



AGENDA  
SPECIAL MEETING  
OF THE BOARD OF HARBOR COMMISSIONERS  
MOSS LANDING HARBOR DISTRICT  
7881 Sandholdt Road, Moss Landing, CA 95039

September 13, 2017 - 6:30 P.M.

**A. CLOSED SESSION**

A closed session will be held immediately prior to the public open meeting, and will begin at **6:00 p.m.** The public open meeting will begin at **6:30 p.m.**, or as soon thereafter as the **Closed Session is concluded**, and any action taken during the Closed Session will be reported out at that time.

1. Confer with real property negotiators (District Counsel and GM) regarding two (2) matters pursuant to Government Code §54956.8: (1) A Portion of APN #413-022-002-000 and 413-022-003 (NH) and 2) A portion of APN 413-022-003-000 (NH).

**B. OPEN SESSION CALL TO ORDER - PLEDGE OF ALLEGIANCE**

**Roll Call**

Russ Jeffries – President  
Tony Leonardini – Vice President  
Vince Ferrante – Secretary  
Peggy Shirrel – Commissioner  
James Goulart - Commissioner

Linda G. McIntyre – General Manager  
Mike Rodriguez – District Counsel  
Tommy Razzeca – Assistant General Manager  
Shay Shaw – Administrative Assistant

**C. PRESIDENT'S REMARKS**

The President will use this opportunity to inform the public of issues affecting the District and other items of a general nature not otherwise provided for on this agenda.

**D. PUBLIC COMMENTS**

Members of the general public may address the Board of Harbor Commissioners regarding any item that is not on the Agenda. The President may limit the total amount of time of testimony on particular issues and for each individual speaker.

**E. NEW BUSINESS**

1. ITEM – Consider adopting Resolution No. 17-11 Terminating a Rental Agreement.
  - a. Staff report
  - b. Public comment
  - c. Board discussion
  - d. Board action
2. ITEM – Consider request for sublease – Sea Harvest Restaurant.
  - a. Staff report
  - b. Public comment
  - c. Board discussion
  - d. Board action

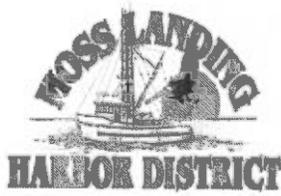
**F. COMMISSIONERS COMMENTS AND CONCERNS**

Commissioners may address items of concern at this time, and may request that items be placed on future agendas in accordance with the By-laws of the Board.

## **G. ADJOURNMENT**

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The next Meeting of the Board of Harbor Commissioners is scheduled for September 27, 2017 at 7:00 PM at the offices of the Moss Landing Harbor District, 7881 Sandholdt Road, Moss Landing, CA. Individuals who require special accommodations are requested to contact the Assistant General Manager by emailing [Razzeca@mosslandingharbor.dst.ca.us](mailto:Razzeca@mosslandingharbor.dst.ca.us) or by calling 831.633.2461 no less than 72 hours prior to the meeting or in the case of a Special Meeting, as soon as possible after the Agenda is posted. Copies of the agenda will be available 72 hours prior to Regular Meetings and 24 hours prior to Special Meetings and may be obtained by logging onto the District's website at [www.mosslandingharbor.dst.ca.us](http://www.mosslandingharbor.dst.ca.us), by contacting the District at 831.633.5417 or by emailing [Mcintyre@mosslandingharbor.dst.ca.us](mailto:Mcintyre@mosslandingharbor.dst.ca.us). All meetings are noticed and conducted in accordance with the Ralph M. Brown Act.



**BOARD OF COMMISSIONERS**  
Russell Jeffries  
Tony Leonardini  
Vincent Ferrante  
Margaret "Peggy" Shirrel, Ph.D.  
James Goulart

7881 SANDHOLDT ROAD  
MOSS LANDING, CA 95039

TELEPHONE – 831.633.2461  
FACSIMILE – 831.633.1201

**GENERAL MANAGER/HARBOR MASTER**  
Linda G. McIntyre, Esq.

**ASSISTANT GM/ASSISTANT HM**  
Tom Razzeca

## **STAFF REPORT**

### **ITEM NUMBER 1 – RESO 17-11 TERMINATING POTTERY PLANET RENTAL AGREEMENT SPECIAL BOARD MEETING OF SEPTEMBER 13, 2017**

The Harbor District is the Landlord under a month-to-month rental agreement with Pottery Planet, Inc.

The rental agreement provides that it may be terminated by either party upon thirty (30) days written advance notice and that if such termination is exercised by the District, it must be done by Resolution of the Board.

The Real Property Committee met with Mr. and Mrs. Goode, owners of the Pottery Planet to discuss terminating the month to month rental agreement.

Staff recommends the Board adopt Resolution 17-11 and direct the General Manager accordingly.

***SERVING COMMERCIAL FISHING AND RECREATIONAL BOATING SINCE 1947***

**ITEM 1 – RESOLUTION 17-11 TERMINATING POTTERY PLANET RENTAL AGREEMENT  
SEPTEMBER 13, 2017 SPECIAL MEETING**

## RESOLUTION 17-11

### A RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE MOSS LANDING HARBOR DISTRICT TERMINATING A RENTAL AGREEMENT WITH POTTERY PLANET INC.

**WHEREAS**, the Moss Landing Harbor District ("District") entered into a month-to-month "Rental Agreement" ("Agreement") with Pottery Planet Inc. on May 27, 2003, and amended the same to include additional property on January 22, 2004; and

**WHEREAS**, the Agreement provides that it may be terminated by either party, upon thirty (30) days written advance notice, and if terminated by the District, such action must be effectuated by resolution of the District Board; and

**WHEREAS**, the District now desires to exercise its right to terminate the Agreement.

### NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF HARBOR COMMISSIONERS AS FOLLOWS:

1. All of the recitals set forth above are true and correct to the best of the Board of Commissioners' knowledge, and by this reference are incorporated herein.
2. The Board hereby terminates the Rental Agreement between the Moss Landing Harbor District and Pottery Planet, Inc., a copy of which, with amendment, is attached as Exhibit A.
3. The Board hereby authorizes and directs the General Manager to provide Pottery Planet, Inc. with notice of the Board's action in compliance with the terms and conditions of the aforesaid Rental Agreement, and to take any and all action necessary to ensure the safe and efficient termination of the involved Agreement.

### CERTIFICATION

Resolution 17-11 was duly adopted by the Board of Harbor Commissioners of the Moss Landing Harbor District at a special meeting of the Board held on September 13, 2017, a quorum present and acting throughout, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

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Russ Jeffries, President  
Board of Harbor Commissioners

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Linda G. McIntyre, Deputy Secretary  
Board of Harbor Commissioners

EXHIBIT  
A  
Rental Agreement

ORIGINAL

***THIS RENTAL AGREEMENT***, made and entered into this 27th day of May, 2003, by and between the **MOSS LANDING HARBOR DISTRICT**, a political subdivision of the State of California, hereinafter called "District" or "Landlord" and **POTTERY PLANET INC.**, hereinafter called "Tenant".

