypothecation, encumbrance or mortgage of this Lease made in accordance with Section 11.

10.2 Port's Consent Required. Tenant shall not make or permit any Transfer of this Lease except with the prior written consent of Port in each instance as evidenced by Port Commission resolution and in full compliance with all of the terms and provisions of this Section 10. Any Transfer of this Lease occurring without full compliance with all of the terms and conditions hereof shall constitute an incurable breach by Tenant and shall be voidable at the option of Port.

10.3 Request for Transfer. Tenant shall give Port at least forty-five (45) days prior written notice of any desired Transfer (herein "Notice of Request to Transfer") and shall provide Port with the following information in writing: (1) the name, address, legal composition and ownership of the proposed transferee; (2) the current balance sheet and profit and loss statements (herein "financial statements") for the proposed transferee and for any other entity or person who is to be liable for Tenant's obligations under this Lease, such financial statements to be certified in writing to be true and correct and to be prepared in accordance with generally accepted accounting principles and to cover a period of three years prior to the proposed effective date of the Transfer (or for such shorter period as the proposed transferee or other person may have been in existence), (3) a full description of the terms and conditions of the proposed Transfer, including copies of any and all proposed sublease or assignment agreements or other documents and instruments concerning the proposed Transfer, (4) a description of the proposed use of the premises by the proposed transferee, including any required desired alteration or improvements to the Premises that may be undertaken by such transferee in order to facilitate its proposed use, (5) complete information regarding all payments to be made or other consideration to be given in connection with the Transfer; (6) a list of personal,

business and credit references of the proposed transferee, (7) a current financial statement of Tenant, and (8) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed Transfer and the prospective transferee. Tenant's Notice of Request to Transfer shall not be deemed to have been served or given until such time as Tenant has provided Port with all information set forth hereinabove. Tenant shall immediately notify Port of any modifications to the proposed terms of the Transfer.

10.4 Port's Consent/Refusal to Consent. Upon receiving a Notice of Request to Transfer, Port shall have the right to do any of the following:

(a) Port may consent to the proposed Transfer, subject to any reasonable conditions upon such Transfer, which conditions may include, without limitation: (i) that the proposed transferee expressly assume all obligations of Tenant under this Lease without, however, Port releasing Tenant therefrom; (ii) that in the event this Lease is terminated prior to the expiration of any sublease, at the election of Port, such termination shall operate to terminate all existing subleases entered into by Tenant without further notice from Port; and (iii) that the sublease or other Transfer agreement contain: (A) an indemnification clause and waiver of claims provisions in favor of Port and City identical to those contained in Section 14 of this Lease; (B) a clause requiring the proposed transferee to name City, Port and their agents as additional insureds under all liability and other insurance policies; and (C) a clause requiring the proposed transferee to acknowledge Port's right to demand increased insurance coverage to normal amounts consistent with the proposed transferee's business activities on the Premises.

(b) Port may deny its consent to the proposed Transfer on any reasonable ground. Reasonable grounds shall include, without limitation, any one or more of the following: (i) that the proposed transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (ii) that the use to which the Premises will be put by the proposed transferee is inconsistent with the terms of this Lease or otherwise will materially and adversely affect any interest

of Port; (iii) that the nature of the proposed transferee's intended or likely use of the Premises would involve an increased risk of the use, release or mishandling of hazardous materials or otherwise increase the risk of fire or other casualty; (iv) that the business reputation or character of the proposed transferee or any of its affiliates is not reasonably acceptable to Port; (v) that the proposed transferee is not likely to conduct on the property a business of a quality substantially equal to that conducted by Tenant; or (vi) that Port has not received assurances acceptable to Port in its sole discretion that all past due amounts owing from Tenant to Port (if any) will be paid and all other defaults on the part of Tenant (if any) will be cured prior to the effectiveness of the proposed Transfer.

If Port denies its consent to the proposed Transfer pursuant to this subsection (b), and if Tenant shall so request in writing, Port shall provide to Tenant a statement of the basis on which Port denied its consent.

(c) One hundred percent (100%) of all sums paid or payable to Tenant by the transferee in excess of the then-existing Rent payable by Tenant attributable to the portion of the Premises being transferred, including without limitation, any rent and all other sums or other consideration received by Tenant as a result of the Transfer, in whatever form (less expenses for verifiable, reasonable and customary brokerage commissions, Tenant Improvements, lease concessions, value of Tenant's trade fixtures conveyed and other expenses actually paid or obligations incurred by Tenant in connection with the Transfer and/or expenses of operating the Premises paid or incurred by Tenant) shall be paid by Tenant to Port immediately upon receipt thereof by Tenant as Additional Rent hereunder. Notwithstanding the foregoing, in the event this Lease is assigned in connection with a sale of Tenant's business, including the sale of Tenant's trade fixtures at the Premises and Tenant's goodwill, and the assignee will continue to operate the same business that Tenant operated at the Premises, then the sums payable by Tenant to Port pursuant to this Section 10.4(c) shall be limited to those amounts attributable to the value of Tenant's leasehold interest and shall not include amounts attributable to the value of Tenant's goodwill, as such amounts are determined by Port in Port's reasonable discretion.

(d) Tenant acknowledges and agrees that each of the rights of Port set forth in this Section 10 is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

(e) No consent to any proposed Transfer, whether conditional or unconditional, shall be deemed to be a consent to any other or further Transfer of this Lease, or any other Transfer of this Lease on the same or other conditions. No interest of Tenant in this Lease shall be assignable by operation of law.

10.5 Fees for Review. Tenant shall reimburse Port for all costs, including without limitation attorney's fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer.

10.6 No Release of Tenant. The acceptance by Port of Rent or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this Lease or to be a consent to any subsequent Transfer or to be a release of Tenant from any obligation under this Lease. No Transfer of this Lease shall in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease. The joint and several liability of Tenant and Tenant's successors or transferees and the obligations of Tenant under this Lease shall not be discharged, released or impaired by any agreement by Port modifying any provision of this Lease or extending time for performance hereunder or by any waiver or failure of Port to enforce any obligations hereunder.

10.7 Assignment of Sublease Rents. Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Transfer of all or any part of the Premises; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to receive, collect and enjoy such rents.

b. Use of Premises. Paragraph 5 of Lease No. L-9175 is hereby amended to include the following additional language:

The Premises may also be used for a bait and tackle retail business; charter boat booking office and/or related office uses; and/or services supporting commercial and sport fishing boats, and their owners, employees, and customers (for example, laundry, restroom, and shower facilities) (collectively, "Fishing Support Uses"). Fishing Support Uses shall be limited to the area designated by cross-hatches on Exhibit 1 attached hereto.

c. City Requirements. The following language is added to the Leases as new paragraph 33:

33. City Requirements.

33.1 Non-Discrimination. Tenant shall not, in the operation and use of the Premises, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by this reference and made a part hereof as though fully set forth herein. Tenant agrees to comply with all provisions of such Chapters 12B and 12C that apply to tenants of the City and County of San Francisco.

33.2 MacBride Principles-Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

33.3 Tropical Hardwood Ban. City urges Tenant not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood product.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Amendment of Leases in the City and County of San Francisco on the dates written below.

ASSIGNOR:

Date: 11-9-94

Carola Svedise
CAROLA SVEDISE

ASSIGNEE:

SCOMA'S RESTAURANT, INC.

Date: 11-4-94

By: Thomas W. Crocker

Its: President

AS TO PARAGRAPH 6 ONLY:

SUBLESSEE:

Date: 11-7-94

Michael Svedise
MICHAEL SVEDISE

APPROVED AS TO FORM:

PORT:

LOUISE H. RENNE
CITY ATTORNEY

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

By: Neil H. Sekhri

NEIL H. SEKHRI
Deputy City Attorney

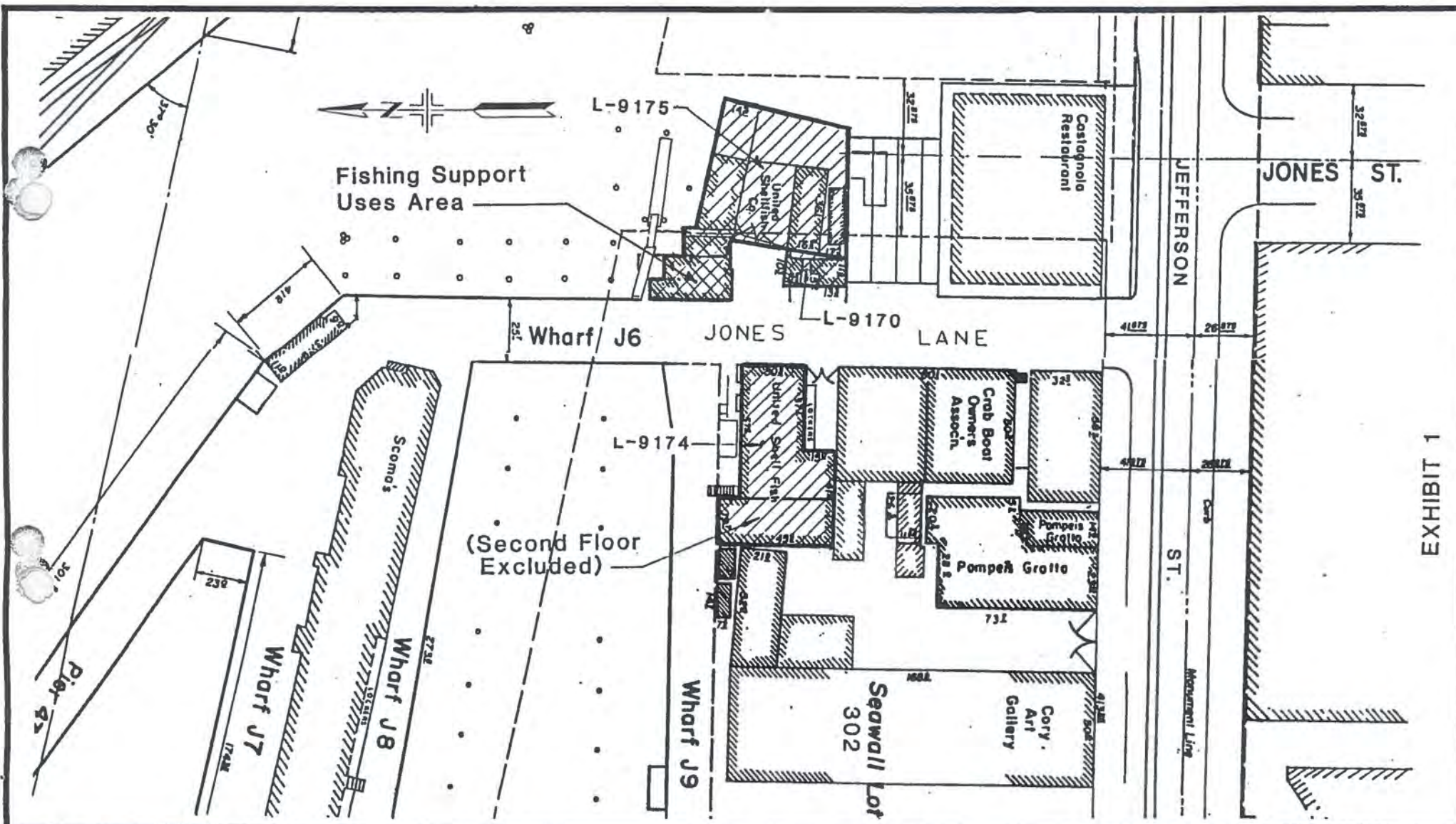
By: Dennis P. Bouey

DENNIS P. BOUEY
Executive Director

Port Commission Resolution No. 94-132

Date: 2-6-95

Board of Supervisors Ordinance No.
16-95



APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE _____

CHIEF HARBOR ENGINEER

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

UNITED SHELLFISH/SCOMA'S
LEASES

DESIGNED BY:	CHECKED BY:
DRAWN BY: R.C.	DATE: 11-1-94
CONTRACT NO.	SCALE: 1"=40'
DRAWING NO. 1470	SHEET NO.
	OF SHEETS

EXHIBIT 2
Form of Sublease



**THIRD AMENDMENT TO
LEASE No. L-9175**

Scoma's Restaurant, Incorporated, a California corporation

This Third Amendment to Lease No. L-9175 ("**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 Scoma's Restaurant, Incorporated, a California corporation, as tenant ("**Tenant**") and is dated for reference purposes only as of April 23, 2021.

RECITALS

A. On February 11, 1976, Port and Joseph Svedise entered Lease No. L-9175 for use of that certain real property located at Seawall Lot 301 in the City and County of San Francisco, as amended by the First Amendment dated May 7, 1979 for reference purposes, and as assigned to Tenant and amended effective March 1, 1995 ("**Original Lease**") The Original Lease commenced on April 1, 1975 and will expire on April 30, 2036 ("**Expiration Date**").

B. Consistent with Port Commission Resolution 20-41, the Port desires to forgive certain rent payments due to Port in order to address the devastating financial impacts of the COVID-19 pandemic on Tenant's business. Amending the Original Lease to forgive such amounts is of considerable value to both parties and is intended to improve the financial feasibility of the Lease and preserve Tenant's ability to continue operations at the Port, while at the same time meeting the Port's own goals, including protecting its revenue streams and assets; supporting the Port's maritime mission and its small local business tenants and aligning Port's and Tenant's interest in promoting a shared prosperity partnership, and is in the best interests of the Port's long-term financial health.

C. The Port's Executive Director has determined that this Amendment satisfies the requirements of Port Commission Resolution 20-41.

D. By Board of Supervisors Ordinance 244-20, the Board of Supervisors has waived the requirement to add certain City ordinances enacted after the effective date of the most recent Lease amendment.

E. As material consideration for this Amendment, Tenant must comply with all Original Lease provisions as modified by this Amendment. This Amendment is narrowly tailored to relieve certain Tenant's rent obligations only and is not intended to excuse, waive, suspend or modify any other provision or obligation of either party under the Original Lease. Except as explicitly provided in this Amendment as to rent, nothing in this Amendment is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of the Original Lease. The parties agree that each of the terms in this Amendment are material and that Port would not have agreed to this Amendment absent such terms.

