

File No. 220438

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date June 8, 2022

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

#### OTHER (Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PRT Lease L-7491 5/1/1970</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PRT Lease L-7491 Amendment 8/20/1970</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PRT Lease L-9171 1/21/1976</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PRT Lease Assignment L-9171 4/12/1990</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PRT Commission Resolution No. 22-20 4/12/2022</u>
<input type="checkbox"/>	<input type="checkbox"/>	_____
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Completed by: Brent Jalipa Date June 3, 2022

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Mutual Termination Agreement of Real Property - 2829 Taylor Street - 360 Jefferson Street -  
2 Alioto Fish Company, Ltd.]

3 **Resolution authorizing the Executive Director of the Port of San Francisco to execute a**  
4 **Mutual Termination Agreement for Port Lease No. L-7491 and Port Lease No. L-9171**  
5 **between the Port of San Francisco and Alioto Fish Company Ltd., for the restaurant**  
6 **premises located at 2829 Taylor Street and the associated warehouse premises located**  
7 **at 360 Jefferson Street; and to authorize the Executive Director of the Port of San**  
8 **Francisco to enter into amendments or modifications to the Mutual Termination**  
9 **Agreement that do not materially increase the obligations or liabilities to the City and**  
10 **are necessary to effectuate the purposes of this Resolution.**

11  
12 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,  
13 Sections 4.114 and B3.581 empower the Port Commission with the power and duty to use,  
14 conduct, operate, maintain, manage, regulate, and control the Port area of the City and  
15 County of San Francisco; and

16 WHEREAS, Alioto Fish Company, Ltd. (the "Tenant") is the current tenant under Port  
17 Lease No. L-7491 for the premises known as Alioto's Restaurant, located at 2829 Taylor  
18 Street; and

19 WHEREAS, The term of Port Lease No. L-7491 is 66 years, commencing May 1, 1970,  
20 and expiring April 30, 2036; and

21 WHEREAS, The Tenant is also the current tenant under Port Lease No. L-9171 for  
22 approximately 15,820 square feet of associated warehouse space at 360 Jefferson Street;  
23 and

24 WHEREAS, The term of Port Lease No. L-9171 is 61 years and one month,  
25 commencing April 1, 1975, and expiring April 30, 2036; and



1           WHEREAS, The Port and the Tenant now wish to agree on an orderly termination of  
2 Port Lease No. L-7491 and Port Lease No. L-9171, per the terms of the Mutual Termination  
3 Agreement on file with the Clerk of the Board of Supervisors (the “Mutual Termination  
4 Agreement”); and

5           WHEREAS, The Mutual Termination Agreement requires payment of lease termination  
6 fees by the Tenant, the surrender of security deposits to the Port, and other agreements  
7 relating to the release of claims and wind down of the lease relationship; and

8           WHEREAS, On April 12, 2022, through Resolution 22-20, the Port Commission  
9 approved the Mutual Termination Agreement; and authorized the Executive Director or her  
10 designee to execute it, and

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

14           RESOLVED, That the Board of Supervisors approves the Mutual Termination  
15 Agreement and authorizes the Port Executive Director or her designee to execute the Mutual  
16 Termination Agreement of Port Lease No. L-7491 and Port Lease No. L-9171 between the  
17 Port of San Francisco and the Tenant; and, be it

18           FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive  
19 Director to enter into any additions, amendments or other modifications to the Mutual  
20 Termination Agreement that the Executive Director, in consultation with the City Attorney,  
21 determines, when taken as a whole, to be in the best interest of the Port, do not materially  
22 increase the obligations or liabilities of the City or the Port, and are necessary or advisable to  
23 complete the transactions which this Resolution contemplates and effectuate the purpose and  
24 intent of this Resolution, such determination to be conclusively evidenced by the execution  
25 and delivery by the Executive Director of such documents; and, be it

1           FURTHER RESOLVED, That within thirty (30) days of the Mutual Termination  
2 Agreement being fully executed by all parties, the Port of San Francisco shall provide the final  
3 agreement to the Clerk of the Board for inclusion into the official file.  
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<b>Item 1</b> <b>File 22-0438</b>	<b>Department:</b> Port
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>The proposed resolution would approve a Mutual Termination Agreement between the Port of San Francisco (Port) and Alioto Fish Company Ltd. (Alioto) for the leases of the restaurant premises at 2829 Taylor Street and the warehouse premises located at 360 Jefferson Street, and authorize the Port Director to enter into amendments or modifications of the Mutual Termination Agreement that do not materially increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the resolution.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>Alioto has operated in Fisherman's Wharf since 1925. The current 66-year lease lasts from May 1970 through April 2036. In 1990, Alioto assumed a warehouse lease that also expires in April 2036. Alioto has not operated since the onset of the COVID-19 pandemic in March 2020 and, as of March 2022, owes the Port \$771,269 in outstanding rent and late fees. After discussions on a path forward, Alioto and the Port have agreed to a Mutual Termination Agreement.</li> <li>Under the proposed Mutual Termination Agreement, Alioto would forfeit the \$25,975 security deposit it had paid to the Port and pay a termination fee of \$250,000. In exchange, the Port would forgive all unpaid rent and late fees owed by Alioto, which will total approximately \$861,427 through June 2022.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>The net cost of the Mutual Termination Agreement to the Port would be \$585,452. The estimated improvement cost to re-lease the premises is approximately \$350,000.</li> <li>Over the approximately 13 years and 10 months remaining on the leases, the Port would forego approximately \$4,988,743 in base rent by terminating early, not including escalation. This amount would be offset if the Port is able to find new tenants that pay comparable base rent.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>According to the Port, the goal of a mutual termination agreement is to seek a compromise whereby the Port can regain control of the site at an early date and seek a new revenue-generating tenant without the time, expense, and controversy of legal action, by forgiving a portion of the payment and repair obligations due under the lease. The Port believes that this forgiveness will be outweighed by the ability to re-lease the Alioto site and generate rental revenues more quickly than further negotiations and/or litigation would allow.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>Approval of the proposed resolution is a policy matter for the Board of Supervisors.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 9.118(c) states that (1) any lease of real property for ten or more years, including options to renew, or having anticipated revenues to the City of \$1,000,000, or (2) the modification, amendment, or termination of these leases is subject to Board of Supervisors approval.

**BACKGROUND**

Alioto Fish Company Ltd. (Alioto) has operated in Fisherman's Wharf since 1925, beginning with a fish stand, and later with a restaurant that opened in 1938. The restaurant, located at 2829 Taylor Street, operated under a 66-year lease with the Port of San Francisco (Port) that was signed on May 1, 1970 and expires April 30, 2036. In 1990, Alioto assumed the lease of a warehouse located at 360 Jefferson Street, which also expires April 30, 2036.

At the onset of the COVID-19 pandemic in March 2020, Alioto suspended operations and has not reopened. Alioto has not paid rent and owes the Port \$545,905 for the restaurant lease and \$225,364 for the warehouse lease, for a total outstanding balance of \$771,269, as of March 31, 2022. Alioto did not apply to the Port's rent forgiveness program, which was approved by the Board of Supervisors in November 2020 (File 20-1163). In April 2021, Port staff contacted restaurant tenants with delinquent rent and invited them to engage with Port staff to determine a path forward. After discussion of the options, Alioto requested a mutual termination agreement, similar to the one reached for the Ferry Plaza Limited Partnership lease with the Port (File 21-0560). After a series of facilities inspections, Port staff negotiated financial terms of a Mutual Termination Agreement. In April 2022, the Port Commission approved the Mutual Termination Agreement.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would approve a Mutual Termination Agreement between the Port and Alioto for the leases of the restaurant premises at 2829 Taylor Street and the warehouse premises at 360 Jefferson Street. The proposed resolution would also authorize the Port Director to enter into any additions, amendments, or other modifications to the Mutual Termination Agreement that do not materially increase the obligations or liabilities to the City or the Port and are necessary or advisable to effectuate the purposes of the resolution.

Under the proposed Mutual Termination Agreement, Alioto would forfeit the security deposit paid to the Port, which is \$18,385 for the restaurant lease and \$7,590 for the warehouse lease, or a total of \$25,975. Alioto would also pay a termination fee of \$200,000 for the restaurant lease and \$50,000 for the warehouse lease, or a total of \$250,000. In exchange, the Port would forgive all unpaid rent and late fees owed by Alioto, which will total \$861,427 through June 2022. Alioto would remove personal property and furniture, but the Port may retain certain fixtures that could be beneficial to a future tenant. Alioto has also attested that it has returned a \$5 million Small Business Administration Restaurant Revitalization Fund loan and that it has received no other COVID-19 relief funds. The lease would officially be terminated once the Port receives the

termination fee. If the Board of Supervisors does not approve the proposed resolution by July 31, 2022, the Mutual Termination Agreement would automatically expire.

In July and August 2021, staff from the Port Maintenance and Engineering Divisions inspected the facilities to estimate the costs of improvements needed to lease the premises again. They identified the following repairs and upgrades: minor water intrusion at the roof, ductwork and insulation replacement, minor electrical code violations, carpentry work to address step irregularities, ceiling height issues, and door/frame replacement, repair of one exterior column, repair/replacement of structural steel framing elements and concrete spall repair of substructure, and American Disabilities Act (ADA) upgrades of doors, handrails, and an elevator. Port Maintenance and Engineering estimate the total cost to improve the facilities is approximately \$350,000.

According to Mike Martin, Port Chief Operating Officer, the Port has received informal inquiries about the availability of the premises, but the Port expects to pursue a competitive solicitation process to select a new tenant for the restaurant site. The warehouse premises would be offered separately for lease, though it is likely that a subsequent operator of the restaurant would also pursue the storage facility if it were available at that time. Improvements to the restaurant would be completed once a new tenant is selected, as the tenant would likely have its own conceptual plans for the space. Chief Operating Officer Martin anticipates that the premises would be reactivated by Spring or Summer 2023.

#### **FISCAL IMPACT**

The proposed Mutual Termination Agreement would forgive approximately \$861,427 in unpaid rent and late fees through June 2022. Alioto would pay a termination fee of \$250,000 and forfeit the security deposit of \$25,975. The net cost to the Port would be \$585,452. As mentioned above, the estimated improvement cost to lease the premises is approximately \$350,000. At this time, the Port expects that a new tenant would pay this improvement cost.

The combined annual base rent for the Alioto leases is \$360,632. Over the approximately 13 years and 10 months remaining on the leases, the Port would forego approximately \$4,988,743 in base rent by terminating early, not including escalation. This amount would be offset if the Port is able to find new tenants that pay comparable base rent.

#### **POLICY CONSIDERATION**

As noted above, the Board of Supervisors previously approved a mutual termination agreement for Ferry Plaza Limited Partnership (FPLP), a Port tenant, in June 2021. FPLP held a lease for a facility behind the Ferry Building that had not been operating for over 10 years so continued nonoperation does not create as much of a negative impact to the Port's revenues as does the closure of a high-performing restaurant in a visitor serving area like Alioto's. In the FPLP case the tenant had continued to pay base rent in hopes of establishing a new operator but eventually decided to terminate. Exhibit 1 below compares the terms of that agreement and the proposed termination agreement (specific to the restaurant premises).

**Exhibit 1: Termination Agreement Comparison**

<b>Alioto Termination Agreement (restaurant premises, proposed agreement)</b>	<b>Amount</b>	<b>Ferry Plaza Termination Agreement (21-0560)</b>	<b>Amount</b>
Unpaid Rent (March 2020-April 2022)	(\$609,719)	Unpaid rent (Jan 2021 to July 2021)	(\$111,432)
Security Deposit	18,385	Security Deposit	222,866
Termination Fee to Port	200,000	Termination Fee to Port	0
Site Improvement Costs <sup>1</sup>	(350,000)	Site Improvement Costs	(709,000)
<b>Net Fiscal Impact to Port</b>	<b>(\$741,334)</b>	<b>Net Fiscal Impact to Port</b>	<b>(597,566)</b>
Annual Base Rent	\$255,256	Annual Base Rent	\$222,864
Remaining Base Rent (through 2036)	\$3,531,041	Remaining Base Rent (through 2040)	\$4,122,984

Source: Files 21-0560 and 22-0438

Note: The \$741,334 net cost to the Port shown above is different than the \$585,452 note in the Fiscal Impact section above because the net fiscal impact value in Exhibit 1 only includes the restaurant's rent, security deposit, and termination fee as well as the site improvement costs. Site improvement costs are included in the table above even though the Port expects them to be paid by a new tenant because those costs would likely result in a lower base rent than if the site did not need any tenant improvements.

As shown above, similar to the proposed termination agreement with Alioto, the Ferry Plaza termination agreement includes the forfeiture of the security deposit. However, Ferry Plaza agreed to pay base rent on the Port property through December 2020, leaving approximately six months of lost rent to the Port, primarily due to seeking approval from the Port Commission and Board of Supervisors. The net cost to the Port of terminating the Ferry Plaza lease, including the cost to bring the site to the surrender condition called for under the lease was \$597,566 or \$143,768 less than the cost to the Port of terminating the restaurant lease with Alioto, which will cost the Port \$741,334. If the warehouse space is included, the net cost to the Port for proposed agreement is \$935,452, or \$337,886 more than the termination of the Ferry Plaza lease. "Net cost" in this instance refers to the amounts provided under the proposed termination agreement as compared to the total recovery to which the Port would argue it is entitled if it were to take legal action; there is no guarantee that the Port would realize those amounts if it did pursue litigation.

