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ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

05/17/2024
Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

7 Attorneys for HERRINGBONE TAVERN, INC.

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

CGC-24-614770

11 HERRINGBONE TAVERN, INC.,
12
13 Plaintiff,
14
15 v.
16 CITY AND COUNTY OF SAN
FRANCISCO, and DOES 1 through 25,
inclusive,
17 Defendant.

Case No.

COMPLAINT FOR:

- (1) Breach of Contract**
- (2) Breach of Covenant of Good Faith and Fair Dealing**
- (3) Unjust Enrichment**
- (4) Public Nuisance**
- (5) Private Nuisance**
- (6) Inverse Condemnation**

18
19 Plaintiff HERRINGBONE TAVERN, INC., alleges as follows:

20 **PARTIES**

21 1. Plaintiff HERRINGBONE TAVERN, INC. is, and at all times relevant herein was,
22 a California Corporation duly organized and existing under the laws of the State of California
23 (“Plaintiff”) and the former tenant of the properties located in the historic Fisherman’s Wharf area
24 at 206 Jefferson Street, San Francisco, CA 94133, 2847 Taylor Street, San Francisco, CA 94133
25 and 2851 Taylor Street, San Francisco, CA 94133.

26 2. Plaintiff is informed and believes, and thereon alleges that Defendant CITY OF AND
27 COUNTY OF SAN FRANCISCO is, and at all times relevant herein was, a public entity and/or
28 municipal corporation under the laws of the State of California (“Defendant City”) operating by and

1 through the San Francisco Port Commission. At all relevant times, Defendant City acted as the
2 landlord, by and through the San Francisco Port Commission, of the properties located in the historic
3 Fisherman’s Wharf area at 206 Jefferson Street, San Francisco, CA 94133, 2847 Taylor Street, San
4 Francisco, CA 94133 and 2851 Taylor Street, San Francisco, CA 94133.

5 3. Defendant DOES 1 through 25, inclusive, are sued by fictitious names pursuant to
6 Code of Civil Procedure § 474 because their true names and capacities, whether individual,
7 corporate, associate or otherwise, and/or their responsibility, culpability and liability for the **acts**
8 alleged herein, are unknown to Plaintiff at this time. When their true names, capacities,
9 responsibility, culpability and liability are ascertained, Plaintiff will amend this complaint
10 accordingly.

11 4. Plaintiff alleges on information and belief that each defendant sued herein as "DOE"
12 is responsible and liable in some manner for the acts and events referred to herein. Defendants and
13 each fictitiously named DOE defendant was the agent, representative, co-conspirator, aider and
14 abettor, alter ego, successor-in-interest, assignee or employee of each other Defendant, and in doing
15 the things alleged herein was acting with the course and scope of such agency, representation,
16 conspiracy, alter ego, succession, assignment and employment.

17 **JURISDICTION AND VENUE**

18 5. Jurisdiction in this court is proper because the subject real property is located in the
19 City and County of San Francisco. The contract at issue was negotiated and executed within the
20 City and County of San Francisco. Venue is proper in the City and County of San Francisco under
21 the Code of Civil Procedure for these similar reasons.

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 6. Plaintiff has timely complied with all government claims presentation requirements.
24 On or about December 5, 2023, Plaintiff filed a Government Claim against Defendants pursuant to
25 Gov. Code, § 910 et seq. A true and correct copy of Plaintiff’s Government Claims are collectively
26 attached hereto as **Exhibit “A”** and are fully incorporated herein by reference.

27 7. On December 18, 2023, Defendant City provided a Notice of Action Upon Claim,
28 notifying Plaintiff as follows:

1 “As to the incidents in your claim occurring within one-year before the filing of your
2 claim, relating to causes of action subject to a one-year presentment requirement:

3 NOTICE OF ACTION UPON CLAIM PLEASE TAKE NOTICE

4 An investigation of your claim filed with the City and County of San Francisco has
5 revealed no indication of liability on the part of the City and County. Accordingly,
6 your claim is DENIED.

7 ...

8 As to the incidents in your claim occurring within six-months before the filing of
9 your claim, relating to causes of action subject to a six-month presentment
10 requirement:

11 NOTICE OF ACTION UPON CLAIM PLEASE TAKE NOTICE

12 An investigation of your claim filed with the City and County of San Francisco has
13 revealed no indication of liability on the part of the City and County. Accordingly,
14 your claim is DENIED.”

15 A true and correct copy of the Notice of Action Upon Claim is attached hereto as **Exhibit “B”** and
16 are fully incorporated herein by reference.

17 **FACTUAL ALLEGATIONS**

18 8. Fisherman’s Wharf is a historical locale in San Francisco, California, encompassing
19 the northern waterfront area of San Francisco from Ghirardelli Square, or Van Ness Avenue, east to
20 Pier 35, or Kearny Street. Historically, Fisherman’s Wharf has existed as a popular tourist attraction
21 known for its views and waterfront restaurants.

22 **I. *Subject Leases & Assignments***

23 9. In or about May 1970, the Defendant City, operating through the San Francisco Port
24 Commission, entered into two separate sixty-six year leases for properties located in the historic
25 Fisherman’s Wharf locale, as follows:

26 a. Effective May 1, 1970, Defendant City, as landlord, approved Lease
27 Agreement L-7498, and thereby agreed to lease the premises located at 2847
28 Taylor Street, San Francisco, CA 94133 and 2851 Taylor Street, San
29 Francisco, CA 94133 (the aforementioned premises will hereinafter be
30 referred to as “Fisherman’s Grotto”) to Nino L. Gerald, Michael F. Gerald,
31 Alphonse B. Gerald, Lawrence Gerald & Josephine Gerald, dba Fisherman’s
32 Grotto, as tenants (“Fisherman’s Grotto Lease”). A true and correct copy of
33 the May 1, 1970 Lease for 2847 Taylor Street, San Francisco, CA 94133 and
34 2851 Taylor Street, San Francisco, CA 94133 is attached hereto as **Exhibit**
35 **“C.”**

36 b. Effective May 1, 1970, Defendant City, as landlord, approved Lease

1 Agreement L-7500 agreed to lease the premises located at 206 Jefferson
2 Street, San Francisco, CA 94133 (the aforementioned premises will
3 hereinafter be referred to as “Tarantino’s”) to Tarantino’s Inc., as tenant
4 (“Tarantino’s Lease”). A true and correct copy of the May 1, 1970 Lease for
5 206 Jefferson Street, San Francisco, CA 94133 is attached hereto as **Exhibit**
6 **“D.”**

7 10. Notably, Section 7 of both aforementioned leases with Defendant City **included** the
8 following identical language:

9 “Port agrees to maintain the character of Fisherman’s Wharf in the
10 same general manner as it exists at the date of this lease. In this
11 connection, the parties recognize that the area of Fisherman’s Wharf
12 is a major tourist attraction and that it is to the benefit of both the Port
13 and Tenant that such condition be maintained throughout the term of
14 this lease.”

15 11. In or about 2016, Plaintiff became interested in purchasing Fisherman’s Grotto.

16 12. During this time, Plaintiff began communicating with Rip Malloy, the then property
17 manager for the Defendant City, and was informed that Defendant City was interested in
18 establishing a fish market near Fisherman’s Grotto.

19 13. Based on the assurances from Mr. Malloy that Defendant City would let Plaintiff
20 construct and operate a fish market in connection with Fisherman’s Grotto, Plaintiff closed escrow
21 on Fisherman’s Grotto and hired an architect to draft necessary drawings and schematics for a fish
22 market.

23 14. Thereafter, in May 2016, Plaintiff entered into an Assignment and Assumption of
24 Lease agreement for the Fisherman’s Grotto Lease (“Fisherman’s Grotto Assignment”). Therein,
25 Plaintiff was assigned Fisherman’s Grotto Restaurant’s interest in the Fisherman’s Grotto Lease. A
26 true and correct copy of the Fisherman’s Grotto Assignment is attached hereto as **Exhibit “E.”**

27 15. In or about August, 2016, the Defendant City subsequently consented to the
28 assignment of the Fisherman’s Grotto Lease from Fisherman’s Grotto Restaurant, as assignor, to
Plaintiff, as assignee. A true and correct copy of the August 2016 Consent to Assignment is attached
hereto as **Exhibit “F.”**

16. Around this time, Plaintiff met with representatives for Defendant City, Mr. Malloy
and a Mike Martin regarding the proposed fish market at Fisherman’s Grotto. Plaintiff informed
Defendant City that the main reason Plaintiff had purchased Fisherman’s Grotto was based on the

1 assurances from Mr. Malloy that he would be able to construct and operate a fish market in the area.

2 17. Plaintiff is informed and believes that shortly following this meeting, Mr. Malloy
3 left, or was relieved of, his position as Property Manager. Unfortunately, Plaintiff was later informed
4 that Plaintiff would not be allowed to construct and/or operate a fish market in the area.

5 18. In or about January 2018, Plaintiff entered into an Assignment and Assumption of
6 Lease agreement for the Tarantino's Lease ("Tarantino's Assignment"). Therein, Plaintiff was
7 assigned Tarantino's, Inc.'s interest in the Tarantino's Lease. A true and correct copy of the
8 Tarantino's Assignment is attached hereto as **Exhibit "G."**

9 19. In or about July 2018, Defendant City subsequently consented to the assignment of
10 the Tarantino's Lease from Tarantino's, Inc., as assignor, to Plaintiff, as assignee. A true and correct
11 copy of the August 2018 Consent to Assignment is attached hereto as **Exhibit "H."**

12 **II. *Improvements to Fisherman's Grotto and Tarantino's***

13 20. Since acquiring Fisherman's Grotto and Tarantino's, Plaintiff has undertaken to
14 maintain their respective historic reputations, including, but not limited to, by replacing the roofs on
15 both properties, installing new flooring at both properties, renovating the kitchens of both properties,
16 upgrading the respective buildings to comply with ADA requirements, dry rot repairs, insulation
17 replacement, and the installation of main-line sprinkler systems at both properties.

18 21. All said, Plaintiff invested over two (2) million dollars in renovating and maintaining
19 both Fisherman's Grotto and Tarantino's.

20 **III. *Defendant City's Breaches of the Leases***

21 22. Since 1970, the underlying soil, substructure, and seawall supporting Tarantino's and
22 Fisherman's Grotto – along with several other buildings at Fisherman's Wharf – has been allowed
23 by Defendant City to deteriorate without abatement efforts. Specifically, the underlying soil,
24 substructure, and seawall has suffered damage at no fault of Plaintiff and remains unabated by the
25 Defendant City despite its knowledge of the deteriorating conditions.

26 23. Notably, on or about September 30, 2021, Steven Reel, PE, the Port's Deputy
27 Director, Engineering, Waterfront Resilience Program, provided a memorandum detailing the
28 earthquake risk along Taylor Street between Embarcadero and Jefferson Street as identified through

1 the Port's Embarcadero Seawall Multi Hazard Risk Assessment, or MHRA, to Brad Benson,
2 Director, Waterfront Resilience Program. A true and correct copy of the September 30, 2021
3 Memorandum prepared by the Waterfront Resilience Program is attached hereto as **Exhibit "I."**

- 4 24. Therein, it was concluded by Defendant City's personnel that:
- 5 a. "[T]he shoreline along Taylor Street is at very high risk of earthquake
6 liquefaction, lateral spreading, and settlement due to liquefiable soils located
7 both below and within the fill used to create the shoreline and backlands."
 - 8 b. "Analysis shows the structures are vulnerable to both ground shaking and to
9 lateral spreading and liquefaction of the shoreline, which is a very high hazard
10 in this location...Buildings supported by the wharves are at risk of damage
11 due to underlying wharf settlement or partial collapse and are also at risk of
12 damage from ground shaking."

13 25. Despite this danger posed, Defendant City has taken no action to abate the "high
14 risk" to the buildings at Fisherman's Wharf, inclusive of Tarantino's and Fisherman's Grotto.
15 Instead, Defendant City has allowed the continued deterioration to persist without redress.

16 26. Additionally, over the past decade, San Francisco, including in the Fisherman's
17 Wharf area, has seen a drastic increase in its homeless population and an increase in criminal
18 activity:

- 19 a. San Francisco saw a 7% surge in its unhoused population over the past two
20 years, with the City of San Francisco reporting 8,328 unhoused people across
21 the city, which was up from 7,754 in 2022. For every person who exits
22 homelessness in San Francisco, the city's Department of Homelessness and
23 Supportive Housing estimates that three more become homeless.
- 24 b. Healthy Street's data shows that in November 2021, the City of San Francisco
25 counted 526 tents and structures erected in the City by unsheltered homeless
26 individuals, and more than 1,000 vehicles, which include RVs, compared
27 with less than 450 tents and structures, and more than 700 vehicles in October
28 2019. The November 2021 totals — both for tents and structures, and vehicles
 — are still far lower than the highs during the early pandemic months in 2020.
- c. This is accented by concerns about the surge in car break-ins - five of San
 Francisco's 12 most-targeted intersections are within two blocks of
 Fisherman's Wharf.
- d. There has also been an increase in unlicensed vendors who line up between
 Pier 39 and Pier 41 selling various goods and consumables.

 27. To make matters worse, on or about March 16, 2020, during the COVID-19
Pandemic, and amidst the growing homelessness and crime hazards, Defendant City issued a shelter
in place order (the "Order") requiring "all individuals anywhere in San Francisco to shelter in

1 place—that is, stay at home—except for certain essential activities and work to provide essential
2 business and government services or perform essential public infrastructure construction, including
3 housing.” A true and correct copy of the March 16, 2020 Shelter in Place Order is attached hereto
4 as **Exhibit “J.”**

5 28. As part of the Order, all bars, restaurants, and cafes, including Fisherman’s Grotto
6 and Tarantino’s, were ordered to be closed regardless of their seating capacity.

7 29. The Order was extended several times and Defendant City did not allow for
8 restaurants to fully reopen until mid-2021. However, during this time in which restaurants were
9 ordered to be closed, Defendant City increased Plaintiff’s rent at both Fisherman’s Grotto and
10 Tarantino’s.

11 30. Additionally, as a result of the increased homelessness population and criminal
12 activity, Fisherman’s Wharf has suffered a substantial decrease in its once thriving tourist activity.

13 31. Defendant City has taken no action to address these ongoing problems and hazards
14 – instead allowing the aforementioned issues to erode the character of Fisherman’s Wharf.

15 32. As a result, Plaintiff paid approximately \$350,000.00 in rent to Defendant City
16 without abatement or an ability to use the properties as restaurants.

17 **III. Unlawful Detainer Actions**

18 33. On or about, September 26, 2023, Defendant City, by and through the San Francisco
19 Port Commission, brought two independent unlawful detainer actions against Plaintiff for
20 possession of the premises located at 206 Jefferson Street, San Francisco, CA 94133 (Case No.
21 CUD-23-673113) and 2847 Taylor Street, San Francisco, CA 94133 and 2851 Taylor Street, San
22 Francisco, CA 94133 (Case No. Case No. CUD-23-673112.) (collectively the “Unlawful Detainer
23 Actions.”).

24 34. As a result of the actions brought by Defendant City, Plaintiff surrendered possession
25 of the premises located at 206 Jefferson Street, San Francisco, CA 94133, 2847 Taylor Street, San
26 Francisco, CA 94133 and 2851 Taylor Street, San Francisco, CA 94133.

27
28

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract – As Against All Defendants)**

3 35. Plaintiff incorporates and re-alleges in full paragraphs 1 through 34 above as though
4 set forth in full.

5 36. In or about May 1970, the Defendant City, operating through the San Francisco Port
6 Commission, entered into two separate sixty-six (66) year leases for properties located in the historic
7 Fisherman's Wharf locale as follows:

8 a. Effective May 1, 1970, Defendant City, as landlord, approved Lease
9 Agreement L-7498, and thereby agreed to lease the premises located at 2847
10 Taylor Street, San Francisco, CA 94133 and 2851 Taylor Street, San
11 Francisco, CA 94133 (the aforementioned premises will hereinafter be
referred to as "Fisherman's Grotto") to Nino L. Gerald, Michael F. Gerald,
Alphonse B. Gerald, Lawrence Gerali & Josephine Gerald, dba Fisherman's
Grotto, as tenants ("Fisherman's Grotto Lease").