F. The Original Lease and this Amendment shall collectively be referred to as the "Lease". All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Original Lease.

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

AGREEMENT

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

2. Lease Compliance. Except as explicitly provided in this Amendment, this Amendment does not excuse, waive, suspend or modify any provision or obligation of Tenant under the Original Lease, including without limitation the obligation to pay all amounts owed prior to the Effective Date and does not and shall not be construed to waive any breach of the Original Lease by Tenant, or any of Port's rights thereunder, or to enlarge or increase Port's obligations thereunder. Tenant shall comply with all terms and conditions of the Original Lease as modified by this Amendment, including provisions requiring compliance with applicable Laws, which shall include without limitation, all "back to work" requirements and other workforce-related ordinances, orders, and laws relating to the COVID- 19 pandemic, including those addressing workplace safety and employment rights. Tenant agrees that, in addition to any remedies under the Lease, upon an uncured default by Tenant of any term or condition of the Lease, including without limitation, the terms and conditions of this Amendment, the provisions of Sections 3 and 4 of this Amendment shall automatically terminate and be of no further force or effect as of the date of default. Tenant acknowledges and agrees that compliance with the Lease is a material condition of this Amendment and that Port would not have agreed to this Amendment absent such terms.

Tenant must resume normal timely payments of rent on January 1, 2021.

3. Rent Forgiveness.

(a) For purposes of this Amendment, the Forgiveness Period is that period beginning on March 1, 2020 and ending on August 31, 2020. Tenant's obligation to pay rent and any late fees and interest on past due amounts is hereby waived and forgiven during the Forgiveness Period.

(b) Notwithstanding any other provision of this Amendment, monies received by Tenant from any federal, regional, state or local government-funded financial aid, grant or loan program including without limitation the Paycheck Protection Program, Economic Injury Disaster Loan program, the San Francisco Hardship Emergency Loan Program (SFHELP), Port's Micro-LBE Hardship Emergency Loan Program, or Port's Crab Fisher Assistance Loan Program for the stated purposes of paying rent are not eligible for forgiveness and will be deducted from any forgiveness amount (whether or not actually used to pay rent). Tenant represents and warrants that it has provided and will continuously provide Port with accurate and complete information regarding such funds and further agrees to promptly make its records available to Port for the purpose of determining the accuracy of Tenant's disclosures. If an audit reveals that Tenant has misrepresented any amounts eligible for forgiveness, Tenant will immediately pay such amounts to Port plus interest from the original due date at ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable law. In addition, Tenant shall pay to Port Three Hundred Dollars (\$300.00) which the parties agree represents a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's misrepresentation. Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under the Lease, at law or in equity.

(c) Tenant agrees to keep Port apprised of its reopening plans and, if applicable, to provide prompt notice of its intent to permanently cease operations on Port property so that the parties can negotiate in good faith for a mutually acceptable termination agreement.

4. Rent Credits.

4.1. Rent Credit for Rent Paid.

(a) During the Forgiveness Period, the parties acknowledge that, Tenant paid the Port the amount of Thirteen Thousand Six Dollars and Ninety-two Cents (\$13,006.92) in Rent, even though Tenant could have instead deferred such payments under the Port's Covid-19 tenant relief policies in Port Commission Resolutions 20- 18; 20-27 and 20-30 (the "Excess Rent Amount") and that Tenant is eligible for a rent credit in such amount, after subtracting any applicable deductions and applying the Excess Rent Amount to pay any balance outstanding prior to March 1, 2020 (the "Rent Paid Rent Credit"). The Rent Paid Rent Credit is Thirteen Thousand Six Dollars and Ninety-two Cents (\$13,006.92).

(b) The Rent Paid Rent Credit shall be applied in the following manner: One-twelfth (1/12) of the Rent Paid Rent Credit (with no interest or escalation) (the "Monthly Rent Paid Rent Credit") will be applied against rent due beginning in the month of July 2021 and in each of the next eleven (11) months (through and including June 2022). The Monthly Rent Paid Rent Credit can be taken against any rent due (including percentage rent), but not against any other fee or charge under the Lease, including without limitation any amounts defined as Additional Rent. The Monthly Rent Paid Rent Credit is One Thousand Eighty-three Dollars and Ninety-One Cents (\$1,083.91).

4.2. Expiration of Rent Credits. Notwithstanding any other provision of this Amendment, rent credits due but not applied ("unused rent credits") shall expire upon the earlier to occur of (x) a default by Tenant of any term or condition of the Lease; or (y) the expiration or earlier termination of the Lease, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credits.

5. Worksheet. The Worksheet attached as *Exhibit 1* documents the total applicable forgiveness amount (taking into account deductions) and any applicable rent credits. The parties will update the Worksheet as needed and any such revised Worksheet shall be incorporated into this Amendment by countersignature of the parties without further action.

6. Tax Consequences. 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.

7. Waiver and Release. Tenant, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge the Port, its agents, employees, departments, commissioners, and officers, from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the matters described in this Amendment.

As to such claims, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

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

Tenant understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Tenant should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Amendment, Tenant will not be permitted to make any claims to recover for such loss, damages or injury against 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. Tenant acknowledges that it intends these consequences even as to claims that may exist as of the date of this Amendment but which Tenant does not know exist, and which, if known, would materially affect Tenant's decision to execute this Amendment, regardless of whether Tenant's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Provided that Tenant strictly comply with the provisions of this Amendment, Port, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge Tenant, its agents and employees from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of rent forgiven under this Amendment.

The provisions of this Section 8 shall survive the expiration or earlier termination of the Lease.

8. **Disclosures.** Tenant has received and reviewed the disclosures included in *Exhibit 2*.

9. **City and Port Requirements.** The following is added as Sections 33.4 – 33.7:

"33.4. 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 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/sublicensee(s). Additionally, Tenant certifies that if this Section 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.

33.5. 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.

33.6. *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 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.

33.7. *Notice of Transfers to Port.* In addition to the obligations under the Lease with respect to reporting transfers, subleases and/or assignments, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and Assessor a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance)."

10. Entire Agreement. This Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Amendment are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment.

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

12. 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.

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

Exhibits and Schedules

Exhibit 1 Worksheet
Exhibit 2 Disclosures

Schedule 1 FEMA Disclosure Notice

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IN WITNESS WHEREOF, Port and Tenant execute this Amendment at San Francisco, California, as of the last date set forth below.

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

DocuSigned by:
By: Rebecca Benzassini
Rebecca Benzassini
Deputy Director, Real Estate and Development
Date Signed: 5/13/2021

TENANT: SCOMA'S RESTAURANT, INCORPORATED,
A CALIFORNIA CORPORATION

DocuSigned by:
By: Mariann Costello
Name: EACE2382AF494AD Mariann Costello
Title: President
Date Signed: 5/12/2021

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

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

DocuSigned by:
By: Rona H. Sandler
Name: Rona H. Sandler
Deputy City Attorney

Amendment Prepared By: Demetri Amaro, Commercial Property Manager Da (initial)

Port Commission Reso. No. 20-41
Board of Supervisors Ordinance No. 244-20

**EXHIBIT 1
WORKSHEET**

[Attachment on following pages]

RENT PAID RENT CREDIT WORKSHEET EXHIBIT 1

TENANT INFORMATION

1 TENANT NAME:	Isom's Restaurant Inc
2 LEASE/LICENSE #	L-9175
3 SECTOR:	Maritime
4 FORGIVENESS PERIOD:	March 1, 2020 - August 31, 2020

TENANT BALANCES AS OF MAY 31

5 PRE-COVID BALANCE:	\$
6 FORGIVENESS PERIOD BALANCE:	\$ 13,006.92
7 TOTAL OUTSTANDING BALANCE:	\$ 13,006.92

CALCULATIONS

8 BALANCE ELIGIBLE FOR FORGIVENESS	\$ 13,006.92
9 TOTAL RENT PAID BY SUBTENANT TO TENANT	\$
10 TOTAL GOV. AID FOR RENT:	\$
11 FINAL FORGIVENESS:	\$ 13,006.92
12 TOTAL RENT PAID :	\$ 13,006.92
13 TOTAL RENT PAID RENT CREDIT (RPRC):	\$ 13,006.92
14 ADJUSTED PRE-COVID BALANCE DUE:	\$ -
15 FINAL RPRC TO BE APPLIED FY 21-22:	\$ 13,006.92
ADJUSTED MONTHLY RPRC	\$ 1,083.91

SCHEDULE OF RENT CREDIT TO BE APPLIED

INVOICE MONTH	RENT CREDIT DEDUCTION
JULY 2021	\$ 1,083.91
AUGUST 2021	\$ 1,083.91
SEPTEMBER 2021	\$ 1,083.91
OCTOBER 2021	\$ 1,083.91
NOVEMBER 2021	\$ 1,083.91
DECEMBER 2021	\$ 1,083.91
JANUARY 2022	\$ 1,083.91
FEBRUARY 2022	\$ 1,083.91
MARCH 2022	\$ 1,083.91
APRIL 2022	\$ 1,083.91
MAY 2022	\$ 1,083.91
JUNE 2022	\$ 1,083.91

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EXHIBIT 2 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. Federal Emergency Management Agency. Tenant represents and warrants to Port that it has received and reviewed the FEMA disclosure notice attached hereto as *Schedule 1*.

3. 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 2* 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 25359.7 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 25359.7 as well as the penalties that apply for failure to meet such obligations.

Schedule 1

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/isan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:
<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:
www.FloodSmart.gov

ADDENDUM TO ALL CITY AND COUNTY OF SAN FRANCISCO CONTRACTS

AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 12B.1, 12B.2 AND 12B.4 THEREOF, DEFINING LEASES, FRANCHISES, CONCESSIONS AND SUBORDINATE AGREEMENTS THEREUNDER AS CONTRACTS, AND PROHIBITING EMPLOYMENT DISCRIMINATION BECAUSE OF AGE.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Administrative Code is hereby amended by amending Sections 12B.1, 12B.2 and 12B.4 thereof, to read as follows:

SEC. 12B.1

All contracting agencies of the City and County of San Francisco, or any departments thereof, acting for or on behalf of the City and County, shall include in all contracts, franchises, leases, concessions or other agreements involving real or personal property, hereinafter negotiated, let, awarded, granted, renegotiated, extended or renewed, in any manner or as to any portion thereof, a provision obligating the contractor, franchisee, lessee, concessionaire, or other party to said agreement not to discriminate on the ground or because of race, color, creed, national origin, ancestry, age, sex or sexual orientation, against any employee of, or applicant for employment with, such contractor, franchisee, lessee, or concessionaire, and shall require such contractor, franchisee, lessee or concessionaire to include a similar provision in all subcontracts, subleases or other subordinate agreements let, awarded, negotiated or entered into thereunder.

(a) DEFINITIONS. As used in this chapter the terms:

"Age" refers to and shall include any employee or applicant for employment who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years. For the purposes of this section, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty (40) years and has not attained the age of sixty-five (65) years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this section.

"Contract" shall mean and include an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded for and on behalf of the City and County of San Francisco.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who submits a bid and/or enters into a contract with department heads and officers empowered by law to enter into contracts on the part of the City and County for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or not of trust moneys under the control or collected by the City and County.

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

"Subcontract" shall mean and include an agreement or contract under or subordinate to a prime contract, franchise, lease or concession granted, let or awarded for or on behalf of the City and County of San Francisco.

"Concession" includes a grant of land or other property by or on behalf of the City and County of San Francisco to a person for the purpose or use specified in said grant.

"Concessionaire" shall mean and include a person who is the grantee or beneficiary of a concession as herein defined.

"Franchise" shall mean and include a right or privilege conferred by grant from the City and County of San Francisco, or any contracting agency thereof, and vested in and authorizing a person to conduct such business or engage in such activity as is specified in said grant.

"Franchisee" shall mean and include a person who is the grantee or beneficiary of a franchise as herein defined.

"Lease" shall mean and include a contract by which the City and County of San Francisco, or any contracting agency thereof, grants to a person the temporary possession and use of property, for reward, and the latter agrees to return the same to the former at a future time.

"Lessee" shall mean and include a person or tenant taking possession of property under a lease as herein provided, and further includes a bailee under a bailment agreement providing a rental fee personal property.

"Sublease" shall mean and include a lease by which a lessee or tenant grants or lets to another person part or all of the leased property for a shorter term and under which said lessee or tenant retains some right or interest under the original lease.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the choice of human adult sexual partner according to gender.

"Supplier" means any person or persons, firm, partnership, corporation, or any combination thereof, who submits a bid or enters into a contract with the awarding agency of the City and County, or who submits a bid or enters into a contract with any contractor, subcontractor, lessee, sublessee, franchisee or concessionaire engaged in the performance of a contract let, awarded or granted by or on behalf of the city and county, for the supplying of goods, materials, services, equipment or furnishings.

SEC. 12B.2 NONDISCRIMINATION PROVISIONS OF CONTRACT.

Every contract or subcontract for or on behalf of the City and County of San Francisco for public works or for the purchase of goods or services, as provided in Sec. 12B.1 hereof, shall contain the provisions following, which shall be known as the nondiscrimination provisions of such contract.

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

(a) Whenever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor or supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, or sexual orientation. The contractor, subcontractor or supplier will take affirmative action to insure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, religion, ancestry, national origin, age, sex, or sexual orientation. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this ordinance shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor, subcontractor or supplier agrees to post in conspicuous places, available to employees and applicants or employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this section.

(b) Except as in this section provided, or in cases where the law compels or provides for such action, any provisions in any contract agreement or understanding entered into on or after the effective date of this chapter which prevent or tend to prevent the employment of any person solely by reason of his age, who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years shall be null and void.

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

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

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

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

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

(2) A finding by the Fair Employment Practices Commission of the State of California that contractor, subcontractor or supplier has violated any provision of the Fair Employment Practices Act of California or the nondiscrimination provisions of this contract, provided that the Fair Employment Practices Commission has issued a final order pursuant to Section 1426 of the Labor Code, or has obtained a final injunction pursuant to Section 1423 of the Labor Code, provided further, that for the purposes of this provision, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for variation, reversal or modification are in progress before a competent administrative or judicial tribunal.

