



San Mateo County Harbor District

Board of Harbor Commissioners

Robert Bernardo, President
Pietro Parravano, Vice President
James Tucker, Treasurer & Secretary
Sabrina Brennan, Commissioner
William Holsinger, Commissioner

Peter Grenell, General Manager

March 18, 2014

Mike and Kim McHenry
Pillar Point Seafood
PO Box 193
Maxwell, CA 95955

Larry Fortado
Three Captains Sea Products
PO Box 1971
El Granada, CA 94018

Dave Mallory
Morningstar Fisheries
PO Box 1714
El Granada, CA 94018

Ref: Fish Hoists on Johnson Pier, Pillar Point Harbor

Dear Mr. and Mrs. McHenry, Mr. Fortado, and Mr. Mallory:

On March 5, 2014, the Board of Harbor Commissioners directed staff to send this letter to you regarding your respective fish hoists at your leased premises on Johnson Pier. As you know, you are responsible by the terms of your respective leases for installation, operation, maintenance, and repair of your respective hoists, and for compliance with all applicable laws and regulations regarding hoist inspection, certification, and other safety measures (see attachments) where applicable and for following Cal-OSHA guidelines for all safety aspects of your leased premises and facility.

The Harbor District is aware of the recent incident involving the hoist at Morningstar Fisheries. As provided for in your leases, all lessees must comply with requirements for hoist maintenance and safety, inspection and certification where applicable of your respective hoists. If necessary, you must purchase new hoists at your expense to effect compliance. The Harbor District will work with each of you to facilitate successful hoist inspections regarding safety and other requirements and certification where applicable.

Harbor Master Grindy and I are available to consult with you as needed in this matter. To expedite a successful outcome, I urge you to confer with Grindy or me directly.

400 Oyster Point Blvd., Suite 300, South San Francisco, CA 94080
(650) 583-4400 T
(650) 583-4611 F



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Peter Grenell, General Manager

Sincerely,

Peter Grenell
General Manager
San Mateo County Harbor District

Cc: Board of Harbor Commissioners
Scott Grindy, Harbor Master
Jean B. Savaree, District Counsel

interruption shall entitle Tenant to terminate this Lease or abate rent or to stop making any other payments due hereunder.

9.0 USE; LIMITATIONS ON USE

9.1 Use.

- (a) Tenant shall use the Premises for its commercial fish-buying and/or fish-unloading business and additional ancillary and compatible uses and services pursuant to paragraph 9.1 (b)(vii) of this lease. Tenant shall not use the Premises for any other purposes without Landlord's prior written consent.
- (b) Tenant shall develop, operate and maintain a first-rate and complete facility for the purpose of wholesale buying, unloading, storing, and shipment of fish and fish-related products and/or the non-exclusive right to sell fish on a retail basis as stipulated in subsection (ii) below. Tenant shall have all necessary permits for fish processing on display in order to engage in this activity.
 - (i) Tenant shall provide on the Premises all equipment required for the operation of said wholesale fish dealership, including winch and hoist for the purpose of loading or unloading of fish or other merchandise to and from vessels, and scales, skiff or equipment storage. Tenant may provide a second winch and hoist at a location approved in advance by the Harbor Master.
 - (ii) Tenant shall have the non-exclusive right to sell fish in the same condition as purchased directly from fishing boats at Pillar Point Harbor, on a retail basis, on a month-to-month basis, subject to written approval of Landlord of any plans, specifications and engineering and compliance with San Mateo County Local Coastal Plan and zoning/land use regulations. Landlord shall retain the right to delete this right if storage, traffic, pedestrian or space problems occur. Tenant shall not be allowed to do any advertising for the retail fish operation on or off-site at any time except as may be permitted by Landlord at Landlord's sole discretion. Violation of this provision will automatically rescind the right by Tenant to sell fish on a retail basis.
 - (iii) Tenant shall not buy fish or other seafood products from any vessel that exceeds eighty (80) feet in length, without permission of Landlord's Harbor Master or General Manager. Permission shall not be arbitrarily withheld and shall be subject to appeal to the Harbor Commission.
 - (iv) Tenant shall unload at the Premises only fish that it has either purchased or has caught in vessels owned or leased by Tenant, or has been purchased by a registered holder of a valid Commercial Activity Permit issued by Landlord. There will be no fish processing on the second floor of the Premises.
 - (v) Tenant shall provide documentation to the District for all fish unloaded that has been purchased by a registered holder of a valid Commercial Activity Permit issued by Landlord, which documentation shall include

- (d) Tenant's rights to buy fish shall be non-exclusive, and Landlord retains the right to permit the purchase of fish from vessels at Pillar Point Harbor. Tenant shall annually negotiate in good faith with other tenants at Pillar Point and local fisherman to establish a commercially reasonable pricing schedule for fish purchases. To the extent such agreement on pricing is reached and implemented each year, Landlord shall include in any permits that it issues for fish purchases from vessels a Fee equal to that required in subsection 6.1(a) of this Lease.