12 b. Effective May 1, 1970, Defendant City, as landlord, approved Lease
13 Agreement L-7500 agreed to lease the premises located at 206 Jefferson
14 Street, San Francisco, CA 94133 (the aforementioned premises will
hereinafter be referred to as "Tarantino's") to Tarantino's Inc., as tenant
("Tarantino's Lease").

15 37. Thereafter, Plaintiff was assigned the tenancy interests in the Fisherman's Grotto
16 Lease and Tarantino's Lease as follows:

17 a. In 2016, Plaintiff was assigned the tenancy interest in Fisherman's Grotto.
18 Defendant City consented to the assignment.

19 b. In 2018, Plaintiff was assigned the tenancy interest in Tarantino's. Defendant
20 City consented to the assignment.

21 38. Pursuant to the Leases, Defendant City agreed to "maintain the character of
22 Fisherman's Wharf in the same general manner as it exists at the date" of the leases and further noted
23 that the area of Fisherman's Wharf is a major tourist attraction and that it "is to the benefit of both
24 Defendant City and Plaintiff that such condition be maintained throughout the term of this lease."

25 39. Unfortunately, Defendant City has failed to maintain the character of Fisherman's
26 Wharf and thereby breached the Leases, by among other things: (1) failing to maintain the character
27 of Fisherman's Wharf in the same general manner as it existed as of the date of the leases; (2) failing
28 to maintain the underlying, soil, substructure, and seawall; (3) allowing illegal vendors to populate
immediately outside of Plaintiff's restaurants; (4) failing to address rampant homelessness and

1 criminal activity in the Fisherman's Wharf area such that it has substantially degraded, defiled and
2 tarnished its reputation as a tourist destination and (5) failing to maintain the character of
3 Fisherman's Wharf in the same general manner as it existed as of the date of the leases.

4 40. As a direct, proximate and foreseeable result of the City Defendant's breach of the
5 Leases, Plaintiff has sustained significant damages resulting from the loss of economically
6 beneficial use of both Fisherman's Grotto and Tarantino's:

7 a. Specifically, at certain relevant times, the Property was deemed required to
8 be closed by Defendant City. Regardless, Plaintiff was required to continue
9 paying rents during this time to Defendant City. As a result of the City
10 Defendant's ordinances, Plaintiff has suffered, and continues to suffer, lost
11 profits due to being forced to close its doors for extended periods of time.

12 b. Defendant City has allowed the character of Fisherman's Wharf to erode to
13 the point that it substantially discourages and deters tourist activity and
14 business. As a result of the City Defendant's breach of the Leases, Plaintiff
15 has suffered, and continues to suffer, lost profits due to the reputational harm
16 caused by Defendant City allowing the character of Fisherman's Wharf to be
17 eroded.

18 41. As a direct, proximate and foreseeable result of the City Defendant's breach of the
19 Leases, Plaintiff was forced to cease operation of their business and was unable to occupy the
20 Property. Defendant's breaches adversely impacted Plaintiffs' occupancy and use of the Property
21 during this time.

22 42. As a direct, proximate and foreseeable result of the City Defendant's breach of the
23 Leases, Plaintiff has been forced to pay rent in full, and without deduction as mandated by the Lease,
24 for the entire period of time in which Fisherman's Wharf has been allowed to remain in disrepair by
25 the City Defendant.

26 WHEREFORE, Plaintiff prays for relief as hereinafter set forth below.

27 **SECOND CAUSE OF ACTION**

28 **(Breach of the Covenant of Good Faith and Fair Dealing – As Against All Defendants)**

43. Plaintiff hereby incorporates the allegations in paragraphs 1 through 42 as though
fully set forth herein verbatim.

44. In or about May 1970, the Defendant City, operating through the San Francisco Port
Commission, entered into two separate sixty-six year leases for properties located in the historic

1 Fisherman's Wharf locale. Thereafter, Plaintiff was assigned the tenancy interests in the Fisherman's
2 Grotto Lease and Tarantino's Lease.

3 45. In addition to the express terms of the Leases, both leases include an implied
4 covenant of good faith and fair dealing which prohibits either party from acting in bad faith to
5 frustrate the benefits the other party was to receive under the contract.

6 46. Defendant City breached the implied covenant of good faith and fair dealing by,
7 among other things, neglecting to make timely repairs or maintain the character of Fisherman's
8 Wharf such that Plaintiff was substantially deprived of the economically beneficial use and
9 occupancy of the Property for an extended period of time.

10 47. By doing so, the Defendant City did not act fairly and in good faith; leaving Plaintiff
11 with none of the contemplated benefits of the Leases and frustrating the very purpose of the same.

12 48. As a direct, proximate and foreseeable result of Defendant City's breach of the
13 covenant of good faith and fair dealing implied in the Leases, Plaintiff sustained significant damages
14 including, *inter alia*: (1) reputational harm; and (2) rent paid without the economical and beneficial
15 use of the Property and without reasonable deduction.

16 49. In addition, and as a direct, proximate and foreseeable result of Defendant City's acts
17 and/or omissions, Plaintiff suffered lost profits due to being forced to close the doors of both
18 restaurants for extended periods of time.

19 50. Resultant therefrom, Plaintiff was prevented from receiving any benefits, let alone
20 the full-benefits, under the Leases.

21 WHEREFORE, Plaintiff pray for relief as hereinafter set forth below.

22 **THIRD CAUSE OF ACTION**

23 **(Unjust Enrichment – As Against All Defendants)**

24 51. Plaintiff hereby incorporates the allegations in paragraphs 1 through 50 as though
25 fully set forth herein verbatim.

26 52. Since being assigned the leases for Fisherman's Grotto and Tarantino's in 2016 and
27 2018 respectively, Plaintiff has invested significant capital in renovating and/or maintaining the
28 aforementioned premises, including the installation of fixtures and improvements.

1 The unsanitary conditions being allowed to erode Fisherman’s Wharf are injurious to the public
2 health. The crime which runs rampant and unabated throughout Fisherman’s Wharf and the surround
3 locale places people, their personal property, their businesses, and their properties at risk. All victims
4 have experienced a substantial and unreasonable interference with the enjoyment of their property,
5 and continue to suffer injury and the threat of injury as a result of the condition outside their
6 respective properties.

7 60. Each victim has been damaged in their own right and in a manner specially injurious
8 to them without consenting to Defendant City's tortious conduct.

9 61. Defendant City’s failure to maintain Fisherman’s Wharf was a substantial factor in
10 causing Plaintiff’s harm as noted above.

11 WHEREFORE, Plaintiff pray for relief as hereinafter set forth below.

12 **FIFTH CAUSE OF ACTION**

13 **(Private Nuisance – As Against All Defendants)**

14 62. Plaintiff hereby incorporates the allegations in paragraphs 1 through 61 as though
15 fully set forth herein verbatim.

16 63. Each individual victim owns, leases, occupies, or otherwise controls all or a portion
17 of the house, apartment, or business identified herein. City's actions and/or inactions, as alleged
18 herein, has/have created a condition and/or permitted a condition to exist that is harmful to the
19 People's health; indecent and offensive to the senses; obstructs the free passage and use of public
20 parks, sidewalks, and streets; permits the unlawful solicitation of prostitution near and/or in front of
21 victims' property; permits the sale and use of illicit drugs near and/or in front of victims' property;
22 leads to the excretion of human waste on and in front of victims' property; and constitutes a fire
23 hazard, as alleged herein above.

24 64. Defendant City’s conduct is intentional and unreasonable, or unintentional but
25 negligent or reckless. Alternatively, the conditions permitted by way of Defendant City's actions
26 and inactions are the result of abnormally dangerous activities that substantially interfere with each
27 victim's use or enjoyment of their land that would reasonably annoy or disturb an ordinary person.

28 65. Specifically, Defendant City, by acting and/or failing to take action to maintain the

1 character of Fisherman’s Wharf, has created and/or allowed a condition to arise that is an obstruction
2 to Plaintiff’s use of Fisherman’s Grotto and Tarantino’s.

3 66. Defendant City’s failure to maintain the character of Fisherman’s Wharf created a
4 condition that was detrimental to the public and for which the seriousness of the harm outweighs
5 the social utility of Defendant City’s conduct.

6 67. As a business owner in the Fisherman’s Wharf area, Plaintiff was uniquely affected
7 by Defendant City’s failure to maintain the character of Fisherman’s Wharf. Defendant City’s
8 failure to take action to remediate the deteriorating condition of the area, due to unabated
9 homelessness, illegal vendors, and criminal activity, substantially negatively impacted the tourist
10 activity and localized economy of the area. As a direct and proximate result of the same, Plaintiff
11 has sustained significant damages including, *inter alia*: (1) lost profits due to being forced to close
12 its doors for extended periods of time; and (2) reputational harm.

13 68. Resultant therefrom, Plaintiff was prevented from receiving any benefits, let alone
14 the full-benefits, under the Leases.

15 69. Defendant City’s failure to maintain Fisherman’s Wharf was a substantial factor in
16 causing Plaintiff’s harm as noted above.

17 WHEREFORE, Plaintiff pray for relief as hereinafter set forth below.

18 **SIXTH CAUSE OF ACTION**

19 **(Inverse Condemnation – As Against All Defendants)**

20 70. Plaintiff hereby incorporates the allegations in paragraphs 1 through 69 as though fully
21 set forth herein verbatim.

22 71. At all times relevant hereto, Defendant City has maintained a contractual obligation
23 to maintain the character of Fisherman’s Wharf as a major tourist attraction and business center.

24 72. California Constitution, Article I Section 19(a) provides, in relevant part, “[p]rivate
25 property may be taken or damaged for a public use and only when just compensation, ascertained
26 by a jury unless waived, has first been paid to, or into court for, the owner.”

27 73. Defendant City’s actions and/or inactions by way of Defendant City’s failure to
28 consistently enforce the law and maintain Fisherman’s Wharf have and continue to limit, damage,

1 and/or burden property and/or business to such a degree that they rise to the level of a regulatory
2 taking.

3 74. Defendant City's failure to maintain Fisherman's Wharf was a substantial factor in
4 causing Plaintiff to be deprived of his tenancy interest and businesses at Fisherman's Grotto and
5 Tarantino's respectively.

6 WHEREFORE, Plaintiff pray for relief as hereinafter set forth below.

7 **PRAYER FOR RELIEF**

8 Based on the foregoing, Plaintiff prays for judgment against defendants, and each of them
9 as follows:

- 10 1. For compensatory, general, economic, incidental, consequential, and special
11 damages according to proof at trial;
- 12 2. For reimbursement of rent, or a portion thereof, paid by Plaintiffs in an amount
13 according to proof;
- 14 3. For recovery of lost revenue and the loss of use of the Property according to proof at
15 trial;
- 16 4. For reputational harm resulting from the delay according to proof;
- 17 5. For recovery of investments made into the properties in an amount not less than
18 \$2,000,000.00;
- 19 5. For recovery of costs of suit according to proof at trial;
- 20 6. For prejudgment interest;
- 21 7. For such other and further relief as the court deems proper.

22
23 Dated: May 17, 2024

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

24
25
26 By: _____



David L. Emerzian
James P. Wagoner
Christopher A. Kent

Attorneys for HERRINGBONE TAVERN, INC.

EXHIBIT “A”

INSTRUCTIONS FOR FILING A CLAIM

Failure to complete all sections of the Claim form will delay the processing of your claim
and result in the return or denial of your claim.

- 1. Claimant's Name, Address and Telephone**-State the full name, mailing address, and telephone numbers of the person claiming personal injury, damage or loss.
- 2. Official Notices and Correspondence**-Provide the name, mailing address, and telephone numbers of the person to whom all official notices and other correspondence should be sent, if other than claimant. This official contact person can be the claimant or a representative of the claimant. If this section is completed, all official notices and correspondence will be sent to the person listed.
- 3. Date of Birth**-State claimant's date of birth including month, day, and year.
- 4. Social Security Number**-State the claimant's social security number. The Federal Government requires the City to report settlements for present or future medical care. This information will be kept confidential and only shared with the Federal Government. The City is unable to process payment without this information.
- 5. Date of Incident**-State the exact month, day, and year of the incident giving rise to the claim.
- 6. Time of Incident**-State the exact time, including A.M. or P.M., of the incident giving rise to the claim.
- 7. Location of Incident of Accident**-Include the city and exact street address or intersection where the incident occurred.
- 8. Claimant Vehicle License Plate Number**-Please provide license plate number of vehicle driven by claimant or in which claimant was a passenger.
- 9. Basis of Claim**-State in detail all facts supporting your claim, including all facts and circumstances of the incident, all alleged injuries, property damage and loss, all persons, entities, property and City departments involved, and why you believe the City is responsible for the alleged injury, property damage or loss. In the appropriate boxes, provide the name, I.D. number and City department of the City employee(s) who allegedly caused the injury or property damage, the type of City vehicle involved (if any), and the license and number of the City vehicle involved (if any). For accidents involving a bus or light rail vehicle, please provide the line and vehicle number.
- 10. Description of Injury, Property Damage or Loss**-Provide in full detail a description of the injury, property damage or loss that allegedly resulted from the incident. If claimant's vehicle was involved, provide the make, model, mileage, and year. You may attach additional material.
- 11. Amount of Loss and Method of Computation**-State the total amount of money you claim in damages. Provide a breakdown of each item of damages and how that amount was computed. You may include future, anticipated expenses or losses. Please attach copies of all bills, receipts and repair estimates. If the claim involves property damage, please provide two repair estimates. The Government Code provides that if the claim is for less than \$10,000, the claimant must state the total amount claimed and the basis of this computation. If the claim exceeds \$10,000, no dollar amount need be provided, but the claimant must indicate the applicable court jurisdiction. Limited civil jurisdiction cases are those involving damages under \$25,000; unlimited civil jurisdiction cases are those involving damages of \$25,000 or more.
- 12. Witnesses**-State the names, addresses, and telephone numbers of any persons who witnessed the incident. Attach list of additional names if necessary.
- 13. Signature of Claimant or Representative**-Please sign and date. Print name of signatory and relationship to claimant. The claim must be signed by the claimant or by the official representative of the claimant.

Claims for death or injury to persons or damage to personal property must be filed within six months after the incident giving rise to the claim. All other claims must be filed within one year.

Personal service of claims can be accomplished during regular business hours, Monday through Friday (excluding County holidays). If you want a time stamped copy of your claim returned to you, please present an original and copy of the claim, and include a self-addressed stamped envelope.

For information on the status of your claim, please call the applicable number listed below:

WATER DEPARTMENT	554-3900	PORT OF SAN FRANCISCO	554-3900	PUC SEWER	554-3952
MUNICIPAL RAILWAY	554-3900	S.F. INTERNATIONAL AIRPORT	(650) 821-5073	DEPT. OF PUBLIC WORKS	554-3952
OTHER DEPARTMENTS	554-3900	CONTROLLER'S CLAIM DIVISION	554-3833	DEPT. OF BLDG. INSPECTION	554-3952

We Do Not Accept claims for the following agencies:

- HOUSING AUTHORITY 1815 Egbert Avenue, S.F., CA 94124 (415) 715-3280
- SAN FRANCISCO UNIFIED SCHOOL DISTRICT 555 Franklin Street, 2nd Fl, S.F., CA, 94102 (415) 241-6000
- SAN FRANCISCO COMMUNITY COLLEGE DISTRICT 33 Gough Street, S.F., CA 94103 (415) 241-2234

Please be advised that the City and County of San Francisco may offset against a claim any amounts owed by the claimant, including unpaid hospital bills, unpaid parking and traffic tickets and welfare reimbursements or overpayments.