(3) Upon such finding by the Director of the Human Rights Commission, or other official design-

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

(g) The Human Rights Commission shall, within ten (10) days of the date of issuance of any finding by the Director of the Human Rights Commission or other official designated by the Commission in the enforcement of this chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of his right to appeal. Notice of appeal must be filed in writing with the Chairman of the Commission within 20 days of the date of mailing said copy and notice.

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

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

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

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

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

(m) There may be deducted from the amount payable to the contractor, subcontractor or supplier by the City and County of San Francisco under this contract a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this contract. In addition to any other penalties herein provided for the violation of the nondiscrimination provisions of this contract or for the failure of any contractor, subcontractor or supplier to abide by the rules and regulations herein contained, this contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding as set forth in Sec. 12B.2(f) that the contractor, subcontractor or supplier has discriminated contrary to the provisions of this contract, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City and County of San Francisco.

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

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

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

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

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

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

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

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

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

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

SEC. 12B.4 AFFIRMATIVE ACTION GUIDELINES

In order to be eligible to bid or to have a bid considered by the awarding agency, the contractor in all public works contracts shall submit an affirmative action program which shall meet the requirements of the Human Rights Commission.

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

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

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

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

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

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

(3) Apprenticeship education and preparation;

(4) Upgrading training and opportunities;

(5) Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, provided, however, that no contractor shall subject his contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City and County of San Francisco for such work; and

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

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

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

Description

SWL 302

United Shell Fish

Commencing at the intersection of the monument line of Hyde Street, and the monument line of Jefferson Street; running thence easterly along the monument line of Jefferson Street for a distance of 795.03 feet; thence at a right angle northerly for a distance of 206.89 feet to the true point of beginning; thence continuing on the last aforesaid course for a distance of 10.11 feet; thence at a right angle easterly for a distance of 19.5 feet; thence at a right angle northerly for a distance of 4.50 feet; thence at a right angle easterly for a distance of 4.00 feet; thence at a right angle southerly for a distance of 14.40 feet; thence at a right angle easterly for a distance of 53.45 feet; thence at a right angle southerly for a distance of 30.21 feet; thence at a right angle westerly for a distance of 68.12 feet; thence at a right angle northerly for a distance of 30.00 feet; thence at a right angle westerly for a distance of 8.83 feet to the true point of beginning, and containing 2310 square feet of area, more or less.

EXHIBIT A

Sheet 1 of 2
See Drawing No. 8731-302-6
Rev. 1-19-76

San Francisco Bay

R

Edge of Deck

Point of Beginning

16.11

45 4.00

195

4.40

53.45

USF
230 sq ft.

12.00

SWL 302

30.00

68.12

206.89

"Jones Alley"

R

EXHIBIT A

Jefferson St. Mon. Line

41.875'

26.875'

R

795.03'

343.75' to Mon Line of Beach St.

Rev. 1-19-76

CONTRACT NO.

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

SWL 302
UNITED SHELL FISH
Description

APPROVED
DATE
DRAWING NO. 8731-302-6

IN CHARGE OF SN

MADE BY GAN

TRACED BY GAN

CHECK BY

DATE 4/24/75

SCALE 1"=40'

SHEET NO 2 OF 2

PORT OF SAN FRANCISCO



MEMORANDUM

February 13, 1997

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

ORIGINAL

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Denise McCarthy, Vice President
Hon. Frankie Lee
Hon. Preston Cook
Hon. James R. Herman

FROM: Douglas F. Wong *DFW*
Executive Director

SUBJECT: Approval of percentage rental adjustment for Scoma's Restaurant located on Pier 47 at Fisherman's Wharf.

DIRECTOR'S RECOMMENDATION: APPROVE PERCENTAGE RENTAL
ADJUSTMENTS SET FORTH HEREIN

Scoma's Restaurant, Incorporated ("Scoma's") operates Scoma's Restaurant on Pier 47 pursuant to Port Lease No. L-8996, whose lease term extends until April 30, 2036 ("Lease"). This Lease provides for the payment of percentage rental, which is subject to periodic review and adjustment. If the rates of percentage rental for like uses in San Francisco in the vicinity have increased or decreased as of the adjustment date, then the Port is to adjust the rate of percentage rental for the Lease accordingly. If Scoma's disagrees on the amount of the adjustment, then Scoma's has the right to terminate the Lease without liability for future rent. Per an agreement between Scoma's and the Port, dated April 30, 1987, the next adjustment date for percentage rental under the Lease is May 1, 1997.

The following table shows the three categories of percentage rental set forth in the Lease, and the current percentage rental rates for these uses.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

ORIGINAL

SAN FRANCISCO PORT COMMISSION

AGENDA SHEET

ORIGINATOR: Kirk Bennett, Sr. Property Manager, Northern Waterfront & Fisherman's Wharf
DATE: February 13, 1997
AGENDA ITEM TITLE: Approval of percentage rental adjustment for Scoma's Restaurant located on Pier 47 at Fisherman's Wharf.

Please initial at the appropriate line.

DIRECTOR, Real Estate & Asset Management
DIRECTOR, Maritime
DIRECTOR, Planning & Development
DIRECTOR, Finance & Administration
DIRECTOR, Facilities & Operations
CITY ATTORNEY
COMMISSION SECRETARY
EXECUTIVE DIRECTOR

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[Handwritten initials]
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[Handwritten initials]
[Handwritten initials]
[Handwritten initials]
[Handwritten initials]

INSTRUCTIONS: Agenda items require the following:
*30 copies of cover Memorandum on stationery
*30 copies of all supporting documentation
*30 copies of the resolution
*10 copies of which shall be hole-punched for the Commission

Please return *all Originals* (cover memorandum, resolution and supporting documentation) to the Commission Secretary. A signed copy of the package will be sent to you for your files.

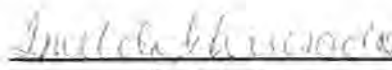
PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 97-13

ORIGINAL

- 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 San Francisco; and
- WHEREAS, under Charter Section B3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, Port Lease No. L-8996 with Scoma's Restaurant, Incorporated, dated April 1, 1974 ("Lease"), provides for the adjustment in the percentage rental, effective May 1, 1997, based upon the determination that the percentage rentals for like uses in San Francisco in the vicinity of the leased premises have increased or decreased; and now therefore be it
- RESOLVED, that the Port Commission determines that the percentage rentals for the uses indicated below in San Francisco in the vicinity of the leased premises are as indicated below and that the percentage rental for the Lease shall be adjusted as indicated below, effective May 1, 1997, and the Port Commission authorize the Executive Director, or his designee, to execute the proper documentation as needed to implement this resolution.

Food	6.5%
Alcoholic beverages & all other items sold through the bar	6.5%
All other uses	8.5%

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 25, 1997.


Secretary

Agenda Item No. 5A
Page 2

Food	5.5%
Alcoholic beverages & all other items sold through the bar	7.5%
All other uses	7.5%

In 1995, the Port retained a market consultant to perform a market survey and analysis of percentage rents in the Fisherman's Wharf vicinity. Port staff also held several discussions with tenants at Fisherman's Wharf whose percentage rentals were then subject to adjustment. Based upon the independent survey and analysis obtained from the Port's consultant, the input provided by Port tenants and their consultants, and Port staff's own consideration and review of the data available to it, Port staff concluded that the percentage rental for restaurants providing full table service which are located over the water should be adjusted to the following percentage rental rates:

Food	6.5%
Alcoholic beverages & all other items sold through the bar	6.5%
All other uses	8.5%

Based upon this staff recommendation, the Port Commission in 1996 reset the percentage rentals for ten such restaurants at Fisherman's Wharf to the rates indicated above. Port staff now recommends that the Port Commission reset the percentage rental for Scoma's Restaurant to these same percentage rental rates effective May 1, 1997.

Prepared by: Kirk W. Bennett, Sr. Property Manager,
Northern Waterfront & Fisherman's Wharf

Port

ASSIGNMENT AND AMENDMENT OF LEASES

This Assignment and Amendment of Leases ("Assignment") is made by and between **Carola Svedise**, as successor in interest to **Joseph Svedise**, doing business as **United Shellfish Company** ("Assignor"), **Scoma's Restaurant, Inc.**, a California corporation ("Assignee"), and the **City and County of San Francisco**, a municipal corporation ("City") operating by and through the **San Francisco Port Commission** ("Port"), and as to the provisions of Paragraph 6 only, **Michael Svedise** ("Sublessee"), who agree as follows:

RECITALS

This Assignment and Amendment of Leases is made with reference to the following facts:

A. Port, as landlord, and Assignor, as tenant, entered into three written leases dated February 11, 1976, referred to as L-9170, L-9174 and L-9175, (collectively, the "Leases"), in which Port leased to Assignor and Assignor leased from Port premises located in the City and County of San Francisco, commonly known as Pier 47, foot of Jones Street, San Francisco, California and described in greater detail in Exhibit A to each of the Leases (collectively, the "Premises"). Lease L-9175 was amended on May 7, 1979. Lease L-9170 was amended on June 16, 1983. A map of the Premises is attached hereto as Exhibit 1.

B. Assignor wishes to assign all of its right, title and interest in the Leases to Assignee on the condition that Assignor be released from all of Assignor's obligations under the Leases.

C. Port shall consent to the proposed assignment on the conditions and subject to the lease amendments set forth in this Assignment.

Now, therefore, in consideration of their mutual covenants and agreements, the parties hereto agree as follows:

AGREEMENT

1. **Effective Date of Assignment.** This Assignment shall take effect upon the first day of the month immediately following the month in which this Assignment

is approved by the San Francisco Port Commission and the Board of Supervisors, and this Assignment is fully executed by the parties hereto ("Effective Date"). Assignor shall give possession of the Premises to Assignee on the Effective Date.

2. **Assignment and Assumption.** Assignor assigns and transfers to Assignee all its right, title and interest in the Leases, and Assignee accepts the Assignment and assumes and agrees to perform, from and after the Effective Date, as a direct obligation to Port, all the provisions of the Leases, and Port hereby consents to such assignment, upon all of the terms and conditions hereof. In particular, without limiting the foregoing, Assignee shall be bound by the use restrictions and terms set forth in Paragraph 5 of the Leases as amended hereby. Port's consent to this Assignment shall not waive the restriction concerning further assignment.

3. **Consideration.** In consideration of this Assignment, Assignee agrees to pay Assignor the sum of Sixteen Thousand Dollars (\$16,000.00). Assignee agrees to pay to Port on Assignor's behalf, on or before the Effective Date hereof, all outstanding bills charged to Assignor under the Leases through July 31, 1994, in the amount of \$26,336.60. Failure of Assignee to pay such sum to Port on or before the Effective Date shall be deemed a material default under the Leases. Assignor shall be responsible for any additional amounts due the Port for the period prior to the Effective Date, and in the event that said amounts are not paid prior to the Effective Date, this Assignment shall be null and void.

4. **Indemnity.** Assignee accepts the Premises "as is," and agrees to defend, indemnify and hold Assignor harmless from any liability, claims, actions, and damages (including attorney's fees) under Paragraphs 5, 6, 7, 8 and 22 of the Leases, whether or not arising prior to the Effective Date of this Assignment.

5. **Assignment Conditioned upon Consent to Sublease and Release.** Concurrent with this Assignment, Assignee hereby agrees to sublease certain of its rights and interests under the Leases to Michael Svedise, effective on the Effective Date, in the form set forth in Exhibit 2 attached hereto ("Sublease"). Port hereby consents to the Sublease in the form attached hereto.

6. **Indemnity by Sublessee.** Sublessee and any successor to Sublessee agrees to defend, indemnify and hold Assignor harmless from any and all liability, claims, actions and damages (including attorney's fees) not assumed by Assignee, it being the intent of this indemnity agreement by Sublessee that in consideration of the cancellation of said Leases, Assignor shall be fully indemnified from all liability, claims, action, and damages (including attorney's fees), of whatsoever kind or character

whether known or unknown arising prior to or after the Effective Date of this agreement.

7. **Guarantee Deposit.** The parties acknowledge that Port now holds a guarantee deposit from Assignor pursuant to the Leases in the amount of \$2,177.66. Assignor hereby releases all claims to that sum against Port, and that sum shall be held by Port for the benefit of Assignee, subject to the provisions of the Leases. On or before the Effective Date, Assignee shall reimburse Assignor for the amount of the actual guarantee deposit on the Leases in the approximate amount of \$2,177.66, plus any interest accumulated thereon.

8. **Attorneys' Fees.** If either party hereto brings an action or proceeding (including any cross-complaint or counterclaim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 8 shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. If any party commences an action against any of the parties arising out of or in connection with this Assignment, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.

9. **Successors.** This Assignment shall be binding on and inure to the benefit of the parties and their successors.

10. **Counterparts.** This Assignment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. **Notices.** All notices, requests, demands and other communications under this agreement shall be in writing and served personally on the party to whom notice is to be given, or upon transmission if delivered by facsimile, or on the third day after mailing if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Assignor at: Carola Svedise
2313 Cipriani Blvd.
Belmont, CA 94002

To Assignee at: Scoma's Restaurant, Inc.
Pier 47
San Francisco, CA 94133

To Port at: Manager, Fisherman's Wharf
Port of San Francisco
Ferry Building, Room 3100
San Francisco, CA 94111

12. **Governing Law.** This agreement shall be construed in accordance with and governed by the laws of the State of California as applied to contracts that are executed and performed entirely in California.

13. **Releases.**

a. **Release of Assignor and Port Under the Leases.** As of the Effective Date, Port and Assignor, its successors and assigns, shall fully and unconditionally release and discharge each other from their respective rights and obligations under the Leases and any oral or written modifications thereof.

b. **Release of Port by Assignor.** Assignor, after having consulted with their attorneys, hereby waives the benefit of, releases and forever discharges City, Port and their commissioners, officers, employees and agents (the "Releasees"), from any and all presently existing liabilities, claims, demands, damages, causes of action, rights of offset or defenses of every kind and nature (including without limitation, tort claims), whether known or unknown, which Assignor may have against the Releasees, or which they may be entitled to assert in connection with or arising in any way out of the Leases or the Premises defined therein, including without limitation any presently existing claim or defense (including any and all claims or defenses based upon the allegedly tortious or other conduct of the Releasees or on their behalf) with respect to the Leases or the Premises defined therein, whether or not presently suspected, contemplated or anticipated to the extent the events giving rise to the same shall have occurred on or prior to the date hereof. Assignor, after having consulted with their attorneys, hereby expressly waive the benefits of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at

the time of executing the release which, if known by him, must have materially affected his settlement with the debtor.