In consideration of the mutual promises hereinafter contained, Landlord rents to Tenant those certain premises in Moss Landing, County of Monterey, State of California, designated as shown on the plat thereof marked Exhibit "A" and attached hereto and more particularly described hereinafter, subject to the following terms and conditions.

### 1. DESCRIPTION OF PREMISES

A part of U.S. Lot 9 and 10 in Section 7 of Township 13 South, Range 2 East, M.D.M. in the County of Monterey, State of California, located as follows:

An existing building located in the North Harbor Area of Moss Landing at State Highway One (Assessors Parcel Number[s] 413-022-002-000 & 413-022-003-000, Coastal Zone, and depicted on the drawing attached hereto as Exhibit "A")

The premises consist of approximately 22,237 square feet more or less of open, exterior space; and a further 4,443 square feet more or less of enclosed, interior space, including land, building and improvements thereon. The area rented by Tenant consists of approximately 1/2 of the premises and 1/2 of the building.

### 2. DEFINITION OF TERMS

"Board" means the Board of Commissioners of the Moss Landing Harbor District.

"State" means the State of California, Department of Boating and Waterways.

### 3. TERM

The term of this Rental Agreement shall be month-to-month commencing on the 6<sup>th</sup> day of June, 2003.

### 4. USE OF PREMISES

Tenant shall use the rented premises only for the operation of a retail and wholesale sales outlet for pottery, garden items, ornaments, items related to gardening, gift

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items and plants. Tenant represents that no less than 75% of tenant's business from the premises will be retail.

Tenant shall not use or permit the rented premises or any part thereof to be used in whole or in part for any purpose other than as herein above set forth at any time during the term of this Rental Agreement, except with the prior written consent of the District, nor for any use in violation of any present or future laws, ordinances, general rules or regulations at any time applicable thereto of any public or governmental authority, including the Moss Landing Harbor District, relating to sanitation or the public health, safety or welfare. Tenant hereby expressly agrees at all times during the term of this Rental Agreement, at its own cost and expense to maintain and operate all building improvements on the rented premises in a clean, wholesome and sanitary condition, and Tenant shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto adopted by federal, state, local or other governmental bodies or departments or offices thereof.

## 5. RENTAL

### Rental Amount

Tenant shall pay as minimum monthly rental each month of the term of this Rental Agreement, in advance and without previous demand, in June 2003 and continuing thereafter on the first day of each succeeding calendar month during the term of this Rental Agreement, the sum of ONE THOUSAND, FOUR HUNDRED AND NO/100 DOLLARS (\$1,400.00) per month. No more frequently than once in any 12 month period such minimum monthly rent shall be increased by the CPI based on the San Francisco-Oakland-San Jose index.

In addition to the minimum monthly rental Tenant shall pay a percentage rent equal to five percent (5%) of Tenant's gross retail sales over and above SIXTY FIVE THOUSAND DOLLARS (\$65,000.00) per month, and One percent (1%) of Tenant's wholesale sales over and above SIXTY FIVE THOUSAND DOLLARS (\$65,000.00) per month for each month of the term of this Rental Agreement. The percentage rent shall be paid no more than thirty (30) days following the end of each month of said term, commencing on the 1<sup>st</sup> day of the third month after Tenant opens for business. Tenant shall diligently pursue all permits and other requirements to open the business as soon as possible. Nothing contained herein contemplates or implies or shall be construed as creating a longer rental period than month-to-month.

### Definition of Gross Sales

The term "gross sales" as herein used shall include all gross receipts from any business carried on in whole or in part upon the rented premises, all gross revenue to Tenant from coin operated vending machines, revenue from rental of any space or facilities, any and all other revenues from sale or use charges received by Tenant, the sale of merchandise of any sort whatsoever, and all services performed for which charge is made by Tenant or by any other person, persons or corporation selling merchandise or performing services of any sort in, upon, or from any part of the said rented premises, and shall include sale of merchandise or performance of services either for cash or for credit, regardless of collections. Gross receipts shall include

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the fair market value of any consideration received by Tenant, or any of its concessionaires, in addition to or in lieu of cash for any of the services, facilities, items, goods or merchandise as covered herein.

Gross sales shall not include any of the following:

1. Merchandise returned for which cash has been fully refunded or credited.
2. Sales on credit or paid by dishonored check to the extent that such sales are charged off as losses or bad debts; provided, however, if such sales so charged off shall later be collected during the term hereof, they shall be included as sales in the month when collected to the extent collected.
3. Any sums received for telephone calls, telegrams, or teletype messages, made by employees or customers, to the extent charges for such items are made by the public utility involved.
4. The amount of any county, state or federal sales, luxury, utility or excise tax upon or based upon the sale of services or sales price of merchandise and which must be paid by Tenant or collected from its customers, and paid to the taxing authority by Tenant or by a concessionaire.
5. The amount of any county, state or federal tax upon the Tenant's possessory interest in the premises.
6. Sales of fixtures after use thereof in the conduct of Tenant's business in the rented premises.
7. Any sums received as repayment of money advanced to or paid on behalf of customers on which there is no profit and are only a reimbursable transaction, and any sums received which are to be transferred to or paid back to said customers, or which receipts as a deposit only, provided, however, that any deposits forfeited or included as payment of an account are to be included in gross sales.

#### **Accounting Record**

Within thirty (30) days after the close of each calendar month of the term of this Rental Agreement, Tenant shall render to District, in a form satisfactory to District (e.g., the monthly State Board of Equalization reporting form), an account of its business transactions during the preceding month, setting forth in particular its gross sales, as heretofore defined, for said month.

Tenant shall keep true and accurate books and records showing all of its business transactions, and shall provide District with a copy of an annual audit reflecting all gross sales as defined herein, and it shall be certified to by the principal auditor preparing same. District shall have the right through its representatives, and at all reasonable times, to inspect all books and records involved in the determination of

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gross sales, including State of California sales tax return records; Tenant hereby agrees that all such records and instruments are available to District, and that Tenant shall make the same available to the District upon demand.

#### **Delinquent Rental Payments**

In the event that Tenant fails to pay rent to District pursuant to this Rental Agreement when due, Tenant shall pay to District a late fee on such delinquent amount at the rate of ten percent (10%) per month from the date such sum was due and payable until paid.

### **6. TITLE TO IMPROVEMENTS**

All improvements made to the rented premises shall be and remain property of Tenant until termination of this Rental Agreement whether by cancellation, forfeiture or otherwise, and upon such termination all such improvements shall be and become the property of District and shall remain upon and be surrendered with the premises as part thereof.

### **7. CONDITION OF EQUIPMENT AND FURNISHINGS**

Tenant shall provide and maintain, at its own cost and expense, throughout the entire term of this Rental Agreement, any and all equipment, fixtures, furniture and furnishings necessary for use in and about the rented premises.

