

FIRST AMENDMENT TO LEASE NO. L-14630

This First Amendment to Lease No. L-14630 (this "**First Amendment**"), dated for reference purposes only as of April 1, 2011, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating through the SAN FRANCISCO PORT COMMISSION ("**Port**"), as landlord, and D & G Company, a California Limited Liability Company doing business as Lou's Pier, as tenant ("**Tenant**").

RECITALS

A. Port and Tenant entered into Port Lease No. L-14630, dated December 1, 2008 for reference purposes only (the "**Lease**"), for that certain real property located at 300 Jefferson Street, consisting of approximately 4,363 rentable square feet of restaurant space in the City and County of San Francisco, State of California, for a fifteen and one-half year term with a five year option, as more particularly described in the Lease. The Lease was approved by the Port Commission by Resolution No. 10-13 and by the Board of Supervisors by Resolution No. 96-10.

B. The Lease requires Tenant to construct Initial Tenant Improvements in an amount of approximately \$750,000, guaranteed by contractor's bonds and a tenant guarantee each in an amount equal to 150% of the construction costs of the Initial Tenant Improvements. The Lease requires construction of the Initial Tenant Improvements to commence no later than January 1, 2011, and, in exchange, provides for a 180-day rent-free construction period. Tenant did not begin construction by January 1, 2011 and Port and Tenant agreed by letter dated January 10, 2011 to extend this deadline until February 15, 2011. Tenant also missed this deadline and is now requesting to begin construction no later than November 1, 2011.

C. Port and Tenant now desire to amend the Lease to extend this deadline as requested, subject to the conditions set forth in this First Amendment.

D. The Original Lease and this First 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. **Basic Lease Information.**

(a) The Commencement Date and Expiration Date sections of the Basic Lease Information shall be deleted and replaced with the following:

Commencement Date:	July 1, 2010
Expiration Date:	December 31, 2025

(b) The Initial Tenant Improvements section of the Basic Lease Information shall be deleted and replaced with the following:

<p><i>Initial Tenant Improvements</i></p>	<p>Tenant must complete the following Initial Tenant Improvements: upgrade accessibility to the Premises; add ADA-compliant bathrooms and other facilities; add a lift; replace fixtures in kitchen; decrease occupancy load; and make other cosmetic upgrades. Seating capacity may also be reduced. Tenant estimates the cost of the Initial Tenant Improvements to be \$750,000.</p> <p>Tenant must provide Port with written notice of the date it will begin construction of the Initial Tenant Improvements no less than ten (10) business days prior such date ("Initial Tenant Improvements Start Date"). Tenant shall have until the date that is One Hundred Eighty (180) days from the Initial Tenant Improvements Start Date to Complete the Initial Tenant Improvements ("Outside Completion Date"). Tenant agrees that failure to construct the Initial Tenant Improvements is a material breach of this Lease. If Tenant begins construction of the Initial Tenant Improvements no later than November 1, 2011, Tenant's Rent will be abated during the subsequent 180-day period during which no Rent will be due, provided that there is no other existing Tenant default. Tenant shall resume Rent payments on the One Hundred Eighty First (181st) day after the Initial Tenant Improvements Start Date, regardless of whether the Initial Tenant Improvements have been Completed. If Tenant does not begin construction of the Initial Tenant Improvements by November 1, 2011, Tenant will not be entitled to any abatement in Rent and Tenant shall continue to pay Rent throughout the construction period.</p> <p>With respect to Rent Abatement, and by way of example only, if the Initial Tenant Improvements Start Date is November 1, 2011, Tenant is relieved from paying Rent from November 1, 2011 through April 30, 2012 (Months 17-22 in the table above) and must resume paying Rent on May 1, 2012 (month 23 in the table above.)</p> <p>All the required tenant improvements shall be constructed in accordance with Section 13 below and the Work Letter attached as <i>Exhibit D</i>.</p>
---	--

(c) The Tenant Guaranty and Contractor's Bond sections of the Basic Lease Information shall be deleted and replaced with the following:

<p><i>Tenant Guaranty and Contractor's Bond:</i></p>	<p>Each in an amount equal to One Hundred percent 100% of the construction costs of the Initial Tenant Improvements in a form acceptable to Port as described in the Work Letter. Tenant agrees that this obligation is material</p>
--	--

	consideration for Port to authorize the Initial Tenant Improvements and that Port would not have done so absent Tenant's agreement to comply with this requirement. Notwithstanding any other provision of this Lease, and without waiving any of Port's remedies, including the ability to declare a default, if Tenant fails to provide the required guaranty and bonds, it will not be entitled to Rent abatement during the 180-day construction period as described above.
--	---

3. America's Cup. Section 44 is added to the Lease to read as follows:

"44. America's Cup. Tenant acknowledges that the Golden Gate Yacht Club has selected San Francisco as the host city for the 34th America's Cup. The selection could result in activities and impacts, all of which are subject to review under the California Environmental Quality Act. The potential activities and impacts include events related to the America's Cup, which will include the 34th America's Cup match, anticipated to occur in 2013, pre-match races, possible future successive defense(s) of the America's Cup, related events and potential long-term development uses, to be determined after the racing events in 2013 (collectively the "Event"). The Event, if held, will be, or may be, on property, including land and water, in the immediate vicinity of the Premises. Tenant is aware that the Event as proposed will include construction projects, racing in the Bay, and public and private events. The activities associated with the Event, if held, are expected to create certain impacts, some of which may result in some inconvenience to or disturbance of Tenant.