According to Chief Operating Officer Martin, the goal of a mutual termination agreement is to seek out a compromise whereby the Port can regain control of the site at an early date and seek a new revenue-generating tenant without the time, expense, and controversy of legal action, by forgiving some portion of the payment and repair obligations due under the lease. The Port believes that this difference in forgiveness will be outweighed by the ability to re-lease the Alioto's site and begin generating rental revenues more quickly than further negotiations and/or litigation would allow. The Port has a much greater interest in reactivating the Alioto's site, which had been performing strongly before the COVID-19 pandemic and is centrally located in a major commercial area, than the Ferry Plaza site, which had been vacant for over 10 years. The termination also provides an opportunity to modernize the lease terms for a new tenant. For

<sup>1</sup> According to Chief Operating Officer Martin, the site improvement costs would likely be paid directly by the new tenant, but indirectly by the Port through a rent reduction.

example, the Port's lease with Boudin (File 20-1210) has a shorter term (10 years) than the Alito lease (66 years), a higher percentage rent (9 percent versus the current 5.0 – 6.5 percent) and includes transfer participation fees to the Port.

**RECOMMENDATION**

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

## MUTUAL TERMINATION AGREEMENT FOR LEASE NO. L-7491 and LEASE NO. 9171

This Mutual Termination Agreement (“**Agreement**”), dated for reference purposes as of April 6, 2022, 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 Alioto Fish Co., Ltd., a California corporation (“**Tenant**”), hereinafter, the “**Parties**”.

### RECITALS

**A.** Lease No. L-7491, as amended, between the parties for restaurant space located in Fisherman’s Wharf (“**Restaurant Lease**”) commenced on May 1, 1970, and expires on April 30, 2036. Tenant, as successor to Tarantino Fish Company, and Port are also parties to Lease No. L-9171, as amended, for associated storage/warehousing space located in Fisherman’s Wharf (“**Warehouse Lease**”) which commenced on April 1, 1975, and expires on April 30, 2036. Under this Agreement, the Restaurant Lease and the Warehouse Lease are collectively the “**Leases**.” Unless otherwise specified, as used in this Agreement, “**Premises**” refers to the premises under both Leases.

**B.** Tenant has requested early termination of the Leases and Port is willing to terminate upon the terms and conditions provided in this Agreement.

**C.** 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 Leases and resolve known claims. Each of the parties have determined that entering 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 Leases.

**3. Effective Date; Termination Date.**

(a) This Agreement is subject to the approval of the Port Commission and the Board of Supervisors, each in its sole discretion. Notwithstanding anything to the contrary contained in this Agreement, Tenant acknowledges and agrees 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 shall be null and void if such approval bodies do not approve this Agreement.

(b) The Parties agree that Port has no obligation to present this Agreement to the Port Commission for approval until and unless Tenant has executed this Agreement; provided an initial executed estoppel certificate for each Lease as further described in Section 5(g); and Tenant has deposited the Termination Fee with Port (which Port shall hold and not deposit until the Effective Date). Upon satisfaction of such requirements, Port staff agrees to use good faith efforts to calendar this Agreement for the next regularly scheduled Port Commission meeting for Port Commission approval and, upon such approval, to calendar this Agreement for Board of Supervisors approval as soon as practicable.



(c) The Effective Date of this Agreement is the date of Port's signature as indicated below.

(d) If this Agreement expires pursuant to Section 3(f), or if this Agreement does not become effective for any reason other than Tenant's default, the Termination Fee shall be returned to Tenant in full without any claim or right of offset by Port within three business days of such expiration or notice by Tenant.

(e) The final termination date of the Leases ("**Termination Date**") is the date Port confirms receipt of payment of the Termination Fee in writing. Promptly following the Termination Date, Port and Tenant shall execute a countersigned memorandum confirming the Termination Date, but either Party's failure to do so shall not affect the expiration of the Leases.

(f) Unless extended by mutual written agreement of the Parties, if a Resolution of the Board of Supervisors approving this Agreement is not adopted on or before July 31, 2022 (the "**Outside Date**"), this Agreement will automatically expire and the Parties will have no further obligations under this Agreement.

#### **4. Surrender Condition.**

**4.1.** No later than the Termination Date, Tenant shall remove the personal property set forth in *Schedule 1* attached to this Agreement and surrender the Premises free and clear of all debris, and shall repair any damage to the Premises for which Tenant is liable under the Leases. At mutually agreeable times prior to the Termination Date and as close as possible to the Termination Date, the parties will conduct a joint inspection of the Premises to review the surrender condition of each leased Premises to identify any and all conditions of the Premises which do not meet the requirements of this section.

**4.2.** Any items, including Tenant's personal property, not removed by Tenant on or before the Termination Date shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned personal property, and Tenant's waiver of all claims in Section 7 below includes claims against Port for any damages resulting from Port's retention, removal and disposition of such property. Tenant agrees that Port may elect to sell Tenant's abandoned personal property 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.

**4.3.** As of April 4, 2022 and as of the Termination Date, to the actual knowledge of each of the undersigned, there are no material conditions at the restaurant facility that require repair other than those described in the memorandum by Port Maintenance and Engineering Division staff regarding the July/August 2021 restaurant facility inspections and rough order of magnitude cost estimates attached hereto as *Exhibit B* ("**Restaurant Facility Conditions Report**").

**5. Tenant Obligations.** Tenant shall comply with the following terms as material consideration for this Agreement and as a condition precedent for any Port obligation under this Agreement:

(a) Payments. Tenant shall (i) forfeit all moneys held by Port as a Security Deposit or otherwise under the Leases (which the Parties agree is \$18,384.52 (Eighteen Thousand Three Hundred Eighty- four Dollars and Fifty-two Cents) for the Restaurant Lease and Seven Thousand Five Hundred Ninety Dollars and One Cent (\$7,590.01); and (ii) pay to Port Two Hundred Thousand Dollars (\$200,000.00) as a termination fee for the Restaurant Lease and Fifty Thousand Dollars (\$50,000) as a termination fee for the Warehouse Lease (collectively, the "**Termination Fee**").

**(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 Leases until the Termination Date.

**(c) Government Funds and Loans.** Tenant has returned the full amount of the \$5,000,000 loan from the Small Business Administration Restaurant Revitalization Fund. Tenant has not received from any federal, regional, state or local government-funded financial aid, grant or loan program for COVID relief, 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 that were specifically designated only for payment of rent by the grantor. All such funds received by the undersigned were used as required by the grantor or returned.

**(d) Insurance.** Until the Termination Date, Tenant shall obtain and maintain insurance coverage in the same amounts and types as on March 8, 2022. All liability insurance policies shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "City and County of San Francisco and the San Francisco Port Commission and their Officers, Directors, Employees and Agents," shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under the Leases, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability. Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in forms satisfactory to Port using EXIGIS, Port's internet-based insurance compliance tracking system. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

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

**(f) Tenant Representations and Warranties.** As of the date of Tenant's execution of this Agreement and as of the Termination Date, to each of the undersigned's actual knowledge:

**(i)** Tenant has or will pay for all services provided by contractors, third party vendors and utility providers for services provided to each Premises, which are legally due, until the 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 that must be maintained absent restaurant operations;

**(iii)** Except as to outstanding rent since April 2020 which is subject to dispute between the Parties, the undersigned is not in default or in breach of the Leases, nor has the undersigned 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 Leases;

**(iv)** Tenant did not handle hazardous materials (except as lawfully stored and maintained in amounts of such substances as are reasonable and customary for Tenant's business) and there no existing presence, release or threatened release of hazardous materials or environmental contamination on, under or about either Premises as of the Termination Date; and

(v) There are no liabilities, claims for damages or suits pending or threatened against Tenant for or by reason of any injury or injuries to any person or persons or property in any way connected with either Premises or the 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 Effective Date of this Agreement and continuing until the date that is twelve (12) months from the Termination Date, Tenant agrees to notify Port immediately of the occurrence of any event or the discovery of any fact that would make any representation contained in this Agreement inaccurate as of the date made as of any future date.

(g) 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 A** for each Lease. No sooner than three (3) days prior to the actual Termination Date, Tenant must provide an updated estoppel certificate in the form attached hereto as **Exhibit A** for each Lease. 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.

**6. Intellectual Property.** Tenant shall not be obligated to transfer any intellectual property to Port, including without limitation the names "Alioto's", "Alioto's Restaurant", "Alioto's No.8", "Alioto's No.8 Restaurant" and any variation thereof using the name "Alioto", "Alioto's" or "Aliotos" (the "**Alioto Names**"). Port acknowledges that the Port does not currently nor at any time has owned any of the Alioto Names or any rights to use of the Alioto Names.

**7. Tenant Release.** Provided that the City and the Port comply with the terms and conditions of this Agreement, except with respect to its 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 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 Leases or any correspondence or documentation related to this Agreement or the Leases.

**8. 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 City and County of San Francisco in its own capacity and on behalf of its elective and/or appointive boards, servants, employees, departments, commissioners, officers, successors, and assigns, and 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 Leases or any correspondence or documentation related to this Agreement or the Leases each as of the Termination Date: (1) any third-party Claim properly filed against the Port, (2) any Claim against Port alleged in a written notice of violation regarding operations under the Leases for which Port has actual notice by a regulatory agency including regulatory agencies of City,

(3) any Claim resulting from a condition identified and described in the Restaurant Facility Conditions Report, (4) any Claim by Port for Rent, (5) any third party Claim relating to the presence, release or threatened release of hazardous materials or environmental contamination on, under or about the Premises as of the Termination Date ("**Hazardous Materials Condition**"), provided however, that neither Tenant nor its Agents or Invitees caused, permitted, contributed to or exacerbated any Hazardous Material Condition, and (6) any Claim in favor of Port arising under the 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 Leases or is otherwise actually covered by insurance obtained by Tenant. Released Claims do not include Claims filed by Tenant; Port/City 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/City 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.

**9. Quitclaim.** Not later than thirty (30) days after the Termination Date, Tenant shall, at no cost to Port, record a quitclaim deed with respect to each of the leased premises and Tenant's personalty transferred or released to Port under this Agreement in the form attached hereto as *Exhibit C*.

**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.

**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 Leases, the terms of this Agreement shall prevail. Time is of the essence of this Agreement. This Agreement shall be governed by the laws of the State of California. Neither this Agreement nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto. 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. Severability.** If any of the provisions of this Agreement or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Agreement to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared and understood to be severable.

**17. Leases in Full Force and Effect.** Until the Termination Date, this Agreement shall not be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the 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**

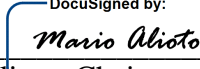
By: \_\_\_\_\_  
Rebecca Benassini  
Deputy Director, Real Estate and Development

Date Signed: \_\_\_\_\_

**TENANT:**        **ALIOTO FISH CO., LTD., A CALIFORNIA CORPORATION**

By: \_\_\_\_\_  
  
Mario Alioto, President

Date Signed: 4/7/2022

By: \_\_\_\_\_  
  
Mario Alioto, Chairman of the Board of Directors

Date Signed: 4/7/2022

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Name: Rona H. Sandler  
Deputy City Attorney

Agreement Prepared By: Michael Martin, Assistant Port Director and Chief  
Operating Officer \_\_\_\_\_ (initial)

Port Commission Reso.  
Board of Supervisors Reso.

**EXHIBIT A****FORM TENANT ESTOPPEL CERTIFICATE**

The undersigned, \_\_\_\_\_, is the tenant of a portion of the real property commonly known as [Insert Premises Address] located in San Francisco, California (the "**Property**"), and hereby certifies, represents and warrants to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION** ("**Port**") the following:

**1.** Tenant certifies, represents and warrants:

(a) That there is presently in full force and effect a lease dated as of \_\_\_\_\_, \_\_, as modified, assigned, supplemented and/or amended by \_\_\_\_\_ ("**Lease**") between the undersigned and Port, covering approximately \_\_\_\_\_ square feet of the Property (the "**Premises**").

(b) That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.

(c) That the commencement date under the Lease was \_\_\_\_\_, \_\_, and the expiration date of the Lease is \_\_\_\_\_, 20\_\_\_\_.

(d) That the present minimum monthly Base Rent under the Lease is \$\_\_\_\_\_.

(e) The security deposit held by Port under the terms of the Lease is \$\_\_\_\_\_ and Port holds no other deposit from Tenant 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 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 date that is twelve (12) months from the Termination Date, the undersigned agrees to notify Port immediately of the discovery of any fact or occurrence that would make any representation contained in this Certificate inaccurate as of the date hereof or as of any future date.

Dated: \_\_\_\_\_, 2022.

[Name of Tenant]

By:

Name:

Title:

**EXHIBIT B**

**Port's Survey Memorandum and Rough Order of  
Magnitude Cost Estimate Report**

[ATTACHED]





**To:** Mike Martin, Assistant Port Director

**From:** Port Engineering and Maintenance

**Date:** August 13, 2021

**Subject:** Alioto's Restaurant Premise Survey

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Port Real Estate tasked members of Port Maintenance Division and Engineering Division to perform a tenant premises survey and provide a rough order of magnitude cost for the repair of the facility. The tenant premises surveys occurred during July and August 2021 and consisted of walkthrough inspections of the building exterior and interior and substructure inspections by boat. No destructive investigation was performed, and only accessible portions of the building were visually inspected.