Tenant shall, at its own cost and expense, maintain all of said equipment, fixtures, furniture and furnishings in a state of good order and repair during the entire term of this Rental Agreement. The District agrees that said equipment, fixtures, furniture and furnishings shall not by reason of its installation in or upon said rented premises become the property of the District, and if Tenant is not in default under the this Rental Agreement, Tenant may remove any or all thereof upon the termination of this Rental Agreement, provided always that any damage resulting to the premises by reason of said removal shall be repaired by Tenant at its own cost and expense and to the satisfaction of the District.

Nothing herein shall impair or defeat the lien or encumbrance of any instrument given by Tenant to secure the purchase of any such equipment fixtures, furniture or furnishings.

### **8. CONDITION AND MAINTENANCE OF PREMISES AND IMPROVEMENTS**

Tenant represents that it has inspected the premises and building and accepts the same in their existing condition. Tenant acknowledges that the building and premises are in disrepair and despite such condition, Tenant wishes to rent the area of the premises and the building as-is. Landlord makes no representations regarding their tenantability or whether any permits for the use of the premises will be issued by any permitting authority having jurisdiction over the premises. Tenant accepts the premises as-is. Tenant shall at its own cost and expense, during the entire term

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hereof, keep and maintain the rented premises and all improvements thereon in good order and repair and in clean, presentable, and tenantable condition, injury thereto or destruction thereof by fire, earthquake, act of God or other cause beyond the control of the Tenant excepted. Tenant hereby expressly waives the right to make such repairs at the expense of District and the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto. Tenant shall, at its cost and expense, maintain and repair any defects in the building structure (e.g., roof, plumbing, termites, etc.).

## 9. NONDISCRIMINATION

Tenant and its employees shall not discriminate because of race, religion, color, sex, ancestry or national origin against any person by refusing to furnish such person any accommodation, facility, service or privilege offered in accordance with the provisions of Paragraph 4 hereof, nor shall Tenant or its employees publicize the facilities, services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religion, color, sex, ancestry, or national origin.

In the performance of this Rental Agreement, Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry or national origin. Tenant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, 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. Tenant shall post in conspicuous places available to employees and applicants for employment, notices to be provided by District setting forth the provisions of this Fair Employment Practices section.

Tenant shall permit access to its records of employment, employment advertisements, application forms and other pertinent data and records by the State of California, Fair Employment Practices Commission, or any other agency of the State of California designated by District for the purpose of investigations to ascertain compliance with the Fair Employment Practices Commission section of this Rental Agreement. The facilities constructed and developed under this Rental Agreement shall be open to all on equal and reasonable terms.

## 10. FIRE INSURANCE

Tenant, at its own cost and expenses, shall carry fire insurance with extended coverage endorsements thereon on all improvements made or constructed by Tenant to or upon the rented premises in an amount equal to ninety percent (90%) of the full insurable value of such improvements, naming the District and Tenant, as their interests may appear, as the insured in any such policy or policies. The proceedings of any such insurance in the event of any loss or damage shall, to the extent the proceeds are so available to Tenant, be used for the repair or rebuilding of the

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improvements made or constructed by Tenant upon the rented premises. A certificate or certificates evidencing such insurance coverage shall be filed with District prior to the commencement of construction of any improvements by Tenant upon the rented premises, and such certificate or certificates shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to District. At least thirty (30) days prior to the expiration of any such policy or policies, a certificate or certificates showing that such insurance coverage has been renewed shall be filed with District.

Said fire insurance shall also name as an insured any lending agency holding as security any encumbrance on the Tenant's possessory interest in the rented premises, as its interest may appear.

## **11. UTILITY CHARGES**

Tenant shall pay for all light, heat, water, gas, sewer or other utility services required by it in connection with its use of the rented premises.

## **12. TAXES**

Tenant shall pay all lawful taxes, assessments or charges which at any time may be levied by any federal, state, county, district or any tax or assessment levying agency upon any interest in this Rental Agreement or any possessory right or interest which Tenant may have in or to the premises covered hereby or the improvements thereon by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments and charges, if any, on goods, merchandise, fixtures, appliances, equipment and property owned by them in or about said premises.

## **13. NO LIENS**

Tenant shall pay for all labor done or materials furnished in the repair, replacements, development or improvement of the rented premises by Tenant and shall keep said premises and Tenant's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Tenant's act or omission except as herein expressly permitted.

## **14. HOLD HARMLESS AGREEMENT AND LIABILITY INSURANCE**

It is the express condition of this Rental Agreement that District and State, and their officers, agents, elected officials and employees shall be free from any and all liabilities and claims for damages or suits for or by reason of any death or deaths of or any injury or injuries to any person or persons or damages to property of any kind whatsoever, whether the person or property of Tenant, its agents or employees, or licensees or third persons, from any cause or causes whatsoever while in or upon said rented premises or any part thereof during the term of this Rental Agreement or occasioned by any occupancy or use of said premises or any activity carried on by Tenant or licensees in connection therewith, and Tenant hereby covenants and agree



to indemnify and to save harmless the District and State, their officers, agents and employees, from all liabilities, charges, legal and other necessary expenses and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses however occurring or damages growing out of same.

## 15. INSURANCE

Tenant shall maintain in full force and effect during the term of this Rental Agreement, comprehensive general liability insurance with bodily injury and property damage liability limits of not less than ONE MILLION DOLLARS (\$1,000,000) per person and ONE MILLION DOLLARS (\$1,000,000) per occurrence, and property damage liability limits of not less than ONE HUNDRED, FIFTY THOUSAND DOLLARS (\$150,000), and Tenant agrees that State and District, its Board and members thereof, and State and District's officers, agents, and employees, shall be named as additional insureds under such liability insurance policy or policies.

A duplicate policy evidencing such insurance coverage shall be filed with District and State prior to the execution of this Rental Agreement by District and prior to any entry upon the premises herein rented, and said policy shall provide that such insurance coverage shall not be canceled or reduced without at least thirty (30) days prior written notice to District and State. Said policy shall likewise provide that such insurance coverage shall not be canceled or reduced without at least thirty (30) days prior written notice to any lending agency holding, of record, an encumbrance upon the possessory interest of Tenant's estate. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with District and State. On failure to file such certificate, District may without further notice cause this Rental Agreement to be forfeited and exercise such other rights as it may have in the event of Tenant's default on the date of expiration of such insurance coverage unless such certificate is filed with District prior to such expiration. Upon any failure to file said certificate showing that such insurance coverage has been renewed or extended, District shall give written notice of such fact to such lending agency and said lending agency shall have sixty (60) days thereafter to obtain a substitute Tenant who can secure such insurance coverage and who shall be suitable to District as a Tenant hereunder. Acceptance by District of said Tenant shall not be unreasonably withheld. In such event, if another Tenant is so obtained and accepted by District, upon written request from District, Tenant shall assign to said substitute Tenant all of its right, title and interest in this Rental Agreement, in a form suitable for recording in Monterey County.