9.2 Limitations on Use. Tenant's activities on the Premises shall be in accordance with this Paragraph 9.2.

9.2.1 Prohibited Uses. The parties hereto agree that the following acts, occurrences or conduct by Tenant on or from the Premises are strictly prohibited:

- (a) Engaging in, assisting, aiding or abetting in any act that constitutes a violation of any Law.
- (b) Obstructing vessel or vehicle traffic on Harbor waters or land area.

9.2.2 Compliance with Laws and Legal Requirements. Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws, statutes, ordinances, resolutions, regulations, judicial decisions, proclamations, orders, decrees or policies of any municipal, county, state or federal government, or the departments, courts, commissions, boards and officers thereof, or other governmental or regulatory authority with jurisdiction over the Tenant and the Premises or any portion thereof, including without limitation, the Landlord, relating to or affecting the condition, use or occupancy of the Premises in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the term hereof, whether or not the same are now contemplated by the parties. Tenant's compliance shall include compliance with all provisions and conditions of the Federal Americans with Disabilities Act and California Harbors and Navigation Section 40. Tenant shall obtain and pay for all licenses and permits required for Tenant's construction and occupancy and use of the Premises. Compliance with Laws and Legal Requirements shall include compliance with all requirements of each regulatory agency that has jurisdiction over the Premises including but not limited to the Department of Boating and Waterways and the County of San Mateo.

9.2.3 Other Permits and Approvals

Should other permits, licenses, and/or Approvals, other than set forth in this Lease, be required to make Alterations or Improvements or to operate the Premises as a fish-buying operation or other use explicitly permitted hereunder, or if a failure to procure such a license or permit might or would, in any way, affect Landlord or the ability of Tenant to operate its businesses, it shall be the sole responsibility of Tenant to obtain and comply with the requirements of said permits, licenses, and/or Approvals.

9.2.4 Waste; Nuisance. Tenant shall not cause, maintain or permit any unreasonable annoyance or nuisance in, on, or about the Premises or on any Landlord property or Harbor waters. Tenant shall not commit or suffer to be committed any waste in or about the Premises and shall keep the Premises in first class repair and maintain the same in Good Condition during the Lease Term.

or has not vested in Landlord, and regardless of whether consent was, or was not given. Tenant shall repair any Damages occasioned by such removal at Tenant's sole cost and expense.

14.0 CONDITION OF PREMISES, MAINTENANCE

14.1 Condition of Premises.

- (a) Landlord shall deliver the Premises to Tenant clean and free of debris on the Effective Date.
- (b) Except as otherwise provided in this Lease, Tenant hereby accepts the Premises in their condition existing as of the Effective Date or the date that Tenant takes possession of the Premises, whichever is earlier, including but not limited to the requirements of the State of California Regional Water Quality Board and subject to all applicable zoning, municipal, county, and state Laws, ordinances, and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business.

14.2 Existing Conditions. Tenant has made a thorough inspection of the real property and is familiar therewith, and has accepted the Premises in an "as is" physical condition. Landlord makes no representation or warranty with respect to the condition of the Premises, including without limitation, the seismological condition thereof, or their fitness or availability for any particular use, and Landlord shall not be liable for any latent or patent defect therein.

14.3 Tenant's Maintenance Obligations.

- (a) Tenant shall, at all times during the Term of this Lease, at its sole cost and expense, keep the Premises in Good Condition and maintained in good working order and condition, and repair the Premises and all Improvements and Alterations thereon, including water, electric, and gas lines located inside the Premises. Tenant shall provide routine custodial Maintenance of the Premises, which includes all ordinary housekeeping and maintenance of equipment and replacement of supplies that are normally performed on a day-to-day basis in order to keep the Premises operating in an efficient, clean, safe, and Good Condition. Routine maintenance includes, but is not limited to:
 - (i) Replacing light bulbs as needed where no specialized equipment is required to do so.
 - (ii) Regular cleaning of the area, storage spaces, and regular washing of windows to be done not less than weekly; daily removal of interior and exterior graffiti, and daily emptying of trash receptacles and ash trays.
- (b) At least once each quarter, representative(s) of Tenant responsible for supporting and overseeing operations of the Premises shall meet with representative(s) of Landlord and inspect the Premises and confer on status of operations and possible improvements.