ATTACHMENT TO GOVERNMENT CLAIM
Herringbone Tavern, Inc. v. City and County of San Francisco

Fisherman's Wharf is a historical locale in San Francisco, California, encompassing the northern waterfront area of San Francisco from Ghirardelli Square, or Van Ness Avenue, east to Pier 35, or Kearny Street. Historically, Fisherman's Wharf has existed as a popular tourist attraction known for its views and waterfront restaurants.

I. *Subject Leases & Assignments*

In or about May 1970, the Subject City, operating through the San Francisco Port Commission, entered into two separate sixty-six year leases for properties located in the historic Fisherman's Wharf locale, as follows:

- a. Effective May 1, 1970, Subject City, as landlord, approved Lease Agreement L-7498, and thereby agreed to lease the premises located at 2847 Taylor Street, San Francisco, CA 94133 and 2851 Taylor Street, San Francisco, CA 94133 (the aforementioned premises will hereinafter be referred to as "Fisherman's Grotto") to Nino L. Geraldi, Michael F. Geraldi, Alphonse B. Geraldi, Lawrence Gerali & Josephine Geraldi, dba Fisherman's Grotto, as tenants ("Fisherman's Grotto Lease").
- b. Effective May 1, 1970, Subject City, as landlord, approved Lease Agreement L-7500 agreed to lease the premises located at 206 Jefferson Street, San Francisco, CA 94133 (the aforementioned premises will hereinafter be referred to as "Tarantino's") to Tarantino's Inc., as tenant ("Tarantino's Lease").

Notably, Section 7 of both aforementioned leases with Subject City included the following identical language:

"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."

In or about 2016, Herringbone Tavern, Inc. became interested in purchasing Fisherman's Grotto. During this time, Chris Henry, on behalf of Herringbone Tavern, Inc., began communicating with Rip Malloy, the then property manager for the Port, and was informed that the Subject City was interested in establishing a fish market near Fisherman's Grotto. Based on the assurances from Mr. Malloy that Subject City would let Herringbone Tavern, Inc. construct and operate a fish market in connection with Fisherman's Grotto, Herringbone Tavern, Inc. closed escrow on Fisherman's Grotto and hired an architect to draft necessary drawings and schematics for a fish market.

Thereafter, in May 2016, Herringbone Tavern, Inc. entered into an Assignment and Assumption of Lease agreement for the Fisherman's Grotto Lease which was later consented to by the Subject City ("Fisherman's Grotto Assignment"). Therein, Herringbone Tavern, Inc. was assigned Fisherman's Grotto Restaurant's interest in the Fisherman's Grotto Lease.

Around this time, Herringbone Tavern, Inc. met with representatives for Subject City, Mr. Malloy and a Mike Martin regarding the proposed fish market at Fisherman's Grotto. Herringbone Tavern, Inc. informed Subject City that the main reason Herringbone Tavern, Inc. had purchased Fisherman's Grotto was based on the assurances from Mr. Malloy that he would be able to construct and operate a fish market in the area. Shortly following this meeting, Mr. Malloy left, or was relieved of, his position as Property Manager. Unfortunately, Herringbone Tavern, Inc. was later informed that it would not be allowed to construct and/or operate a fish market in the area.

In or about January 2018, Herringbone Tavern, Inc. entered into an Assignment and Assumption of Lease agreement for the Tarantino's Lease ("Tarantino's Assignment") which was also consented to by the Subject City. Since acquisition, Herringbone Tavern, Inc. has operated both locations largely without issue.

II. *Improvements to Fisherman's Grotto and Tarantino's*

Since acquiring Fisherman's Grotto and Tarantino's, Herringbone Tavern, Inc. has undertaken to maintain their respective historic reputations by, including, but not limited to, replacing the roofs on both properties, installing new flooring, renovating the kitchens, upgrading the buildings to comply with ADA requirements, dry rot repairs, insulation replacement, and the installation of main like sprinkler systems at both locations. All said, Herringbone Tavern, Inc. has invested over two (2) million dollars in renovating and maintaining both Fisherman's Grotto and Tarantino's so that both locations could provide first class dining.

Unfortunately, Herringbone Tavern, Inc. has been unable to enjoy the benefit of its leases due to the breaches of the leases by the Subject City as articulated below:

III. *Subject City's Breaches of the Leases*

Since 1970, the underlying soil, substructure, and seawall supporting Tarantino's and Fisherman's Grotto – along with several other buildings at Fisherman's Wharf – has been allowed by Subject City to deteriorate without abatement efforts. Specifically, the underlying soil, substructure, and seawall has suffered damage at no fault of Herringbone Tavern, Inc. and remains unabated by the Subject City despite its knowledge of the deteriorating conditions.

Notably, on or about September 30, 2021, Steven Reel, PE, the Port's Deputy Director, Engineering, Waterfront Resilience Program, provided a memorandum detailing the earthquake risk along Taylor Street between Embarcadero and Jefferson Street as identified through the Port's Embarcadero Seawall Multi Hazard Risk Assessment, or MHRA, to Brad Benson, Director, Waterfront Resilience Program. Therein, it was concluded by Subject City's personnel that:

- c. "The shoreline along Taylor Street is at very high risk of earthquake liquefaction, lateral spreading, and settlement due to liquefiable soils located both below and within the fill used to create the shoreline and backlands."
- d. "Analysis shows the structures are vulnerable to both ground shaking and to lateral spreading and liquefaction of the shoreline, which is a very high hazard in this location...Buildings supported by the wharves are at risk of damage due to underlying wharf settlement or partial collapse and are also at risk of damage from

ground shaking.”

Despite this danger posed, Subject City has taken no action to abate the “high risk” to the buildings at Fisherman’s Wharf, inclusive of Tarantino’s and Fisherman’s Grotto. Instead, Subject City has allowed the continued deterioration to persist without redress.

Additionally, over the past decade, San Francisco, including in the Fisherman’s Wharf area, has seen a drastic increase in its homeless population and an increase in criminal activity. As a result of the increased homelessness population and criminal activity, Fisherman’s Wharf has suffered a substantial decrease in its once thriving tourist activity. Subject City has taken no action to address these ongoing problems and hazards – instead allowing the aforementioned issues to erode the character of Fisherman’s Wharf.

A direct and proximate cause of the Subject City’s failure to maintain the character of Fisherman’s Wharf, Herringbone Tavern, Inc. was deprived of its benefit of the leases it had been assigned. Given the deterioration in the area, the maintenance of which is an obligation upon the Subject City, Herringbone Tavern, Inc. could not operate its business and was forced to endure substantial losses without abatement from the Subject City.

The Subject City then brought unlawful detainer actions against Herringbone Tavern, Inc. to further deprive it of the enjoyment and benefit of its leases. Having not maintained the character of Fisherman’s Wharf once the Subject City had courted Herringbone Tavern, Inc., the Subject City has now sought to obtain possession of the properties and the benefits of Herringbone Tavern, Inc.’s rents, improvements, and maintenance over the years while the Subject City failed to uphold its obligations under the lease.

Claimant Herringbone Tavern, Inc. has been damaged in an amount not less than \$6 million due to the Subject City’s breaches of the leases for Tarantino’s and Fisherman’s Grotto.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Fresno, State of California. My business address is 7647 North Fresno Street, Fresno, CA 93720.

On December 8, 2023, I served true copies of the following document(s) described as **CLAIM AGAINST THE CITY AND COUNTY OF SAN FRANCISCO** on the interested parties in this action as follows:

Controller's Office
Claims Division
1390 Market Street, 7th Floor
San Francisco, CA 94102-5408

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on December 8, 2023, at Fresno, California.



Pamela J. Johnson

EXHIBIT “B”



DAVID CHIU
City Attorney

FREDERICK SHEINFIELD
Chief Claims Deputy

DIRECT DIAL: (415) 554-3872
E-MAIL: RICK.SHEINFIELD@SFCITYATTY.ORG

December 18, 2023

Christopher Kent Esq.
McCormick Barstow LLP
7647 N. Fresno St.
Fresno, CA 93720

RE: Claim of Herringbone Tavern, Inc. / Claim Number 24-01049

Department: PORT Port Commission (39)
Incident Date: December 5, 2022
Claim Filed: December 8, 2023

NOTICE OF ACTION UPON CLAIM

The Government Code requires us to include the following language to all putative claimants. The Code contains no express exceptions for those already represented.

As to the incidents in your claim occurring more than one-year before the filing of the claim, relating to causes of action subject to a one-year presentment requirement:

PLEASE TAKE NOTICE THAT a review of your claim filed with the City and County of San Francisco has revealed that your claim was not presented to the Controller “within a reasonable time not to exceed one year after the accrual of the cause of action,” as required by California Government Code section 911.2 (a). Consequently, your claim is barred.

As to the incidents in your claim occurring more than six-months before the filing of your claim and more than one -year before the filing of your claim, relating to causes of action subject to a six-month presentment requirement:

The claim that you presented to the Controller on December 8, 2023 is being returned because it was not presented within six months after the event or occurrence as required by law. See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

Your only recourse at this time is to apply without delay to this office for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the Government Code. If you would like a Late Claim Application, please call (415) 554-3900.

Be advised that if your Application is denied and you seek late claim relief from the court, the City and County of San Francisco will argue that the court lacks jurisdiction to consider the motion and further, the matter is time barred.

As to the incidents in your claim occurring more than six-months before the filing of your claim and within one -year before the filing of your claim, relating to causes of action subject to a six-month presentment requirement:

{B1}·{B2}

{B3} FACSIMILE: {B4}

DECEMBER 18, 2023

The claim that you presented to the Controller on December 8, 2023 is being returned because it was not presented within six months after the event or occurrence as required by law. See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

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Be advised that if your Application is denied and you seek late claim relief from the court, the City and County of San Francisco will argue that the court lacks jurisdiction to consider the motion and further, the matter is time barred.

As to the incidents in your claim occurring within one-year before the filing of your claim, relating to causes of action subject to a one-year presentment requirement:

NOTICE OF ACTION UPON CLAIM**PLEASE TAKE NOTICE**

An investigation of your claim filed with the City and County of San Francisco has revealed no indication of liability on the part of the City and County. Accordingly, your claim is DENIED.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code section 945.6. This time limitation applies only to causes of action arising under California law for which a claim is mandated by the California Government Claims Act, Government Code sections 900 et. seq. Other causes of action, including those arising under federal law, may have shorter time limitations for filing.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Please also be advised that, pursuant to Code of Civil Procedure sections 128.7 and 1038, the City and County of San Francisco will seek to recover all costs of defense in the event an action is filed in this matter and it is determined that the action was not brought in good faith and with reasonable cause.

As to the incidents in your claim occurring within six-months before the filing of your claim, relating to causes of action subject to a six-month presentment requirement:

NOTICE OF ACTION UPON CLAIM**PLEASE TAKE NOTICE**

An investigation of your claim filed with the City and County of San Francisco has revealed no indication of liability on the part of the City and County. Accordingly, your claim is DENIED.

LETTER TO CHRISTOPHER KENT

PAGE 3

DECEMBER 18, 2023

WARNING

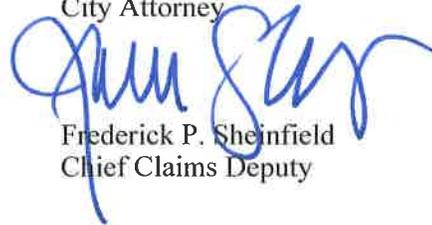
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Please also be advised that, pursuant to Code of Civil Procedure sections 128.7 and 1038, the City and County of San Francisco will seek to recover all costs of defense in the event an action is filed in this matter and it is determined that the action was not brought in good faith and with reasonable cause.

Very truly yours,

DAVID CHIU
City Attorney



Frederick P. Sheinfield
Chief Claims Deputy

Claim of: Herringbone Tavern, Inc.

Claim Filed: December 8, 2023

I, John Divina, say: I am a citizen of the United States, over eighteen years of age, and not a party to the within action; that I am employed by the City Attorney's Office of San Francisco, Fox Plaza, 1390 Market Street, 7th Floor, San Francisco, CA 94102.

That on December 18, 2023 I served:

NOTICE OF ACTION UPON CLAIM

by placing a true copy thereof in an envelope addressed to:

Christopher Kent Esq.
McCormick Barstow LLP
7647 N. Fresno St.
Fresno, CA 93720

Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 13, 2023 at San Francisco, California.



John Divina

For

DECLARATION OF SERVICE BY MAIL

EXHIBIT “C”

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 NINO L. GERALDI, MICHAEL F. GERALDI, ALPHONSE B. GERALDI, LAWRENCE GERALDI & JOSEPHINE GERALDI, dba FISHERMEN'S GROTTTO, a Co-Partnership, jointly and severally, hereinafter called "Tenant";

WITNESSETH:

1. Letting. Port does hereby lease, demise, and let to Tenant the real property and improvements thereon situate in the City and County of San Francisco, State of California, more particularly described on Exhibit "A" attached hereto 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 called the "leased premises". The leased area described as Area 2 in Exhibit "A" is subject to all the terms of this lease and in addition, that area is governed by the terms of paragraph 3, which except, reserve, and provide for the reversioning in Port of a portion of this area, all as is more fully described in paragraph 3.

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 that area described in Exhibit "A" as Area 1 for the first five (5) years of the term in the amount of Four Thousand Forty Dollars, Thirty Cents (\$4,040.30) 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.

C.P.I.
1157-54=100

The entire amount of the minimum rental paid to Port, except as provided in paragraph 3(c), 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.

(c) Commencing July 1, 1970, Tenant agrees to pay Port rent for that area described in Exhibit "A" as Area 2 in the amount of \$346.49 per month. This amount is not to be credited against the percentage rental until such time as Tenant enlarges the restaurant into Area 2, and at that time, the rent hereunder will be considered a part of the minimum rental as stated in numerical paragraph 2(a) and thereafter applied to the percentage rental as permitted under paragraphs 2(a) and 2(b).

The area covered by the extension of the solid waste lockers West of the westerly line of the "net house" will be subject to revesting to the Port on six (6) months' written notice. This revesting will occur and be solely for purposes, as is reasonably necessary, of permitting convenient access and egress for the removal of solid waste matter collected in the common area as hereinabove described. This area is cross-hatched on Exhibit "A" in blue.

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 the minimum rent is increased, the guaranteed amount

shall be increased accordingly. The form of deposit of security may be changed from time to time by mutual consent. In the event Tenant wishes to use a bond as security, it must supply evidence of satisfactory renewal or reissuance promptly and prior to the expiration of any existing bond. In the event that Tenant wishes to deposit securities, Tenant may deposit the securities in a depository mutually acceptable to the parties and may obtain all interest payable on the securities as the same becomes due. The deposit of security, or so much thereof as remains after Tenant's obligations and liabilities to Port hereunder have been satisfied, shall be refunded to Tenant upon the termination of this lease. It is understood that this security is in addition to any and all rights accruing to Port under and by virtue of the terms of this lease, or conferred by law upon Port because of a breach of any of the covenants of this lease.