## 16. WORKER'S COMPENSATION INSURANCE

Tenant shall maintain in force during the term of this Rental Agreement, in an amount and with coverage satisfactory to District, Worker's Compensation Insurance. A certificate evidencing such insurance coverage shall be filed with District prior to execution of this Rental Agreement and prior to entry upon the premises herein rented.

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## 17. FAILURE TO PROCURE INSURANCE

In case of failure on the part of Tenant to procure or renew the herein required insurance, District may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith and all monies so paid by District shall be repaid by Tenant to District upon demand.

## 18. RESTORATION OF PREMISES

In the event that, during the term of this Rental Agreement, the rented premises shall be damaged or destroyed to an extent in excess of fifty percent (50%) of the then value thereof due to a cause not covered by insurance, and if parties are unable to agree upon a substantial reconstruction of the building, either party is hereby granted the privilege, upon giving thirty (30) days written notice to the other party (such notice to be given within thirty (30) days after such damage or destruction) to cancel and annul this Rental Agreement; provided, however, that in such case neither party shall so elect to cancel and annul this Rental Agreement and notice to that effect is given by each party to the other party, Tenant agrees to restore with due diligence the building and structures appurtenant thereto. In the event that the damage to or destruction of the rented premises is less than fifty percent (50%) of the then value, and is due to causes not covered by insurance, Tenant shall with due diligence reconstruct the building and appurtenances thereto.

In the event that the damage to or destruction of said premises is covered by insurance, Tenant shall restore said premises to a good and tenantable condition.

If Tenant is prohibited by provisions of the then-existing law from restoring said premises to substantially the same condition as existed immediately before the damage or destruction thereto, Tenant shall be relieved of the obligation to restore said premises and Tenant shall thereupon be entitled to any insurance proceeds payable by virtue of casualty insurance maintained by Tenant.

In the event that during the term of this Rental Agreement the rented premises shall be damaged or destroyed to an extent in excess of fifty percent (50%) of the value thereof due to a cause not covered by insurance, and Tenant and District are unable to agree upon substantial reconstruction of the building, and Tenant or District shall exercise the privilege herein above granted of giving thirty (30) days written notice to cancel and annul this Rental Agreement, the party giving said notice shall also give at the same time thirty (30) days written notice to any lending agency holding an encumbrance of record on the possessory interest of Tenant's estate; and unless said encumbrance shall be fully paid and extinguished prior to the expiration of said thirty (30) day period, said lending agency shall have the optional right to obtain a substitute Tenant hereunder who shall be suitable to District, acceptance of whom by District shall not be unreasonably withheld, and said substitute Tenant and said lending agency shall have the optional right to rebuild and restore the improvements on the rented premises, subject to all of the terms and conditions hereof. If the lending agency elects to so obtain for District a substitute Tenant hereunder at the expiration of said thirty (30) day period, it shall thereupon give written notice of such election to District and to Tenant, and shall have thirty (30) days thereafter

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within which to obtain another Tenant suitable to District. Upon the acceptance of said substitute Tenant by District, Tenant shall assign in writing, in a form suitable for recording in Monterey County, all of its right, title and interest hereunder to said substitute Tenant. Tenant shall thereupon be released from any further obligation under this Rental Agreement, provided Tenant is not otherwise in default hereunder. In the event that the lending agency exercises its said option to obtain a substitute Tenant, the lending agency and substitute Tenant shall have six (6) months from the date of written acceptance by District of said substitute Tenant, within which to rebuild and restore said rented premises and improvements.

## 19. DESTRUCTION OF PREMISES

In case of destruction, partial destruction, or damage by fire, Tenant shall not be liable for the full monthly rental herein specific during the time that said rented premises are thus rendered untenable and unfit for Tenant's occupancy due to such damage or destruction, but in such case Tenant shall pay a pro rata amount only of the monthly rental herein reserved, for such part of the herein rented premises as Tenant can use and occupy economically, and shall from the date of restoration of said premises pay the full monthly rental herein reserved. If at the time either party shall have elected to cancel this Rental Agreement as herein provided, and Tenant shall not be or be deemed to be in default as to any terms, covenants, conditions or agreements in this Rental Agreement contained by Tenant to be kept, performed, discharged or paid, District shall restore to Tenant any unearned portion of the current monthly installment of rent paid in advance by Tenant and shall return to Tenant for cancellation all policies of insurance, the premiums on which were paid by Tenant, who shall then be entitled thereto.

## 20. SUBRENTAL AGREEMENT, ASSIGNMENTS AND SUCCESSORS

Tenant shall not either directly or indirectly give, assign, hypothecate, encumber, transfer or grant control of this Rental Agreement or any interest, right, or privilege therein, or sublet the whole or any portion of the rented premises or reassign the use of the same in whole or in part, without obtaining the prior written consent of District and State.

Neither this Rental Agreement nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Tenant, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law, and possession of the whole or any part of the rented premises shall not be divested from Tenant in such proceedings or by any process of law, without written consent of District and State. Any breach of the provisions of this paragraph shall give District the right to terminate this Rental Agreement immediately.

In the event the Tenant is a corporation, the principal stockholders of such corporation shall not transfer control of the corporation by sale or assignment of interest unless such transfer has the prior approval of District and State. District shall not unreasonably withhold such approval.

Each and all of the provisions, agreement, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto, and all rights, privileges, and benefits arising under this Rental Agreement and in favor of either party shall be available in favor of the heirs, executors, administrators, successors, and assigns thereof respectively; provided, that no assignment or subletting by or through Tenant in violation of the provisions of this Rental Agreement shall vest any rights in any such assignee or subtenant.

## 21. HAZARDOUS SUBSTANCES

**Uses Prohibited.** The Premises shall not be used or permitted to be used in whole or in part during Tenant's occupancy under this Rental Agreement for any purpose or use in violation of any of federal, state or municipal law, regulation or ordinance. This prohibition includes, but is not limited to, bringing Hazardous Materials onto the Premises. Tenant agrees to construct, repair, maintain and do all things necessary to maintain the Premises in a clean and sanitary manner and in compliance with all federal, state and municipal laws, regulations and ordinances.

For purposes of this Paragraph, Hazardous Materials includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.) Section 25117 of the California Health and Safety Code, Section 25316 of the California Health and Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulation concerning the environment, industrial hygiene or public health or safety now in effect or enacted after this date.

No goods, merchandise, or materials which are in any way explosive or hazardous shall be kept, stored or sold in or upon said premises; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon; and no machinery or apparatus which will in any way injure said premises or adjacent buildings shall be used or operated on said premises; provided, however, except as otherwise set forth herein, that nothing in this paragraph contained shall preclude Tenant from bringing, keeping or using or about said premises and building such materials, supplies, equipment and machinery as are necessary or customary in carrying on its business, or from carrying on its business in all respects as is usual.