The results of the survey are presented in the attached Real Estate Survey checklist and the referenced reports. In general, the facility is in good to fair condition with the following repairs and upgrades of note:

- Minor water intrusion at roof
- Duct work and insulation replacement
- Minor electrical code violations
- Carpentry work to address step irregularities, ceiling height issues, and door/frame replacement
- Repair of one exterior column
- Repair/replace of structural steel framing elements and concrete spall repair of substructure
- ADA upgrade of doors, handrails, and elevator

Port Maintenance and Engineering estimate a cost of \$350,000 for work.

**Attachments**

RE Inspection Checklist  
Port Engineering Structural Inspection Report  
Alioto's Restaurant Maintenance Findings Report  
Photo Log  
Alioto's ROM Cost Estimate

# PORT OF SAN FRANCISCO REAL ESTATE SURVEY

Date: 07/09/2021

Facility Name / CODE: Alitoto's Restaurant Building / FIN #

Last Survey: \_\_\_\_\_

Follow-up Date: \_\_\_\_\_

☐ Facility Survey  
☒ Tenant Premises Survey

☐ Pre-Lease Survey  
☐ Termination Survey

Condition:                      G (Good)                      F (Fair)                      P (Poor)  
Responsibility:              P (Port)                      T (Tenant)                      PT (Shared)              NA (Not Applicable)

ITEM	COND ITION	RESP ONSIB ILITY	REMARKS
<b>EXTERIOR</b>			
Paint	F	T	There is some visible flaking of existing paint finish. Will need to test for lead paint prior to removing/scaping old paint and applying a new primer and finish coat of paint.
Glazing (e.g., windows)	G	T	No visible cracking. Needs general maintenance cleaning of inside & outside windowpanes.
Fencing & Gates	N/A	T	Repair is needed in breezeway between the restaurants. New doors and frames need repair or replacement. See Port Maintenance's ALIOTO'S RESTAURANT MAINTENANCE FINDINGS report – Carpenter Shop Section
Facade	G	T	Needs general maintenance cleaning of bird droppings on front and rear of building.
Stucco Plaster	P	T	There is an exposed lath/hole (spalling of Stucco plaster) in the Soffit of the of the Breezeway's drop-down Stair Egress/Exiting area.
Signage	G	T	Need to check & confirm whether the neon signages in the front and rear of building are properly functioning & lit in the evenings.
Curb / Walkways	F	P	There are adequate ADA accessible curb ramps at the pedestrian crossing from the public shared parking lot to the main entrance of Alioto's Restaurant. Recommend repainting the striping of the crosswalk (it has faded over the years).
Landscape	N/A	T	
Parking Lot(s) (Striping, pavement, etc.)	N/A	T	There is a shared public parking lot across the street of Alioto's Restaurant.
Main Doors	G	T	Although the pair of main entry doors are in good condition; however, recommend upgrading to ADA accessible door handles, or modifying with electronic operable accessible doors with push button controls.
Roll-up Doors	N/A	T	

Other			<p>There are some irregularities in steps lengths in multiple rooms inside the restaurant that should be addressed. The ceiling height in some personnel rooms are not to code and should also be addressed. New doors and frames repaired or replaced. See Port Maintenance's ALIOTO'S RESTAURANT MAINTENANCE FINDINGS report – Carpenter Shop Section</p> <p>Deterioration near the base of exterior column on south side of building and Loose connection at top of ladder found on the roof. See Port Engineering Structural Inspection report.</p>
<b>ROOF</b>			
Leaking or watertight	G	T	<p>The existing modified roof membrane appears to be in good condition; Only one minor water intrusion near the roof access ladder detected up on inspection; however, recommend running a water test to observe any water intrusion.</p> <p>Recommend general maintenance removal of debris &amp; cleaning of the entire roof area for proper rainwater flow to drainages.</p> <p>See Port Maintenance's ALIOTO'S RESTAURANT MAINTENANCE FINDINGS report – Roofing Shop Section for additional details</p>
<b>APRON</b>			
Condition of Surface (cracks?)	G	P	Minor hairline cracking of concrete surface in the rear public walkway area
Substructure	<u>F</u>	P	Requires repair/replacement of structural steel framing elements and concrete spall repair of substructure. See Port Engineering Structural Inspection report.
<b>INTERIOR</b>			
Common Areas/Hallways	G	T	<p>Ground Level: There are currently several child booster chairs encroaching into the hallway access egress path. Need to remove these booster chairs before re-opening the restaurant to the public.</p> <p>2<sup>nd</sup> Level: Non-Accessible (the elevator does not stop on this level) 3<sup>rd</sup> Level: Accessible</p>
Ceilings	G	T	<p>Ground Level: Good condition 2<sup>nd</sup> Level: Acoustical tiles are in good condition. 3<sup>rd</sup> Level: Acoustical tiles are in good condition.</p>
Walls	G	T	<p>Ground Level: Paint is in good condition. 2<sup>nd</sup> Level: Paint is in good condition. 3<sup>rd</sup> Level: Paint is in good condition.</p>
Stairs	F	T	There needs to be an upgrade of all the handrailing extensions at the top & bottom landings of each floor level, in order to comply with current Port Building Code.
Floors	G	T	<p>Ground Level: Tile is in good condition. 2<sup>nd</sup> Level: Carpet is in good condition. 3<sup>rd</sup> Level: Carpet is in good condition.</p>
Lighting and Electrical	G	T	Lighting seems to be ok. Minor code issues. See Port Maintenance's ALIOTO'S RESTAURANT MAINTENANCE FINDINGS report – Electric Shop section.
Elevator	F/P	T	The Elevator is in operation; however, the interior lights were non-functioning during the time of inspection. The Elevator only serves the 1 <sup>st</sup> Level and 3 <sup>rd</sup> Level (it does not stop at the 2 <sup>nd</sup> Level to the Event Dining Area). Recommend upgrading Elevator to meet

			current ADA Accessibility and create a stop/access to the 2 <sup>nd</sup> Level. See Port Maintenance's ALIOTO'S RESTAURANT MAINTENANCE FINDINGS report – Elevator section
Restrooms	G	T	Ground Level: Accessible 2 <sup>nd</sup> Level: Men's RR is non-accessible due to two steps without handrails & no ramp. Recommend to provide handrails. Otherwise, the patron will need to take the elevator down to ground level to the accessible All-Gender Restrooms. 3 <sup>rd</sup> Level: No RR on the 3 <sup>rd</sup> Floor
General Cleanliness	F	T	All levels are in fair condition. Needs general cleaning of tables, counters and floor surface prior to re-opening.
HVAC (any known problems)	G	T	HVAC systems are in good condition. See Port Maintenance's ALIOTO'S RESTAURANT MAINTENANCE FINDINGS report – Stationary Section
Drive-way	N/A	T	No interior driveway.
Other			Utility closet where water heaters are located have duct work that is wide open, this should probably be replaced altogether. Employee access storage/hallway upstairs has water leaking and ductwork and insulation may need to be replaced. See Port Maintenance's ALIOTO'S RESTAURANT MAINTENANCE FINDINGS report – Sheet Metal Section  Plumbing in working condition. See Port Maintenance's ALIOTO'S RESTAURANT MAINTENANCE FINDINGS report – Plumbing Shop Section
<b>FIRE / LIFE-SAFETY</b>			
Sprinklers <b>Yes or No (circle one)</b>	G	T	Fire sprinkler riser seem to be in good condition. See Port Maintenance's ALIOTO'S RESTAURANT MAINTENANCE FINDINGS report – Stationary Engineers Section
<b>MARITIME</b>			
Maritime Improvements	N/A	N/A	
<b>HAZARD MATERIALS</b>			
HAZMATS <b>Yes or No (circle one)</b>	*	T	Recommend including health and safety for future renovation work.
Other environmental issues		P	

**Inspection checklist prepared August 2021 based on input from Port Engineering and Maintenance Staff and referenced inspection reports. Photo log and ROM cost estimate for items likely needing replacement or repair are attached.**

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# Alioto's Restaurant

## Structural Inspection Findings

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### Superstructure

Superstructure inspection of the Alioto's restaurant building was performed on July 9, 2021. The tenant premises survey consisted of a walkthrough inspection of the building exterior and interior. No finishes were removed and only accessible portions of the building were inspected. The building is a three story wood framed building constructed partially over a marginal wharf. Construction consists of wood roof and floor joists, beams, and posts.

Overall the superstructure is in acceptable condition with some minor repairs as noted below:

- Loose connection at top of ladder found on the roof (See Figure 7)
- The stucco damage found at the south side of building (Figure 10)
- Deterioration near the base of exterior column on south side of building. (Figure 11)



Figure 1 East Elevation





Figure 2 West Elevation



Figure 3 Timber column, girder, and beams construction – Ground Floor



Figure 4 Column supporting third floor – Taken from 2<sup>nd</sup> floor



Figure 5 Dining area on 3<sup>rd</sup> floor





Figure 6 Kitchen area



Figure 7 - Ladder – Top connection of ladder appears loose – Roof





Figure 8 Roof view

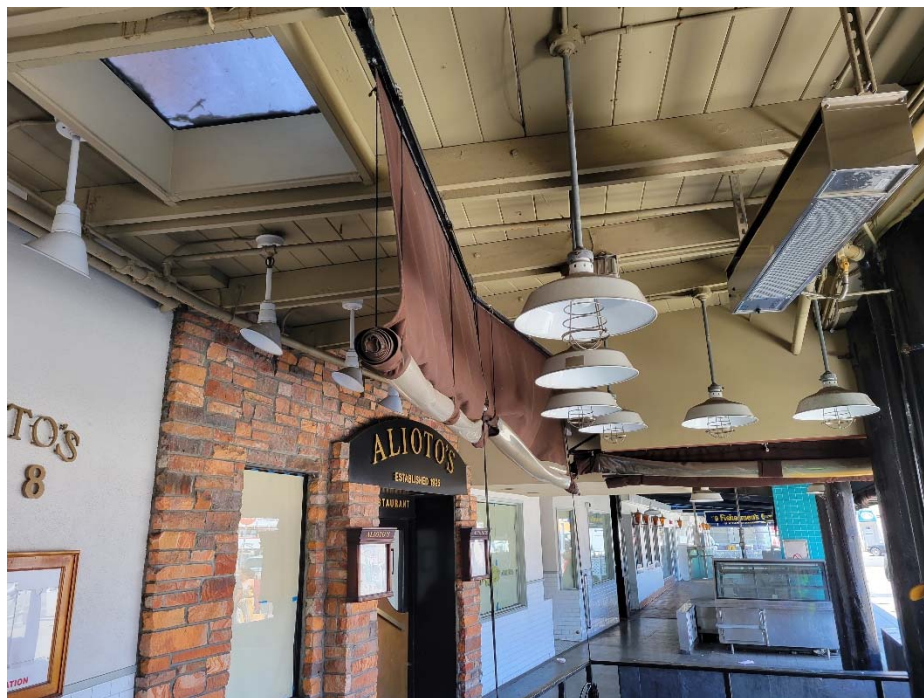


Figure 9 Ground Floor awning – east side



Figure 10 Stucco damage on south side



Figure 11 Exterior wood column on south side – minor deterioration at base



Figure 12 Ground Floor awning – west side



## Substructure

Substructure inspection of Alioto's restaurant building on July 16, 2021. The tenant premises survey by boat inspection was included only areas under Alioto's. The inspection was performed from a small boat and there was no underwater inspection. Access to the landward portion of the wharf was limited due to utility piping overhead and access that would have damaged the motor of the inspection boat. The scope of the inspection is a visual inspection, performed to identify general structural conditions and identify major structural damage. No destructive investigation was performed.

Wharf J1 is a timber wharf structure that runs along Taylor Street. Construction consists of wood cap beams on timber piles. The deck consisted of timber strings supporting a concrete slab. At the landward edge of the wharf, stringers are supported on a wood mudsill over the top of a rip-rap embankment.

Overall the vast majority of structural elements are in serviceable condition. Some items of note to repair:

- Some structural steel framing elements show coating failure, but minimal section loss. Some bracing elements show more corrosion. (Figure 2 and 3)
- Minor corrosion of steel reinforcement and spalling is visible in a several locations.