4. Default and Re-Entry. If any rental or other payment shall be due and unpaid for thirty (30) days, or if any other default shall be made by Tenant in any of the conditions or covenants of this lease and said other default shall continue for thirty (30) days after notice in writing to Tenant, then Port, besides any other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises, providing, however, that if the default cannot be cured in thirty (30) days, Tenant shall have such additional time as may be required, provided he commences to remedy the default and continues to so remedy the default with due diligence; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant. Should Port elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may

either terminate this lease or it may from time to time, without terminating this lease, relet said premises or any part thereof to a tenant suitable to Port for such term or terms (which may be for a term extending beyond the term of this lease) and such conditions as Port in its sole discretion may deem advisable with the right to make alterations and repairs to said premises; upon each such reletting (a) Tenant shall be immediately liable to pay to Port, in addition to any indebtedness other than rent due hereunder, the cost and expense of such reletting incurred by Port, including the cost of alterations or repairs to the extent that Tenant was obligated by this lease to make such alterations or repairs, and the amount, if any, by which the rent reserved in this lease for the period of such reletting (up to but not beyond the term of this lease) exceeds the amount agreed to be paid as rent for the leased premises for such period on such reletting; or (b) at the option of Port, rents received by Port from such reletting shall be applied, first, to the payment of any indebtedness, other than the rent due hereunder from Tenant to Port; second, to the payment of said costs and expenses of such reletting; third, to the payment of rents due and unpaid hereunder; and the residue, if any, shall be held by Port and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting under option (b) during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Port. Such deficiency shall be calculated and paid monthly. In calculating value of percentage rental it shall be deemed the rent payable for the previous twelve (12) months prior to breach is the yearly rental value of the premises. If the breach occurs before twelve (12) months of percentage rent is due, the monthly amount payable as

percentage rent shall be averaged and extended on a twelve-month basis. Monthly rent shall be one-twelfth (1/12th) of the yearly amount. No such re-entry or taking possession of said premises by Port shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, the Port may at any time thereafter elect to terminate this lease for such previous breach. Should Port at any time terminate this lease for any breach, in addition to any other remedy it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the premises and including the worth at the time of such termination of the excess, if any, of the amount of rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Port.

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

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

reasons beyond the control of Tenant, then the Port at its option may terminate this lease. It is the intent hereof that a Tenant shall not acquire the use of the property through a lease and then not use it.

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

8. Alterations and Improvements. Except for non-structural changes, Tenant shall not make, nor suffer to be made, any alterations or improvements to the said premises (including the installation of any trade fixtures affixed to the premises or whose removal, if not affixed, will cause injury to the premises) without the written consent of the Port first had and obtained, and any additions to or alterations of or installations to the said premises shall become at once a part of the realty and belong to the Port unless the Port waives its rights hereunder in writing, and except that the Port can require Tenant to make removal of the alterations, improvements or installations upon termination of this lease, and to repair the

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

9. Prohibited Uses. Tenant shall not use, or permit said premises, or any part thereof, to be used, for any purposes other than the purpose or purposes for which the said premises are hereby leased; and no act shall be permitted on the leased premises which will cause a cancellation of any insurance policy covering said building, or any part thereof, or which shall in any way conflict with any law, ordinance, rule or regulation affecting the occupancy and use of said premises, which is or may hereafter be enacted or promulgated by federal, state, county or municipal authority having jurisdiction over the premises, including any rules and regulations of said building, or in any way obstruct or interfere with the rights of other tenants or licensees of the Port, or injure or annoy them, nor use, nor allow said premises to be used, for any improper, immoral, unlawful or objectionable purpose.

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

A. CONCESSIONAIRES.

The provision against subletting elsewhere contained in this lease shall not prohibit Tenant from granting concessions for the operation of one or more departments of the business conducted in or upon the leased premises, provided, however, that:

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

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

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

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

B. SECURITY INTERESTS.

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

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

(b) The Lender, at its option, may at any time before the Port's exercise of any of its rights pursuant to paragraph 4 hereof, or before the expiration date of the period specified in subparagraph (f) below, whichever last occurs, perform any of the covenants and conditions required to be performed hereunder

by the Tenant, to the extent that such covenants and conditions are applicable and pertain to and affect the portion of the leased premises encumbered by such lien, and such performance by the Lender shall be as effective to prevent the termination of this Lease as the same would have been if done and performed by Tenant.

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

(d) Should Lender acquire Tenant's leasehold estate hereunder by foreclosure or other appropriate proceedings in the nature thereof or as a result of any other action or remedy provided for by any mortgage, deed of trust or other security

instrument, or by a conveyance from Tenant in lieu of foreclosure, the Lender may sublease such portion for any period or periods within the term of this Lease, or may assign Tenant's leasehold estate hereunder by sale or otherwise, provided that any assignee or purchaser of said leasehold estate or any person taking through any other means and their respective successors in interest, shall take said leasehold estate subject to all of the covenants and conditions herein contained on the part of the Tenant to be kept, observed and performed, and shall, as a condition of such assignment, purchase or taking, assume and agree to perform all such covenants and conditions.

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

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

first given to the Lender written notice of such default, specifying the same, and the Lender having failed to cure such default within sixty (60) days after receiving such written notice of default, or within a reasonable time thereafter if it shall have commenced foreclosure or other appropriate proceedings in the nature thereof within such sixty (60) days' period and is diligently prosecuting the same. The fact that the time has expired for performance of a covenant by the Tenant shall not be deemed to render performance by the Lender or a purchaser impossible, but in such event, if the Lender or any purchaser shall promptly undertake to perform the Tenant's defaulted obligation and shall diligently proceed with such performance, the time for such performance shall be extended by such period as shall be reasonably necessary to complete such performance. If, and so long as, the Lender is prevented, by any process, injunction or other order issued by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Tenant or any injunction or other suit, action, or proceedings, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, it shall be deemed to have commenced foreclosure proceedings and to have diligently prosecuted said proceedings for purposes of this subparagraph (f); provided, however, that the Lender shall use reasonable efforts to contest and appeal the issuance of any such process, injunction or other order.

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

C. CHANGE IN BUSINESS STATUS:

Notwithstanding the foregoing provisions Tenant may assign this lease:

(a) If Tenant as an individual or partnership incorporates Tenant's business and Tenant, either as an individual or if formerly a partnership, jointly controls said corporation; or

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

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

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

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

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

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

12. Comprehensive Public Liability Insurance.

Tenant shall maintain and pay premiums on a policy or policies of liability insurance, which name Port and the City and County of San Francisco, their officers, agents and employees, as additional or co-insureds, with a company or companies acceptable to Port. Such policy or policies shall cover the leased premises and its operation against claims for personal injury and death in an amount of not less than \$250,000 for injury or death of any one person, and \$500,000 for injury or death of all persons in any one occurrence, and \$100,000 for property damage. Tenant shall furnish to Port a certificate evidencing the fact that the insurance described in this paragraph has been obtained and is in full force and effect and that such insurance cannot be cancelled or a change made affecting coverage without fifteen (15) days' prior notice to Port. Tenant shall promptly notify Port of any change in the terms of such policy or policies and shall provide Port with certificates evidencing such change. Said policy or policies shall either contain a broad form of contractual liability coverage, including leases, or there shall be attached to all policy or policies an endorsement providing that such insurance as is provided for therein shall apply to the obligations assumed by Tenant under this lease. The procuring of this policy or policies shall not be construed to be a substitute in any respect for Tenant's obligations under this lease. Tenant and Port shall periodically review the amount of public liability insurance carried pursuant to this paragraph, but in any event not less than every ten (10) years during the term of this lease. If it is found to be the general commercial practice in the City and

County of San Francisco to carry public liability insurance in an amount substantially greater or lesser than the amount then being carried by Tenant with respect to risks comparable to those associated with the leased premises, the amount carried by Tenant shall be increased or decreased to conform to such general commercial practice.

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

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

15. Liens. Subject to the provisions of paragraph 10(B) hereof, Tenant shall keep the demised premises and the improvements thereon free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant,

provided, however, this paragraph shall not apply to any lien for the purchase or other acquisition of a removable fixture placed upon the premises by Tenant.

16. Fire Insurance. Tenant shall maintain and pay premiums on a policy or policies of fire and extended coverage insurance on the improvements on the leased premises which name Port and the City and County of San Francisco as additional insureds, with a company or companies acceptable to Port. Such policy or policies shall cover the improvements on the leased premises, except the substructure, in an amount of at least 80% replacement value of the improvements insured, except that if Tenant cannot obtain insurance of 80% replacement value at a cost which is reasonable in prudent business judgment, then Tenant shall so notify Port and shall carry such lesser insurance as is prudent. Tenant shall furnish to Port a certificate evidencing the fact that the insurance described in this paragraph has been obtained and is in full force and effect and that such insurance cannot be cancelled or a change made affecting coverage without fifteen (15) days prior notice to Port. Tenant shall promptly notify Port of any change in the terms of such policy or policies and shall provide Port with copies thereof. Any funds received by Tenant from any damage which occurs and is covered by said policy or policies shall be immediately deposited by Tenant in a separate trust account in the names of the Tenant and the Port. The funds in said account shall be used solely for repairs and replacements on the premises. Tenant shall make such repairs and replacements to the full extent of the funds recovered under the policy or policies. Plans and specifications for such repairs and replacements shall be submitted to and approved by the Chief Engineer of Port. In the event that Tenant declines to repair or replace to the full extent of the proceeds of the policy,

that portion of the proceeds of the policy that is payment for damage to the improvements or trade fixtures where title had vested in Port shall be conveyed to Port free of any claim by Tenant or any third party. If Tenant fails to repair as provided herein, Port may, if it wishes to do so, elect to make such repairs and replacements itself out of these funds, but Port is not required to use the funds for repair or replacement. Tenant may, if it elects, repair and replace in an amount greater than the funds derived from the policy, but in that event it shall have no claim against Port for any excess funds spent. Title to said 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:

Fishermen's Grotto
No. 9 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.

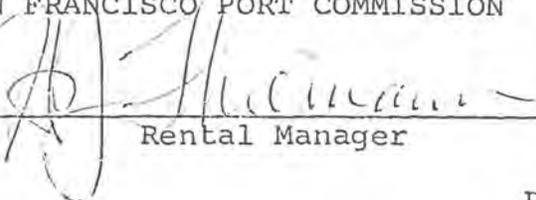
30. Time is of Essence. Time is of the essence of this lease.

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 nereto have caused this agreement to be executed the day and year first above written.

SAN FRANCISCO PORT COMMISSION

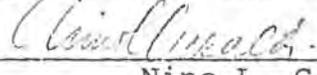
By


Rental Manager

PORT

FISHERMEN'S GROTTTO, a Co-Partnership, jointly and severally

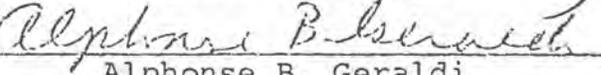
By


Nino L. Gerald

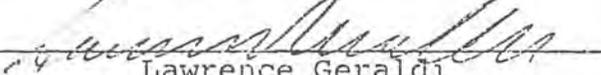
By


Michael F. Gerald

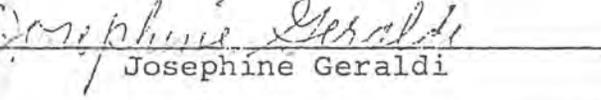
By


Alphonse B. Gerald

By


Lawrence Gerald

By


Josephine Gerald

TENANT

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

On this 27th day of July, 1970, before me,
a Notary Public of said county and state, duly commissioned and
sworn, personally appeared H. J. Peemann,
known to me to be the Rental Manager of the San Francisco
Cart 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.

Reginald J. Leahy
Notary Public in and for said
County and State

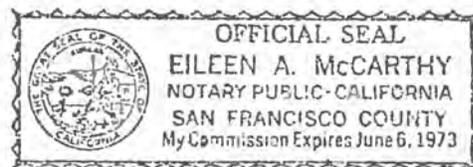
My Commission Expires May 28, 1971

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

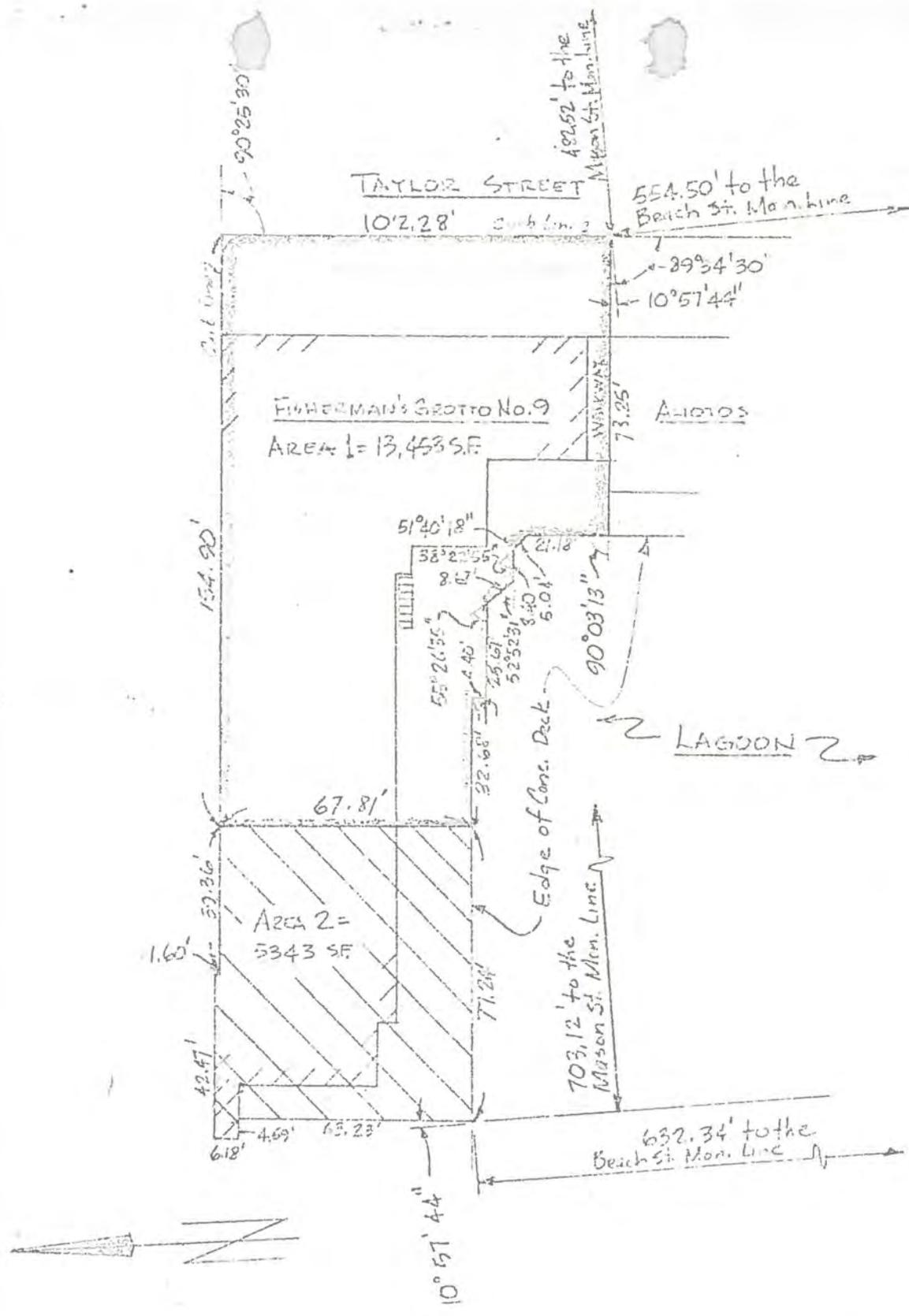
On this 29 day of July, 1970, before me,
a Notary Public of said county and state, duly commissioned and
sworn, personally appeared Thomas F. Keratti, Michael F. Keratti,
known to me to be one of the partners of William B. Keratti,
Thomas F. Keratti, Michael F. Keratti, the partnership that executed the
within instrument, and acknowledged to me that such partnership
executed the same.

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

Eileen A. McCarthy
Notary Public in and for said
County and State



205 Jefferson St., San Francisco, Calif. 94133



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING		Lot Description Fisherman's Grotto No. 9 Pier 49		APPROVED _____ DATE _____ DRAWING NO. 7057-9)-6
IN CHARGE BY [Signature]	MADE BY [Signature]	TRACED BY [Signature]	CHECK BY FSN	DATE 5/20/10 SCALE 1" = 30' SHEET NO 4 OF 4

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.