## 22. FORFEITURE

This Rental Agreement is made upon the condition that if the rents or other sums which Tenant herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if default be made in any of the terms, agreements, conditions, or covenants herein contained on the part of Tenant, or should Tenant abandon and cease to use the premises for a period of thirty (30) days

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

at any one time except when prevented by fire, earthquake, wars, strikes, or other calamity beyond its control, then and in such event this Rental Agreement shall become forfeited, and District may exercise all rights of entry and reentry upon the rented premises. Tenant shall not be considered in default as to any provisions of this Rental Agreement where such default is the result of, or pursuant to, any process, order or decree of any court or regulatory body. No default shall be declared by District as to any breach which may be cured or obviated by Tenant until the expiration of thirty (30) days after written notice by District to Tenant (and to any lending agency holding of record an encumbrance on the Tenant's possessory interest in the rented premises), of such default during which thirty (30) days period such default shall not have been cured or obviated; provided, that only five (5) days written notice shall be required in the case of a default in the payment of rent or other sums herein provided to be paid by Tenant.

### **23. RIGHT OF ENTRY AS AGENT**

In any case in which provision is made herein for the termination of this Rental Agreement by District, or in the case of abandonment or vacating of the premises by Tenant, District in lieu of declaring a forfeiture may enter upon the premises. To such end Tenant hereby irrevocably appoints District its agent to remove any and all persons or property from said premises and to place any such property in storage for the account of and at expense of Tenant. In such case District may relet the premises upon such terms as to it may seem proper, and if a sufficient sum shall not be realized thereby, after paying expenses of such reletting, to satisfy the rent and other sums herein agreed to be paid by Tenant, Tenant agrees to pay any such deficiency. Tenant further agrees to save District harmless from any loss or damage or claim arising out of the action of District in pursuance of this paragraph.

### **24. SURRENDER OF PREMISES**

Tenant covenants and agrees that at the expiration of this Rental Agreement, or upon its earlier termination, it will quit and surrender said premises with all the improvements thereon in as good state and condition as the same were when possession thereof was given to Tenant, reasonable wear and tear excepted, and Tenant agrees, unless otherwise permitted in writing by District, to remove all personal property belonging to Tenant. Upon such termination, District shall have the right to enter upon and take possession of all of the said premises. Provided always, however, that nothing in this paragraph contained shall obligate Tenant to make any repairs that by any other provision of this Rental Agreement it shall be relieved or exempt from making.

### **25. INSPECTION OF PREMISES**

District or its duly authorized representatives or agents may enter upon said premises at any and all reasonable times during the term of this Rental Agreement for the purpose of determining whether or not Tenant is complying with the terms and conditions hereof or for any other purpose incidental to rights of District.



## 26. ADVANCE NOTICE PRIOR TO TERMINATION

Except for forfeiture or default under this Rental Agreement, either party may terminate this Rental Agreement upon thirty (30) days written advance notice. On termination of this Rental Agreement Tenant shall have ninety (90) days to vacate the premises, or such other time as may be mutually agreed between District and Tenant at the time of such termination. It is the intent of the parties to provide the other party with as much advance notice and opportunity to vacate as possible.

## 27. WAIVERS

No waiver by District at any time of any of the terms, conditions, covenants or agreements of this Rental Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other terms, conditions, covenants or agreements herein contained, nor of the strict and prompt performance thereof by Tenant. No delay, failure or omission of District to reenter the rented premises or to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of rent then or thereafter accrued, shall impair any such right, power, privilege or option, to be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by District shall be required to restore or revive time as of the essence hereof after waiver by District of default in one or more instances. No option, right, power, remedy or privilege of District shall be construed as being exhausted or discharged by the exercise thereof in one of more instances. It is agreed that each and all of the rights, power, options or remedies given to District by this Rental Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by District shall not impair its rights to any other right, power, option or remedy.

## 28. AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Tenant is not a resident of this State, or are an association or partnership without a member or partner resident of this State, or is a foreign corporation, then in any such event Tenant shall file with District a designation of a natural person residing in the County of Monterey, State of California, giving his name, residence and business address, as its agent for the purpose of service of process in any court action between Tenant and District arising out of or based upon this Rental Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Tenant; and it is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event Tenant may be personally served with such process out of this State, and that such service shall constitute valid service upon Tenant; and it is further expressly agreed that Tenant is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objections and protest thereto.

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is a stylized, cursive 'A' or similar character. The second signature is a more complex, cursive signature, possibly 'P.S.' or similar.

## 29. WAIVER OF CLAIMS

Tenant hereby waives any claim against District and State and their officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Rental Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Rental Agreement null, void or voidable, or delaying the same, or any part thereof, from being carried out.

## 30. SEVERABILITY

If any term or provision of this agreement are held invalid or unenforceable, the remainder shall not be affected and shall remain in full force and effect.

## 31. TIME OF ESSENCE

Time is expressly declared to be of the essence of this Rental Agreement.

## 32. NOTICES

Any notice permitted or required to be served upon Tenant may be served upon it at Pottery Planet Inc., 2600 Soquel Avenue, Santa Cruz, CA 95062; if Tenant shall give notice in writing to District of any change in said address, then and in such event such notice shall be given to Tenant at such substituted address. Any notice permitted or required to be served upon District may be served upon it at Moss Landing Harbor District, 7881 Sandholdt Road, Moss Landing, California 95039; provided, however, that if District shall give notice in writing to Tenant or any change in said address, then and in such event such notice shall be given to District at such substituted address.

## 33. QUIET POSSESSION

Tenant, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the rented premises throughout the term of this Rental Agreement.

## 34. CONFLICT OF INTERESTS

Tenant warrants and covenants that no official or employee of District or any business entity in which an official or employee of District is interested:

1. has been employed or retained to solicit aid in the procuring of this Rental Agreement;
2. will be employed in the performance of this Rental Agreement without the immediate divulgence of such fact to District.

Handwritten initials 'DF' and 'PG' in black ink, located in the bottom right corner of the page.

In the event District determines that such employment of such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of District, Tenant upon request of District shall terminate such employment immediately.

For breach of violation of this paragraph, District shall have the right both to annul this Rental Agreement without liability and in its discretion to recover the full amount of any compensation paid to such official or business entity by Tenant for such employment.

### **35. EMINENT DOMAIN**

Forthwith upon the receipt by District or by Tenant of any notice of the institution of any proceeding for the taking or damaging of the rented premises or any part thereof, by the exercise of any power of condemnation or eminent domain, the party receiving such notice shall promptly give written notice thereof to the other party and to any lending agency holding an encumbrance on the Tenant's possessory interest in the rented premises which has given to District written notice of its interest as such, and such other parties and each of them, including such lending agency, though not named in the proceedings, may appear, plead and defend each in respect to its own property or interest or that claimed by it in like manner as if named in the complaint. The respective rights of all claimants in and to the award shall be determined and apportioned in accordance with the law applicable thereto.