Figure 1 Photo of typical condition under Alioto's restaurant



Figure 2 Structural steel framing elements show signs of corrosion



Figure 3 Structural steel framing elements show signs of corrosion



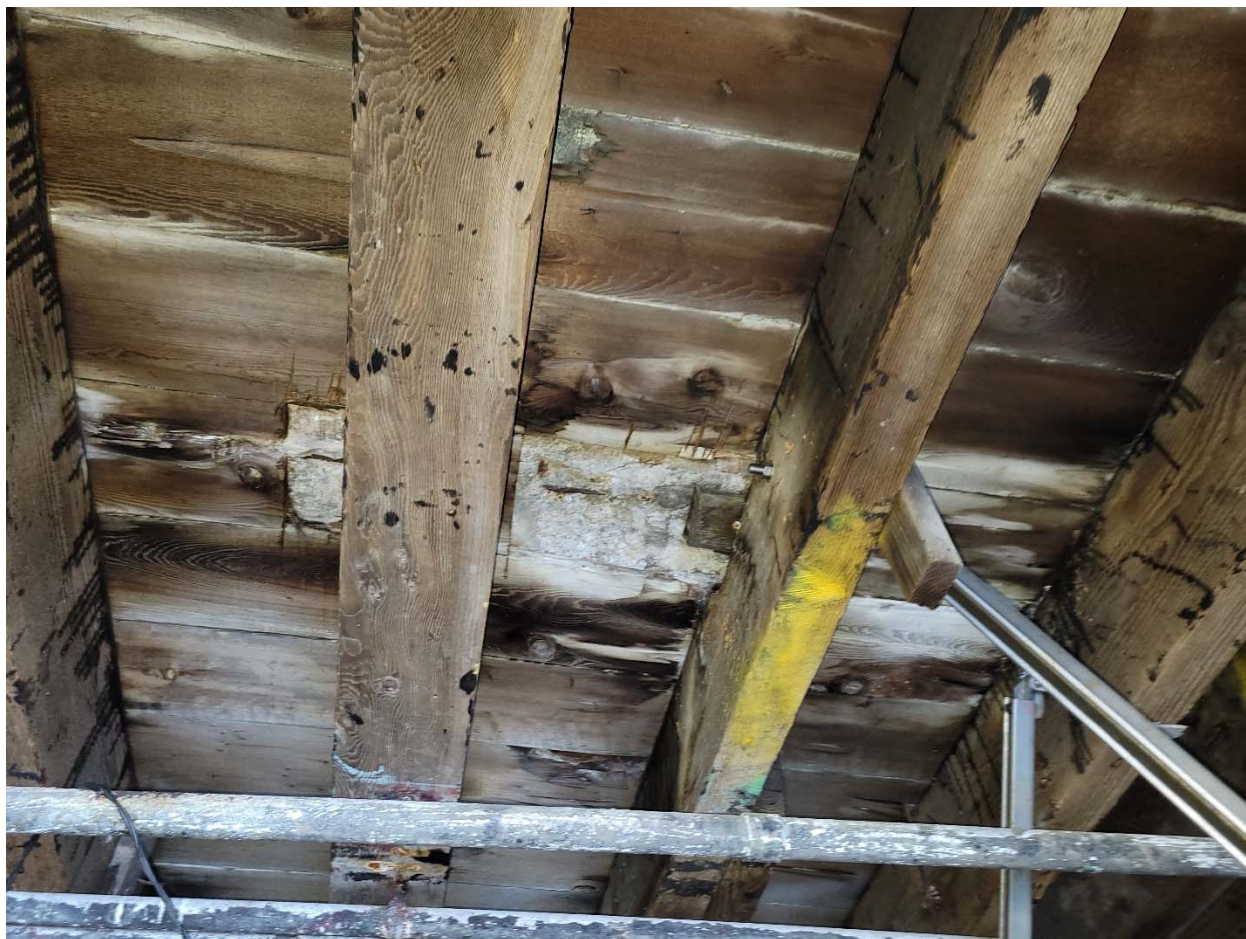


Figure 4. Minor corrosion of steel reinforcement and spalling is visible in a several locations

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# ALIOTO'S RESTAURANT MAINTENANCE FINDINGS

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AUGUST 2, 2021  
PORT OF SAN FRANCISCO

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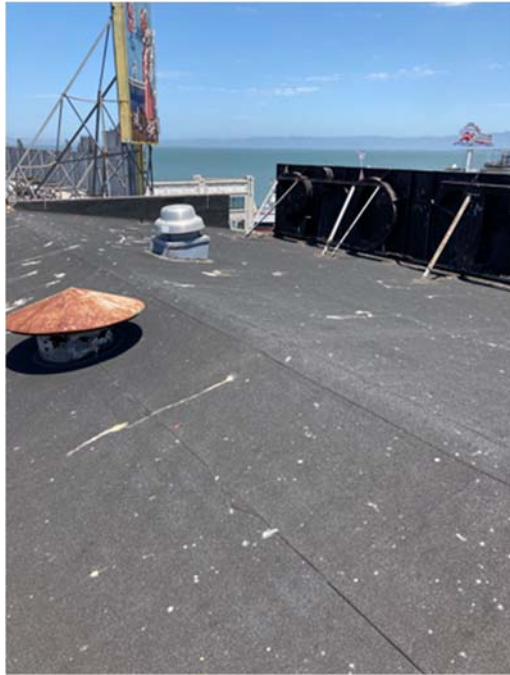
Figure 28 Double doors missing glass (Left) ..... 16

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## Roofing Shop

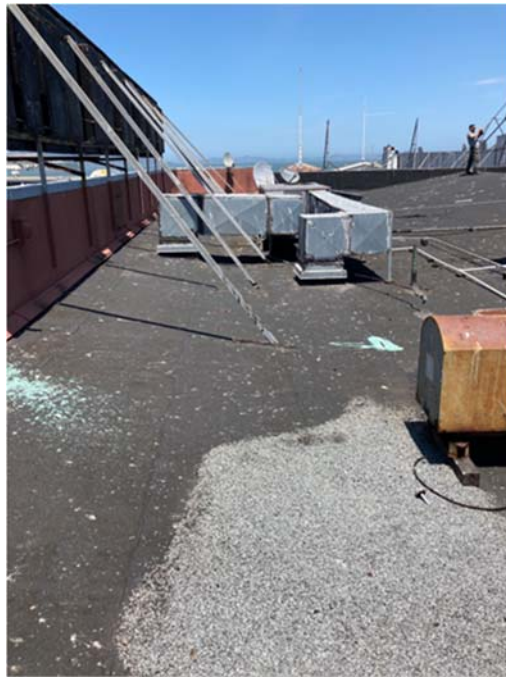
Overall conditions acceptable. Life expectancy 10-15 years. Only one minor water intrusion near the roof access ladder detected up on inspection



*Figure 1 Roof Looking East*



*Figure 2 Roof Looking West*



*Figure 3 Roof Looking East*

## Stationary Engineers

Overall Building HVAC systems are in GOOD conditions and the fire sprinkler riser was inspected this year; this also seems to be in GOOD condition. There are a number of split HVAC systems but these would be tenant Improvements and not go towards actual building systems. There are three kitchen exhaust fans, one is new and the two older ones are acceptable.



*Figure 4 Fire sprinkler riser*



*Figure 5 Newer kitchen exhaust fan*



*Figure 6 HVAC Unit 1*





*Figure 7 HVAC Unit 1*



*Figure 8 HVAC Unit 2*

## Sheet Metal

Overall conditions are acceptable with a few repairs needed. The utility closet where the water heaters are located have duct work that is wide open, this should probably be replaced altogether.

The employee access storage/hallway upstairs has water leaking from the wall and the ceiling which needs to be addressed, the ductwork insulation has been soaking and possibly rotting in water for some time. The insulation should be open to inspect the condition of the ductwork and possibly replace that duct to avoid mold and or legionaries.

The roof duct seems to be in decent operational condition. There is some surface rust but this does not affect its structural integrity. In the future it may start to pinhole and it's always a good idea to monitor that from time to time.



*Figure 9 Utility Closet open duct work*



*Figure 10 Employee access storage water intrusion*



*Figure 11 Employee Access Storage*



*Figure 12 Roof Duct surface rust*

## Electric shop

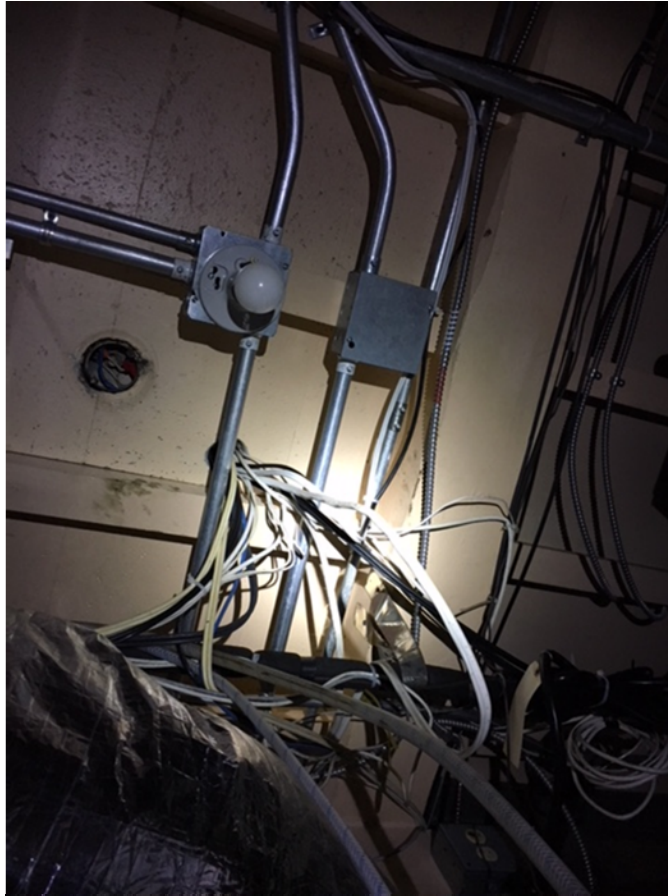
There are a lot of electrical systems in Alioto's. Everything seemed to work properly with a few burnouts aside, the lighting seemed ok and power to equipment also seemed ok. There were a few code violations found, and while they appear minor, some might be more difficult to repair without knowing exactly what they operate (An example would be the Romex wiring found in one closet, but we don't know how long the run is or where it goes. There is also panel cover that is not secured properly in main kitchen.

The minor code issues were as follows...



- Non-metallic cable ( Romex ) installed in 1<sup>st</sup> floor closet
- Boxes without covers
- Boxes with K/O's removed
- Conduit directly on roof surface
- Flexible conduit in free air without supports

All in all, the restaurant seemed in good shape with no egregious violations.



*Figure 13 Romex 1st floor*



*Figure 14 Unsupported conduit*



*Figure 15 Extension cord inside HVAC duct*





*Figure 16 Missing cover, extension cord being used as permanent wiring*



*Figure 17 Unsupported flexible conduit*



*Figure 18 Panel cover not properly secured in main kitchen*



*Figure 19 Missing knock outs*



*Figure 20 Missing knock outs*

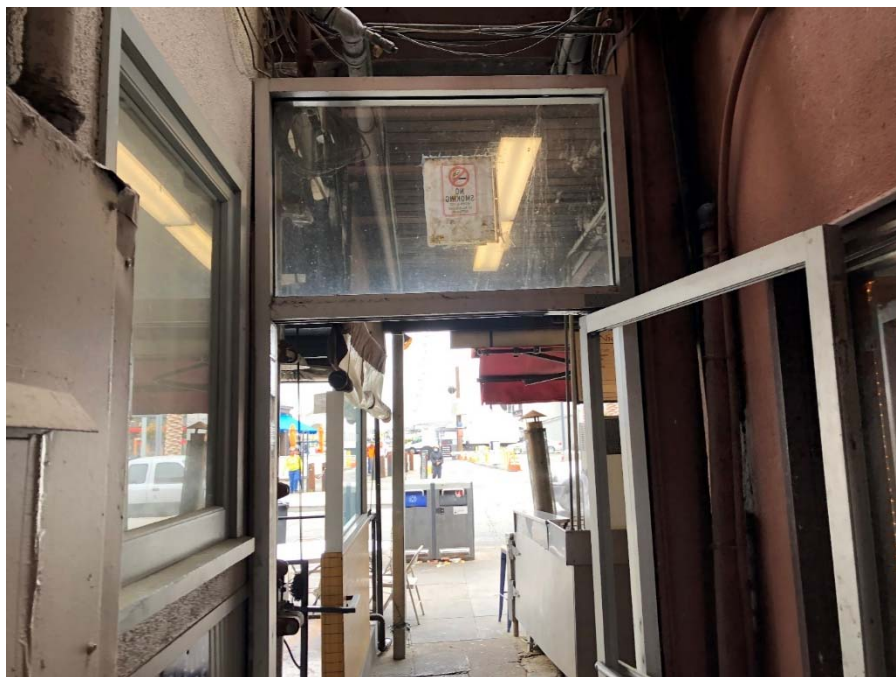


*Figure 21 Open wiring, not secured*



## Carpenter Shop

The restaurant is in overall GOOD conditions with no major repairs needed. There are some irregularities in steps lengths in multiple rooms inside the restaurant that should be addressed. The ceiling height in some personnel rooms are not to code and should also be addressed. The major repair needed is in the breezeway between the restaurants (Not sure if this is Alioto's responsibility) that need new doors and frames repaired or replaced.



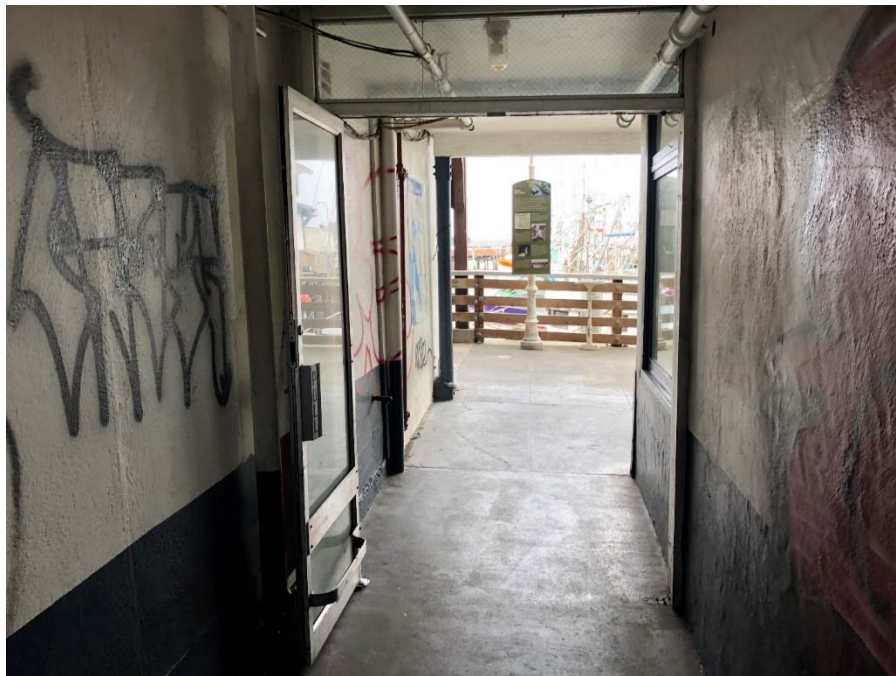
*Figure 22 Single door in breezeway broken glass*



*Figure 23 Breezeway double door missing one door frame damager*



*Figure 24 Breezeway double doors missing one door*



*Figure 25 Breezeway double doors missing one door*





*Figure 26 Double doors missing glass*



*Figure 27 Double doors missing glass (Right)*



*Figure 28 Double doors missing glass (Left)*

## Elevator

The elevator is operational and in good conditions for its age, the only issue was the interior light not working. The machine room seemed in good conditions but there was no maintenance record book on site. Annette Alioto mentioned they had Otis performing monthly maintenance on the elevator but she has not provided any documentation to reflect the maintenance.