DESCRIPTION OF PROPERTY LEASED TO
FISHERMAN'S GROTTO 9 AT
FISHERMAN'S WHARF - PIER 49

AREA 2:

Commencing at the intersection of the Mason St. and Beach St. monument lines; thence proceed in a westerly direction along said Beach St. monument line for a distance of 703.12 feet; then turn a right angle to the right and go a distance of 652.34 feet to the edge of concrete deck and the true point of beginning; thence turn right a deflection angle of $10^{\circ}57'44''$ and go 63.23 feet to a wall; then turn a right angle to the left and go 4.59 feet to a corner; then turn a right angle to the right and go 6.18 feet to a corner; then turn a right angle to the right and go 42.47 feet to a corner; then turn a right angle to the right and go 1.60 feet to a corner; then turn a right angle to the left and go 39.36 feet to a corner; then turn a right angle to the right and go 67.81 feet to the edge of concrete deck, then turn a right angle to the right and go 77.24 feet to a point on the edge of deck, which is the true point of beginning of the area described, which contains 5343 square feet, more or less. The physical objects are described as they existed April 24, 1970.

DESCRIPTION OF PROPERTY LEASED TO
FISHERMAN'S GROTTO 9 AT
FISHERMAN'S WHARF - PIER 49

AREA 1:

Commencing at the intersection of the Mason Street and Beach Street monument lines, thence proceed in a westerly direction along said Beach Street monument line for a distance of 482.52 feet, then turn a right angle to the right and go 554.50 feet northerly to the curb line at the southeasterly property corner and the true point of beginning, thence turn left a deflection angle of $79^{\circ}02'16''$ and proceed thru the walkway along its southerly side for a distance of 78.25 feet to the westerly edge of the concrete deck, then proceed along the edge of deck by turning right a deflection angle of $90^{\circ}03'13''$ and going a distance of 21.18 feet to an angle point; then turn left a deflection angle of $51^{\circ}40'18''$ and go a distance of 5.04 feet to an angle point; then turn a deflection angle left $38^{\circ}22'55''$ and go a distance of 8.40 feet to an angle point; then turn right a deflection angle of $52^{\circ}52'31''$ and go a distance of 8.67 feet to an angle point; then turn left a deflection angle of $52^{\circ}28'35''$ and go a distance of 25.67 feet to an angle point; then turn right a deflection angle of $92^{\circ}34'04''$ and go 4.40 feet to an angle point; then turn a right angle to the left and go 32.58 feet to a point on the edge of deck; then turn a right angle to the right and go 67.81 feet to the northwesterly corner of Fisherman's Grotto No. 9 building; then turn a right angle to the right and go 154.90 feet along the northerly wall and along the northerly edge of sidewalk to the intersection of this line and the westerly curb line of Taylor Street extended; then turn right a deflection angle of $90^{\circ}25'30''$ and go 102.28 feet along the curb line to the true point of beginning of the described area, which contains 13,453 square feet of land, more or less. Physical objects are described as they existed on April 24, 1970.

ADDENDUM TO ALL
CITY AND COUNTY OF SAN FRANCISCO CONTRACTS

NONDISCRIMINATION PROVISIONS
OF Sec. 12B.2, as amended by Ordinance No. 340-08,
(Chap. 12B, S.F. Admin. Code)

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

(a) Wherever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor or supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, 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 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) 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. Any 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 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.

(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 1426 of the Labor Code, or has obtained a final injunction pursuant to Section 1429 of the Labor Code; provided further, that for the purposes of this provision, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of 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 (f) and (g) 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 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(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.

(f) 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 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(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.

(g) 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.

(h) 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.

(i) 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.

(j) 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. Wilful 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 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. 12B.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. 12B.4 hereof, and the prebid or preaward conference which may be required by Human Rights Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

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

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

(3) Preapprenticeship education and preparation;

(4) Upgrading training and opportunities;

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

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

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

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

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 NINO L. GERALDI, MICHAEL E. GERALDI, ALPHONSE B. GERALDI, LAWRENCE GERALDI, & JOSEPHINE GERALDI, dba FISHERMEN'S GROTTTO, a Co-Partnership, jointly and severally, Tenant, did on the 1st day of May, 1970, enter into a lease for restaurant operation at Pier 49, San Francisco, California; and

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

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

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

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 31st 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

FISHERMEN'S GROTTTO, a Co-Partner-
ship, jointly and severally

By [Signature]
[Signature]
Alphonse Blumetti
[Signature]
Josephine Geraldini

ATTEST:

Secretary
(If Corporation)

TENANT

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

On this 17th day of August, 1970, before me, a Notary Public of said county and state, duly commissioned and sworn, personally appeared H. J. Thieman, known to me to be the Rental Manager of the San Francisco Park Commission that executed the within instrument, and acknowledged to me that such corporation executed the same.

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

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

My Commission Expires May 23, 1971

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

On this 19 day of August, 1970, before me, a Notary Public in and for said county and state, duly commissioned and sworn, personally appeared Nino L. Reraldi, known to me to be one of the partners of Fishermen's Grubbs, the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

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

Eileen A. McCarthy
Notary Public in and for said
County and State



206 Jefferson St., San Francisco, Calif. 94133

SECOND AMENDMENT TO RESTAURANT LEASE
BETWEEN THE SAN FRANCISCO PORT COMMISSION
AND FISHERMEN'S GROTTTO, INC.

WHEREAS, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating through the SAN FRANCISCO PORT COMMISSION, (hereinafter called "Port") Landlord, and NINO L. GERALDI, MICHAEL F. GERALDI, ALPHONSE B. GERALDI, LAWRENCE GERALDI and JOSEPHINE GERALDI, dba FISHERMEN'S GROTTTO, a co-partnership, jointly and severally (hereinafter called "Tenant") did on May 1, 1970, enter into a lease for restaurant operation at Pier 49, San Francisco, California; and

WHEREAS, said Josephine GeraldI is now deceased and by probate decree her interest in the above property has been transferred to Lawrence GeraldI, named hereinabove as one of the co-partners; and

WHEREAS, the parties to that lease desire to amend said lease pursuant to paragraph 25 thereof;

NOW, THEREFORE, WITNESSETH the following amendments:

Said lease is hereby amended to delete therefrom as co-partner said Josephine GeraldI, now deceased, it being

understood that her interest in said co-partnership has vested in co-partner Lawrence Gerald, and such interest is hereby recognized by all parties.

WHEREFORE, the parties hereto have entered into this second amendment this 23d day of October, 1973.

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

By Minna E. Wolff

FISHERMEN'S GROTTTO, INC., a
co-partnership, jointly and
severally

By Nino L. Gerald
Nino L. Gerald

By Michael F. Gerald
Michael F. Gerald

By Alphonse B. Gerald
Alphonse B. Gerald

By Lawrence Gerald
Lawrence Gerald

By Josephine Gerald
Executor of the estate of
Josephine Gerald



EXHIBIT “D”

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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 TARANTINO'S, INC., 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 \$1,924.42 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	6½%
Food	5%
All Other Uses	6½%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. CONCESSIONAIRES.

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

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

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

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

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

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

B. SECURITY INTERESTS.

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

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

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

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

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

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

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

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

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

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

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

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

C. CHANGE IN BUSINESS STATUS:

Notwithstanding the foregoing provisions Tenant may assign this lease:

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

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

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

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

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

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

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

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

12. Comprehensive Public Liability Insurance.

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

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

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

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

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

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

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

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

17. Taxes. Tenant agrees to pay to the proper

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:

Tarantino's, Inc.
206 Jefferson Street, Fisherman's Wharf
San Francisco, California 94133

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

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

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

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

SAN FRANCISCO PORT COMMISSION

By

R. J. Hiemann
Rental Manager

PORT

TARANTINO'S, INC., a California corporation

ATTEST:

By

William E. McDonnell

President

Herald E. Jensen
Secretary, Vice President

TENANT

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

On this 20th day of May, 1970, before me, a Notary Public of said county and state, duly commissioned and sworn, personally appeared N. J. Thiemann, known to me to be the Rental Man of the S.F. Park Commission that executed the within instrument, and acknowledged to me that such corporation executed the same.

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

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

My Commission Expires May 28, 1971

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

On this _____ day of _____, 19____, before me, a Notary Public in and for said county and state, duly commissioned 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 partnership 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 day of May, 1970, before me,
a Notary Public of said State, duly commissioned and sworn,
personally appeared William E. McDonnell, President and
known to me to be the Donald E. Lynam, Vice President
of Tarantino's, Inc., 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

ADDENDUM TO ALL
CITY AND COUNTY OF SAN FRANCISCO CONTRACTS

NONDISCRIMINATION PROVISIONS
OF Sec. 12B.2, as amended by Ordinance No. 340-08,
(Chap. 12B, S.F. Admin. Code)

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

(a) Wherever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor or supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, 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 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) 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. Any 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 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.

(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 1426 of the Labor Code, or has obtained a final injunction pursuant to Section 1429 of the Labor Code; provided further, that for the purposes of this provision, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of 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 (f) and (g) 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 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(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.

(f) 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 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(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.

(g) 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.

(h) 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.

(i) 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.

(j) 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. 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 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. 12B.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. 12B.4 hereof, and the prebid or preaward conference which may be required by Human Rights Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

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

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

(3) Preapprenticeship education and preparation;

(4) Upgrading training and opportunities;

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

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

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

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

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

Commencing at the intersection of the Beach St. and Mason St. monument lines; thence proceed in a westerly direction along said Beach St. monument line a distance of 549.92 feet; then turn a right angle to the right and go a distance of 374.04 feet to the northerly curb line of Jefferson St., the true point of beginning; thence turn a right angle to the left and go a distance of 84.14 feet; then turn a right angle to the right and go a distance of 40.05 feet; then turn a right angle to the right and go a distance of 17.70 feet; then turn a right angle to the left and go a distance of 67.11 feet to the edge of the concrete deck; then turn right a deflection angle of $100^{\circ}37'11''$ and proceed along the edge of deck a distance of 23.76 feet to an angle point; then turn left a deflection angle of $13^{\circ}52'01''$ and go a distance of 14.65 feet to an angle point; then turn right a deflection angle of $87^{\circ}05'07''$ and go a distance of 10.62 feet to a building corner; then turn right a deflection angle of $6^{\circ}09'43''$ and go 16.65 feet to the intersection of two walls; then turn a right angle to the left and go 19.47 feet; then turn a right angle to the right and go 0.50 feet; then turn a right angle to the left and go 7.85 feet; then turn a right angle to the right and go 76.00 feet to the true point of beginning of the described area which contains 6831 square feet more or less. The physical features described are as they existed on April 22, 1970.

TARANTINO'S
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

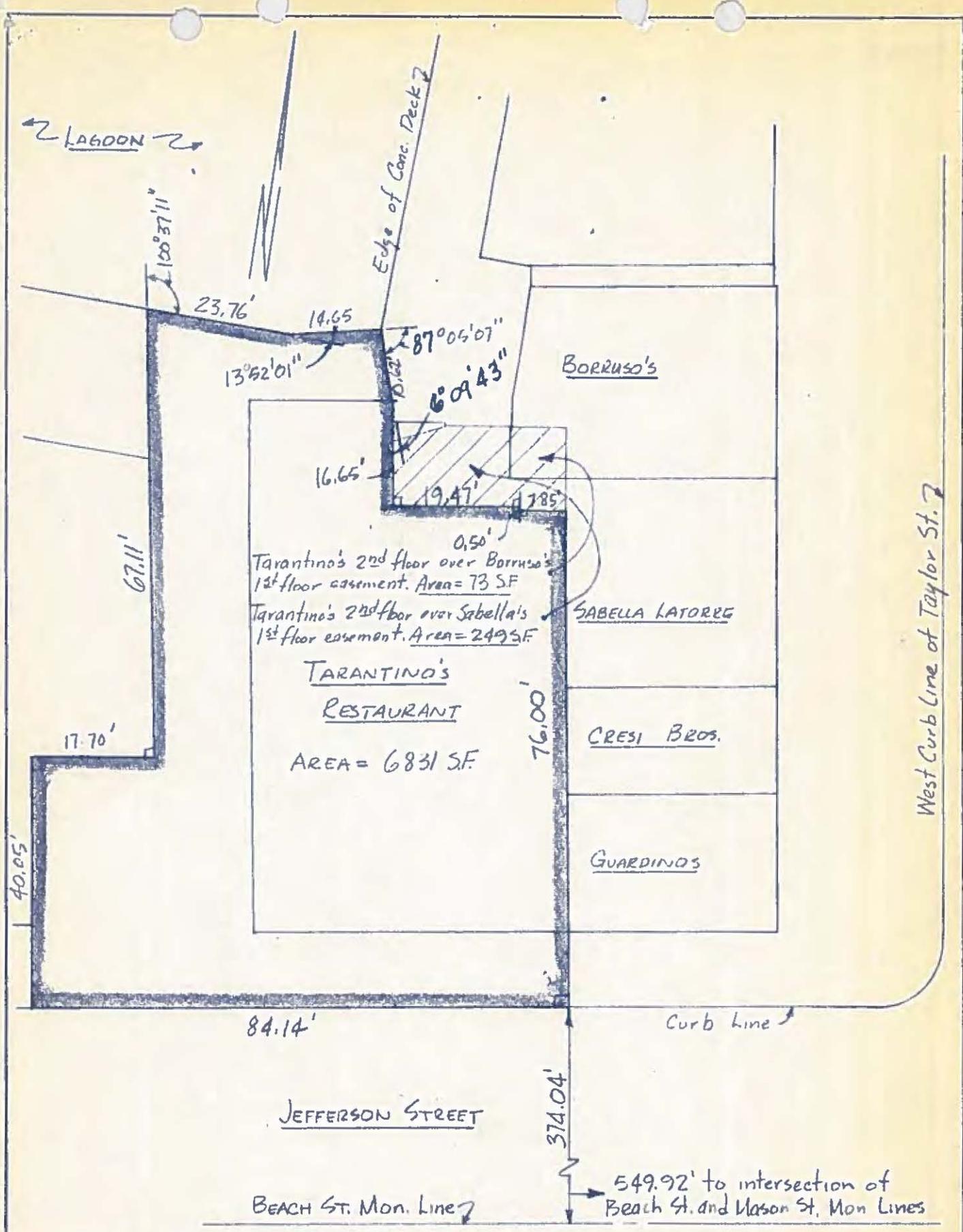
FURTHER RESERVING rights in the premises for existing and future utilities, including sewers and drains, and full rights to service, install, and repair utilities, sewers and drains; and

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; and

FURTHER RESERVING the right of the public to use the platform beneath the second floor area at the south west corner of the leased premises.

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.



West Curb Line of Taylor St. 7

SAN FRANCISCO PORT ^{Commission} PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING		Lot Description Tarantino's Property at Pier 49			APPROVED _____ DATE _____ DRAWING NO. 7968-49-6
IN CHARGE OF GAN	MADE BY GAN	TRACED BY GAN	CHECKED BY JSM	DATE 5/11/70	SCALE 1" = 20' SHEET NO 2 OF 3

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 TARANTINO'S, INC., 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 12 day of Oct., 1970.

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

By [Signature]
Rental Manager

PORT

TARANTINO'S, INC., a California corporation

By [Signature]
[Signature]

ATTEST:

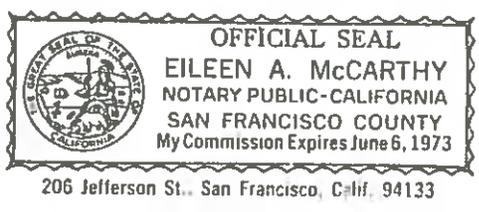
[Signature]
Secretary
(If Corporation).
Vice President

TENANT

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

On this 12th day of October, 1970, before me, a Notary Public of said county and state, duly commissioned and sworn, personally appeared William E. McInnell and Donald E. Lynon known to me to be the President & Vice President of the Carantia, Inc. 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.