### **36. TERMINATION BY DISTRICT**

Except in cases of forfeiture or default under this Rental Agreement, any termination of this Rental Agreement by District shall be by resolution of the Board, duly adopted after notice as required herein.

### **37. AGREEMENT IN TRIPLICATE**

This Rental Agreement is executed in triplicate, each copy of which shall be deemed an original.

### **38. HARBORS AND WATERCRAFT REVOLVING FUND**

The Moss Landing Harbor District has received loan(s) proceeds from the Harbors and Watercraft Revolving Fund administered by the Department of Boating and Waterways of the State of California. The loan(s) proceeds were, and are being used for the acquisition of the rented premises from Western Salt Company; and other development of Moss Landing Harbor. Pursuant to the Harbors and Navigation Code the District is required to competitively bid the leasing of property acquired with money from this fund. Further, the operating revenues of the District, including the rents obtained under this Rental Agreement, are pledged as collateral for the repayment of said loan(s). In the event State is required to assume responsibility of

BA PJ

the Moss Landing Harbor or does so pursuant to the above-mentioned Loan Agreements, the Tenant's obligation shall be to State as Landlord.

**39. POWER TO FIX AND DETERMINE RATES**

The Board of Harbor Commissioners of the Moss Landing Harbor District reserves the power to fix and determine the rates to be charged by the Tenant for the use of the rented premises by the public. Tenant shall provide a list of rates, fees, tariffs or other charges to the District prior to the execution of this Rental Agreement.

**40. APPROVAL BY DEPARTMENT OF BOATING AND WATERWAYS**

Notwithstanding the relationship of the District as Landlord, the Department of Boating and Waterways may exercise the right to review and approve this Rental Agreement.

***IN WITNESS WHEREOF***, District has by Resolution of its Board of Harbor Commissioners caused this Rental Agreement to be executed by the General Manager of the Moss Landing Harbor District and attested by the Secretary thereof, and Tenant has executed the same the day and year first herein above written.

**LANDLORD:**

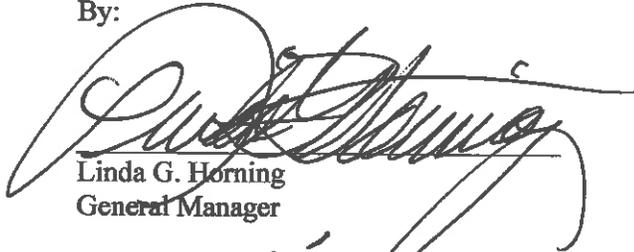
**TENANT:**

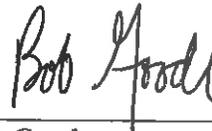
MOSS LANDING HARBOR DISTRICT

POTTERY PLANET INC.

By:

By:

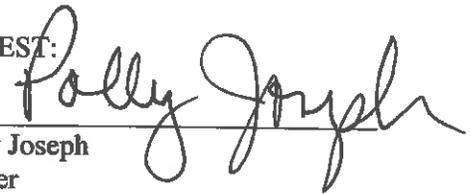
  
Linda G. Horning  
General Manager

  
\_\_\_\_\_  
Bob Goode  
Owner

ATTEST:

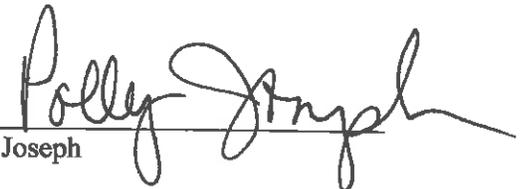
ATTEST:

  
\_\_\_\_\_  
Yvan Gideon  
Secretary

  
\_\_\_\_\_  
Polly Joseph  
Owner

The undersigned individuals hereby personally guarantee the performance of the Tenant under the terms of this Rental Agreement:

  
\_\_\_\_\_  
Bob Goode

  
\_\_\_\_\_  
Polly Joseph

ORIGINAL

## RENTAL AGREEMENT AMENDMENT

This Rental Agreement Amendment, hereinafter referred to as "Amendment" is made and entered into at Monterey County, California this 22nd of January, 2004, for reference purposes only, by and between MOSS LANDING HARBOR DISTRICT, a Political Subdivision of the State of California, hereinafter referred to as "Landlord" and POTTERY PLANET, INC., hereinafter referred to as "Tenant".

### Recitals

A. Landlord and Tenant entered into that certain Rental Agreement dated May 27, 2003, with a month-to-month term commencing June 6, 2003 for 1/2 of the former Little Baja Building and 2/3 of the former Little Baja premises.

B. Tenant requested that the Agreement be modified to include the additional 1/2 of the former Little Baja Building and the remaining 1/3 of the former Little Baja premises resulting in Tenant renting the entire property consisting of 22,237 square feet more or less of open exterior space and 4,443 square feet more or less of enclosed interior space commencing January 1, 2004. At its January 22, 2004 Regular Board Meeting, the Board of Harbor Commissioners of Landlord granted the additional space as requested.

NOW THEREFORE THE PARTIES agree as follows:

1. Paragraph 1 of the Rental Agreement is hereby amended to include the remaining 1/2 of the building and the remaining 1/3 of the premises for a total rented open exterior space of approximately 22,237 square feet mol and approximately 4,443 square fee mol of enclosed,

Landlord Initials:

Tenant Initials:



interior space, subject to the terms and conditions of the May 27, 2003 Rental Agreement.

Payment for such additional square footage shall commence January 1, 2004.

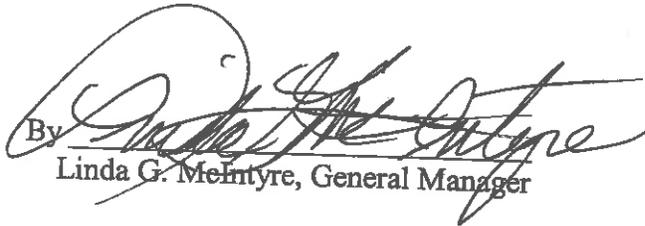
2. Paragraph 5 of the Rental Agreement, minimum monthly rental, is hereby amended to Two Thousand Four Hundred (\$2,400.00) per month.

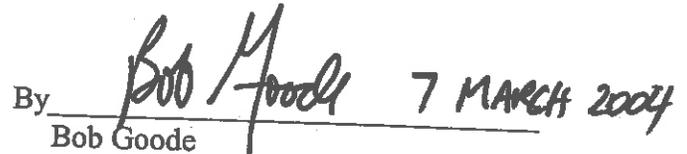
3. Except as specifically set forth herein the terms, covenants, limitations, provisions, restrictions, agreements, rights, remedies, conditions, and the personal guaranty of Bob Goode and Polly Joseph contained in the Rental Agreement are incorporated herein and made a part hereof and shall remain in full force and effect and be binding upon the parties.