The permit in the elevator expired on 09/09/2017.



Figure 29 Elevator permit

## Plumbing Shop

After performing the inside and under pier inspection there were no damages or neglected maintenance to report. The plumbing section of the restaurant works as intended in all the restrooms, bar, and kitchen areas. No leaks were found under the pier and all the discharge pipes were in good operating conditions.



PORT OF SAN FRANCISCO  
REAL ESTATE SURVEY  
Photos



Figure 1: Accessible Curb from Parking Lot



Figure 2: Front Façade of Alioto's Restaurant



Figure 3: Closeup of Front Façade & Signage



Figure 4: Closeup of Front Façade & Signage



Figure 5: Entrance to Aliotos's Café 8



Figure 6: Entrance to Aliotos's Restaurant

PORT OF SAN FRANCISCO  
REAL ESTATE SURVEY  
Photos



Figure 7: Door to Passage Way

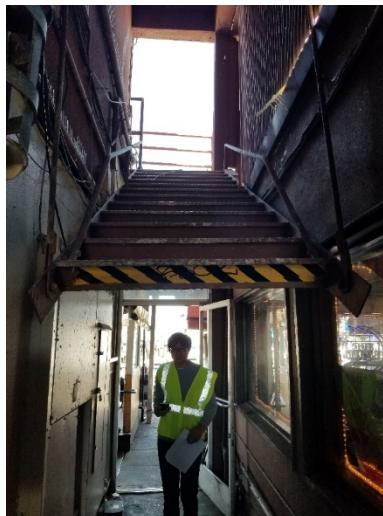


Figure 8: Missing Glass on Door



Figure 9: Door to Passage Way



Figure 10: Rear of Alioto's/Wharf J-3



Figure 11: Rear of Alioto's/Wharf J-3



Figure 12: Rear of Alioto's/Wharf J-3



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REAL ESTATE SURVEY  
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Figure 13: Main Entrance/Lobby



Figure 14: Booster Chairs blocking Hallyway Egress



Figure 14: Lobby/Passenger Elevator



Figure 15: Passenger Elevator Call Buttons



Figure 16: Passenger Elevator/Interior Cab



Figure 17: Passenger Elevator/Interior Control Panel

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Figure 18: Staircase #1, missing Handrail Extensions



Figure 19: Staircase #1, missing Handrail Extensions

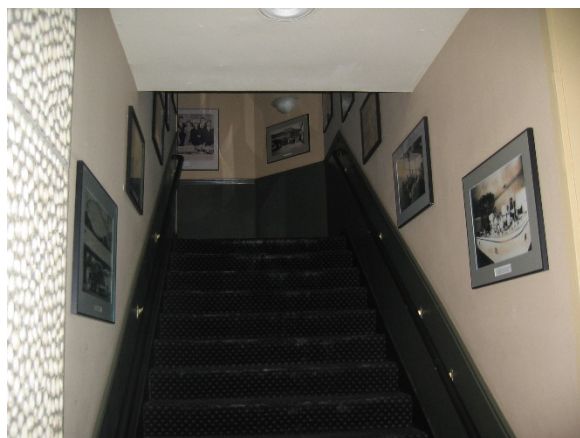


Figure 20: Staircase #1, missing Handrail Extensions



Figure 21: Staircase #1, missing Handrail Extensions

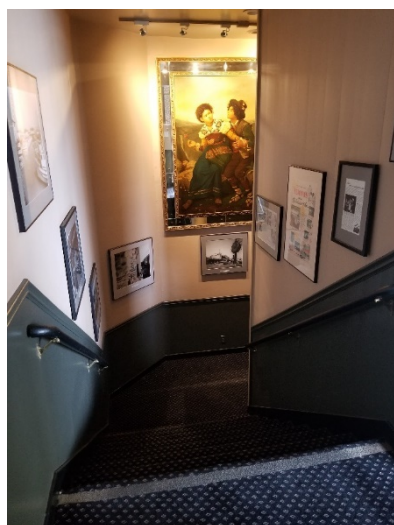


Figure 22: Staircase #1, missing Handrail Extensions

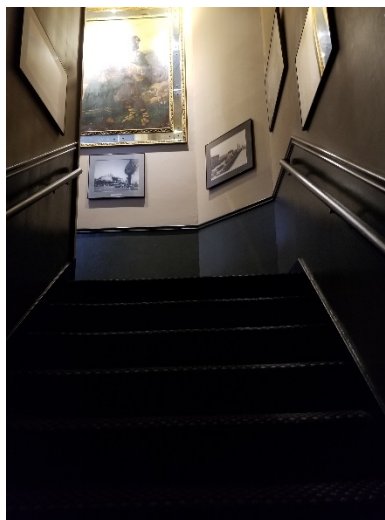


Figure 23: Staircase #1, missing Handrail Extensions



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Figure 24: Side Door Entrance/Exit at Bar Counter



Figure 25: Side Door Entrance/Exit at Bar Counter



Figure 26: 1<sup>st</sup> Floor Rear Dining Area



Figure 27: 1<sup>st</sup> Floor Rear Dining Area



Figure 28: 1<sup>st</sup> Floor Bus Station



Figure 29: 1<sup>st</sup> Floor Bus Station



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Figure 30: 1<sup>st</sup> Floor Cafe Dining Area



Figure 31: 1<sup>st</sup> Floor Cafe Dining Area



Figure 32: 1<sup>st</sup> Floor Cafe Dining Area



Figure 33: 1<sup>st</sup> Floor Cafe Dining Area



Figure 34: 1<sup>st</sup> Floor Cafe Dining Area



Figure 35: 1<sup>st</sup> Floor Counter Area

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Figure 36: 1<sup>st</sup> Floor All Gender ADA Restroom



Figure 37: 1<sup>st</sup> Floor All Gender ADA Restroom



Figure 38: 1<sup>st</sup> Floor All Gender ADA Restroom



Figure 39: 1<sup>st</sup> Floor All Gender ADA Restroom



Figure 40: 1<sup>st</sup> Floor All Gender ADA Restroom



Figure 41: 1<sup>st</sup> Floor All Gender ADA Restroom



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Figure 42: 1<sup>st</sup> Floor All Gender ADA Restroom



Figure 43: 1<sup>st</sup> Floor All Gender ADA Restroom



Figure 44: 2<sup>nd</sup> Flr. Steps to Men's RR, missing handrails

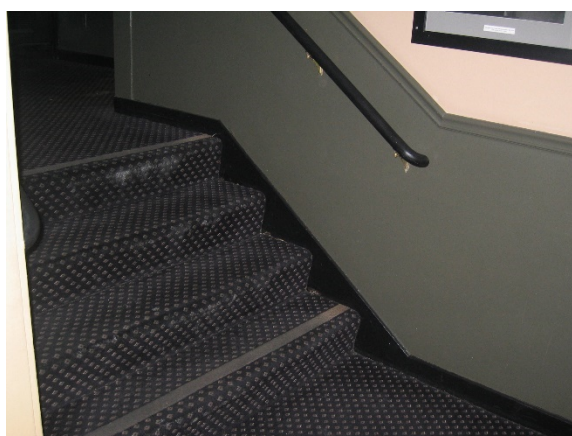


Figure 45: Stair #1 to 2<sup>nd</sup> Floor, missing Handrail Ext.



Figure 46: 2<sup>nd</sup> Floor Men's Restroom



Figure 47: 2<sup>nd</sup> Floor Men's Restroom



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Figure 48: 2<sup>nd</sup> Floor Men's Restroom



Figure 49: 2<sup>nd</sup> Floor Men's Restroom



Figure 50: 2<sup>nd</sup> Flr. Women's RR Lobby Area



Figure 51: 2<sup>nd</sup> Flr. Women's RR Lobby Area



Figure 52: 2<sup>nd</sup> Floor Women's Restroom



Figure 53: Figure 52: 2<sup>nd</sup> Floor Women's Restroom

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Figure 52: Figure 52: 2<sup>nd</sup> Floor Women's Restroom



Figure 53: 2<sup>nd</sup> Flr. Landing, missing handrail Extensions



Figure 54: 2<sup>nd</sup> Floor Meeting Room No. 1



Figure 55: 2<sup>nd</sup> Floor Meeting Room No. 1



Figure 56: 2<sup>nd</sup> Floor Meeting Room No. 2



Figure 57: 3<sup>rd</sup> Floor Private Dining Room



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Figure 58: 3<sup>rd</sup> Floor Waiting Area



Figure 59: 3<sup>rd</sup> Floor Waiting Area



Figure 60: 3<sup>rd</sup> Floor Waiting Area



Figure 61: 3<sup>rd</sup> Floor Waiting Area



Figure 62: 3<sup>rd</sup> Floor Service Counter Bar Area



Figure 63: 3<sup>rd</sup> Floor Upper Dining Area

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Figure 64: 3<sup>rd</sup> Floor Upper Dining Area



Figure 65: 3<sup>rd</sup> Floor Upper Dining Area



Figure 66: 3<sup>rd</sup> Floor Ramp to Mid Dining Area

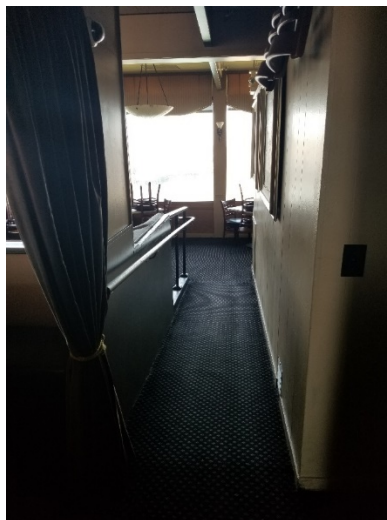


Figure 67: 3<sup>rd</sup> Floor Ramp to Lower Dining Area



Figure 68: 3<sup>rd</sup> Floor Ramp to Upper Dining Area



Figure 69: 3<sup>rd</sup> Floor Mid Dining Area



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Figure 70: 3<sup>rd</sup> Floor Mid Dining Area



Figure 71: 3<sup>rd</sup> Floor Mid Dining Area



Figure 72: 3<sup>rd</sup> Floor Ramo to Mid Dining Area



Figure 73: 3<sup>rd</sup> Floor Lower Dining Ar



Figure 74: 3<sup>rd</sup> Floor Lower Dining Area



Figure 75: 3<sup>rd</sup> Floor Steps to Mid Dining, missing Handrail.