Eileen A. McCarthy
Notary Public in and for said
County and State

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

On this _____ day of _____, 19____, before me, a Notary Public in and for said county and state, duly commissioned 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 partnership 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 12th day of October, 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 Rental Manager of the S. A. Park Commission that executed the within instrument, and acknowledged to me that such corporation executed the same.

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

Margaret A. Leahy
3. Notary Public in and for said
County and State

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

Commencing at the intersection of the Beach St. and Mason St. monument lines; thence proceed in a westerly direction along said Beach St. monument line a distance of 549.92 feet; then turn a right angle to the right and go a distance of 374.04 feet to the northerly curb line of Jefferson St., the true point of beginning; thence turn a right angle to the left and go a distance of 84.14 feet; then turn a right angle to the right and go a distance of 40.05 feet; then turn a right angle to the right and go a distance of 17.70 feet; then turn a right angle to the left and go a distance of 67.11 feet to the edge of the concrete deck; then turn right a deflection angle of $100^{\circ}37'11''$ and proceed along the edge of deck a distance of 23.76 feet to an angle point; then turn left a deflection angle of $13^{\circ}52'01''$ and go a distance of 14.65 feet to an angle point; then turn right a deflection angle of $87^{\circ}05'07''$ and go a distance of 10.62 feet to a building corner; then turn right a deflection angle of $6^{\circ}09'43''$ and go 16.65 feet to the intersection of two walls; then turn a right angle to the left and go 19.47 feet; then turn a right angle to the right and go 0.50 feet; then turn a right angle to the left and go 7.85 feet; then turn a right angle to the right and go 76.00 feet to the true point of beginning of the described area which contains 6831 square feet more or less. The physical features described are as they existed on April 22, 1970.

TARANTINO'S
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

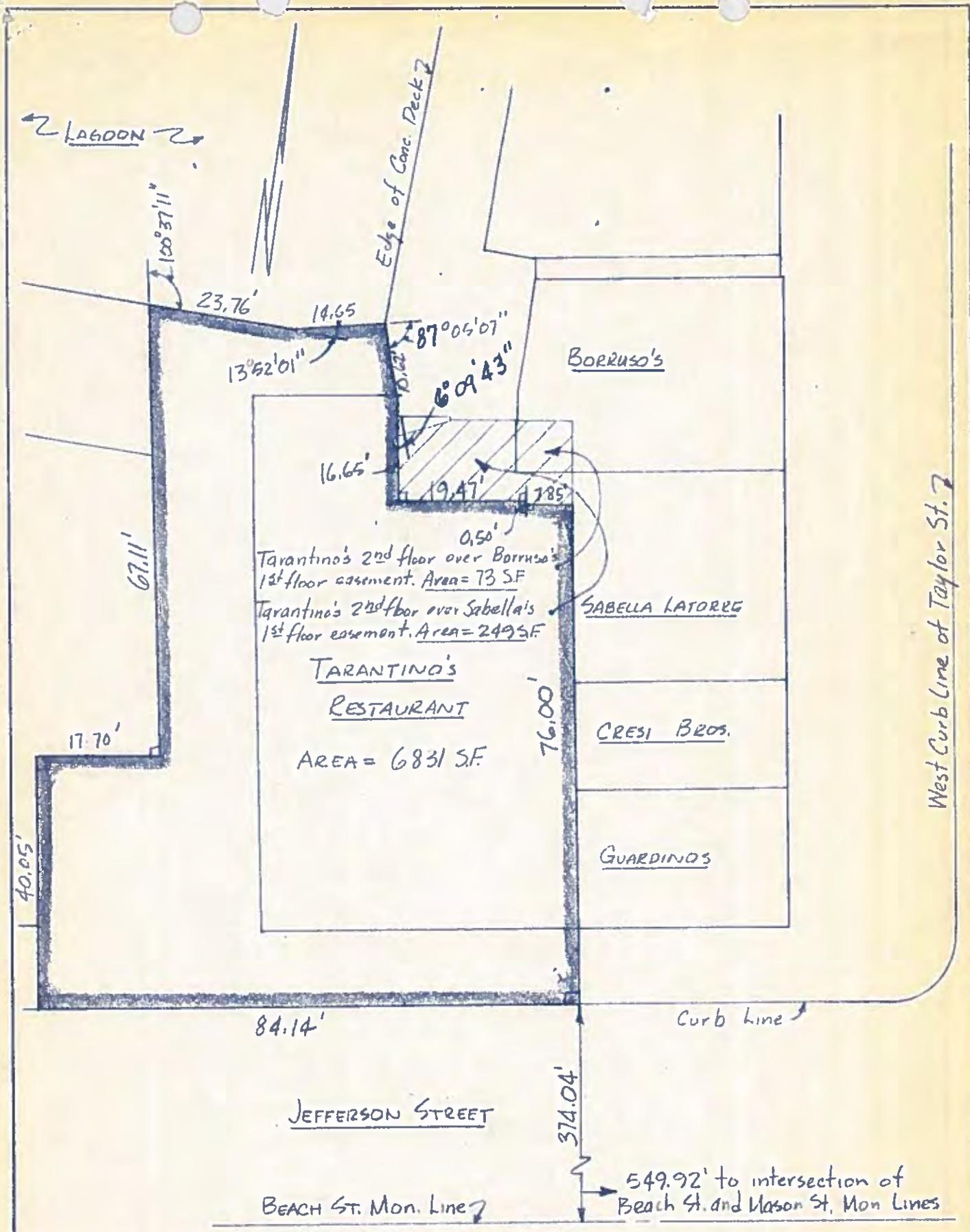
FURTHER RESERVING rights in the premises for existing and future utilities, including sewers and drains, and full rights to service, install, and repair utilities, sewers and drains; and

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; and

FURTHER RESERVING the right of the public to use the platform beneath the second floor area at the south west corner of the leased premises.

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.



West Curb Line of Taylor St. 7

SAN FRANCISCO PORT ^{Commission} PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING		Lot Description Tarantino's Property at Pier 49			APPROVED _____ DATE _____ DRAWING NO. 7968-49-6
IN CHARGE OF GAN	MADE BY GAN	TRACED BY GAN	CHD. BY <i>7gn</i>	DATE 5/11/70	SCALE 1"=20' SHEET NO. 2 OF 3

EXHIBIT “E”

ASSIGNMENT AND ASSUMPTION OF LEASE

This Assignment of Lease (the "**Assignment**") is made by and between Fisherman's Grotto Restaurant, a general partnership (**Assignor**), and Herringbone Tavern, Inc., a California corporation ("**Assignee**"), effective as of the Effective Date defined at the end of this Assignment. The parties agree as follows:

1. Premises. Assignor and the City and County of San Francisco, a municipal corporation, operating through the San Francisco Port Commission ("**Landlord**") executed a lease dated as of May 1, 1970 (the "**Lease**"), attached to this Assignment as Exhibit A, pursuant to which Landlord leased to Assignor and Assignor leased from Landlord that certain property commonly known as 2847 and 2851 Taylor Street, San Francisco, California 94133, as more particularly described in Exhibit A to the Lease.

2. Assignment. Assignor assigns and transfers to Assignee all right, title, and interest in the Lease and Assignee accepts from Assignor all right, title, and interest, subject to the terms and conditions set forth in this Assignment.

3. Assumption of Lease Obligations. Assignee assumes and agrees to perform and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor as tenant under the Lease, including the making of all payments due to or payable on behalf of tenant under the Lease as they become due and payable.

4. Effectiveness Contingent upon Landlord's Consent. Assignor and Assignee expressly acknowledge and agree that this Assignment is subject to, and shall not be effective unless and until, the mutual execution and delivery by Assignor, Assignee, and Landlord of that certain Landlord's Consent to Assignment of Lease in the form attached as Exhibit B.

5. Indemnification. Assignor agrees to indemnify and hold harmless Assignee from and against any loss, cost, or expense, including attorneys' fees and court costs relating to the failure of Assignor to fulfill Assignor's obligations under the Lease, and accruing with respect to the period of the Lease term up to and including the Effective Date. Assignee agrees to indemnify and hold harmless Assignor from and against any loss, cost, or expense, including attorneys' fees and court costs relating to the failure of Assignee to fulfill obligations under the Lease, and accruing with respect to the Lease term after the Effective Date. **Successors and Assigns.** This Assignment inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and assigns.

6. Governing Law. This Assignment shall be governed by and construed in accordance with California law.

7. Counterparts. This Assignment and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

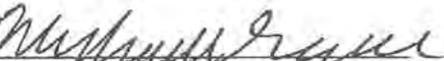
By execution below, Assignor and Assignee, and each of them, hereby acknowledge that this Assignment and the Consent of Landlord below shall have no force and effect whatsoever unless and until (1) all conditions of this Assignment and the Consent of Landlord have been completely satisfied, and (2) the pending escrow at Old Republic Title Company closes with title to the business passing to Assignee (the "**Effective Date**"). All such conditions are acknowledged to be indispensable to the effectiveness of this Assignment and Consent.

Effective Date: May ____, 2016

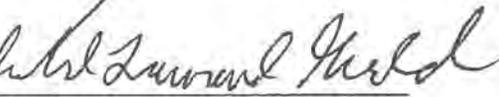
Assignor:

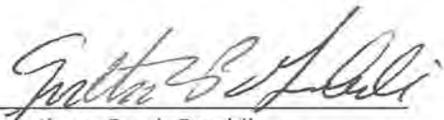
Fishermen's Grotto Restaurant,
a general partnership

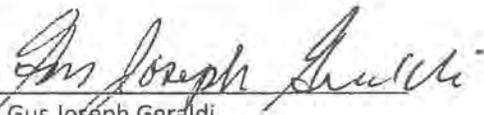
By: 
Michael Alphonse Geraldi

By: 
Michael Anthony Geraldi

By: 
Anthony Michael Geraldi

By: 
Richard Lawrence Geraldi

By: 
Anthony Frank Geraldi

By: 
Gus Joseph Geraldi

By: JJG Grotto Limited Partnership

By: 
Michael Alphonse Geraldi,
General Partner

Assignee:

Herringbone Tavern, Inc.
a California corporation

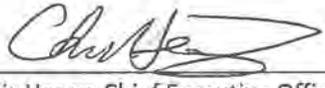
By: 
Chris Henry, Chief Executive Officer

EXHIBIT “F”

CONSENT TO ASSIGNMENT

This Consent to Assignment (this "Consent") is dated as of August 1, 2016, for reference purposes only, by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City") operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), Fisherman's Grotto Restaurant, a General Partnership company ("Assignor") and Herringbone Tavern, Inc., a California Corporation ("Assignee").

RECITALS

A. Port and Assignor entered into that certain Lease Agreement L-7498 dated as of May 1, 1970 and as amended, August 31, 1970, October 23, 1973, (the "Lease"), relating to certain premises located at Fisherman's Wharf, Pier 49, in San Francisco, California ("Premises"), as more particularly described in the Lease.

B. Assignor desires to assign its interest in the Lease to Assignee and Assignee desires to assume all obligations of Assignor under the Lease pursuant to that certain Assignment and Assumption Agreement ("Assignment Agreement") dated June 24, 2016 and attached hereto as Exhibit A.

C. Assignor has requested that Port consent to the Assignment Agreement, and Port has agreed to consent, on the terms and conditions set forth herein.

D. NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual agreements and covenants hereinafter set forth, Port, Assignor and Assignee agree as follows:

1. LEASE.

The Assignee shall be bound by all of the terms, covenants, conditions, provisions and agreements of the Lease. Neither the Assignment Agreement nor this Consent shall be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Lease.

2. NO FURTHER CONSENT.

Neither the Assignment Agreement nor this Consent shall: (a) operate as a consent or approval by Port to any of the terms, covenants, conditions, provisions or agreements of the Assignment Agreement, and Port shall not be bound thereby, or (b) be construed as a consent by Port to any further assignment by Assignor or Assignee of the Lease, it being clearly understood that this Consent shall not in any way be construed to relieve Assignor or Assignee of the obligation to obtain Port's prior written consent to any further assignment.

3. NO REPRESENTATION OR WARRANTY BY PORT.

Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

4. INDEMNITY AND EXCULPATION.

Notwithstanding any provision to the contrary in the Assignment Agreement, Assignee agrees and acknowledges to be bound by the indemnification and exculpation provisions of the Lease, all with the same force and effect as if Assignee had been the original tenant for the Premises under the Lease. The obligation of Assignee under this Section 4 shall survive any termination or expiration of the Lease.

5. WAIVER OF RELOCATION.

To the extent allowed by applicable Law, Assignor and Assignee hereby waive any and all rights, benefits or privileges of the California Relocation Assistance Law, California

Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect.

6. INSURANCE.

Notwithstanding any provision to the contrary in the Assignment Agreement, Assignee, shall, at Assignee's expense, with respect to the Premises, secure and keep in force during the term of the Lease such insurance as required of tenant under the Lease. Without limiting the generality of the immediately preceding sentence, such liability policy or policies of insurance shall name as additional insureds by written endorsement "THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES", shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, 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. A certificate evidencing such insurance shall be delivered to Port promptly after the date hereof. Assignee additionally acknowledges Port's absolute right to demand increased coverage to amounts consistent with the type of Assignee's business activities on the Premises.

7. REVIEW FEE.

Assignor shall reimburse Port for all costs, including without limitation attorneys' fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or consent to the Assignment Agreement ("Review Fees"). Accordingly, as a condition to Port's consent to the Assignment Agreement, prior to the Effective Date, Assignor shall pay to Port, an amount equaling \$1,500.00 to reimburse Port for its Review Fees.

8. NOTICES.

As of the Effective Date of this Consent, Assignor's and Assignee's addresses for delivery of notices are:

Assignor:	Assignee:
Fisherman's Grotto Restaurant	Chris Henry
2847 Taylor Street	Herringbone Tavern, Inc.
2851 Taylor Street	P.O.Box 411 Tiburon, CA
San Francisco, CA 94133	94920 _____
_____	_____

9. MISCELLANEOUS.

(a) This Consent may be executed in counterparts.

(b) This Consent shall be governed by and construed in accordance with the laws of the State of California. In the event of a conflict between the terms and provisions of this Consent and the Assignment Agreement, the Consent shall control. Terms not defined in this Consent shall have the same meanings as in the Lease.

(c) The terms and provisions of this Consent shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) If any one or more provisions in this Consent shall be invalid, illegal or unenforceable for any reason, the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(e) This Consent may not be modified or amended except by a writing executed by all parties to the Consent.

(f) Port and Assignee hereby mutually waive any claim against the other and its agents for any loss or damage to any of their property located on or about the Premises, the Building and the Project that is caused by or results from perils covered by property insurance carried by the respective parties, to the extent of the proceeds of such insurance actually received with respect to such loss or damage, whether due to the negligence of the other party or its agent(s). Each party shall immediately notify its insurer, in writing, of these mutual waivers and have their insurance policies endorsed to prevent the invalidation of the insurance coverage because of these waivers.

10. EFFECTIVE DATE.

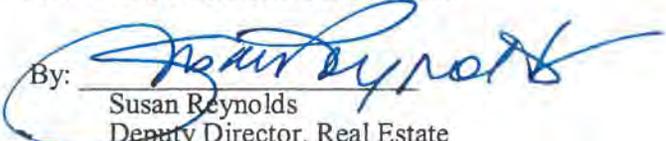
The Effective Date of this Consent is the date on which the Port fully executes and delivers this Consent.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

The execution of this Consent by Assignor and Assignee shall evidence Assignor's and Assignee's joint and several confirmation of the foregoing conditions, and of their agreement to be bound thereby and shall constitute Assignee's acknowledgement that it has received a copy of the Lease.