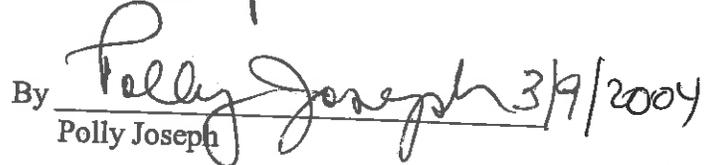
Executed this 22nd day of January, 2004 in Monterey County, California.

Landlord, Moss Landing Harbor District

Tenant, Pottery Planet, Inc.

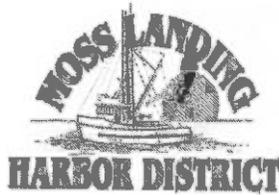
By   
Linda G. McIntyre, General Manager

By  7 MARCH 2004  
Bob Goode

By  3/9/2004  
Polly Joseph

Landlord Initials: 

Tenant Initials: \_\_\_\_\_



BOARD OF COMMISSIONERS  
Russell Jeffries  
Tony Leonardini  
Vincent Ferrante  
Margaret "Peggy" Shirrel, Ph.D.  
James Goulart

7881 SANDHOLDT ROAD  
MOSS LANDING, CA 95039

TELEPHONE – 831.633.2461  
FACSIMILE – 831.633.1201

GENERAL MANAGER/HARBOR MASTER  
Linda G. McIntyre, Esq.

ASSISTANT GM/ASSISTANT HM  
Tom Razzeca

## STAFF REPORT

### ITEM NUMBER 2 – CONSIDER REQUEST FOR A SUBLEASE – SEA HARVEST SPECIAL BOARD MEETING OF SEPTEMBER 13, 2017

The Lessees of the Sea Harvest Restaurant have requested that we authorize the sublease of the Sea Harvest Restaurant to Veronica and Bruce Pirl. Attached is their Business Plan.

The Lease between MLHD and Sea Harvest states that Tenant shall not assign or otherwise transfer the Lease or any right or interest thereunder, or sublet the Premises without the prior written consent and approval of Landlord, which consent and approval will not be unreasonably withheld.

It goes on to say that Landlord reserves the right to condition any such approval upon Landlord's determination that the proposed assignee or subtenant has: (i) adequate net worth; (ii) experience in operating similar restaurants; and (iii) is suitable to Landlord in all other reasonable respects.

The Pirls met with the Real property Committee on September 6 and answered questions and generally discussed their plans for the Sea harvest Restaurant. The Real property Committee may wish to weigh in with any comments they may have as a result of this meeting.

The Board should consider the recommendations of the Real property Committee and direct the General Manager accordingly.

*SERVING COMMERCIAL FISHING AND RECREATIONAL BOATING SINCE 1947*

ITEM 2 – REQUEST FOR SUBLEASE – SEA HARVEST RESTAURANT  
SEPTEMBER 13, 2017 SPECIAL MEETING

## LETTER OF INTENT TO SUBLEASE

This letter summarizes the basic economic terms, which will form the basis of a sublease agreement. It is understood that the final form of the lease is subject to review and approval by the parties hereto as well as the Moss Landing Harbor District ("Owner"), owner of the property located at 2420 Highway One, Moss Landing, California 95039 (the "Premises").

The major business terms are as follows:

- Sublessor:** Deyerle Brothers Enterprises, LLC
- Sublessee:** Veronica G. Pirl and Bruce D. Pirl  
413 Fifth Street  
San Juan Bautista, CA 95045
- Size of Leased Premises:** Approximately 1600 square feet
- Use:** Restaurant
- Improvements:** Sublessee shall take possession of the Premises "as-is" and any improvements shall be Sublessee's sole responsibility, and subject to prior approval by Owner.
- Term of Lease (Years):** 5 years, with two 5-year options for renewal
- Occupancy Date:** As soon as Owner approval received
- Rent Commencement Date:** Upon occupancy; pro-rated if start date is other than first of month
- Minimum Rent:** Year 1: \$5,700/month, payable to Sublessor on or before the 1st of each month
- The Minimum Rent shall be adjusted at the commencement of the second (2nd) year of this Lease, and annually thereafter on each anniversary of the Effective Date. The base for computing the adjustment shall be the most recently published Consumer Price Index for the United States/San Francisco-Oakland/San Jose as published by the U. S. Department of Labor's Bureau of Labor Statistics.
- Additional Rent:** Sublessee shall pay to Owner, as additional rent, the greater of the sum of \$2,750.00 or a Percentage Rent equal to four percent (4%) of Sublessee's gross receipts on retail sales, and three percent (3%) of Sublessee's gross receipts for restaurant and alcohol sales for each quarter (or three-month period), and shall be paid to Sublessor on or before the last day of the month following each quarter (or three-month period).
- Property Taxes:** Sublessee shall pay all property taxes attributable to the Premises.
- Insurance:** Each party shall carry and pay for liability insurance and personal property insurance. Lessee shall provide a certificate of "all risk" or "all perils" liability insurance in an amount of no less than \$300,000/ \$1,000,000 with Landlord as named co-insured.

**Signage:** Exterior signs will be in compliance with all county codes.

**Maintenance and Repair:** Subtenant's responsibility

**Common Area Maintenance:** If Owner shall, after the Effective Date of the sublease, implement a program for the common maintenance and landscaping of common areas situated within 500 feet of the Premises, Sublessee agrees to pay its reasonable share of expenses incurred in maintaining and landscaping such common areas, including the vehicle parking area closest to the restaurant.

**Option to Purchase:** Sublessee shall pay a non-refundable deposit of \$60,000.00 to Sublessor for an option to purchase the furnishings, fixtures, equipment, goodwill, and other tangible and intangible assets used in connection with the operation of the business. The option shall remain open for the initial term of the Sublease to purchase the business from Sublessor for a purchase price of \$790,000.00. If Sublessee fails to exercise the option to purchase on such terms, the deposit shall be non-refundable.

**Disclaimer:** The terms as outlined herein are not all-inclusive, but comprise a summary of the general business terms for which a Sublease Agreement will be drafted. Other terms, which are not included, are to be negotiated. The parties mutually agree that neither shall have any binding contractual obligations to the other with respect to the matters referenced herein, unless and until a formal written Lease Agreement has been prepared with adequate opportunity to be reviewed by legal counsel or either party's authorized representative, and has been fully executed and delivered by the parties and approved by the Owner.

Submitted this 14<sup>th</sup> day of July, 2017 by: See below (Sublessee)

If this letter is acceptable, please so indicate by signing and returning the enclosed copy.