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Figure 76: 3<sup>rd</sup> Floor Steps to Mid Dining



Figure 77: 3<sup>rd</sup> Floor Waiter Station/Bar Service



Figure 78: 3<sup>rd</sup> floor Kitchen



Figure 79: 3<sup>rd</sup> floor Kitchen (Stair to Storage)



Figure 80: 3<sup>rd</sup> Floor Kitchen to Dining Area



Figure 81:



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Figure 82: 2<sup>nd</sup> Floor Rear Egress Staircase #2

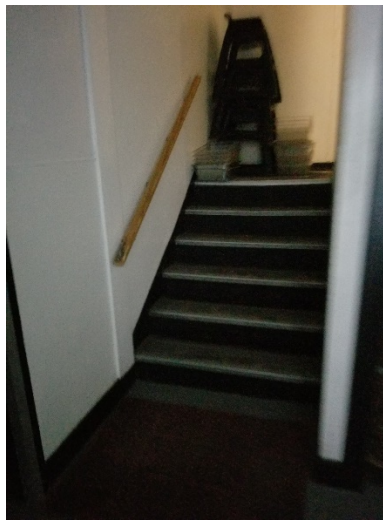


Figure 83: 2<sup>nd</sup> Floor Rear Egress Staircase #2



Figure 84: 3<sup>rd</sup> Floor Rear Egress Staircase #3



Figure 85: 3<sup>rd</sup> Floor Rear Egress Staircase #3



Figure 86: 3<sup>rd</sup> Floor Rear Egress Staircase #3



Figure 87: 3<sup>rd</sup> Floor Exterior Egress Stair #4

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Figure 88: 2d Floor Mechanical Room



Figure 89: 2d Floor Mechanical Room

**Alioto's Restaurant****Rough order of magnitude cost estimate for repair of elements from July and August 2021 inspections**

ITEM	DESCRIPTION	QTY.	UNIT	\$ / UNIT	EXT.
------	-------------	------	------	-----------	------

**Roofing**

Fix water intrusion	Repair minor water intrusion near the roof access ladder	1	EA	\$2,000	\$2,000
Fix ladder connection at roof	Fix loose ladder connection	1	EA	\$1,000	\$1,000

**Sheet Metal**

Replace duct work	The utility closet where the water heaters are located have duct work that is wide open, this should be replaced.	1	EA	\$10,000	\$10,000
Ductwork and insulation replacement	The employee access storage/hallway upstairs has water leaking from the wall and the ceiling which needs to be addressed, the ductwork insulation has been soaking and possibly rotting in water for some time. The insulation should be open to inspect the condition of the ductwork and possibly replace that duct to avoid mold and or legionaries.	1	EA	\$20,000	\$20,000

**Electrical**

Address code violations	<ul style="list-style-type: none"> <li>•Non-metallic cable ( Romex ) installed in 1st floor closet</li> <li>•Boxes without covers</li> <li>•Boxes with K/O's removed</li> <li>•Conduit directly on roof surface</li> <li>•Flexible conduit in free air without supports</li> </ul>	1	EA	\$10,000	\$10,000
-------------------------	--	---	----	----------	----------

**Carpentry**

Address step irregularities	There are some irregularities in steps lengths in multiple rooms inside the restaurant that should be addressed	1	EA	\$2,000	\$2,000
Address ceiling height issues	The ceiling height in some personnel rooms are not to code and should also be addressed.	1	EA	\$20,000	\$20,000
Repair/replace new doors and frames	Major repair needed is in the breezeway between the restaurants that need new doors and frames repaired or replaced.	1	EA	\$20,000	\$20,000
Stucco repair	Repair of stucco in breezeway	10	SF	\$200	\$2,000

**Elevator**

Repair interior light	Repair interior light	1	EA	\$1,000	\$1,000
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<b>Structural</b>					
Column base repair	Repair deteriorated column base	1	EA	\$5,000	\$5,000
Recoat/replace steel elements	Structural steel framing elements show sign of corrosion needs to be recoated or replaced.	1	LS	\$100,000	\$100,000
Concrete spall repair	Repair of corroded steel reinforcement and spalling	50	SF	\$500	\$25,000

<b>Architectural ADA</b>					
Restriping	Restriping at crosswalk	1	EA	\$4,000	\$4,000
Door Upgrade	Upgrade main doors	1	EA	\$20,000	\$20,000
12" Handrail Extensions at Top of Stair Landings	Need to comply with Section 11B-505.10.2	7	PAIR	\$1,000	\$7,000
24" Handrail Extensions at Bottom of Stair Landings	Need to comply with Section 11B-505.10.3	7	PAIR	\$2,000	\$14,000
3-stop Traction ADA Elevator	Need to add a compliant ADA Elev Stop to the 2nd Floor	1	EA	\$75,000	\$75,000

<b>Grand Total</b>	(Rounded to nearest \$1,000)	<b>\$338,000</b>
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\* This is a rough order of magnitude cost estimate based on limited visual inspection. Costs will range at least -50% to +100%.

\*\* Based on prior experience performing similar projects done by Port Maintenance.

\*\* Doesn't include hazmat abatement. No testing was done.

\*\* Does not include foreseen conditions or soft costs

**EXHIBIT C**

**FORM OF QUITCLAIM DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Port of San Francisco  
Pier One The Embarcadero  
San Francisco, CA 94111  
Attention: Deputy Director of Real Estate and Development

Block No. xxx, Lot xxx

**QUITCLAIM DEED**

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105).

Alioto Fish Co., Ltd., a California corporation ("Transferor") does, effective [Termination Date], hereby REMISE, RELEASE, and forever QUITCLAIM to THE CITY AND COUNTY OF SAN FRANCISCO, acting by and through the SAN FRANCISCO PORT COMMISSION ("Transferee"):

all rights, title, and interest Transferor has in the following described real property located in the Fisherman's Wharf area of City and County of San Francisco, State of California as more specifically described in the lease between the San Francisco Port Commission as landlord and Transferor as tenant dated as of Date] (as amended, the "Lease") Assessor's Block No. xxx, Lot xxx, as shown in *Exhibit A* attached hereto and Transferor's personal property remaining in, on or about the leased premises as of the effective date hereof.

The person executing this Quitclaim Deed on behalf of Transferor does hereby covenant and warrant that Transferor is the tenant under the Lease and is a duly authorized and existing entity, that Transferor is qualified to do business in California, that Transferor has full right and authority to execute this Quitclaim Deed, and that the person signing on behalf of Transferor is authorized to do so.

Dated: \_\_\_\_\_, 2022

**ALIOTO FISH CO., LTD., A CALIFORNIA CORPORATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_



**Exhibit A**

**Map of Quitclaimed Property**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
(Seal)

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## **SCHEDULE 1**

### **PROPERTY TO BE REMOVED**

Tenant agrees that the following items will be removed on or before the Termination Date:

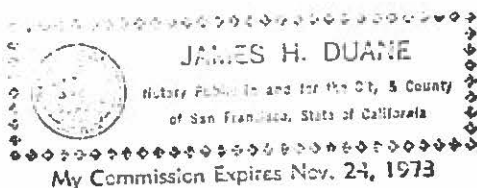
1. All furniture.
2. All personal property: dishes, cookware, silverware, liquor or any other remaining foodstuffs, files, records, computer equipment, etc.
3. All wall hangings and artwork.
4. The following trade fixtures:
  - a. 1st Floor Espresso Machine;
  - b. 3rd Floor Espresso Machine;
  - c. 2nd Floor Ice Maker;
  - d. 2nd Floor 7up Branded Beverage Fridge;
  - e. 3rd Floor 7up Branded Beverage Fridge; and
  - f. All Point of Sale Equipment.
5. All items in the Warehouse Lease space.

STATE OF CALIFORNIA )  
 ) ss.  
CITY AND COUNTY OF SAN FRANCISCO )

On this 21st day of September, 1970,  
before me, a Notary Public of said City and County and State,  
duly commissioned and sworn, personally appeared

EUGENE H. CONNELL known to me to be the  
Secretary of the Micro Fish Co. Ltd  
that executed the within  
instrument, and acknowledged to me that such corporation  
executed the same.

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



James H. Duane  
Notary Public in and for said  
City and County and State

STATE OF CALIFORNIA )  
 ) ss.  
CITY AND COUNTY OF SAN FRANCISCO )

On this \_\_\_\_\_ day of May, 1970, before me, a  
Notary Public in and for said City and County and State, duly  
commissioned and sworn, personally appeared \_\_\_\_\_

known to me to be partners of \_\_\_\_\_  
\_\_\_\_\_, the partnership that executed  
the within instrument, and acknowledged to me that such partner-  
ship executed the same.

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

\_\_\_\_\_  
Notary Public in and for said  
City and County and State



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

On this 20 day of May, 1970, before me,  
a Notary Public of said State, duly commissioned and sworn,  
personally appeared Frank N. Alioto, President  
known to me to be the \_\_\_\_\_  
of Alioto Fish Co., Ltd., a California corpora-  
tion, and acknowledged to me that he executed the within  
instrument for and on behalf of the said corporation.

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



Eileen A. McCarthy  
Notary Public in and for said State of  
California, County of San Francisco

My Commission Expires: 6 June 1973

STATE OF CALIFORNIA )  
 ) ss.  
CITY AND COUNTY OF SAN FRANCISCO )

On this 21<sup>st</sup> day of September, 1970,  
before me, a Notary Public of said City and County and State,  
duly commissioned and sworn, personally appeared Robert M. Menezes  
Robert M. Menezes known to me to be the  
Robert M. Menezes of the S.F. Port Commission  
that executed the within  
instrument, and acknowledged to me that such corporation executed  
the same.

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

Harold J. Leary  
Notary Public in and for said  
City and County and State

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RESTAURANT LEASE

THIS LEASE, made on the 1st day of May, 1970, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating through the SAN FRANCISCO PORT COMMISSION, hereinafter called "Port", Landlord, and ALIOTO FISH CO., LTD.,  
a California Corporation  
hereinafter called "Tenant";

WITNESSETH:

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

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

(a) Minimum Rental. Tenant agrees to pay a minimum rental for the first five (5) years of the term in the amount of \$ 2,623.04 per month, payable in advance on the 1st day of each month. (If Tenant goes into occupancy, or if this lease commences on other than the 1st day of the month, the rent for that month will be apportioned as the number of days of occupancy bears to the month. The anniversary date of this lease



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



of or installations to the said premises shall become at once a part of the realty and belong to the Port unless the Port waives its rights hereunder in writing, and except that the Port can require Tenant to make removal of the alterations, improvements or installations upon termination of this lease, and to repair the damage occasioned by such removal at Tenant's sole cost and expense, regardless of whether title has vested in the Port. Tenant hereby waives the provisions of Civil Code Section 1019. Tenant shall leave the premises at the expiration or termination of this lease, free and clear of all debris, and shall repair and restore any damage to the improvements on the premises owned by the Port resulting from either construction or removal by Tenant or resulting from causes for which Tenant is liable under this lease, subject to such adjustments as may be made by mutual agreement in writing supplementary to this lease. In the event that Tenant fails to comply with Port's demands that it remove the improvements erected by Tenant, or movable furniture or trade fixtures, or to leave the property in the condition provided for herein, the Port may make such removal or place the property in such condition and Tenant agrees to pay all of the costs involved therein.

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

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

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

A. CONCESSIONAIRES.

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

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

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

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

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

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

B. SECURITY INTERESTS.

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

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

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



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

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

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

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

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

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

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

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

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

C. CHANGE IN BUSINESS STATUS:

Notwithstanding the foregoing provisions Tenant may assign this lease:

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

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

12. Comprehensive Public Liability Insurance.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

17. Taxes. Tenant agrees to pay to the proper



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

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

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

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

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

21. Maintenance by Tenant. Title to the real property, substructure, and all buildings and improvements located thereon, are in Port. The term "improvements" shall include all trade fixtures where title has vested in Port, but shall exclude trade fixtures where title has not vested in Port and where removal may be had without structural injury to the premises. Despite the fact that title is in Port, Port shall have no obligation to maintain either the substructure or the leased premises or any part thereof. If, however, the substructure is damaged by fire, acts of war, or acts of God, 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 or the improvements by ordinary wear and

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

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

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

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



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

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

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

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

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

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

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

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

and if to Tenant to:

Alioto Fish Co., Ltd.

#8 Fisherman's Wharf

San Francisco, California 94133

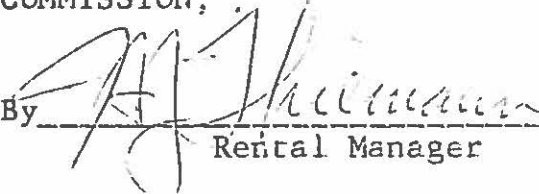
or as may from time to time otherwise be directed in writing by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid and deposited, postage prepaid, in a post office or branch post office regularly maintained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

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

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

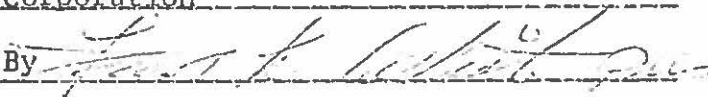
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

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

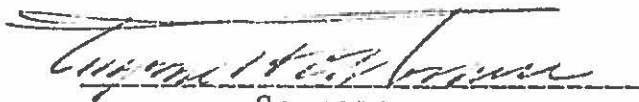
By   
Rental Manager

PORT

ALIOTO FISH CO., LTD., a California  
Corporation

By 

ATTEST:

  
Secretary  
(If Corporation)

TEENANT

AMENDMENT TO ALL  
CITY AND COUNTY OF SAN FRANCISCO CONTRACTS

NONDISCRIMINATION PROVISIONS  
OF Sec. 12B.2, as amended by Ordinance No. 310-08;  
(Chap. 12B, S.F. Admin. Code)

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

(a) Moreover 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, or national origin. 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 or national origin. 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 contractor, subcontractor or supplier agrees to post in conspicuous places, available to employees and applicants for employment, notices and posters, in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this section.

(b) 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, creed, color or national origin. All solicitations or advertisements that satisfy similar requirements under Federal law, subject to the approval of the awarding authority, will also satisfy this requirement.

(c) 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.

(d) The contractor, subcontractor or supplier will 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.

(e) That contractor, subcontractor or supplier shall be deemed to have breached the nondiscrimination provisions 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 142b of the Labor Code, or has obtained a final injunction pursuant to Section 142b 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 ordered by order of the 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 designated 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 (1) and (2) hereof.

(4) The Human Rights Commission shall, within ten 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 decisions, order or other action rendered hereunder. Should a member of the Human Rights Commission be designated under Sec. 12B.2(e)(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 shall, 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 ten (10) dollars 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(e) 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.

(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 determination 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 Section 12B.2(g) 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. Intentional false statements made in such reports shall be punishable as provided by law. The contractor, subcontractor or supplier shall be held in nonconformance for not filing such a report with the 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 anti-discrimination program in terms of the unions' specific areas of skill and geography, such as 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. 128.4. 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. For the purpose of this ordinance, the following definitions shall apply to the following terms:

"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 goods, supplies or services 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 service let or awarded for or on behalf of the City and County in accordance with the plans and specifications of such contract. Such term shall also include any contractor who enters into a contract with any subcontractor for the performance of 10 per cent or more of the subcontract.