14. **Time is of the Essence.** Time is of the essence as to each and every provision of this Lease.

15. **Amendment of Leases.**

a. **Assignment and Subletting.** Paragraph 10 of each of the Leases is hereby deleted in its entirety and replaced by the following language:

10. **Assignment and Subletting.**

10.1 **Definition of Transfer.** The occurrence of any of the following (whether voluntarily, involuntarily or by operation of Law) shall constitute a "Transfer" of this Lease:

(a) any direct or indirect assignment, conveyance, alienation, sublease, or other transfer of Tenant's interest in this Lease or in the Premises, or any part thereof or interest therein; or

(b) the use of all or part of the Premises by any person or entity other than Tenant, except Tenant's authorized agents or invitees; or

(c) if Tenant is a privately-held corporation, the dissolution, merger, consolidation or other reorganization of Tenant, or any cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of the total capital stock of Tenant or any sale or cumulative sales of fifty percent (50%) or more of the value of the assets of Tenant; or

(d) if Tenant is a partnership or an unincorporated association, (i) the withdrawal or substitution (whether voluntarily, involuntarily or by operation of Law and whether occurring at one time or over a period of time) of any partner(s) owning fifty percent (50%) or more of said partnership or association, or (ii) the cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of any interest in the capital or

profits of such partnership or association, or (iii) the dissolution of the partnership or association.

As used herein, the term "Transfer" includes a transfer of any interest in this Lease held by any subtenant, assignee, or transferee, but does not include any hypothecation, encumbrance or mortgage of this Lease made in accordance with Section 11.

10.2 Port's Consent Required. Tenant shall not make or permit any Transfer of this Lease except with the prior written consent of Port in each instance as evidenced by Port Commission resolution and in full compliance with all of the terms and provisions of this Section 10. Any Transfer of this Lease occurring without full compliance with all of the terms and conditions hereof shall constitute an incurable breach by Tenant and shall be voidable at the option of Port.

10.3 Request for Transfer. Tenant shall give Port at least forty-five (45) days prior written notice of any desired Transfer (herein "Notice of Request to Transfer") and shall provide Port with the following information in writing: (1) the name, address, legal composition and ownership of the proposed transferee (2) the current balance sheet and profit and loss statements (herein "financial statements") for the proposed transferee and for any other entity or person who is to be liable for Tenant's obligations under this Lease, such financial statements to be certified in writing to be true and correct and to be prepared in accordance with generally accepted accounting principles and to cover a period of three years prior to the proposed effective date of the Transfer (or for such shorter period as the proposed transferee or other person may have been in existence), (3) a full description of the terms and conditions of the proposed Transfer, including copies of any and all proposed sublease or assignment agreements or other documents and instruments concerning the proposed Transfer, (4) a description of the proposed use of the Premises by the proposed transferee, including any required or desired alterations or improvements to the Premises that may be undertaken by such transferee in order to facilitate its proposed use, (5) complete information regarding all payments to be made or other consideration to be given in connection with the Transfer; (6) a list of personal,

business and credit references of the proposed transferee, (7) a current financial statement of Tenant, and (8) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed Transfer and the prospective transferee. Tenant's Notice of Request to Transfer shall not be deemed to have been served or given until such time as Tenant has provided Port with all information set forth hereinabove. Tenant shall immediately notify Port of any modifications to the proposed terms of the Transfer.

10.4 Port's Consent/Refusal to Consent. Upon receiving a Notice of Request to Transfer, Port shall have the right to do any of the following:

(a) Port may consent to the proposed Transfer, subject to any reasonable conditions upon such Transfer, which conditions may include, without limitation: (i) that the proposed transferee expressly assume all obligations of Tenant under this Lease without, however, Port releasing Tenant therefrom; (ii) that in the event this Lease is terminated prior to the expiration of any sublease, at the election of Port, such termination shall operate to terminate all existing subleases entered into by Tenant without further notice from Port; and (iii) that the sublease or other Transfer agreement contain: (A) an indemnification clause and waiver of claims provisions in favor of Port and City identical to those contained in Section 14 of this Lease; (B) a clause requiring the proposed transferee to name City, Port and their agents as additional insureds under all liability and other insurance policies; and (C) a clause requiring the proposed transferee to acknowledge Port's right to demand increased insurance coverage to normal amounts consistent with the proposed transferee's business activities on the Premises.

(b) Port may deny its consent to the proposed Transfer on any reasonable ground. Reasonable grounds shall include, without limitation, any one or more of the following: (i) that the proposed transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (ii) that the use to which the Premises will be put by the proposed transferee is inconsistent with the terms of this Lease or otherwise will materially and adversely affect any interest

of Port; (iii) that the nature of the proposed transferee's intended or likely use of the Premises would involve an increased risk of the use, release or mishandling of hazardous materials or otherwise increase the risk of fire or other casualty; (iv) that the business reputation or character of the proposed transferee or any of its affiliates is not reasonably acceptable to Port; (v) that the proposed transferee is not likely to conduct on the property a business of a quality substantially equal to that conducted by Tenant; or (vi) that Port has not received assurances acceptable to Port in its sole discretion that all past due amounts owing from Tenant to Port (if any) will be paid and all other defaults on the part of Tenant (if any) will be cured prior to the effectiveness of the proposed Transfer.

If Port denies its consent to the proposed Transfer pursuant to this subsection (b), and if Tenant shall so request in writing, Port shall provide to Tenant a statement of the basis on which Port denied its consent.

(c) One hundred percent (100%) of all sums paid or payable to Tenant by the transferee in excess of the then-existing Rent payable by Tenant attributable to the portion of the Premises being transferred, including without limitation, any rent and all other sums or other consideration received by Tenant as a result of the Transfer, in whatever form (less expenses for verifiable, reasonable and customary brokerage commissions, Tenant Improvements, lease concessions, value of Tenant's trade fixtures conveyed and other expenses actually paid or obligations incurred by Tenant in connection with the Transfer and/or expenses of operating the Premises paid or incurred by Tenant) shall be paid by Tenant to Port immediately upon receipt thereof by Tenant as Additional Rent hereunder. Notwithstanding the foregoing, in the event this Lease is assigned in connection with a sale of Tenant's business, including the sale of Tenant's trade fixtures at the Premises and Tenant's goodwill, and the assignee will continue to operate the same business that Tenant operated at the Premises, then the sums payable by Tenant to Port pursuant to this Section 10.4(c) shall be limited to those amounts attributable to the value of Tenant's leasehold interest and shall not include amounts attributable to the value of Tenant's goodwill, as such amounts are determined by Port in Port's reasonable discretion.

(d) Tenant acknowledges and agrees that each of the rights of Port set forth in this Section 10 is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

(e) No consent to any proposed Transfer, whether conditional or unconditional, shall be deemed to be a consent to any other or further Transfer of this Lease, or any other Transfer of this Lease on the same or other conditions. No interest of Tenant in this Lease shall be assignable by operation of law.

10.5 Fees for Review. Tenant shall reimburse Port for all costs, including without limitation attorney's fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer.

10.6 No Release of Tenant. The acceptance by Port of Rent or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this Lease or to be a consent to any subsequent Transfer or to be a release of Tenant from any obligation under this Lease. No Transfer of this Lease shall in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease. The joint and several liability of Tenant and Tenant's successors or transferees and the obligations of Tenant under this Lease shall not be discharged, released or impaired by any agreement by Port modifying any provision of this Lease or extending time for performance hereunder or by any waiver or failure of Port to enforce any obligations hereunder.

10.7 Assignment of Sublease Rents. Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Transfer of all or any part of the Premises; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to receive, collect and enjoy such rents.

b. Use of Premises. Paragraph 5 of Lease No. L-9175 is hereby amended to include the following additional language:

The Premises may also be used for a bait and tackle retail business; charter boat booking office and/or related office uses; and/or services supporting commercial and sport fishing boats, and their owners, employees, and customers (for example, laundry, restroom, and shower facilities) (collectively, "Fishing Support Uses"). Fishing Support Uses shall be limited to the area designated by cross-hatches on Exhibit 1 attached hereto.

c. City Requirements. The following language is added to the Leases as new paragraph 33:

33. City Requirements.

33.1 Non-Discrimination. Tenant shall not, in the operation and use of the Premises, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by this reference and made a part hereof as though fully set forth herein. Tenant agrees to comply with all provisions of such Chapters 12B and 12C that apply to tenants of the City and County of San Francisco.

33.2 MacBride Principles-Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

33.3 Tropical Hardwood Ban. City urges Tenant not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood product.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Amendment of Leases in the City and County of San Francisco on the dates written below.

ASSIGNOR:

Date: 11-9-94

Carla Svedise
CAROLA SVEDISE

ASSIGNEE:

SCOMA'S RESTAURANT, INC.

Date: 11-4-94

By: Thomas W. Cresson
Its: President

AS TO PARAGRAPH 6 ONLY:

SUBLESSEE:

Date: 11-7-94

Michael Svedise
MICHAEL SVEDISE

APPROVED AS TO FORM:

PORT:

**LOUISE H. RENNE
CITY ATTORNEY**

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

By: Neil H. Sekhri
NEIL H. SEKHRI
Deputy City Attorney

By: Dennis P. Bouey
DENNIS P. BOUEY
Executive Director

Port Commission Resolution No. 94-132

Date: 2-6-95

**Board of Supervisors Ordinance No.
16-95**

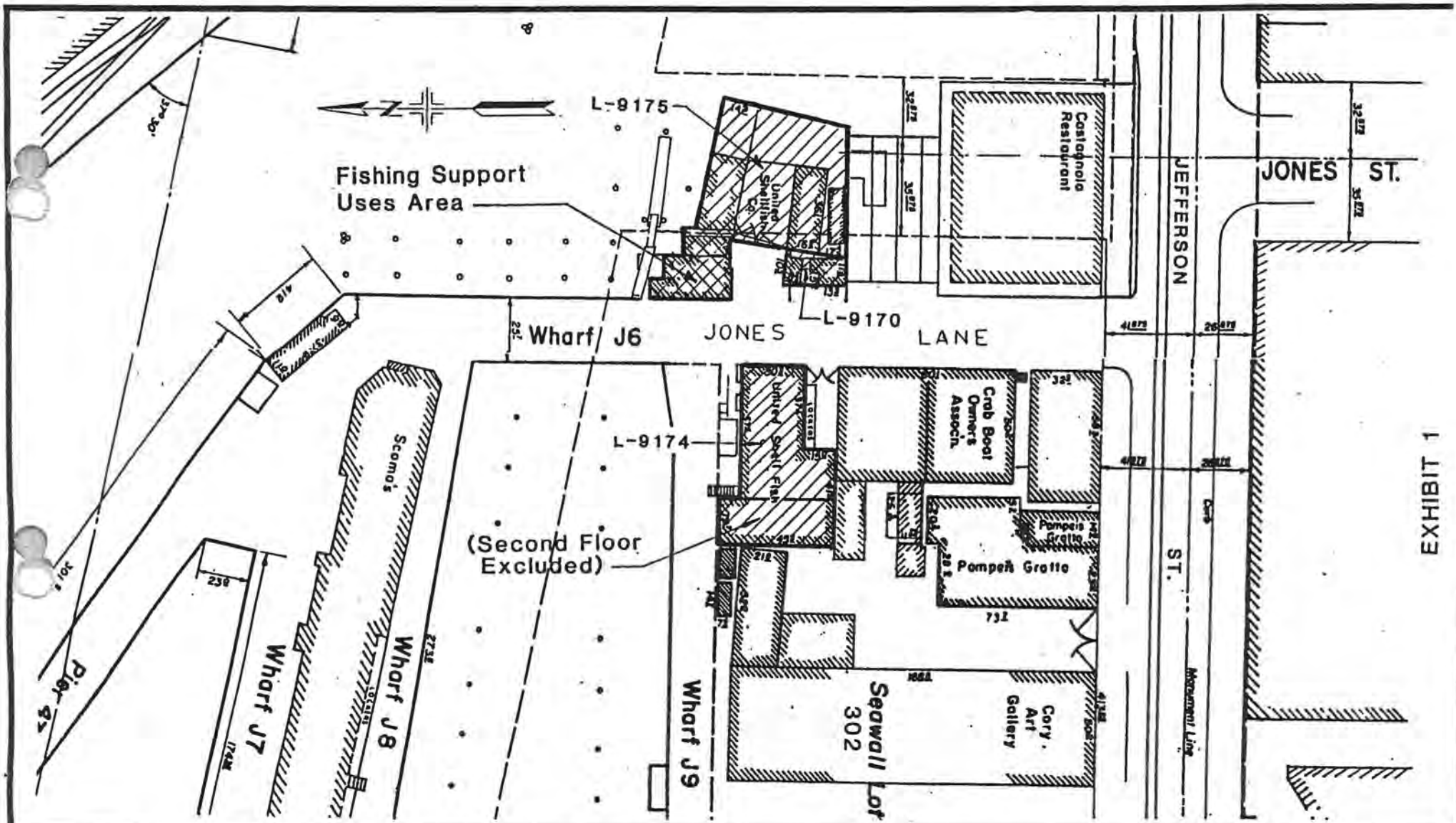


EXHIBIT 2
Form of Sublease



MEMORANDUM

November 3, 1994

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Anne Halsted, Vice President
Hon. Frankie G. Lee
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Assignment and Amendment of Leases for United Shellfish Company at Fisherman's Wharf and Approval of Sublease

DIRECTOR'S RECOMMENDATION: APPROVE ASSIGNMENT AND AMENDMENT OF LEASES FOR UNITED SHELLFISH COMPANY AND APPROVAL OF SUBLEASE

BACKGROUND

United Shellfish Company occupies the premises at Fisherman's Wharf demised in the following three leases: L-9170, L-9174, and L-9175 ("Leases"). These premises are shown on the attached Exhibit 1.