Impacts of the Event may include, but are not limited to, increased pedestrian, vessel, vehicle and truck traffic, traffic delays and re-routing of street traffic, loss of street and public parking, temporary re-routing or interruption of land and water transit, dust, dirt, land- and water-based construction, dredging, and other noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of impacts, inconvenience or disturbance as a result of the Event.

4. Section 2.5 of Exhibit D of the Lease, the Work Letter, shall be deleted and replaced with the following:

"2.5, Performance Bond. At least five (5) business days prior the Initial Tenant Improvements Start Date, Tenant shall provide Port, at Tenant's sole cost and expense, a corporate surety payment bond and a performance bond substantially in the form attached hereto as **Attachment 2** and approved as to form by the City Attorney's Office obtained by each of Tenant's contractors performing work on the Initial Tenant Improvements. Tenant shall not begin construction until Port has accepted the bond required by this Section, regardless of whether Tenant has obtained all other Regulatory Approvals. Tenant agrees that failure to comply with this Section is a material breach of this Lease.

Each bond shall be in an amount equal to one hundred percent (100%) of the estimated costs of such work on the Initial Tenant Improvements. Each performance bond shall guarantee the contractor's faithful performance of its contract(s) with Tenant. Each payment bond shall guarantee the Contractor's payment of labor, materials, supplies and equipment used in the performance of its contract(s) with Tenant. The bonds are intended to help protect the Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in

the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII. Each corporate surety bond shall obligate the surety to Tenant and the City and County of San Francisco as co-obligees."

5. Section 2.6 of Exhibit D of the Lease, the Work Letter, shall be deleted and replaced with the following:

"2.6 **Tenant Guarantee.** At least five (5) business days prior to the Initial Tenant Improvements Start Date, Tenant shall provide Port, at Tenant's sole cost and expense, a corporate surety bond, in an amount equal to one hundred percent (100%) of the estimated costs of such Initial Tenant Improvements to ensure adequate Completion of the work. Tenant shall not begin construction until Port has accepted the bond required by this Section, regardless of whether Tenant has obtained all other Regulatory Approvals. Tenant agrees that failure to comply with this Section is a material breach of this Lease. Tenant's bond shall be substantially in the form attached hereto as *Attachment 3* and approved as to form by the City Attorney's Office. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII."

6. **Entire Agreement.** This First Amendment contains all of the representations and 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 the First Amendment are superseded in their entirety by this First Amendment. No prior drafts of this First Amendment or changes between those drafts and the executed version of this First 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 First Amendment.

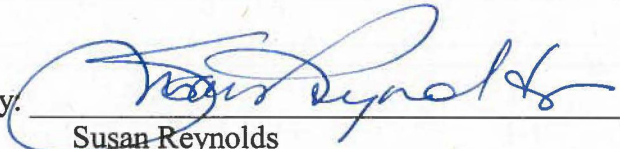
7. **Miscellaneous.** This First Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This First Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise. This First 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 First 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. As amended hereby, the Lease is hereby ratified and confirmed in all respects. In the event of any inconsistencies between the terms of this First Amendment and the Lease, the terms of this Amendment shall prevail. This First Amendment shall bind and inure to the benefit of Port and Tenant and their successors and assigns. Time is of the essence of this First Amendment. This First Amendment shall be governed by the laws of the State of California. Neither this First Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

8. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Original Lease shall remain in full force and effect.

9. **Effective Date.** The Effective Date of this First Amendment is the date of Port execution.

IN WITNESS WHEREOF, Port and Tenant execute this First Amendment to Lease No. 14630 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

By: 
Susan Reynolds
Deputy Director, Real Estate

Dated: 04/26/2011

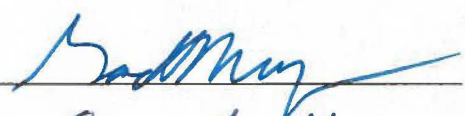
**TENANT: D&G COMPANY, A CALIFORNIA LIMITED LIABILITY COMPANY
DBA LOU'S PIER 47**

By: 

Name: Glenn Meyers

Its: Managing Member

Dated: 3.24.2011

By: 

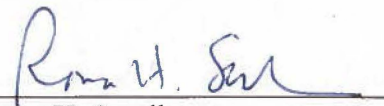
Name: Garrett Meyers


Its: Managing Member

Dated: 3.24.2011

Two Corporate Officers
MUST SIGN

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

By: 
Rona H. Sandler
Deputy City Attorney

Amendment Prepared By: Jeff Bauer  (initial)