"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 for the supplying of goods, materials, equipment, furnishings or supplies.

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. 128.4 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 and with the Human Rights Commission for the effectuation of the affirmative action nondiscrimination programs developed under this ordinance.

Contractor shall include the foregoing nondiscrimination provisions in all subcontracts let or awarded hereunder.

[Sections 128.1 and 128.2 of Ord. No. 261-66 as amended by Ord. No. 340-66.]



DESCRIPTION OF PROPERTY LEASED TO  
ALBERTO'S RESTAURANT AT  
FISHERMAN'S WHARF - PIER 49

Commencing at the intersection of the Beach Street and  
Mason Street monument lines, thence proceed along said Beach Street  
monument line in a westerly direction for a distance of 482.52 feet,  
then turn a right angle to the right and go 554.50 feet to a point  
on the face of the westerly curb of Taylor Street, which is the  
true point of beginning, thence turn left a deflection angle of  
79°02'16" and proceed along the curb for a distance of 45.55 feet  
to an angle point, then turn left a deflection angle of 11°35'59"  
and proceed along the curb for a distance of 26.57 feet, then turn  
right a deflection angle of 90°18'30" and proceed through a walkway  
on its southerly side for a distance of 63.07 feet, then turn right  
a deflection angle of 11°02'05" and go 21.20 feet to the westerly  
edge of deck, then turn right a deflection angle of 89°53'07" and  
go along the edge of deck for a distance of 83.45 feet, then turn  
right a deflection angle of 89°56'47" and go through a walkway a  
distance of 78.25 feet to the true point of beginning of the  
described area, which contains 6270 square feet, more or less.  
The physical objects described are as they existed April 24, 1970.

DESCRIPTION OF PROPERTY

RESERVING THEREFROM surface rights in all of the sidewalk and walkway areas for pedestrian traffic and public access to the leasehold premises and to all adjoining and adjacent premises, sidewalks, walkways, and streets; and

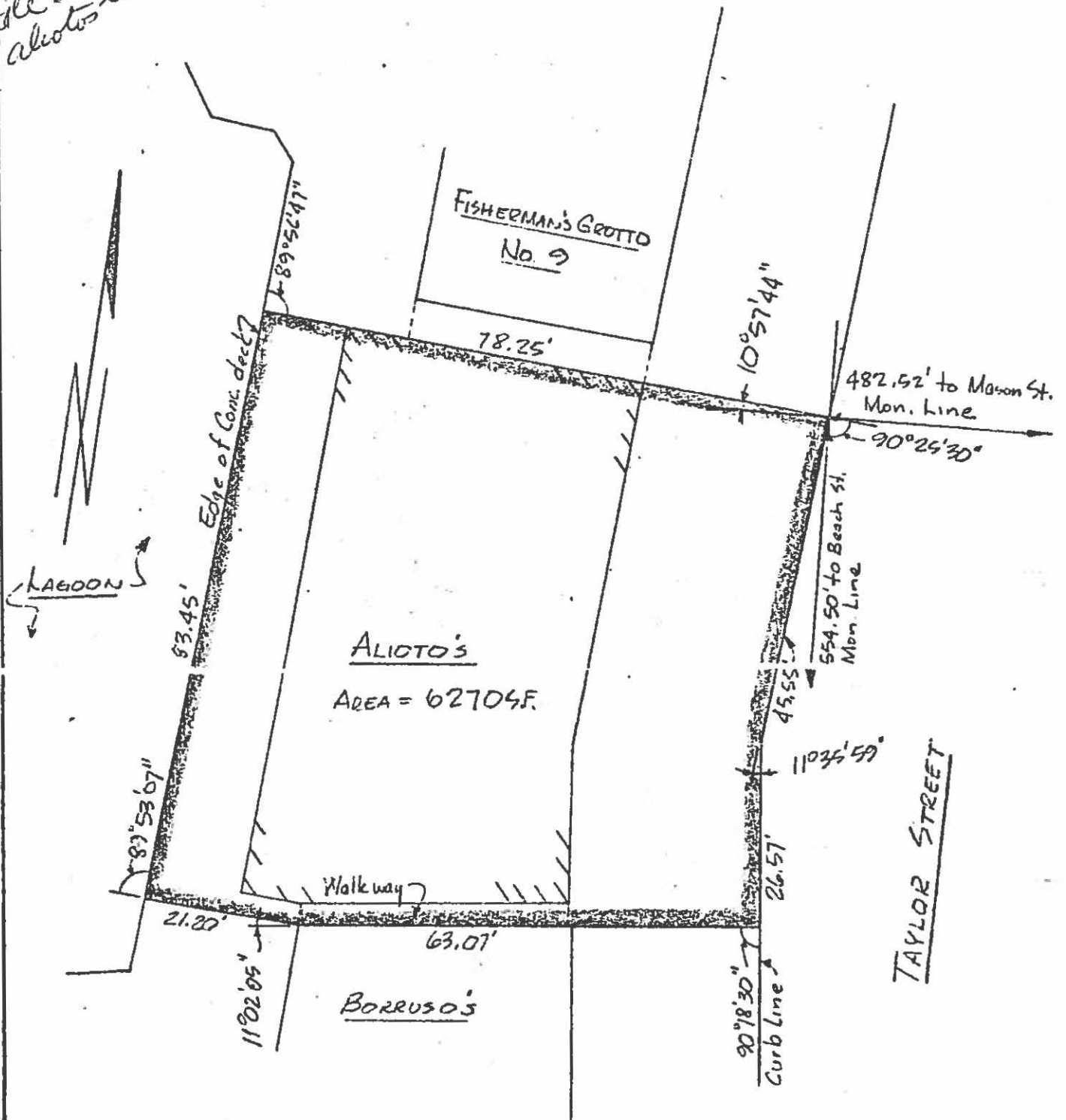
FURTHER RESERVING rights in the premises for existing and future utilities, including sewers and drains, and full rights to service, install, and repair utilities, sewers and drains; and

FURTHER RESERVING the right to install and maintain parking meters where appropriate; and

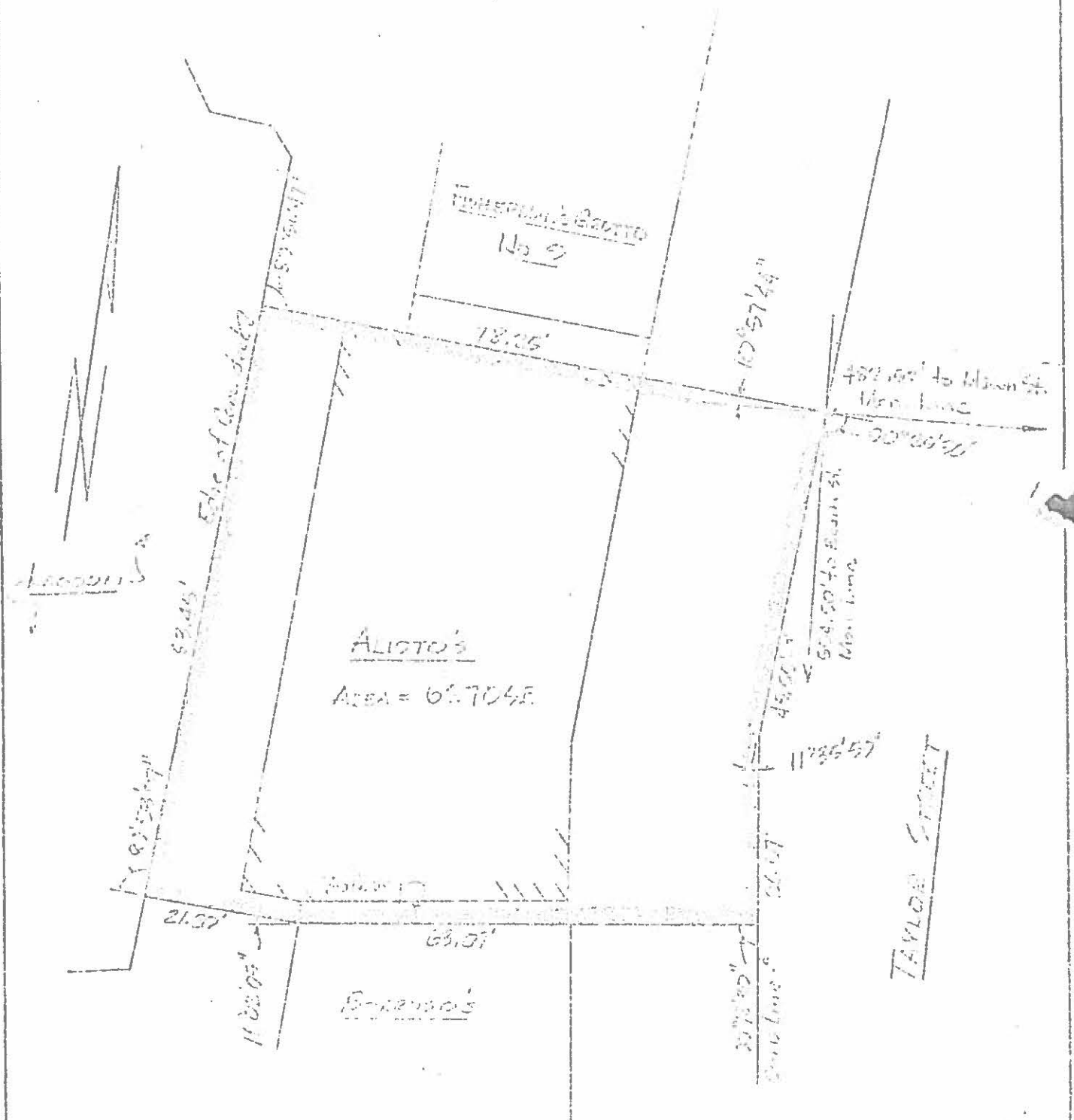
FURTHER RESERVING the right of the public to fish from areas on walkways adjacent to the lagoon.

This lease is made on condition that any alteration on the exterior of the buildings, sidewalk stands, or sidewalk areas, or any maintenance which interferes with sidewalks or walkways, shall first have the express written permission of the Port. Port reserves the right to approve colors and appearances generally, and reserves the right to prohibit or permit signs awnings, or anything which in any way affects appearance generally or interferes with sidewalks or walkways any of which are not in existence at the date hereof.

File -  
w Alioto's lease



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING			Lot Description Alioto's Restaurant at Pier 49			APPROVED _____ DATE _____ DRAWING NO. 7966-49-6
IN CHARGE OF GAN	MADE BY GAN	TRACED BY GAN	CHECKED BY FSN	DATE 6/4/70	SCALE 1"=20'	SHEET NO. 2 OF 3



Alioto's  
L-7491

SAN FRANCISCO PORT DISTRICT PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING			LOT 2, ALIOTO'S ALIOTO'S, DISTRICT 10 A. Dier 12			APPROVED DATE DRAWING NO. 712-25-2		
IN CHARGE OF	MADE BY	ENCLOSURE	CHECKED BY	DATE	SCALE	SHEET NO. 2		

AMENDMENT TO FISHERMAN'S WHARF LEASES

WHEREAS, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION, hereinafter called "Port", Landlord, and ALIOTO FISH CO., LTD., a California corporation, Tenant, did on the 1st day of May, 1970, enter into a lease for restaurant operation at Pier 49, San Francisco, California; and

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

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

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



of the leased premises."

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

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the 20<sup>th</sup> day of August 1970.

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

By [Signature]  
Rental Manager

PORT

ALITO FISH CO., LTD. a California corporation

By [Signature]  
[Signature]

ATTEST:

[Signature]  
Secretary  
(If Corporation)

STATE OF CALIFORNIA,  
City & County of San Francisco } ss.

On this 20th day of August in the year one thousand nine hundred and Seventy, before me, I. LLOYD POLITI,  
a Notary Public, State of California, duly commissioned and sworn, personally appeared

Eugene H. O'Donnell

known to me to be the Secretary  
of the corporation described in and that executed the within instrument, and also known to me to be  
the person who executed the within instrument on behalf of the corporation therein named, and  
acknowledged to me that such corporation executed the same. Amendment to  
Fisherman's Wharf Leases

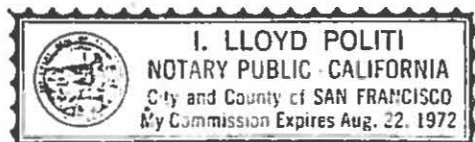
IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the  
City & County of San Francisco the day and year in this certificate  
first above written.

[Signature]  
Notary Public, State of California.

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

On this 20<sup>th</sup> day of August, 1970, before me,  
a Notary Public of said county and state, duly commissioned and  
sworn, personally appeared Frank D. Alton  
known to me to be the President of the Alto  
Fish Co. Ltd. that executed the within instrument,  
and acknowledged to me that such corporation executed the same.

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



I. Lloyd Politi  
Notary Public in and for said  
County and State

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

On this 2 day of \_\_\_\_\_, 19\_\_\_\_, before me,  
a Notary Public in and for said county and state, duly commis-  
sioned and sworn, personally appeared \_\_\_\_\_  
known to me to be one of the partners of \_\_\_\_\_  
\_\_\_\_\_, the partnership that executed  
the within instrument, and acknowledged to me that such partner-  
ship executed the same.

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

\_\_\_\_\_  
Notary Public in and for said  
County and State

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

On this 20<sup>th</sup> day of August, 1970, before me, a  
Notary Public of said county and state, duly commissioned and  
sworn, personally appeared H. J. Thiemann  
known to me to be the General Mgr. of the San Francisco  
Post Commission that executed the within instrument,  
and acknowledged to me that such corporation executed the same.