Landlord:

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

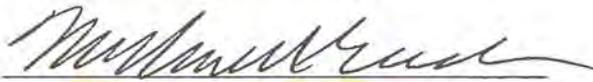
By: 
Susan Reynolds
Deputy Director, Real Estate

Date: 09/12/2016

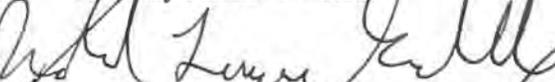
Assignor:

Fisherman's Grotto Restaurant
a General Partnership

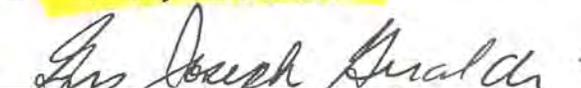
By: 
Name: Michael Alphonse Geraldi

By: 
Name: Michael Anthony Geraldi

By: 
Name: Anthony Michael Geraldi

By: 
Name: Richard Lawrence Geraldi

By: 
Name: Anthony Frank Geraldi

By: 
Name: Gus Joseph Geraldi

By: JJG Grotto Limited Partnership

By: Michael Alphonse Gerald

Michael Alphonse Gerald

Its: General Partner

Assignee:

Herringbone Tavern, Inc.
a California Corporation

By: Chris Henry

Name: Chris Henry, Chief Executive Officer

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

By: Rona H. Sandler
Rona H. Sandler Deputy City Attorney

Prepared by: Rip Malloy, Property Manager _____

EXHIBIT “G”

ASSIGNMENT AND ASSUMPTION OF LEASE

This Assignment of Lease (the "Assignment") is made by and between Tarantino's Inc., a California Corporation ("Assignor"), and Herringbone Tavern, Inc., a California corporation ("Assignee"), effective as of the Effective Date defined at the end of this Assignment. The parties agree as follows:

1. Premises. Assignor and the City and County of San Francisco, a municipal corporation, operating through the San Francisco Port Commission ("Landlord") executed a lease dated as of May 1, 1970 (the "Lease"), attached to this Assignment as Exhibit A, pursuant to which Landlord leased to Assignor and Assignor leased from Landlord that certain property commonly known as 206 Jefferson Street, San Francisco, California 94133, as more particularly described in Exhibit A to the Lease.

2. Assignment. Assignor assigns and transfers to Assignee all right, title, and interest in the Lease and Assignee accepts from Assignor all right, title, and interest, subject to the terms and conditions set forth in this Assignment.

3. Assumption of Lease Obligations. Assignee assumes and agrees to perform and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor as tenant under the Lease, including the making of all payments due to or payable on behalf of tenant under the Lease as they become due and payable.

4. Effectiveness Contingent upon Landlord's Consent. Assignor and Assignee expressly acknowledge and agree that this Assignment is subject to, and shall not be effective unless and until, the mutual execution and delivery by Assignor, Assignee, and Landlord of that certain Landlord's Consent to Assignment of Lease in the form attached as Exhibit B.

5. Indemnification. Assignor agrees to indemnify and hold harmless Assignee from and against any loss, cost, or expense, including attorneys' fees and court costs relating to the failure of Assignor to fulfill Assignor's obligations under the Lease, and accruing with respect to the period of the Lease term up to and including the Effective Date. Assignee agrees to indemnify and hold harmless Assignor from and against any loss, cost, or expense, including attorneys' fees and court costs relating to the failure of Assignee to fulfill obligations under the Lease, and accruing with respect to the Lease term after the Effective Date. **Successors and Assigns.** This Assignment inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and assigns.

6. Governing Law. This Assignment shall be governed by and construed in accordance with California law.

7. Counterparts. This Assignment and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

By execution below, Assignor and Assignee, and each of them, hereby acknowledge that this Assignment and the Consent of Landlord below shall have no force and effect whatsoever unless and until (1) all conditions of this Assignment and the Consent of Landlord have been completely satisfied, and (2) the pending escrow at Old Republic Title Company closes with title to the business passing to Assignee (the "Effective Date"). All such conditions are acknowledged to be indispensable to the effectiveness of this Assignment and Consent.

7.2 Agreement. This Consent, the Assignment, and the Lease embody the entire agreement between the parties with relation to the transaction contemplated by this Consent, and there have been and are no covenants, agreements, representations, warranties, or restrictions between the parties hereto with regard thereto other than those specifically set forth in this Consent, the Assignment, and the Lease. Any modifications of this Consent shall be binding only if evidenced in writing, signed by each party.

7.3 Authorization. Each party executing this Consent on behalf of an entity or another person warrants that he or she has the authority to execute this Consent on behalf of such entity or other person.

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

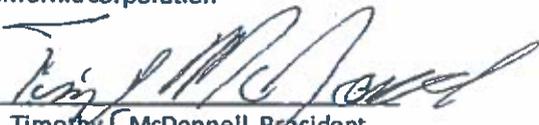
[Signature page follows]

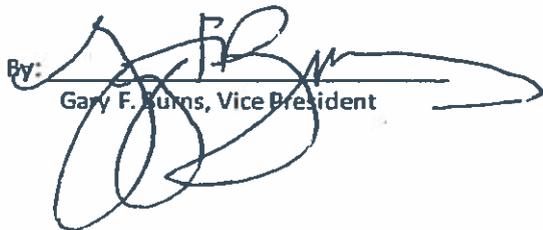
Effective Date: January 25 2018

~~Landlord: _____
San Francisco Port Commission
By: _____
Its: _____~~

Assignor:

Tarantino's Inc.
a California corporation

By: 
Timothy J. McDonnell, President

By: 
Gary F. Burns, Vice President

Assignee:

Herringbone Tavern, Inc.
a California corporation

By: 
Chris Henry, Chief Executive Officer

EXHIBIT “H”

CONSENT TO ASSIGNMENT

This Consent to Assignment (this "Consent") is dated as of July 2, 2018, for reference purposes only, by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City") operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), Tarantino's, Inc., a California corporation ("Assignor") and Herringbone Tavern, Inc., a California corporation ("Assignee").

RECITALS

A. Port and Assignor entered into that certain Lease Agreement L-7500 dated as of May 1, 1970 and as amended October 12, 1970, (the "Lease"), relating to certain premises located at Fisherman's Wharf, Pier 49 in San Francisco, California ("Premises"), as more particularly described in the Lease.

B. Assignor desires to assign its interest in the Lease to Assignee and Assignee desires to assume all obligations of Assignor under the Lease pursuant to that certain Assignment and Assumption Agreement ("Assignment Agreement") dated January 25, 2018 and attached hereto as *Exhibit A*.

C. Assignor has requested that Port consent to the Assignment Agreement, and Port has agreed to consent, on the terms and conditions set forth herein.

D. Assignor has provided Port the Tenant Estoppel Certificate attached hereto as *Exhibit B*.

E. NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual agreements and covenants hereinafter set forth, Port, Assignor and Assignee agree as follows:

1. LEASE.

The Assignee shall be bound by all of the terms, covenants, conditions, provisions and agreements of the Lease. Neither the Assignment Agreement nor this Consent shall be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Lease.

Assignor acknowledges the transfer and assignment to Assignee of all right, title and interest in and to the Two Thousand Seven Hundred Seventy Eight Dollars and Forty Six Cents (\$2,778.46) deposited with Port as a cash security deposit pursuant to Section 3 of the Lease. Assignee agrees to deposit with Port Nine Thousand Five Hundred Dollars and Thirty Eight Cents (\$9,500.38) as the remaining cash security deposit required pursuant to Section 3 of the Lease no later than July 23, 2018.

2. NO RELEASE OR WAIVER.

Neither the Assignment Agreement nor this Consent shall: (a) release or discharge the Assignor from any liability, whether past, present or future, under the Lease (including but not limited to the payment of Rent and any indemnification, hold harmless or exculpation obligations); or (b) be construed to waive any breach by Assignor of the Lease, or any of Port's rights as the landlord thereunder, or to enlarge or increase Port's obligations thereunder. Assignor and Assignee shall be and continue to be liable for the payment of all bills rendered by Port, if any, for charges incurred by the Assignee for services and materials supplied to the Premises. Assignor acknowledges that Port need not give any notice to Assignor before amending or terminating the Lease or entering into any new lease for the Premises.

3. NO FURTHER CONSENT.

Neither the Assignment Agreement nor this Consent shall: (a) operate as a consent or approval by Port to any of the terms, covenants, conditions, provisions or agreements of the Assignment Agreement, and Port shall not be bound thereby, or (b) be construed as a consent by Port to any further assignment by Assignor or Assignee of the Lease, it being clearly understood that this Consent shall not in any way be construed to relieve Assignor or Assignee of the obligation to obtain Port's prior written consent to any further assignment. In the event of any conflict between the terms of this Consent and the terms contained in the Assignment Agreement, the terms of this Consent shall prevail.

4. REPRESENTATION AND WARRANTY BY ASSIGNOR.

Assignor hereby represents and warrants that, (i) to the best of Assignor's knowledge, Assignor is not in default or in breach of the Lease, nor has Assignor 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 Lease; and (ii) Assignor 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. The representations in this Section and in the Tenant Estoppel Certificate provided by Assignor attached hereto as *Exhibit B* are material and Port would not have given its consent absent such representations.

5. NO REPRESENTATION OR WARRANTY BY PORT.

Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

6. INDEMNITY AND EXCULPATION.

Notwithstanding any provision to the contrary in the Assignment Agreement, Assignee agrees and acknowledges to be bound by the indemnification and exculpation provisions of the Lease, all with the same force and effect as if Assignee had been the original tenant for the Premises under the Lease. The obligation of Assignee under this Section 6 shall survive any termination or expiration of the Lease. Assignor and Assignee each covenant and agree that Port and City shall not be responsible for or liable for, and, to the fullest extent allowed by law, each waive all rights against City, Port and their agents and release City, Port and their agents from any and all losses or liabilities relating to the Assignment, this Consent or any disputes that may exist between Assignor and Assignee relating to the Lease or the Premises.

7. WAIVER OF RELOCATION.

To the extent allowed by applicable Law, Assignor and Assignee hereby waive any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect.

8. INSURANCE.

Notwithstanding any provision to the contrary in the Assignment Agreement, Assignee, shall, at Assignee's expense, with respect to the Premises, secure and keep in force during the term of the Lease such insurance as required of tenant under the Lease. Without limiting the generality of the immediately preceding sentence, such liability policy or policies of insurance shall name as additional insureds by written endorsement "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES**", shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, 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. A certificate evidencing such insurance shall be delivered to Port promptly after the date hereof. Assignee

additionally acknowledges Port's absolute right to demand increased coverage to amounts consistent with the type of Assignee's business activities on the Premises.

9. REVIEW FEE.

Assignor shall reimburse Port for all costs, including without limitation attorneys' fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or consent to the Assignment Agreement ("Review Fees"). Accordingly, as a condition to Port's consent to the Assignment Agreement, Assignee shall pay to Port, an amount equaling \$1,500.00 to reimburse Port for its Review Fees.

10. NOTICES.

As of the Effective Date of this Consent, Assignor's and Assignee's addresses for delivery of notices are:

Assignor:

Tarantino's, Inc.
206 Jefferson Street
San Francisco, CA 94133

Assignee:

Herringbone Tavern, Inc.
P.O. Box 411
Tiburon, CA 94920

11. MISCELLANEOUS.

(a) This Consent may be executed in counterparts.

(b) This Consent shall be governed by and construed in accordance with the laws of the State of California. In the event of a conflict between the terms and provisions of this Consent and the Assignment Agreement, the Consent shall control. Terms not defined in this Consent shall have the same meanings as in the Lease.

(c) The terms and provisions of this Consent shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) If any one or more provisions in this Consent shall be invalid, illegal or unenforceable for any reason, the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(e) This Consent may not be modified or amended except by a writing executed by all parties to the Consent.

(f) Port and Assignee hereby mutually waive any claim against the other and its agents for any loss or damage to any of their property located on or about the Premises, the Building and the Project that is caused by or results from perils covered by property insurance carried by the respective parties, to the extent of the proceeds of such insurance actually received with respect to such loss or damage, whether due to the negligence of the other party or its agent(s). Each party shall immediately notify its insurer, in writing, of these mutual waivers and have their insurance policies endorsed to prevent the invalidation of the insurance coverage because of these waivers.

12. EFFECTIVE DATE.

(a) The Effective Date of this Consent is the date on which the Port fully executes and delivers this Consent.

The execution of this Consent by Assignor and Assignee shall evidence Assignor's and Assignee's joint and several confirmation of the foregoing conditions, and of their agreement to be bound thereby and shall constitute Assignee's acknowledgement that it has received a copy of the Lease.

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

By: 
Michael J. Martin
Deputy Director, Real Estate and Development

Date: 10/17/18

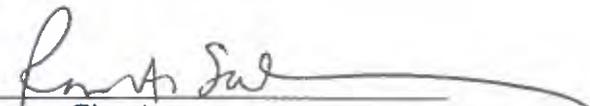
Assignor: TARANTINO'S, INC.,
a California corporation

By: 
Name: Timothy McDonald
Title: pres.

Assignee: HERRINGBONE TAVERN, INC.,
a California corporation

By: 
Name: Chris Henry
Title: owner

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

By: 
Deputy City Attorney

Prepared By: Rip Malloy, Commercial Property Manager 

EXHIBIT “I”



MEMORANDUM

Date: Thursday, September 30, 2021

To: Brad Benson, Director
Waterfront Resilience Program, Port of San Francisco

From: Steven Reel, PE Deputy Director, Engineering
Waterfront Resilience Program, Port of San Francisco

RE: Embarcadero Seawall Multi-Hazard Risk Assessment
General Summary of Findings along Taylor Street

This Memorandum provides a general overview of the earthquake risk along Taylor Street between Embarcadero and Jefferson Street as identified through the Port's Embarcadero Seawall Multi Hazard Risk Assessment, or MHRA. The MHRA is a planning level study of earthquake and coastal flood risk along the Port's northern waterfront, a dense and historic bayfront stretching 3.5 miles from Hyde Street Pier to the 3rd Street Bridge at Mission Creek. The MHRA was completed in August 2020 and the [Summary Report](#) is available on the Port's website.

Below is a general summary of MHRA findings specific to earthquake risk along Taylor Street between Embarcadero and Jefferson Street.

Characterization of the Area

Fisherman's Wharf predominantly consists of reclaimed land constructed in the late 1800's. Information is very limited on the original filling operation and shoreline construction within the Inner Harbor including the shoreline along Taylor Street between Embarcadero and Jefferson Streets.

Unlike much of the Embarcadero where the shoreline consists of a rock dike, the shoreline along Taylor Street consists of a shallow armored slope, short bulkhead walls, and timber wharves supporting timber buildings. Information on the subsurface was developed through examination of existing geotechnical records and nearby geotechnical explorations conducted as part of the MHRA. Information on the existing marine structures and buildings was taken from Port records including existing drawings, engineering reports, and rapid structural assessment reports. Field inspections for this area were not part of the study.