The original Tenant of the Leases was Joseph Svedise, who operated United Shellfish Company at Fisherman's Wharf from the 1940s until he passed away in 1993. Since then, his widow, Carola Svedise, has been the Tenant, and United Shellfish Company has been operated by her nephew, Michael Svedise. United Shellfish Company has recently encountered some financial difficulties, and as of October 31, 1994, owed the Port \$34,212.43 under the Leases.

The terms of the Leases all commenced on April 1, 1975 and will expire on April 30, 2036. The size of the premises and the current monthly rents are shown in the table on the next page.

THIS PRINT COVERS CALENDAR ITEM NO. 5A



<u>Lease No.</u>	<u>Size of Premises (Sq. ft.)</u>	<u>Current Monthly Rent</u>
L-9170	339	\$ 143.48
L-9175	<u>4,466</u>	<u>1,080.31</u>
Sub-total	4,805	\$1,223.79
L-9174	<u>2,310</u>	<u>955.70</u>
Total	7,115	\$2,179.49

The uses permitted by the Leases consist of "wholesale fish processing, fish storage, marine food preparations and such other uses as are reasonably related thereto". Lease No. L-9175 also provides that use of the Premises "shall not include any retail sales nor sales to any persons or entities who are not engaged in the retail sale of fish and marine food, who do not intend to transact retail sales of such items nor who intend to consume such items".

PROPOSED TRANSACTION

The proposed transaction involves three components: (1) assignment of the Leases; (2) amendment of the Leases; and (3) subleasing the premises demised in two of the Leases.

1. Assignment of Leases

The Leases will be assigned from Carola Svedise ("Assignor") to Scoma's Restaurant, Inc. ("Assignee"). The Effective Date of the assignment will be the first day of the month immediately following the month in which the transaction is approved by the San Francisco Port Commission and the Board of Supervisors, and the Assignment is fully executed by the parties. As of the Effective Date, the Assignor will be released from all obligations under the Leases. The consideration which will be paid to the Assignor by the Assignee will consist of \$16,000, plus payment of all outstanding charges due the Port under the Leases through July 31, 1994, which totaled \$26,336.60. (The balance due the Port will be paid by the Assignor prior to the Effective Date of this transaction).

2. Amendment of Leases

The Leases will be amended to include the assignment and subletting provisions of the current Port Standard Lease and to include City requirements involving Non-



Discrimination, MacBride Principles-Northern Ireland, and Tropical Hardwood Ban. In addition, the permitted use provisions of Lease No. L-9175 will be amended to include the following language:

"The Premises may also be used for a bait and tackle retail business; charter boat booking office and/or related office uses; and/or services supporting commercial and sport fishing boats, and their owners, employees, and customers (for example, laundry, restroom, and shower facilities) (collectively "Fishing Support Uses"). Fishing Support Uses shall be limited to the areas designated by cross hatches on Exhibit 1 attached hereto."

It is the intent of the Assignee and the Sublessee to renovate the area designated for Fishing Support Uses in order to offer much needed services to the fishing fleet at Fisherman's Wharf.

3. Sublease

The Assignee will sublease the premises demised in Lease Nos. L-9170 and L-9175 to Michael Svedise ("Sublessee"), who will continue to operate the United Shellfish Company on these Sublease Premises, as well as operate the Fishing Support Uses in conjunction with the Assignee. The term of the sublease will be five years, with three more options to extend the term by an additional five years each. The initial base rent for the Sublease Premises will be \$1,223.79 per month (which is identical to the amount paid by the Assignee to the Port for the Sublessee Premises, with the same future adjustments in the base rent as required by the Leases with the Port. The Sublessee will also pay fixed additional rent of \$352.69 per month for five years, constituting amortization at 8% interest of \$17,394.30, which represents a portion of the amount paid by the Assignee toward the balance owed the Port by the Assignor. The Sublessee will also be responsible for all other rent, charges, utilities and wharfage relating to the Sublease Premises, and the Sublessee will be responsible for maintenance and repairs to the Sublease Premises.

The first two components of this transaction will be documented in an Assignment and Amendment of Leases agreement, and the third component will be documented in a separate Sublease Agreement. Both of these documents have been approved as to form by the City Attorney.

Prepared by: Frederick White, Director
Tenant and Maritime Services



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

RESOLUTION NO. 94-____

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Port Commission approval is being sought for the assignment of Leases L-9170, L-9174 and L-9175 and for an amendment of said Leases, as set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994; and

WHEREAS, Port Commission approval is being sought for the subleasing of the premises demised in Leases L-9170 and L-9175, as set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994; now therefore, be it

RESOLVED, that the Port Commission hereby approves the Assignment and Amendment of Leases, the business terms of which are set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994, and hereby authorizes the Executive Director of the Port to execute the same on behalf of the Port and forward said Assignment and Amendment of Leases to the San Francisco Board of Supervisors for approval by ordinance pursuant to City Charter Section 7.402-1; and be it further

RESOLVED, that the Port Commission hereby consents to the sublease of the premises demised in Leases L-9170 and L-9175, the business terms of which are set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 15, 1994



PORT OF SAN FRANCISCO



MEMORANDUM

February 13, 1997

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

ORIGINAL

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Denise McCarthy, Vice President
Hon. Frankie Lee
Hon. Preston Cook
Hon. James R. Herman

FROM: Douglas F. Wong *[Signature]*
Executive Director

SUBJECT: Approval of percentage rental adjustment for Scoma's Restaurant located on Pier 47 at Fisherman's Wharf.

**DIRECTOR'S RECOMMENDATION: APPROVE PERCENTAGE RENTAL
ADJUSTMENTS SET FORTH HEREIN**

Scoma's Restaurant, Incorporated ("Scoma's") operates Scoma's Restaurant on Pier 47 pursuant to Port Lease No. L-8996, whose lease term extends until April 30, 2036 ("Lease"). This Lease provides for the payment of percentage rental, which is subject to periodic review and adjustment. If the rates of percentage rental for like uses in San Francisco in the vicinity have increased or decreased as of the adjustment date, then the Port is to adjust the rate of percentage rental for the Lease accordingly. If Scoma's disagrees on the amount of the adjustment, then Scoma's has the right to terminate the Lease without liability for future rent. Per an agreement between Scoma's and the Port, dated April 30, 1987, the next adjustment date for percentage rental under the Lease is May 1, 1997.

The following table shows the three categories of percentage rental set forth in the Lease, and the current percentage rental rates for these uses.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

ORIGINAL

SAN FRANCISCO PORT COMMISSION

AGENDA SHEET

ORIGINATOR: Kirk Bennett, Sr. Property Manager, Northern Waterfront & Fisherman's Wharf

your file copy

DATE: February 13, 1997

any

AGENDA ITEM TITLE: Approval of percentage rental adjustment for Scoma's Restaurant located on Pier 47 at Fisherman's Wharf.

Please initial at the appropriate line.

DIRECTOR, Real Estate & Asset Management
DIRECTOR, Maritime
DIRECTOR, Planning & Development
DIRECTOR, Finance & Administration
DIRECTOR, Facilities & Operations
CITY ATTORNEY
COMMISSION SECRETARY
EXECUTIVE DIRECTOR

[Handwritten initials]
[Handwritten initials]
[Handwritten initials]
[Handwritten initials]
[Handwritten initials]
NHS
[Handwritten initials]
[Handwritten initials]

- INSTRUCTIONS: Agenda items require the following:
- *30 copies of cover Memorandum on stationery
 - *30 copies of all supporting documentation
 - *30 copies of the resolution
 - *10 copies of which shall be hole-punched for the Commission

Please return *all Originals* (cover memorandum, resolution and supporting documentation) to the Commission Secretary. A signed copy of the package will be sent to you for your files.

ORIGINAL

RESOLVED, that the Port Commission determines that the percentage rentals for the uses indicated below in San Francisco in the vicinity of the leased premises are as indicated below and that the percentage rental for the Lease shall be adjusted as indicated below, effective May 1, 1997, and the Port Commission authorize the Executive Director, or his designee, to execute the proper documentation as needed to implement this resolution.

All other uses	8.5%
----------------	------

Agenda Item No. 5A

Page 2

Food	5.5%
Alcoholic beverages & all other items sold through the bar	7.5%
All other uses	7.5%

In 1995, the Port retained a market consultant to perform a market survey and analysis of percentage rents in the Fisherman's Wharf vicinity. Port staff also held several discussions with tenants at Fisherman's Wharf whose percentage rentals were then subject to adjustment. Based upon the independent survey and analysis obtained from the Port's consultant, the input provided by Port tenants and their consultants, and Port staff's own consideration and review of the data available to it, Port staff concluded that the percentage rental for restaurants providing full table service which are located over the water should be adjusted to the following percentage rental rates:

Food	6.5%
Alcoholic beverages & all other items sold through the bar	6.5%
All other uses	8.5%

Based upon this staff recommendation, the Port Commission in 1996 reset the percentage rentals for ten such restaurants at Fisherman's Wharf to the rates indicated above. Port staff now recommends that the Port Commission reset the percentage rental for Scoma's Restaurant to these same percentage rental rates effective May 1, 1997.

Prepared by: Kirk W. Bennett, Sr. Property Manager,
Northern Waterfront & Fisherman's Wharf

Port

ASSIGNMENT AND AMENDMENT OF LEASES

This Assignment and Amendment of Leases ("Assignment") is made by and between **Carola Svedise**, as successor in interest to **Joseph Svedise**, doing business as **United Shellfish Company** ("Assignor"), **Scoma's Restaurant, Inc.**, a California corporation ("Assignee"), and the **City and County of San Francisco**, a municipal corporation ("City") operating by and through the **San Francisco Port Commission** ("Port"), and as to the provisions of Paragraph 6 only, **Michael Svedise** ("Sublessee"), who agree as follows:

RECITALS

This Assignment and Amendment of Leases is made with reference to the following facts:

A. Port, as landlord, and Assignor, as tenant, entered into three written leases dated February 11, 1976, referred to as L-9170, L-9174 and L-9175, (collectively, the "Leases"), in which Port leased to Assignor and Assignor leased from Port premises located in the City and County of San Francisco, commonly known as Pier 47, foot of Jones Street, San Francisco, California and described in greater detail in Exhibit A to each of the Leases (collectively, the "Premises"). Lease L-9175 was amended on May 7, 1979. Lease L-9170 was amended on June 16, 1983. A map of the Premises is attached hereto as Exhibit 1.

B. Assignor wishes to assign all of its right, title and interest in the Leases to Assignee on the condition that Assignor be released from all of Assignor's obligations under the Leases.

C. Port shall consent to the proposed assignment on the conditions and subject to the lease amendments set forth in this Assignment.

Now, therefore, in consideration of their mutual covenants and agreements, the parties hereto agree as follows:

AGREEMENT

1. **Effective Date of Assignment**. This Assignment shall take effect upon the first day of the month immediately following the month in which this Assignment

is approved by the San Francisco Port Commission and the Board of Supervisors, and this Assignment is fully executed by the parties hereto ("Effective Date"). Assignor shall give possession of the Premises to Assignee on the Effective Date.

2. **Assignment and Assumption.** Assignor assigns and transfers to Assignee all its right, title and interest in the Leases, and Assignee accepts the Assignment and assumes and agrees to perform, from and after the Effective Date, as a direct obligation to Port, all the provisions of the Leases, and Port hereby consents to such assignment, upon all of the terms and conditions hereof. In particular, without limiting the foregoing, Assignee shall be bound by the use restrictions and terms set forth in Paragraph 5 of the Leases as amended hereby. Port's consent to this Assignment shall not waive the restriction concerning further assignment.

3. **Consideration.** In consideration of this Assignment, Assignee agrees to pay Assignor the sum of Sixteen Thousand Dollars (\$16,000.00). Assignee agrees to pay to Port on Assignor's behalf, on or before the Effective Date hereof, all outstanding bills charged to Assignor under the Leases through July 31, 1994, in the amount of \$26,336.60. Failure of Assignee to pay such sum to Port on or before the Effective Date shall be deemed a material default under the Leases. Assignor shall be responsible for any additional amounts due the Port for the period prior to the Effective Date, and in the event that said amounts are not paid prior to the Effective Date, this Assignment shall be null and void.

4. **Indemnity.** Assignee accepts the Premises "as is," and agrees to defend, indemnify and hold Assignor harmless from any liability, claims, actions, and damages (including attorney's fees) under Paragraphs 5, 6, 7, 8 and 22 of the Leases, whether or not arising prior to the Effective Date of this Assignment.

5. **Assignment Conditioned upon Consent to Sublease and Release.** Concurrent with this Assignment, Assignee hereby agrees to sublease certain of its rights and interests under the Leases to Michael Svedise, effective on the Effective Date, in the form set forth in Exhibit 2 attached hereto ("Sublease"). Port hereby consents to the Sublease in the form attached hereto.

6. **Indemnity by Sublessee.** Sublessee and any successor to Sublessee agrees to defend, indemnify and hold Assignor harmless from any and all liability, claims, actions and damages (including attorney's fees) not assumed by Assignee, it being the intent of this indemnity agreement by Sublessee that in consideration of the cancellation of said Leases, Assignor shall be fully indemnified from all liability, claims, action, and damages (including attorney's fees), of whatsoever kind or character

whether known or unknown arising prior to or after the Effective Date of this agreement.

7. **Guarantee Deposit.** The parties acknowledge that Port now holds a guarantee deposit from Assignor pursuant to the Leases in the amount of \$2,177.66. Assignor hereby releases all claims to that sum against Port, and that sum shall be held by Port for the benefit of Assignee, subject to the provisions of the Leases. On or before the Effective Date, Assignee shall reimburse Assignor for the amount of the actual guarantee deposit on the Leases in the approximate amount of \$2,177.66, plus any interest accumulated thereon.

8. **Attorneys' Fees.** If either party hereto brings an action or proceeding (including any cross-complaint or counterclaim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 8 shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. If any party commences an action against any of the parties arising out of or in connection with this Assignment, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.

9. **Successors.** This Assignment shall be binding on and inure to the benefit of the parties and their successors.