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

Margaret D. Leahy  
Notary Public in and for said  
County and State

3.

My Commission Expires Aug. 22, 1971

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THIS LEASE, made on the 21 day of January, 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 TARANTINO FISH COMPANY, a Division of A. PUCCINI & SONS, INC., a California Corporation, 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 \$1495.00 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 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 it, then, in that event, TENANT shall promptly make the maintenance or repair and complete the same with due diligence. PORT will make periodic inspections of the substructure and will advise TENANT when maintenance of 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, 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:

Tarantino Fish Company  
a Division of A. Puccini & Sons, Inc.  
Foot of Leavenworth 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 22 day of January, 1975, 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

TARANTINO FISH COMPANY, a Division  
of A. PUCCINI & SONS, INC.,

By Tom Puccini  
TENANT



**AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 12B.1, 12B.2 AND 12B.3 CHAPTER OF DEFINING LEASES, FRANCHISES, CONCESSIONS AND CO-ORDINATE 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.3 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, franchise leases, concessions or other agreements involving real or personal property, hereafter negotiated, let, awarded, granted, re-negotiated, extended or renewed, in any manner or as in any portion thereof, a provision obligating the contractor, franchisee, lessee, concessionaire, or other party to such agreement not to discriminate on the ground or basis of race, color, creed, national origin, ancestry, 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 refuse 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 or 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 for 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 a lease 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, sublease, 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 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 state 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 list 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 will 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 14.5 of the Labor Code, or has obtained a final injunction pursuant to Section 14.29 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 sub paragraphs (c) and (d) 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) 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 in his possession 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 no 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 applicant 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 the 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.

(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 or to become due hereunder may be forfeited to, and retained by, the City and County of San Francisco.

(b) 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 shall be a bar to determination by the officers, 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 ten (10) 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.

(c) 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.

(d) 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.

(e) 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 share his employees through the union or unions, 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;

(c) 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 out 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 apprenticesable;

(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 conference shall not be confidential and may be published 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 the 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 may 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 effectiveness of the affirmative action nondiscrimination programs developed under this ordinance.



## ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE is made and entered into as of April 12, 1990, by and between HOEI TRADING AMERICA, INC., a California corporation ("Assignor"), and Alioto Fish Co., Ltd., a California corporation ("Assignee").

### RECITALS

A. Assignor's predecessor-in-interest, Tarantino Fish Company, a division of A. Puccini and Sons, Inc., a California corporation ("Tarantino"), as Tenant, and the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission ("Landlord"), as Landlord, entered into a written lease (the "Lease"), dated January 21, 1976 for approximately 15,820 square feet of land and existing improvements in the City and County of San Francisco, State of California, described with precision in Exhibit A attached hereto (the "Property"). On October 14, 1981 Tarantino assigned the Lease to Assignor, with Landlord's written consent;

B. Assignor now desires to assign the Lease to Assignee and Assignee desires to accept the assignment of the Lease pursuant to the terms and conditions of this Assignment; and

C. The Lease provides for assignment upon the written consent of Landlord and requires that such consent shall not be unreasonably withheld.

AGREEMENT

NOW, THEREFORE, for value received:

1. Assignor hereby assigns and transfers to Assignee, and Assignee hereby accepts from Assignor, all of Assignors right, title and interest in and to the Lease as of the date hereof.

2. Assignee hereby assumes and agrees to keep, perform and fulfill all of the terms, covenants, conditions and obligations of the tenant under the Lease, including, but not limited to, the making of all payments due to or payable on behalf of Landlord under the Lease when due and payable and compliance with all provisions in the Lease regarding permitted and prohibited uses, and Assignee hereby agrees to indemnify Assignor against and to hold Assignor harmless from any loss, damage, liability, cost or expense, including attorneys' fees, incurred as a consequence of any act or occurrence which occurs or may be alleged to occur with respect to the Property, the Lease, or the tenant's obligations under the Lease, arising on and after the date hereof. Assignee hereby acknowledges that any change in use of the leased premises shall require amendment of the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

ASSIGNOR:

HOEI TRADING AMERICA, INC., a  
California corporation

By: 

Hideyuki Katsukura  
Its Chief Financial Officer

ASSIGNEE:

ALIOTO FISH CO, LTD, a California corporation

By: Frank B. Alkhat

Its: Pres.

CONSENT OF LANDLORD

The undersigned is the Landlord under the Lease described in the foregoing Assignment and hereby consents to the Assignment.

LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, operating  
by and through the San Francisco  
Port Commission

By: [Signature]

Its: Executive Director

APPROVED AS TO FORM:


By: [Signature]  
Deputy City Attorney



## MEMORANDUM

April 8, 2022

**TO:** MEMBERS, PORT COMMISSION  
Hon. Willie Adams, President  
Hon. Doreen Woo Ho, Vice President  
Hon. Kimberly Brandon  
Hon. John Burton  
Hon. Gail Gilman

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Request approval of Mutual Termination Agreement for Port Lease No. L-7491 (2829 Taylor Street) and Port Lease No. L-9171 (360 Jefferson Street) with Alioto Fish Company, Ltd.

**DIRECTOR'S RECOMMENDATION:** Approve the Attached Resolution No. 22-20

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### **Executive Summary**

Alioto Fish Company Ltd. ("Tenant") is the current tenant under Port Lease No. L-7491 for Alioto's Restaurant, located at 2829 Jefferson Street (the "Restaurant Lease"), and under Lease No. L-9171 for storage space located at 360 Jefferson Street (the "Warehouse Lease" and, together with the Restaurant Lease, the "Leases"). In 2020 the onset of the Covid-19 pandemic and associated health orders prompted the Tenant to close the restaurant; it has not reopened since and Tenant has paid no rent due to the Port since March 2020. After negotiations, Port staff and representatives of the Tenant have agreed to seek an amicable mutual termination of the Lease on the terms summarized below. Accordingly, Port staff is seeking Port Commission approval of the proposed mutual termination agreement (the "Agreement").

### **Strategic Objective**

The proposed Agreement is expected to contribute to meeting the Stability Objective of the Port's Strategic Plan by regaining control of the subject property in order to seek a new tenant relationship under business terms that would be better able to perform through economic cycles and would provide additional benefits to the Port, if feasible.



## **Background**

The Port entered the Restaurant Lease with the Tenant on May 1, 1970. The term of the Restaurant Lease is 66 years, leaving approximately 14.5 years remaining before the expiration date of April 30, 2036. Over the decades, the name recognition, prime location and quality of service at the restaurant made it one of the highest performing restaurants in the Port's portfolio, though sales had recently decreased over the years leading up to the pandemic. In support of the restaurant operation the Tenant acquired the Warehouse Lease from Hoei Trading America, Inc. effective June 12, 1990; it also expires on April 30, 2036.

In 2020 the onset of the Covid-19 pandemic and associated health orders prompted the Tenant to close the restaurant; it has not reopened since and Tenant has paid no rent due to the Port on either of the Leases since March 2020. As of March 31, 2022, the outstanding balance on Restaurant Lease is \$545,904.80 and the outstanding balance on the Warehouse Lease is \$225,364.28.

Over the course of 2020 and early 2021 Port staff communicated with all of the Port's restaurant tenants about the availability of the Port Commission's tenant relief programs, but the Tenant did not apply. In April 2021 Port staff sent a letter to Fisherman's Wharf restaurant tenants with delinquent balances that had not taken advantage of the Port Commission-approved relief program, reiterating the fact that the rent is still due and inviting them to engage with Port staff to determine a path forward. Tenant responded to the invitation and requested a dialogue with Port staff on parallel paths regarding conditions for reopening the restaurant or, alternatively, a mutual termination of the Leases. After some discussion of the options, Tenant requested a mutual termination along the lines of the recent mutual termination of the Ferry Plaza Limited Partnership ("FPLP") lease at One Ferry Plaza. While recognizing the similarities and differences with the Tenant's situation, Port staff agreed to consider this approach.

Accordingly, Port staff scheduled a series of facility inspections in July and August, performed by members of the Port's Engineering and Maintenance divisions in the same manner as the FPLP facility inspections, to determine what the cost would be to address deficiencies in the condition of the property as compared to the level of maintenance required under the Leases. Port staff also negotiated for financial terms including forfeiture of the security deposits and a termination fee. Those negotiations reached a successful conclusion and today Port staff is bringing the Agreement to the Port Commission for consideration and approval. If the Port Commission approves, the Agreement would be subject to approval by the Board of Supervisors since the Leases were originally approved by the Board under Charter Section 9.118.

## **Mutual Termination Agreement Summary**

The proposed Agreement includes the following key terms:

1. Tenant shall forfeit all moneys held by Port as a security deposit (which the Parties agree is \$18,384.52 for the Restaurant Lease and \$7,590.01 for the Warehouse Lease) and in addition will pay to Port \$200,000.00 as a termination

fee for the Restaurant Lease and \$50,000 as a termination fee for the Warehouse Lease (collectively, the "Termination Fee").

2. Tenant will deliver both premises in the condition required by the Leases and the Restaurant facility in substantially the same condition as Port staff found it during the inspections noted above, subject to removal of tenant's personal property and furniture. Port and Tenant will agree on certain restaurant fixtures that would be beneficial to Port and a future tenant and those will remain in the premises at no cost to Port.
3. Tenant will cooperate as needed to ensure all permits and contractual obligations relating to the leaseholds are assigned or addressed as appropriate to complete the transaction.
4. Tenant shall maintain insurance as required by the Leases up to the Termination Date.
5. Tenant represents that it has returned the full amount of the \$5,000,000 loan from the Small Business Administration Restaurant Revitalization Fund, and further that it has not received other funds from any federal, regional, state or local government-funded financial aid, grant or loan program for COVID relief, that were specifically designated only for payment of rent by the grantor. All such funds received by the undersigned were used as required by the grantor or returned.
6. The parties release each other from known claims, but neither party releases the other as to unknown claims. Known claims released by Port include claims for unpaid rent, future rent and deferred maintenance and for Tenant include claims for rent abatement due to the pandemic.

The Agreement requires all approvals to be obtained by July 31, 2022. Upon approval by the Port Commission, Port staff will calendar the Agreement with the Board of Supervisors as soon as practicable.

### **Port Staff Analysis**

Port staff recommends approval of the Agreement for the following reasons:

1. The Tenant is a longstanding, iconic destination in Fisherman's Wharf that has engaged in good faith with the Port on the negotiation summarized above, reaching an amicable result that both parties find acceptable as to the business terms on which to end the relationship and feel protects their interests going forward.
2. Although the facility inspections identified some needed repairs and replacements relative to the maintenance obligations under the Restaurant Lease, as a general matter the facility was in serviceable condition. Port staff

believes that these renewal needs can be addressed through the tenant improvements that would be needed to establish a new operation at the site.

3. The Port has an interest in regaining control of the site at an early date, especially in light of the Tenant's desire to not reopen.

### **Recommendation**

Port staff recommends that the Port Commission adopt Resolution No. 22-20 approving the Agreement. If the Port Commission and Board of Supervisors approve the Agreement, the termination date is expected to be no later than August 10, 2022 (and likely sooner, depending on the Board process). Upon final termination of the Leases, Port staff would return to the Port Commission to seek direction on seeking a new tenant for the facility, likely incorporating lessons learned in connection with the development of the broker-managed solicitation that will be discussed later on the April 12 agenda.

In addition, Port staff extends its thanks to the Tenant and all its shareholders and employees who had a hand in making the 50+ years of its partnership with the Port such a great success. While in some ways this is a sad day, the legacy of this restaurant will always be remembered by San Franciscans and visitors alike.

Prepared by: Michael Martin  
Assistant Port Director

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


**RESOLUTION NO. 22-20**

- 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, Port and Alioto Fish Company, Ltd. (“Tenant”) entered into that certain Port Lease No. L-9171, dated May 1, 1970, under which Tenant leases real property known as Alioto’s Restaurant located at 2829 Taylor Street (as amended, the “Restaurant Lease”); and
- WHEREAS, On June 12, 1990, Tenant accepted assignment of that certain Port Lease No. L-7491, under which Tenant leases warehouse support space at 360 Jefferson Street (the “Warehouse Lease” and, together with the Restaurant Lease, the “Leases”); and
- WHEREAS, The Leases both expire on April 30, 2036; 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
- WHEREAS, Among other things, the Mutual Termination Agreement requires payment of termination fees for both Leases, the surrender of the associated security deposits to the Port, and other agreements relating to the release of claims and wind down of the lease relationship, all as more particularly described in the Memorandum to the Port Commission dated April 8, 2022; now, 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 12, 2022.***

DocuSigned by:  
  
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Secretary



April 20, 2022

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

Dear Ms. Calvillo:

Attached please find an electronic copy a proposed Resolution for Board of Supervisors consideration, to approve a mutual termination agreement for Port Lease No. I-7491 and Port Lease No. L-9171 between the San Francisco Port Commission and Alioto Fish Company, located at 2829 Taylor Street and the associated warehouse premises located at 360 Jefferson Street.

The following is a list of accompanying documents

- Resolution approving mutual termination agreement
- Draft mutual termination agreement
- Port Commission staff report and resolution approving the mutual termination agreement

The following person may be contacted regarding this matter:

Boris Delepine, Legislative Affairs Manager  
415-571-6626  
Boris.Delepine@sfport.com

Sincerely,

Boris Delepine