- (c) Tenant shall be responsible, at its sole expense, for all interior building repairs, including repairs to exterior doors. Tenant shall also be responsible for repairing, at its sole expense, all damage to ladders, piers and fender pilings caused by any vessel using Harbor facilities to access the Premises in connection with Tenant's operations. A video will be given to Tenant prior to the Commencement Date to establish the baseline state of conditions.
- (d) Landlord shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or alterations now or hereafter located thereon, except that Landlord shall maintain the outside and roof of the structure containing the Leased Premises, including painting the outside of the structure.
- (e) In the event that the Tenant, its agent or invitees cause any Damages (excepting ordinary wear and tear) to the Premises, Landlord may repair the same at Tenant's expense and Licensee shall immediately reimburse Landlord therefor. Tenant shall make or cause others to make all repairs, replacements or renewals, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, necessary or appropriate to maintain the Premises in Good Condition. Tenant shall provide and maintain established standards of public health and cleanliness established by Landlord.
- (f) In the event Tenant fails to maintain the Premises in Good Condition as required by this Paragraph 14, Landlord may give Tenant written notice specifying what actions are required to correct the conditions of the Premises. In the event Tenant fails to initiate such actions as are indicated by Landlord in its notice within thirty (30) days after Tenant's receipt of such notice, or thereafter fails to diligently proceed to complete such actions, such failure shall be deemed an Event of Default within the meaning of Paragraph 21 and Landlord shall have all the rights, powers and remedies provided for in this Lease or at Law including the right to enter on the Premises and maintain or cause the Maintenance of the Premises as required by this Paragraph 14. In such event Landlord shall be entitled to reimbursement for any amounts spent plus a fee of ten percent (10%) of the cost of the work performed which shall be due and payable five (5) days after Tenant receives Landlord's statement therefore. In the event Tenant fails to pay such amounts within such five (5) day period, Landlord shall be entitled to interest thereon at the Default Rate established in Section 21.4 from the end of such five (5) days until paid.

14.4 Common Maintenance and Landscaping Program. If Landlord shall, after the Effective Date, implement a program for the common Maintenance and landscaping of common areas situated near the Premises, Tenant agrees to enter into an agreement with Landlord and Landlord's other tenants, as appropriate, implementing such a program and to pay its proportionate share of expenses.

14.5 Signage Program. Tenant agrees to comply with Landlord's regulations, policies and guidelines governing signage, and to pay costs and operational expense of installing and maintaining signage for the Premises on Harbor property. No signs, directional, guiding, or

other stripes, lines, directions or markings shall be installed or painted in or upon the Premises or removed by Tenant without prior written consent of Landlord.

14.6 Emergency Plan.

- (a) Tenant shall work with Landlord to complete a detailed emergency plan. Tenant shall instruct all Persons employed by Tenant in the plan and the employee's responsibilities relating to the plan. Copies of the plan shall be posted in a prominent location on the Premises.
- (b) In the event of any major emergency or condition (i.e., power outage, flooding, fire, natural catastrophe or any other unanticipated condition) that may reasonably result in a threat to Persons or property, Tenant shall immediately contact Landlord by telephone and Tenant's Manager or Assistant Manager shall report to the Premises and remain until the emergency has been resolved. If Landlord cannot be reached, Tenant shall make continued efforts to reach other staff persons as designated by Landlord until a Landlord representative has been notified. Landlord's facility operator is available 24 hours a day and can be reached by calling the Pillar Point Harbor Master, (650) 726-4382 extension 4 or contact 911.
- (c) Tenant shall immediately erect and maintain such temporary signs, barricades, lights and other devices as may be necessary to warn people of any dangerous or defective conditions and shall take such actions as may be necessary to reasonably protect people from injury, loss or damage which might result because of any such condition.
- (d) Any time a dangerous or defective condition may reasonably be known by Tenant to exist in the Premises or their environs, Tenant shall immediately take reasonably necessary protective action by calling the Pillar Point Harbor Master and shall immediately notify Landlord by telephone and in writing of such condition and protective action.

14.7 Security of Facilities. The security of the Premises shall be the responsibility of the Tenant.

15.0 INDEMNIFICATION AND EXCULPATION

15.1 Liability of Landlord. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income there from or for damage to the goods, wares, merchandise, or other property of Tenant, Tenant's employees, invitees, customers, or any other Person in or about the Premises, nor shall Landlord be liable for bodily injury to the person of Tenant, Tenant's employees, agents, or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of Landlord's property or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damage arising from any act or neglect of any other tenant, occupant, or user of the Landlord's property nor from the failure of Landlord to enforce the provisions of any other lease.

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