10. **Counterparts.** This Assignment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. **Notices.** All notices, requests, demands and other communications under this agreement shall be in writing and served personally on the party to whom notice is to be given, or upon transmission if delivered by facsimile, or on the third day after mailing if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Assignor at: Carola Svedise
2313 Cipriani Blvd.
Belmont, CA 94002

To Assignee at: Scoma's Restaurant, Inc.
Pier 47
San Francisco, CA 94133

To Port at: Manager, Fisherman's Wharf
Port of San Francisco
Ferry Building, Room 3100
San Francisco, CA 94111

12. **Governing Law.** This agreement shall be construed in accordance with and governed by the laws of the State of California as applied to contracts that are executed and performed entirely in California.

13. **Releases.**

a. **Release of Assignor and Port Under the Leases.** As of the Effective Date, Port and Assignor, its successors and assigns, shall fully and unconditionally release and discharge each other from their respective rights and obligations under the Leases and any oral or written modifications thereof.

b. **Release of Port by Assignor.** Assignor, after having consulted with their attorneys, hereby waives the benefit of, releases and forever discharges City, Port and their commissioners, officers, employees and agents (the "Releasees"), from any and all presently existing liabilities, claims, demands, damages, causes of action, rights of offset or defenses of every kind and nature (including without limitation, tort claims), whether known or unknown, which Assignor may have against the Releasees, or which they may be entitled to assert in connection with or arising in any way out of the Leases or the Premises defined therein, including without limitation any presently existing claim or defense (including any and all claims or defenses based upon the allegedly tortious or other conduct of the Releasees or on their behalf) with respect to the Leases or the Premises defined therein, whether or not presently suspected, contemplated or anticipated to the extent the events giving rise to the same shall have occurred on or prior to the date hereof. Assignor, after having consulted with their attorneys, hereby expressly waive the benefits of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at

the time of executing the release which, if known by him, must have materially affected his settlement with the debtor.

14. **Time is of the Essence.** Time is of the essence as to each and every provision of this Lease.

15. **Amendment of Leases.**

a. **Assignment and Subletting.** Paragraph 10 of each of the Leases is hereby deleted in its entirety and replaced by the following language:

10. **Assignment and Subletting.**

10.1 **Definition of Transfer.** The occurrence of any of the following (whether voluntarily, involuntarily or by operation of Law) shall constitute a "Transfer" of this Lease:

(a) any direct or indirect assignment, conveyance, alienation, sublease, or other transfer of Tenant's interest in this Lease or in the Premises, or any part thereof or interest therein; or

(b) the use of all or part of the Premises by any person or entity other than Tenant, except Tenant's authorized agents or invitees; or

(c) if Tenant is a privately-held corporation, the dissolution, merger, consolidation or other reorganization of Tenant, or any cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of the total capital stock of Tenant or any sale or cumulative sales of fifty percent (50%) or more of the value of the assets of Tenant; or

(d) if Tenant is a partnership or an unincorporated association, (i) the withdrawal or substitution (whether voluntarily, involuntarily or by operation of Law and whether occurring at one time or over a period of time) of any partner(s) owning fifty percent (50%) or more of said partnership or association, or (ii) the cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of any interest in the capital or

profits of such partnership or association, or (iii) the dissolution of the partnership or association.

As used herein, the term "Transfer" includes a transfer of any interest in this Lease held by any subtenant, assignee, or transferee, but does not include any hypothecation, encumbrance or mortgage of this Lease made in accordance with Section 11.

10.2 Port's Consent Required. Tenant shall not make or permit any Transfer of this Lease except with the prior written consent of Port in each instance as evidenced by Port Commission resolution and in full compliance with all of the terms and provisions of this Section 10. Any Transfer of this Lease occurring without full compliance with all of the terms and conditions hereof shall constitute an incurable breach by Tenant and shall be voidable at the option of Port.

10.3 Request for Transfer. Tenant shall give Port at least forty-five (45) days prior written notice of any desired Transfer (herein "Notice of Request to Transfer") and shall provide Port with the following information in writing: (1) the name, address, legal composition and ownership of the proposed transferee, (2) the current balance sheet and profit and loss statements (herein "financial statements") for the proposed transferee and for any other entity or person who is to be liable for Tenant's obligations under this Lease, such financial statements to be certified in writing to be true and correct and to be prepared in accordance with generally accepted accounting principles and to cover a period of three years prior to the proposed effective date of the Transfer (or for such shorter period as the proposed transferee or other person may have been in existence), (3) a full description of the terms and conditions of the proposed Transfer, including copies of any and all proposed sublease or assignment agreements or other documents and instruments concerning the proposed Transfer, (4) a description of the proposed use of the Premises by the proposed transferee, including any required or desired alterations or improvements to the Premises that may be undertaken by such transferee in order to facilitate its proposed use, (5) complete information regarding all payments to be made or other consideration to be given in connection with the Transfer; (6) a list of personal,

business and credit references of the proposed transferee, (7) a current financial statement of Tenant, and (8) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed Transfer and the prospective transferee. Tenant's Notice of Request to Transfer shall not be deemed to have been served or given until such time as Tenant has provided Port with all information set forth hereinabove. Tenant shall immediately notify Port of any modifications to the proposed terms of the Transfer.

10.4 Port's Consent/Refusal to Consent. Upon receiving a Notice of Request to Transfer, Port shall have the right to do any of the following:

(a) Port may consent to the proposed Transfer, subject to any reasonable conditions upon such Transfer, which conditions may include, without limitation: (i) that the proposed transferee expressly assume all obligations of Tenant under this Lease without, however, Port releasing Tenant therefrom; (ii) that in the event this Lease is terminated prior to the expiration of any sublease, at the election of Port, such termination shall operate to terminate all existing subleases entered into by Tenant without further notice from Port; and (iii) that the sublease or other Transfer agreement contain: (A) an indemnification clause and waiver of claims provisions in favor of Port and City identical to those contained in Section 14 of this Lease; (B) a clause requiring the proposed transferee to name City, Port and their agents as additional insureds under all liability and other insurance policies; and (C) a clause requiring the proposed transferee to acknowledge Port's right to demand increased insurance coverage to normal amounts consistent with the proposed transferee's business activities on the Premises.

(b) Port may deny its consent to the proposed Transfer on any reasonable ground. Reasonable grounds shall include, without limitation, any one or more of the following: (i) that the proposed transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (ii) that the use to which the Premises will be put by the proposed transferee is inconsistent with the terms of this Lease or otherwise will materially and adversely affect any interest

of Port; (iii) that the nature of the proposed transferee's intended or likely use of the Premises would involve an increased risk of the use, release or mishandling of hazardous materials or otherwise increase the risk of fire or other casualty; (iv) that the business reputation or character of the proposed transferee or any of its affiliates is not reasonably acceptable to Port; (v) that the proposed transferee is not likely to conduct on the property a business of a quality substantially equal to that conducted by Tenant; or (vi) that Port has not received assurances acceptable to Port in its sole discretion that all past due amounts owing from Tenant to Port (if any) will be paid and all other defaults on the part of Tenant (if any) will be cured prior to the effectiveness of the proposed Transfer.

If Port denies its consent to the proposed Transfer pursuant to this subsection (b), and if Tenant shall so request in writing, Port shall provide to Tenant a statement of the basis on which Port denied its consent.

(c) One hundred percent (100%) of all sums paid or payable to Tenant by the transferee in excess of the then-existing Rent payable by Tenant attributable to the portion of the Premises being transferred, including without limitation, any rent and all other sums or other consideration received by Tenant as a result of the Transfer, in whatever form (less expenses for verifiable, reasonable and customary brokerage commissions, Tenant Improvements, lease concessions, value of Tenant's trade fixtures conveyed and other expenses actually paid or obligations incurred by Tenant in connection with the Transfer and/or expenses of operating the Premises paid or incurred by Tenant) shall be paid by Tenant to Port immediately upon receipt thereof by Tenant as Additional Rent hereunder. Notwithstanding the foregoing, in the event this Lease is assigned in connection with a sale of Tenant's business, including the sale of Tenant's trade fixtures at the Premises and Tenant's goodwill, and the assignee will continue to operate the same business that Tenant operated at the Premises, then the sums payable by Tenant to Port pursuant to this Section 10.4(c) shall be limited to those amounts attributable to the value of Tenant's leasehold interest and shall not include amounts attributable to the value of Tenant's goodwill, as such amounts are determined by Port in Port's reasonable discretion.

(d) Tenant acknowledges and agrees that each of the rights of Port set forth in this Section 10 is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

(e) No consent to any proposed Transfer, whether conditional or unconditional, shall be deemed to be a consent to any other or further Transfer of this Lease, or any other Transfer of this Lease on the same or other conditions. No interest of Tenant in this Lease shall be assignable by operation of law.

10.5 Fees for Review. Tenant shall reimburse Port for all costs, including without limitation attorney's fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer.

10.6 No Release of Tenant. The acceptance by Port of Rent or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this Lease or to be a consent to any subsequent Transfer or to be a release of Tenant from any obligation under this Lease. No Transfer of this Lease shall in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease. The joint and several liability of Tenant and Tenant's successors or transferees and the obligations of Tenant under this Lease shall not be discharged, released or impaired by any agreement by Port modifying any provision of this Lease or extending time for performance hereunder or by any waiver or failure of Port to enforce any obligations hereunder.

10.7 Assignment of Sublease Rents. Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Transfer of all or any part of the Premises; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to receive, collect and enjoy such rents.

b. Use of Premises. Paragraph 5 of Lease No. L-9175 is hereby amended to include the following additional language:

The Premises may also be used for a bait and tackle retail business; charter boat booking office and/or related office uses; and/or services supporting commercial and sport fishing boats, and their owners, employees, and customers (for example, laundry, restroom, and shower facilities) (collectively, "Fishing Support Uses"). Fishing Support Uses shall be limited to the area designated by cross-hatches on Exhibit 1 attached hereto.

c. City Requirements. The following language is added to the Leases as new paragraph 33:

33. City Requirements.

33.1 Non-Discrimination. Tenant shall not, in the operation and use of the Premises, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by this reference and made a part hereof as though fully set forth herein. Tenant agrees to comply with all provisions of such Chapters 12B and 12C that apply to tenants of the City and County of San Francisco.

33.2 MacBride Principles-Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

33.3 Tropical Hardwood Ban. City urges Tenant not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood product.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Amendment of Leases in the City and County of San Francisco on the dates written below.

ASSIGNOR:

Date: 11-9-94

Carola Svedise
CAROLA SVEDISE

ASSIGNEE:

SCOMA'S RESTAURANT, INC.

Date: 11-4-94

By: Thomas W. Crocker

Its: President

AS TO PARAGRAPH 6 ONLY:

SUBLESSEE:

Date: 11-7-94

Michael Sved
MICHAEL SVEDISE

APPROVED AS TO FORM:

PORT:

**LOUISE H. RENNE
CITY ATTORNEY**

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

By: Neil H. Sekhri
NEIL H. SEKHRI
Deputy City Attorney

By: Dennis P. Bouey
DENNIS P. BOUEY
Executive Director

Port Commission Resolution No. 94-132

Date: 2-6-95

Board of Supervisors Ordinance No.
16-95

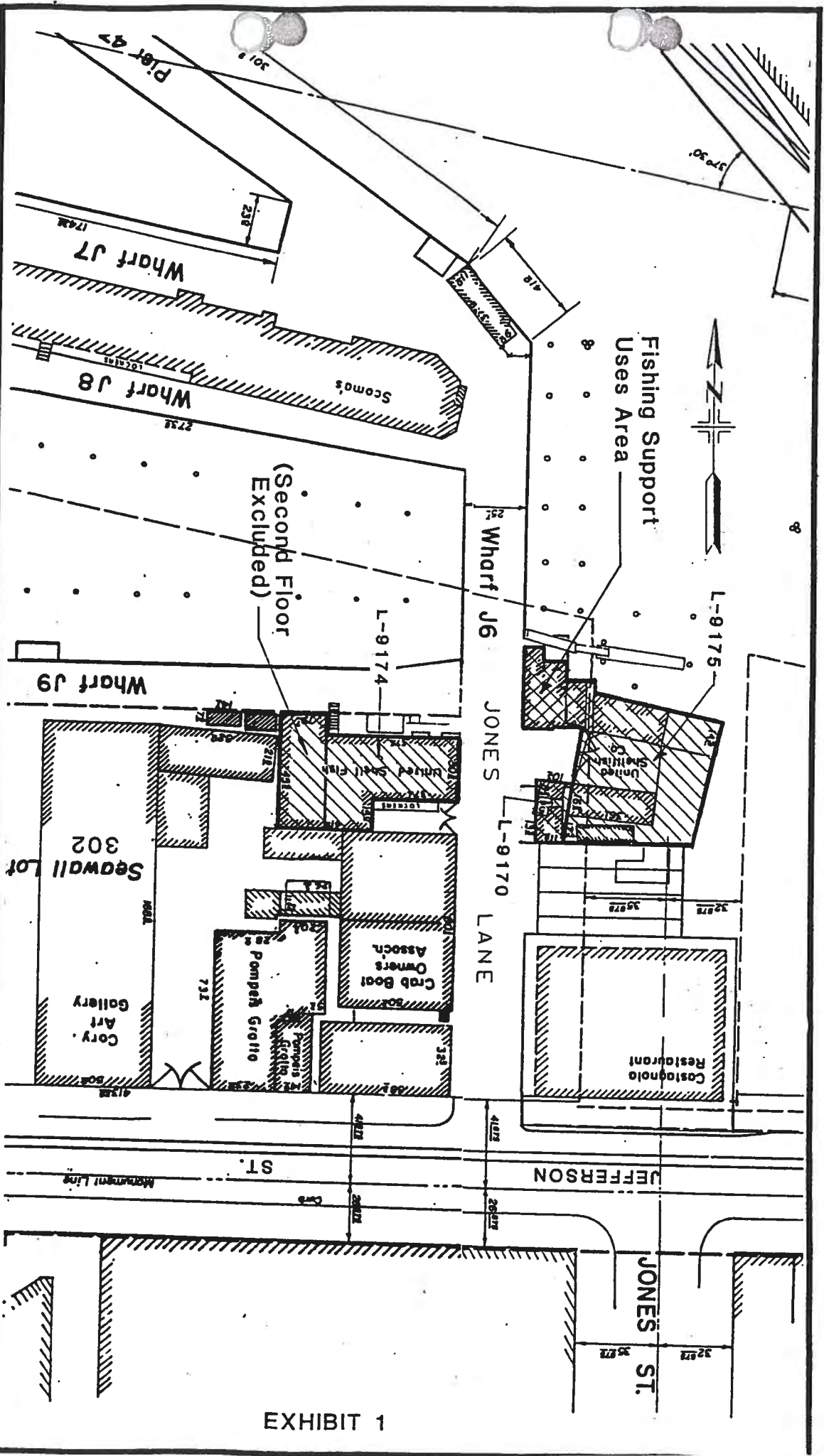


EXHIBIT 1

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE _____
CHIEF HARBOR ENGINEER

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

UNITED SHELLFISH/SCOMA'S
LEASES

DESIGNED BY:	CHECKED BY:
DRAWN BY: R.C.	DATE: 11-1-94
CONTRACT NO.	SCALE: 1"=40'
DRAWING NO. 1470	SHEET NO. OF SHEETS

EXHIBIT 2
Form of Sublease



MEMORANDUM

November 3, 1994

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Anne Halsted, Vice President
Hon. Frankie G. Lee
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Assignment and Amendment of Leases for United Shellfish Company at Fisherman's Wharf and Approval of Sublease

DIRECTOR'S RECOMMENDATION: APPROVE ASSIGNMENT AND AMENDMENT OF LEASES FOR UNITED SHELLFISH COMPANY AND APPROVAL OF SUBLEASE

BACKGROUND

United Shellfish Company occupies the premises at Fisherman's Wharf demised in the following three leases: L-9170, L-9174, and L-9175 ("Leases"). These premises are shown on the attached Exhibit 1.