The following excerpt is from page 3-2 of the MHRA Summary Report

- Fisherman's Wharf to Telegraph Hill, which consists of a thin layer of loose sand and Young Bay Mud over denser sand and clays with shallow to moderately deep rock
- The former Yerba Buena Cove centered on Market Street and the Ferry Building, which is characterized by fill over very thick Young Bay Mud with very deep bedrock up to 240 feet below the surface
- South Beach, which is characterized by firmer sand and clays and moderately deep bedrock

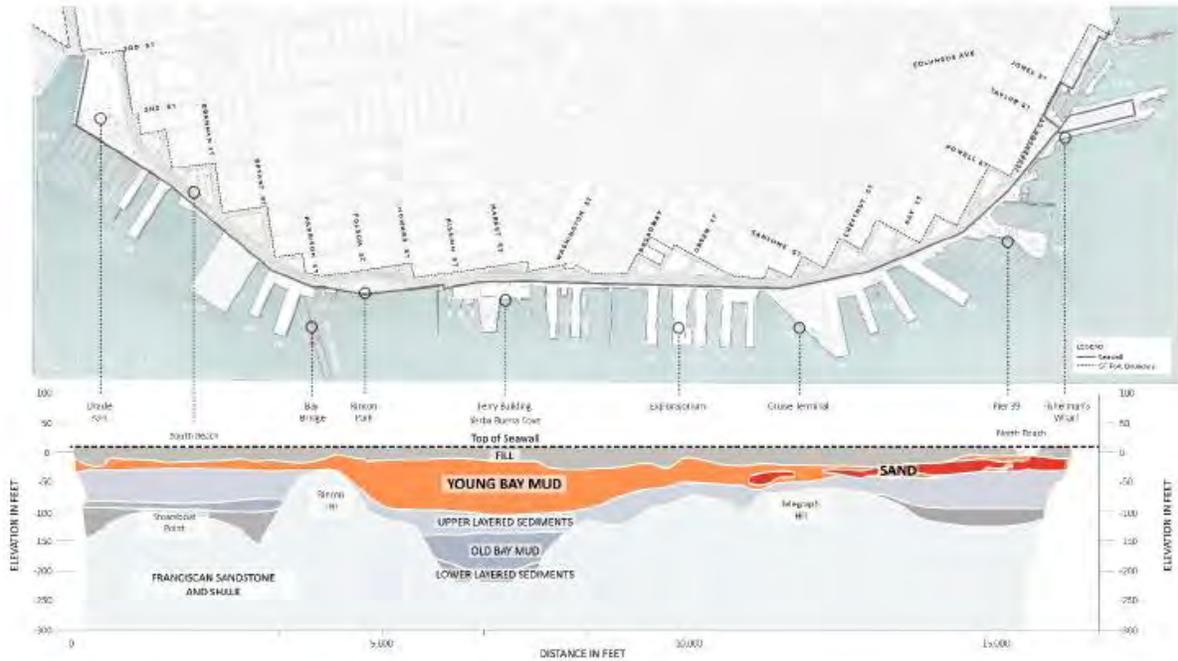


Figure 3-2. Subsurface Conditions along the Seawall

Earthquake Hazard

Earthquake hazards along the Port’s shoreline include strong ground shaking, liquefaction of native and fill soils, instability of bulkheads and seawall retaining structures, and lateral spreading and settlement of soils both bayward and behind the bulkheads. To assess the earthquake hazard within the study area, geotechnical engineers characterized the soils, built computer models of the shoreline at various locations, and determined the earthquake hazards at return periods from likely to very rare. Overall, the ground shaking hazard is high and only varies somewhat along the waterfront, however, liquefaction and lateral spreading hazards vary considerably along the waterfront ranging from moderate to very high.

Table 3-1. Earthquake Scenarios Evaluated in the Multi-hazard Risk Assessment

Likelihood	Earthquake Hazard Return Period and Probability	Historical Context
Frequent	43-year (70% probability in 50 years)	Similar to shaking in San Francisco from 1989 Loma Prieta earthquake (M7+/-)
Occasional	100-year (40% probability in 50 years)	Similar to Loma Prieta earthquake (M7+/-), but with an epicenter located within 10 miles instead of 60 miles away
Rare	225-year (20% probability in 50 years)	Similar, but slightly larger than the 1906 Great San Francisco earthquake, (M7.5+/-) located nearby
Very Rare	975-year (5% probability in 50 years)	M8+ earthquake, larger than 1906 Great San Francisco earthquake, located nearby

Shoreline Lateral Spreading & Settlement Hazard at Taylor Street is Very High

The shoreline along Taylor Street is at very high risk of earthquake liquefaction, lateral spreading, and settlement due to liquefiable soils located both below and within the fill used to create the shoreline and backlands. Occasional earthquakes slightly larger than the 1989 Loma Prieta earthquake (40% probability in 50 years) are likely to trigger liquefaction and lateral spreading causing the shoreline to move as much as 1 foot Bayward and settle 6 inches; rare earthquakes similar to the 1906 earthquake (20% probability in 50 years) are likely to cause the shoreline to move 3 to 4 feet and settle approximately 1 foot; and very rare earthquakes (5% probability in 50 years) may cause the shoreline to move more than 7 feet and settle more than 2 feet.

Below is a figure from the Summary Report showing expected lateral spreading at the rare earthquake (20% probability in 50 years, or 225yr return period).

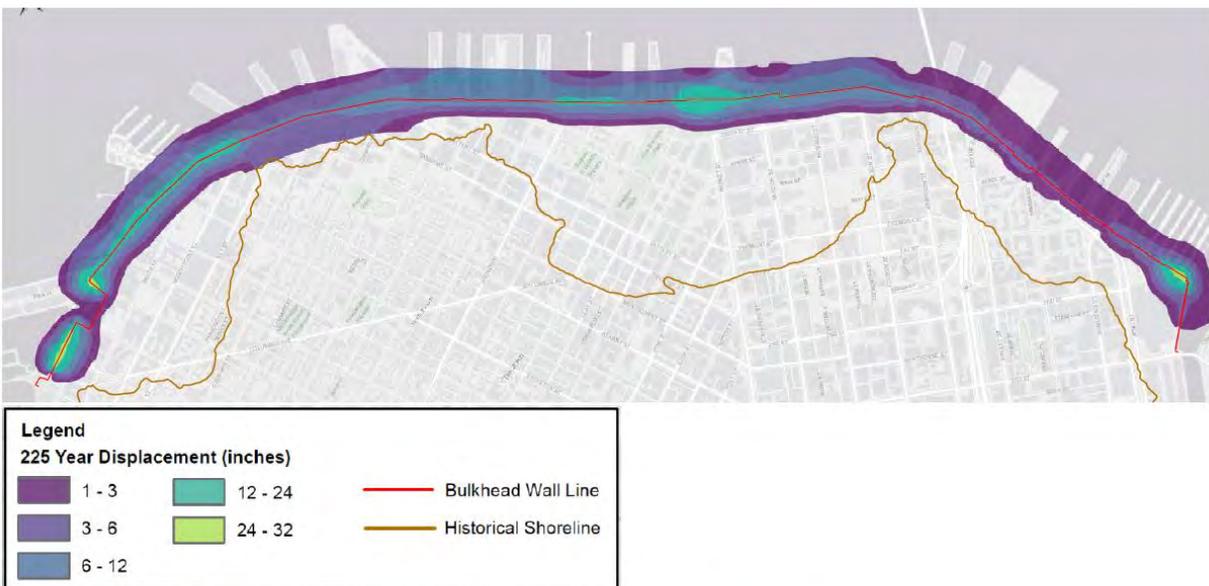


Figure 3-7. Lateral Ground Displacement under the 225-Year Earthquake

Earthquake Risk of Bulkhead Wharves and Buildings

Bulkhead wharves along the Port can be damaged from earthquake ground shaking, lateral spreading of the shoreline, and liquefaction of soils around piles or below bulkhead walls.

The bulkhead wharf structures built along Taylor Street are primarily timber and were constructed in a manner similar to other timber wharves built throughout the Port in the early to mid 1900's. The Taylor Street wharves support low rise timber buildings and have been modified or repaired over the years often without clear records. For purposes of the MHRA, it was decided to create a single representative wharf structure to characterize the likely earthquake behavior of the various timber wharves.

Assumptions included the wharves being in a state of good repair and using standard detailing. The earthquake performance characteristics of the representative structure were determined using structural analysis, and the characteristics added to the overall waterfront wide earthquake risk model along with the site specific earthquake shaking, lateral spreading, and liquefaction hazards determined along the waterfront.

Per the MHRA, the earthquake risk to bulkhead wharves and supported buildings along Taylor Street is High

Analysis shows the structures are vulnerable to both ground shaking and to lateral spreading and liquefaction of the shoreline, which is a very high hazard in this location. In an occasional earthquake (40% probability in 50 years) wharf damage is likely to be moderate to extensive, and in a rare earthquake (similar to the 1906 earthquake with 20% probability in 50 years) wharf damage is likely to be extensive to very extensive. Wharf damages may include shifting and settlement of piles, fracture of piles, uneven settlement of the deck, and partial collapse of the deck from unseating or pile failure. Buildings supported by the wharves are at risk of damage due to underlying wharf settlement or partial collapse and are also at risk of damage from ground shaking. It is emphasized that MHRA results are planning level and a detailed facility specific assessment may indicate higher or lower risk.

Below are excerpts from the Summary Report characterizing overall earthquake risk to marine structures and buildings in the study area. The Taylor Street wharves and supported buildings are one of several higher risk areas within the high risk wharf zone.

Table 4-7. Structure Damage by Structure Type and Earthquake Return Period

Structure Type	Earthquake Return Period			
	43-Year	100-Year	225-Year	975-Year
Wharves	Minor	Moderate	Extensive	Very Extensive
Piers	Very Minor	Minor	Moderate	Extensive
Buildings over Water	Very Minor	Minor	Extensive	Very Extensive
Buildings on Land	Very Minor	Very Minor	Minor	Moderate

From MHRA Summary Report, pg 4-19

- Other potential hotspots for significant structural damage include the Agriculture Building and substructure and many of the timber wharves and timber pile-supported buildings in Fisherman's Wharf. Again, detailed facility specific assessments may show different results.

In summary, the planning level MHRA indicates that the Taylor street shoreline is a very high hazard location for earthquake liquefaction and lateral spreading of the shoreline, and that the wharves and buildings are among the higher earthquake risk structures in the study area with extensive to very extensive damage predicted during a repeat of the 1906 earthquake.

EXHIBIT “J”



ORDER OF THE HEALTH OFFICER No. C19-07

**ORDER OF THE HEALTH OFFICER
OF THE CITY AND COUNTY OF SAN FRANCISCO DIRECTING
ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR
PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO
PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR
ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR
ESSENTIAL BUSINESS AND GOVERNMENT SERVICES; EXEMPTING
INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE
SHELTER IN PLACE ORDER BUT URGING THEM TO FIND SHELTER
AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL
BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON-
ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE
COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF
ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF
ALL NON-ESSENTIAL TRAVEL**

(SHELTER IN PLACE)

DATE OF ORDER: March 16, 2020

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; California Penal Code §§ 69, 148(a)(1); San Francisco Administrative Code section 7.17(b).)

Summary: The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. Because of the risk of the rapid spread of the virus, and the need to protect all members of the community and the Bay Area region, especially including our members most vulnerable to the virus and also health care providers, this Order requires all individuals anywhere in San Francisco to shelter in place—that is, stay at home—except for certain essential activities and work to provide essential business and government services or perform essential public infrastructure construction, including housing. This order begins at 12:01 a.m. on March 17, 2020 and will continue for three weeks through April 7, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below.

Gatherings of individuals outside the home are generally prohibited, with certain exceptions for essential activities or essential travel or to perform work for essential businesses and government agencies or perform essential infrastructure work. Consistent



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with the directive issued by Governor Gavin Newsom on March 15, 2020, all bars and nightclubs are ordered closed. Restaurants and cafes—regardless of their seating capacity—that serve food are ordered closed except solely for takeout and delivery service. Additionally, all gyms and recreation facilities are ordered closed. Homeless individuals are not subject to the shelter in place order but are strongly urged to find shelter and government agencies are urged to take steps needed to provide shelter for those individuals.

Under any of the limited circumstances in which individuals are allowed to interact in person outside their residence, the Health Officer orders individuals to abide by the following requirements: (i) maintain at least six feet from other individuals, wash hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes, and not shake hands; (ii) for people with medical conditions, regardless of age, that put them at higher risk of serious complications should they get COVID-19, and other than health care workers and other essential providers, avoid leaving their homes to the extent possible; and (iii) for employers in San Francisco that do not provide essential businesses or government services, take all steps necessary for employees to work remotely from home to the extent possible. These requirements build on the California Department of Public Health and United States Centers for Disease Control and Prevention guidelines issued March 11, 2020, extended as necessary to address the health emergency affecting the Bay Area region. No individual who is sick may go to the workplace or be outside the home except as necessary to seek or receive medical care in accordance with guidance from public health officials. The Health Officer may revise this Order as the situation evolves, and facilities must stay updated by checking the City Administrator’s website (sfgsa.org) regularly.

This Order revokes and replaces Order Number C19-05b, issued March 13, 2020, and C19-02, issued March 7, 2020. Those orders are no longer in effect as of the effective date and time of this Order. This Order does not revoke Order Numbers C19-01b, C19-03, C19-04, or C19-06.

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE
SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE CITY AND
COUNTY OF SAN FRANCISCO (“HEALTH OFFICER”) ORDERS:**

- 1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to**



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comply with any of the provisions of this Order constitutes an imminent threat and creates an immediate menace to public health.

2. All individuals currently living within the City and County of San Francisco (the “County”) are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use COVID-19 risk mitigation practices in their operation).
3. All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line.
4. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.
5. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.
6. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the



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age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the County.

7. This Order also is issued in light of the existence of 37 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in neighboring Bay Area counties, as of 10:00 a.m. on Sunday, March 16, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
8. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 25, 2020 Proclamation by the Mayor Declaring the Existence of a Local Emergency issued by Mayor London Breed, as supplemented on March 11, 2020, the March 6, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, and guidance issued by the California Department of Public Health, as each of them have been and may be supplemented.
9. This Order is also issued in accordance with, and incorporates by reference the March 12, 2020 Executive Order (Executive Order N-25-20) issued by Governor Gavin Newsom. Executive Order N-25-20 expressly orders that “[a]ll residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.” This Order is also based on statements by Governor Newsom during a press conference on March 15, 2020, indicating the guidance of the State of California that all nightclubs, bars, wineries, and brewpubs close and that persons 65 years old and older isolate at home.



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10. Definitions and Exemptions.

- a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
 - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
 - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.
 - iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.
 - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
 - v. To care for a family member or pet in another household.
- b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.



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- c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.**
- d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others working for or to support Essential Businesses are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions.” Essential Governmental Functions means all services needed to ensure the continuing operation of the government agencies and provide for the health, safety and welfare of the public. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined this Section, to the extent possible.**
- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.**
- f. For the purposes of this Order, “Essential Businesses” means:**

 - i. Healthcare Operations and Essential Infrastructure;**
 - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;**
 - iii. Food cultivation, including farming, livestock, and fishing;**



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- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;**
- v. Newspapers, television, radio, and other media services;**
- vi. Gas stations and auto-supply, auto-repair, and related facilities;**
- vii. Banks and related financial institutions;**
- viii. Hardware stores;**
- ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;**
- x. Businesses providing mailing and shipping services, including post office boxes;**
- xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;**
- xii. Laundromats, dry cleaners, and laundry service providers;**
- xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;**
- xiv. Businesses that supply products needed for people to work from home;**
- xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;**



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- xvi. **Businesses that ship or deliver groceries, food, goods or services directly to residences;**
 - xvii. **Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;**
 - xviii. **Home-based care for seniors, adults, or children;**
 - xix. **Residential facilities and shelters for seniors, adults, and children;**
 - xx. **Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;**
 - xxi. **Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:**
 - 1. **Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).**
 - 2. **Children shall not change from one group to another.**
 - 3. **If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.**
 - 4. **Childcare providers shall remain solely with one group of children.**
- g. For the purposes of this Order, “Minimum Basic Operations” include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:**
- i. **The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.**
 - ii. **The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.**



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- h. For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.**

 - i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.**
 - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.**
 - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.**
 - iv. Travel to return to a place of residence from outside the jurisdiction.**
 - v. Travel required by law enforcement or court order.**
 - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.**
- i. For purposes of this order, residences include hotels, motels, shared rental units, and similar facilities.**
- j. For purposes of this order Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.**
- 11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and the Chief of Police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and creates an immediate menace to public health.**
- 12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.**



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13. The City must promptly provide copies of this Order as follows: (1) by posting on the City Administrator's website (sfgsa.org) and the Department of Public Health website (sfdph.org); (2) by posting at City Hall, located at 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102; and (3) by providing to any member of the public requesting a copy. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy.
14. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:

A handwritten signature in blue ink that reads "Tomás Aragón".

Tomás J. Aragón, MD, DrPH,
Health Officer of the
City and County of San Francisco

Dated: March 16, 2020