The original Tenant of the Leases was Joseph Svedise, who operated United Shellfish Company at Fisherman's Wharf from the 1940s until he passed away in 1993. Since then, his widow, Carola Svedise, has been the Tenant, and United Shellfish Company has been operated by her nephew, Michael Svedise. United Shellfish Company has recently encountered some financial difficulties, and as of October 31, 1994, owed the Port \$34,212.43 under the Leases.

The terms of the Leases all commenced on April 1, 1975 and will expire on April 30, 2036. The size of the premises and the current monthly rents are shown in the table on the next page.

THIS PRINT COVERS CALENDAR ITEM NO. 5A



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<u>Lease No.</u>	<u>Size of Premises (Sq. ft.)</u>	<u>Current Monthly Rent</u>
L-9170	339	\$ 143.48
L-9175	<u>4,466</u>	<u>1,080.31</u>
Sub-total	4,805	\$1,223.79
L-9174	<u>2,310</u>	<u>955.70</u>
Total	7,115	\$2,179.49

The uses permitted by the Leases consist of "wholesale fish processing, fish storage, marine food preparations and such other uses as are reasonably related thereto". Lease No. L-9175 also provides that use of the Premises "shall not include any retail sales nor sales to any persons or entities who are not engaged in the retail sale of fish and marine food, who do not intend to transact retail sales of such items nor who intend to consume such items".

PROPOSED TRANSACTION

The proposed transaction involves three components: (1) assignment of the Leases; (2) amendment of the Leases; and (3) subleasing the premises demised in two of the Leases.

1. Assignment of Leases

The Leases will be assigned from Carola Svedise ("Assignor") to Scoma's Restaurant, Inc. ("Assignee"). The Effective Date of the assignment will be the first day of the month immediately following the month in which the transaction is approved by the San Francisco Port Commission and the Board of Supervisors, and the Assignment is fully executed by the parties. As of the Effective Date, the Assignor will be released from all obligations under the Leases. The consideration which will be paid to the Assignor by the Assignee will consist of \$16,000, plus payment of all outstanding charges due the Port under the Leases through July 31, 1994, which totaled \$26,336.60. (The balance due the Port will be paid by the Assignor prior to the Effective Date of this transaction).

2. Amendment of Leases

The Leases will be amended to include the assignment and subletting provisions of the current Port Standard Lease and to include City requirements involving Non-



Discrimination, MacBride Principles-Northern Ireland, and Tropical Hardwood Ban. In addition, the permitted use provisions of Lease No. L-9175 will be amended to include the following language:

"The Premises may also be used for a bait and tackle retail business; charter boat booking office and/or related office uses; and/or services supporting commercial and sport fishing boats, and their owners, employees, and customers (for example, laundry, restroom, and shower facilities) (collectively "Fishing Support Uses"). Fishing Support Uses shall be limited to the areas designated by cross hatches on Exhibit 1 attached hereto."

It is the intent of the Assignee and the Sublessee to renovate the area designated for Fishing Support Uses in order to offer much needed services to the fishing fleet at Fisherman's Wharf.

3. Sublease

The Assignee will sublease the premises demised in Lease Nos. L-9170 and L-9175 to Michael Svedise ("Sublessee"), who will continue to operate the United Shellfish Company on these Sublease Premises, as well as operate the Fishing Support Uses in conjunction with the Assignee. The term of the sublease will be five years, with three more options to extend the term by an additional five years each. The initial base rent for the Sublease Premises will be \$1,223.79 per month (which is identical to the amount paid by the Assignee to the Port for the Sublessee Premises, with the same future adjustments in the base rent as required by the Leases with the Port. The Sublessee will also pay fixed additional rent of \$352.69 per month for five years, constituting amortization at 8% interest of \$17,394.30, which represents a portion of the amount paid by the Assignee toward the balance owed the Port by the Assignor. The Sublessee will also be responsible for all other rent, charges, utilities and wharfage relating to the Sublease Premises, and the Sublessee will be responsible for maintenance and repairs to the Sublease Premises.

The first two components of this transaction will be documented in an Assignment and Amendment of Leases agreement, and the third component will be documented in a separate Sublease Agreement. Both of these documents have been approved as to form by the City Attorney.

Prepared by: Frederick White, Director
Tenant and Maritime Services



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

RESOLUTION NO. 94-____

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Port Commission approval is being sought for the assignment of Leases L-9170, L-9174 and L-9175 and for an amendment of said Leases, as set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994; and

WHEREAS, Port Commission approval is being sought for the subleasing of the premises demised in Leases L-9170 and L-9175, as set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994; now therefore, be it

RESOLVED, that the Port Commission hereby approves the Assignment and Amendment of Leases, the business terms of which are set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994, and hereby authorizes the Executive Director of the Port to execute the same on behalf of the Port and forward said Assignment and Amendment of Leases to the San Francisco Board of Supervisors for approval by ordinance pursuant to City Charter Section 7.402-1; and be it further

RESOLVED, that the Port Commission hereby consents to the sublease of the premises demised in Leases L-9170 and L-9175, the business terms of which are set forth in the Memorandum of Agenda Item 5A for the Port Commission Meeting on November 15, 1994.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 15, 1994





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 Mutual Termination Agreement with Scoma's Restaurant, Incorporated for Lease No. L-9170 and Lease No. L-9175 for Premises at Al Scoma Way SWL 302 San Francisco, CA 94111, subject to Board of Supervisor's approval.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 25-22

EXECUTIVE SUMMARY

Scoma's Restaurant, Incorporated, a California corporation ("Tenant") leases premises under Lease L-9170 and Lease L-9175 ("Smokehouse") and both leases expire on April 30, 2036. The Smokehouse has fallen into disrepair and most of the Smokehouse has been red-tagged¹. Tenant pursued several opportunities to redevelop the Smokehouse, but none came to fruition and no further redevelopment plans are contemplated due to lack of capital.

Port staff are proposing to enter a mutual termination agreement with no termination fee for the Smokehouse for Real Estate, Resilience, and Planning purposes as described in

¹ Pursuant to the 3020-SUB13-1-2019 RSA Smokehouse Substructure report. See attached 2019 Rating Map – *Exhibit 1*.

this memorandum. Once the termination is complete, Port will demolish the buildings, deck, and piles, and retain a portion of the deck for a small public overlook, if feasible.

The termination saves Scoma's an average of \$44,000 per year in rent, further abatement of hazardous materials, reduction in liability, and improved aesthetics. Potential total Rent lost due to the termination through lease expiration in 11 years is approximately \$480,000.

Resilience supports the termination to pave the way for the demolition as part of the Wharf J9 Phase 1 project because it results in the removal of the red-tagged and seismically vulnerable wharf and buildings and eases the construction of a new raised seawall that includes improvements to Al Scoma Way. Funding is available for the approximately \$1.5 million project through General Obligation Bond funds.

The termination and subsequent demolition support Planning goals to provide an opportunity for expanded public access to the waterfront as well as open waterfront views. The project includes creating a small overlook to augment the rejuvenated public access provided by the nearly complete off-the-boat fish sales float at Wharf J9. Removal of the Smokehouse will pave the way for the Wharf J9 Phase 2 resilience work. There may also be fill removal credits from the San Francisco Bay Conservation and Development Commission (BCDC) for the removal of this in-water structure. With improved public access Port staff believe more people will notice and patronize Scoma's.

Port staff recommend approval of the proposed mutual termination agreement as Port staff believe the Port's interests are best served by regaining possession of the Smokehouse premises to allow for demolition commencing in DP fall 2025.

STRATEGIC PLAN ALIGNMENT

Termination of the Smokehouse leases and subsequent demolition supports the following goals of the Port's Strategic Plan:

Economic Recovery

Tenant Recovery: Scoma's is struggling to find stabilization in the post-COVID economy. The termination of Smokehouse Leases will save Scoma's an average of approximately \$44,000 in annual rent and a reduction in insurance costs. Improved public access may bring more customers to Scoma's.

Equity

Scoma's has a large diverse staff, and the termination of the Smokehouse leases will be a step towards stabilization and job retention.

Resilience

The termination of the Smokehouse leases will assist in making the seismically vulnerable seawall ready for upgrades as part of the Wharf J9 Phase 2 resilience project.

Evolution

Open Space: The Smokehouse premises block views of the inner lagoon from Al Scoma Way. The view of the inner lagoon and further is compromised by the Smokehouse from the restaurant locations on Taylor Street. Removal of the Smokehouse and construction of a small overlook will improve views and provide new public access to these waterfronts.

Engagement

Public Awareness: The removal of the Smokehouse and completion of the J9 off-the-boat fish sales float will provide new opportunities for activation and public access in this previously moribund area.

BACKGROUND

United Shellfish Company was the original tenant for the premises at Fisherman's Wharf under leases L-9170 and L-9175 ("Leases")². These premises are shown on the attached ***Exhibit 2*** from the 1994 assignment to Scoma's. The original tenant was Joseph Svedise, who operated United Shellfish Company at Fisherman's Wharf from the 1940s until he passed away in 1993. The Leases both commenced on April 1, 1975 and expire on April 30, 2036.

The Port's rapid structural assessment from May 2006 concluded that a significant number of the substructure cap beams and stringers were dry rotted and the seawall at the north-west corner suffered considerable undermining. The allowed overwater load was limited to 50 pounds psf (yellow). By the 2019 survey, the two buildings and an open canopy structure over the substructure looked to be vacant and abandoned as shown in the 2019 *Figure 1* photo on the next page.

In 2019 the facility was designated as unsafe (red) and access prohibited. Subsequently, Scoma's subtenant terminated operations in 2020. Scoma's began dismantling the structures, including removing asbestos and performing pile work in anticipation of redeveloping the facility.

However, due to capital constraints, work on the redevelopment stopped and the sub and superstructures have continued to deteriorate as shown in *Figure 2* on the next page.

² Also included was Lease L-9174 which is not part of this recommendation as it is separate from Smokehouse.



Figure 1 - 2019

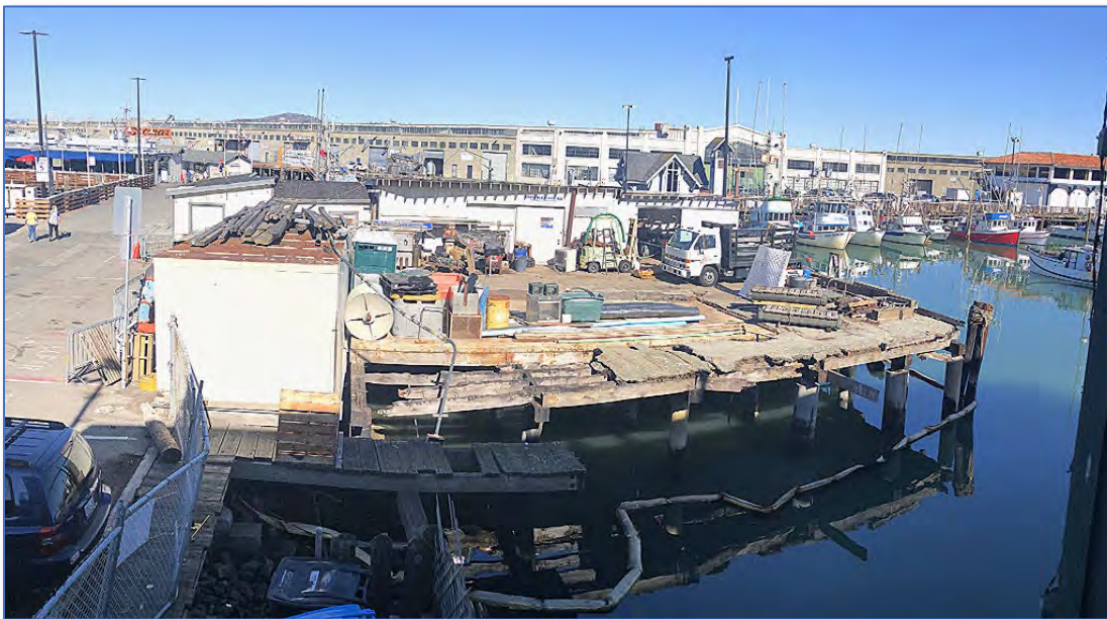


Figure 2 – Summer 2024

The Leases require that on termination the Premises are to be surrendered in as-good-as-received condition, or, at Port's election, Tenant shall be obligated at its own expense to demolish and remove down to ground level.

Neither of these is a viable option because a large part of Scoma's ownership has transitioned into a younger generation of family members with approximately 18 different ownership interests. A common theme among most of the ownership is to conserve capital. Rebuilding Smokehouse is not a current investment objective. Due to financial constraints, it is unlikely that Scoma's at lease expiration in 2036 will be able to return the Premises in their original condition or demolish the improvements.

The project name is *WRP Wharf J9 Replacement Project, Phase 1.5 - Smokehouse Demolition*. The budget for the project is approximately \$1.5 million and likely eligible to be paid for with General Obligation Bond proceeds. The project will be supported by San Francisco Public Works As-Needed Design and Job Order Contract (JOC) Construction as well as Port Planning, Real Estate, Maritime, and Engineering divisions.

The physical demolition is slated to commence in September 2025 based on the mid-January 2025 schedule provided by the project manager:

Schedule: <i>*Dependent on ability to contract on time, env. permits, & successful negotiations with JOC contractor</i>	
Hazmat Survey (G. Bibbins, in-progress)	September 2024 - January 2025
Bring on Designer (DPW As-Needed)	January 2025 - February 2025
Develop Demo Plans, Specs	March 2025 - May 2025
Bring on Contractor (DPW JOC)	April 2025 - June 2025
	<i>*JOC negotiations can start early*</i>
Contractor Mobilization	July 2025 - September 2025
Abatement and Building Demolition (on-land)	September 2025 - October 2025
Deck and Pile Demolition (in-water)	October 2025 - November 2025
Public platform construction	November 2025 - December 2025
Closeout	December 2025 - January 2026

As noted, the schedule could change depending on design, permitting, regulatory approval, and negotiations with a contractor.

PROPOSED TERMS OF AGREEMENT

Port staff propose to waive Smokehouse's remaining rent due on the Effective Date of the Mutual Termination Agreement ("MTA"). There is no termination fee proposed for the early termination.

Originally, Leases No. L-9170 and No. L-9175 were set for termination the day before demolition was slated to commence in approximately September 2025, but could be later if demolition was delayed. However, Scoma's objected to the floating termination date, and through subsequent discussions, Port agreed to a termination date of the earlier of demolition commencement or December 31, 2025, regardless of the date of demolition commencement.

Port staff agreed to this change because Resilience is reasonably confident of commencing demolition of the structures in September 2025 (before the fixed termination date of December 31, 2025), and if the timing slips, the next opportunity to demolish would arise in Spring 2026 not adding significantly to Port's exposure to liability.

The MTA requires continued compliance with the terms of the Leases up to the actual termination date, primarily maintaining the required insurance. The MTA includes mutual releases of liability and other standard terms. Tenant must also meet its obligations and be in good standing under its remaining leases³.

A copy of the proposed MTA for Scoma's Smokehouse leases L-9170 and L-9175 is on file with the Port Commission Secretary.

STAFF ANALYSIS AND DISCUSSION

The Smokehouse is in poor condition and unsafe and would require a complete rebuild, including pile replacement to become operational. This would be an expensive endeavor and could take several years to accomplish.

On top of the time and cost to rebuild, the Leases expire April 30, 2036 and this relatively near-term expiration would make it hard for Scoma's or an independent investor to achieve a risk-adjusted return based on the remaining term of the Leases. Port has the option to extend the term of the Leases, making it a more attractive investment opportunity, but this may have a negative impact on Port's plans for Phase 2 of the J9 Wharf resilience work.

Since 2020 (the COVID era), Scoma's has seen a decline in annual sales, and while 2022-2024 sales average 90% of 2019 sales, inflationary increases in labor and cost of goods and other operating expenses have reduced cashflow to the extent that the restaurant has not been profitable since 2019.

Since Port has the means and funding to start to demolish the Smokehouse by fall 2025, this is a good opportunity to not only help Scoma's stabilize operations but also achieve Port goals.

³ L-8996 (Restaurant)
L-9174 (Storage)
License No. 16926 (Outdoor Dining)
License No. 9959 (Parking)
TRF 013 (Landing Fees)

Rationale for the termination of the Smokehouse Leases includes:

- The red-tagged structure is a liability and Scoma's does not have the financial means to improve it. Termination and subsequent demolition will reduce potential liability for Scoma's and perhaps provide insurance savings.
- The wharf and building are seismically vulnerable, and demolition would avoid an uncontrolled collapse, particularly after an earthquake and the need to manage the aftermath.
- The structure is a navigation hazard because of the containment booms and occasionally piles have fallen into the water and floated in the inner lagoon.
- Termination of the Leases and demolition of the red-tagged and unsafe structure will improve the aesthetics of the inner harbor and provide an opportunity for expanded public access to the new J-9 Wharf float for off-the-boat fish sales. Removal creates better views of the inner harbor, particularly from the restaurants surrounding the inner lagoon.
- The Port desires to support its restaurants as they regain footing in this new local economy. Termination of the leases will save Scoma's approximately \$35,000 in rent per year, obviate continuing maintenance responsibilities, and eliminate the repair or demolish obligations when the Leases expire.
- The removal of the structure will ease Wharf J9 Phase 2 construction issues for improvements to Al Scoma Way and a new raised seawall protecting against sea level rise and earthquake risk.

Fill Credits: As part of the process, Port Planning recommends seeking a fill removal credit from BCDC for the demolition and further recommends Port submits a regionwide permit request with BCDC to have a record of the removal. However, Port cannot assume a replacement in kind in the future. If BCDC approves the fill credit it would be available as an offsetting mitigation for future development. Future replacement proposals would need to go through a new permitting/approval process with BCDC.

Total Rent due under the Leases from May 2025 (assumed rent termination date) through April 2036 totals approximately \$480,000. The loss of this potential rent is offset by the benefits of the demolition discussed above. If there was an uncontrolled collapse of the structure, for example, it could lead to potential liability more than the potential rent. Based on 2023 and 2024 operating performance, there is no guarantee that Scoma's can continue to pay this rent for the balance of the lease term.

RECOMMENDATION

Port staff recommend that the Port proceed to finalize the Mutual Termination Agreement on the stated terms and seek Port Commission and Board of Supervisor's approval of the Mutual Termination Agreement.

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

Through: Kimberley Beal, Assistant Deputy Director
Real Estate and Development

For: Scott Landsittel, Deputy Director
Real Estate and Development

Attachments: Exhibit 1 – Smokehouse – 2019 Structural Rating Map
Exhibit 2 – Premises

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 25-22**

- 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, Scoma's Restaurant, Incorporated, a California corporation ("Tenant") leases premises under Lease L-9170 and Lease L-9175 ("Leases") for premises along Al Scoma Way over bay waters ("Smokehouse"); and
- WHEREAS, Smokehouse was deemed unsafe and red-tagged in 2019 and the sub-tenant subsequently ceased operating and despite Tenant's efforts Smokehouse continues to deteriorate; and
- WHEREAS, Tenant has no financial ability or willingness to redevelop Smokehouse or when the Leases expire return Smokehouse in as-good-as-received condition or demolish it; and
- WHEREAS, The Leases expire on April 30, 2036 and have no early termination option and Port and Tenant desire to terminate the leases before the natural expiration; and
- WHEREAS, Port and Tenant now wish to agree on an orderly termination of the Leases per the terms of the Mutual Termination Agreement on file with the Commission Secretary (the "Mutual Termination Agreement") and as described in the memorandum accompanying this resolution; and
- WHEREAS, Among other things, the Mutual Termination Agreement paves the way to demolish the Smokehouse, does not require payment of a termination fee due to the benefits that accrue to Port and public by such demolition, and Tenant's continued performance of the obligations of the Leases, particularly payment of rent and maintaining insurance coverage, and continues to require that the Tenant perform under Tenant's other leases, all as more particularly described in the Memorandum to the Port Commission dated February 21, 2025; now, therefore be it
- RESOLVED, That, subject to Board of Supervisors' approval, the Port Commission approves the Mutual Termination Agreement and authorizes the Executive Director or her designee to execute such agreement in substantially the same form on file with the Port Commission Secretary; and be it further
- RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments, or other modifications to the Mutual Termination Agreement that the Executive Director, in consultation

with the City Attorney, determines, when taken as a whole, to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.

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

DocuSigned by:

Jenica Lin

Secretary

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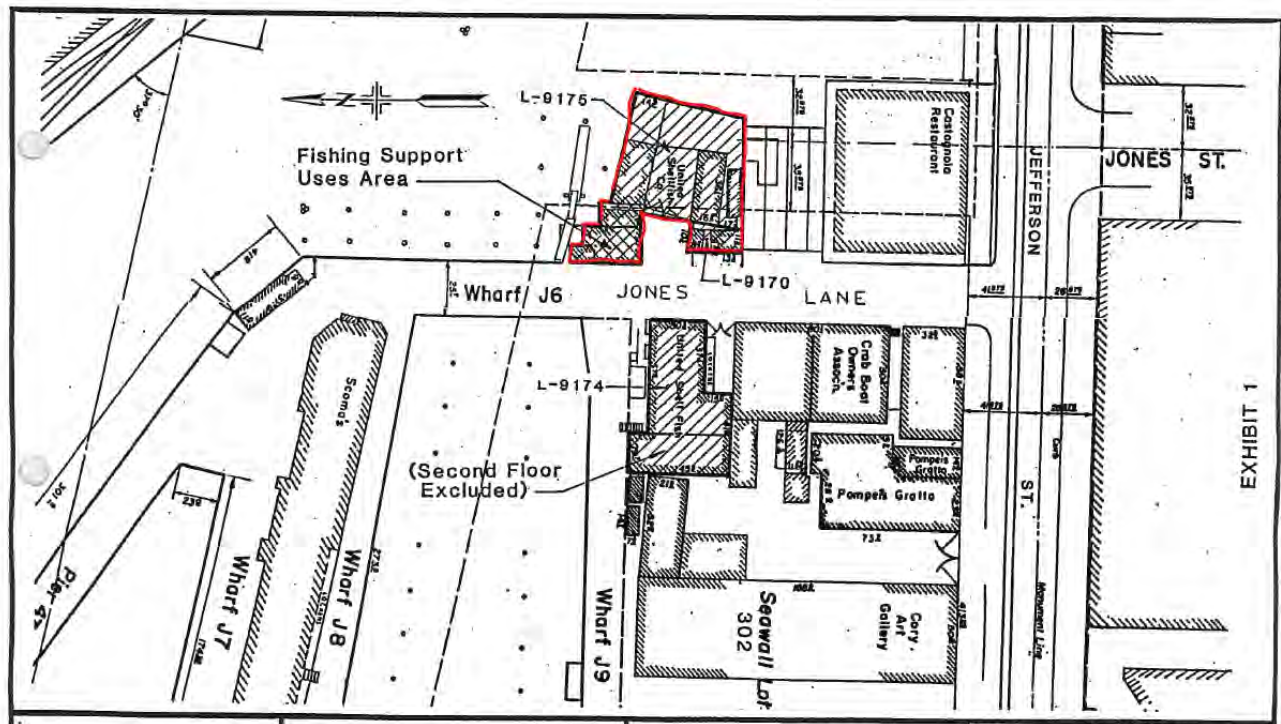
Exhibit 1

Smokehouse – 2019 Structural Rating Map



Exhibit 2

Premises





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 #: 250689

Bid/RFP #: L-9170 & L-9175

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@sfport.com

5. CONTRACTOR	
NAME OF CONTRACTOR Scoma's Restaurant, Incorporated	TELEPHONE NUMBER 415.771.4383
STREET ADDRESS (including City, State and Zip Code) 1965 Al Scoma Way, San Francisco, CA 94133	EMAIL mcostello@scomas.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER L-9170 & L-9175	FILE NUMBER (If applicable) 250689
DESCRIPTION OF AMOUNT OF CONTRACT Mutual Termination Agreeemnt		
NATURE OF THE CONTRACT (Please describe) Mutual Termination of two leases representing the "Smokehouse" on Al Scoma way held by Scoma's Restaurant Incorporated, to pave the way for the demolition of the red-tagged Smokehouse. Both leases expire on April 30, 2036 and the early termination will result in the loss of potential rent of approximately \$480,000.		

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	Creedon	Thomas	CEO
2	Costello	Mariann	Other Principal Officer
3	Creedon	Cheryl	Other Principal Officer
4	Creedon	Thomas	Board of Directors
5	Creedon	Cheryl	Board of Directors
6	Scoma	Cheryl	Board of Directors
7	Scoma	Sancia	Board of Directors
8	Scoma II	A.J.	Board of Directors
9	Creedon	Cheryl	Shareholder
10	Creedon QSST	Cheryl	Shareholder
11	Creedon QSST	Thomas	Shareholder
12	Scoma QSST	Sancia	Shareholder
13	Scoma	Cheryl	Shareholder
14	Scoma II QSST	A.J.	Shareholder
15	Scoma II	A.J.	Shareholder
16			
17			
18			
19			

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
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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
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40			
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42			
43			
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☐ 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 BOS Clerk of the Board	DATE SIGNED
---	--------------------

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

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

- ☒ 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- ☐ 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- ☐ 3. Request for Hearing on a subject matter at Committee
- ☐ 4. Request for Letter beginning with "Supervisor _____ inquires..."
- ☐ 5. City Attorney Request
- ☐ 6. Call File No. _____ from Committee.
- ☐ 7. Budget and Legislative Analyst Request (attached written Motion)
- ☐ 8. Substitute Legislation File No. _____
- ☐ 9. Reactivate File No. _____
- ☐ 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- ☐ Yes ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Sauter

Subject:

Mutual Termination Agreement of Real Property – Smokehouse – Scoma's Restaurant

Long Title or text listed:

Resolution authorizing the Executive Director of the Port of San Francisco to execute a Mutual Termination Agreement with Scoma's Restaurant, Incorporated, a California corporation for Port Lease No. L-9170 and Port Lease No. L-9175 between the Port of San Francisco and Scoma's Restaurant, for premises along Al Scoma Way over bay waters ("Smokehouse"); and to authorize the Executive Director of the Port of San Francisco to enter into amendments or modifications to the Mutual Termination Agreement that do not materially increase the obligations or liabilities to the City and are necessary to effectuate the purposes of this Resolution.

Signature of Sponsoring Supervisor: _____