Accepted this 14<sup>th</sup> day of July, 2017

"SUBLESSOR"  
Deyerle Brothers Enterprises, LLC,

BY:   
RICHARD S. DEYERLE, MANAGER

BY:   
DANIEL S. DEYERLE, MANAGER

BY:   
VERONICA PIRL

## **To Whom It May Concern:**

### **1.-Executive Summary**

The Restaurant`wil continue with the same menu and just will be ad 4-5 items. Ribeye, New York, Paella, etc. pot roast, We will offer specialty selections including a lighter options and smaller portions for a children`s menu.

The restaurant will be family owned and operated by Veronica and Family, Together they have over 25+ collective years experience in the restaurant and catering industry.

The décor will feature wood accented chairs, white table cloths. Dinner style tables will be surrounded by wooden chairs with comfortable seating cushions.

Sales projections assume 1700 customers per week resulting in weekly sales of just over

### **Business Objectives**

The primary objectives of the business plan for Restaurant are below:

- To be the premier Seafood and European cuisine
- To provide quality meals at reasonable prices with exemplary service

### **Mission Statement**

Our Mission is to provide a unique and relaxing dining experience – similar to dining at home. We will strive to achieve this goal by: 1) by providing menu items incorporating quality ingredients at reasonable prices, and 2) we will be mindful of the well being of our customers and staff– treating each and everyone with dignity and respect – just like we would at our own home!

### **Guiding Principles**

#### **Being Mindful of our Customers and our Staff**

Coinciding with our family values, we will treat both our customers and staff in a manner in which we ourselves would want to be treated (or better!)

#### **Gratitude**

“An attitude of gratitude” shown to our customers, employees and vendors – because without their input, service, labor and time, our business would not be here without them!

#### **Our Service**

Provide the warm and friendly service expected from a family-style restaurant creating an informal, comfortable environment which will make the customers satisfied and want to return again and again.

## Keys to Success

- Repeat business. Every customer who comes in once should want to return, and recommend us. Word-of-mouth marketing is a powerful ally.
- Hire top notch chefs and offer training to keep the chef on top of his/her game, and pay top wages to ensure they stay with us.
- Location. Convenience is essential to us; we need to be close to our market because we are not trying to get people to travel to reach us.
- A variety of menu offerings with a “down home” theme, reasonably priced to establish credibility, but not so high as to limit customers.

The restaurant will be open 7 days a week with hours as follows:

Monday	9:00 am – 10:00 pm
Tuesday	9:00 am – 10:00 pm
Wednesday	9:00 am – 10:00 pm
Thursday	9:00 am – 10:00 pm
Friday	9:00 am – 11:00 pm
Saturday	9:00 am – 11:00 pm
Sunday	9:00 am – 10:00 pm

## Ownership

The restaurant will be owned by Bruce & Veronica Pirl her restaurant career at the age of 15 working in family restaurant and earned her way through college as a business administration on hospitality. After earning her degree, she worked for an independent fine dining restaurant. In these organizations she held the positions of Assistant Manager and then General Manager. After earning experience she open a Basque restaurant in San Juan Bautista in 2002 to now and we took over a breakfast place, Mission Café on 2010 to now.

With the high turnover of help for startup restaurants, we will rely on family to fill in where required until we are off the ground and making a profit.

## Legal Form

The restaurant will be organized as a LLC, wholly owned and operated by Veronica Pirl and Bruce Pirl.

## Services

### Daily Operations and Production

WE will be open 7 days a week for lunch and dinner requiring multiple shifts. Veronica will write the schedules. The schedules will be written in a manner that will allow the ability to increase or decrease hourly labor according to sales volume in order to maintain a consistent labor cost control.

Proper labeling and rotation techniques, accompanied by ample storage facilities will ensure that high quality prepared product will be sufficiently available to meet the demands during peak business hours. Replenishment and ongoing preparation will continue during off peak business hours.

Veronica Pirl and Guillermo Matchain, her brother will be responsible for ordering, receiving and maintaining sufficient inventory to meet production demands. Ordering schedules will be staggered with perishable products being ordered multiple times per week to preserve freshness. Standard grocery and supply orders will be ordered less often, according to a predetermined schedule and storage capacity.

We will rely on operational checklists to verify that each work shift has been properly prepared for and to insure the operational standards are followed before, during and after work shifts.

### **Management Controls**

We will practice sound management procedures in order to control costs, insure quality of product and provide friendly customer service. The following systems will be used by management:

**Order Guide:** The restaurant will use an item specific order guide to track order history and maintain designated levels of product in inventory.

**Weekly Inventory:** Management will conduct a weekly inventory to determine valuation for use in the preparation of weekly profit and loss reports.

**Daily Inventory Tracking:** Daily inventory will be taken on specific items. Movement will be compared to sales data to ensure designated products have been properly accounted for.

**Purchasing Records/Payables.** A part time bookkeeper will process and record invoices and credits daily. Reports detailing cash expenditures, payments by check, and accounts payable transactions will be readily available. Check disbursements will be prepared by the bookkeeper. Check signing authority for the general operating account will be given to the general manager.

**Payroll Processing.** Payroll checks will be issued bi-monthly. Veronica will run reports from the time & attendance system, make necessary adjustments, and prepare for transfer to the payroll system. Payroll will be processed by a payroll processing service.

If you need more information please lend us know

Veronica and Bruce Pirl

## SUBLEASE

THIS SUBLEASE is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between Deyerle Brothers Enterprises, LLC, a California Limited Liability Company ("Sublessor"), and Veronica G. Pirl and Bruce D. Pirl (collectively referred to herein as "Sublessee").

## RECITALS

A. Sublessor is the Tenant under that certain Ground Lease Agreement dated August 28, 2000 (the "Lease"). Moss Landing Harbor District is the Landlord under the Lease (the "Landlord"). A true and correct copy of the Lease is attached hereto as Exhibit A and incorporated by reference.

B. The property that is the subject of the Lease (the "Leased Premises") is described as 2420 Highway One, located in Moss Landing, California. The Leased Premises includes only the ground and none of the improvements thereon.

C. Sublessor desires to sublet to Sublessee the entire Leased Premises, and Sublessee desire to sublease the Leased Premises from Sublessor, on all of the terms and conditions set forth herein.

## AGREEMENT

### 1. Sublease.

Sublessor hereby sublets to Sublessee and Sublessees hereby sublease from Sublessor, the Leased Premises described above in its entirety. Sublessee hereby agrees to assume each and every obligation of Sublessor under the terms of said Lease.

### 2. Term.

The term of this Sublease shall commence on \_\_\_\_\_, 2017 ("Effective Date"), and shall expire on \_\_\_\_\_, 2022. There shall be two 5-year option periods for renewal of the lease.

### 3. Rent.

For the first year of the Sublease, rent shall be \$5,700 per month, payable to Sublessor on or before the 1<sup>st</sup> of each month. At the commencement of the 2<sup>nd</sup> year of this Agreement, and annually thereafter on the anniversary of the Effective Date the rent shall be adjusted. The base for computing the adjustment shall be the most recently published Consumer Price Index ("CPI") for the United States/San Francisco-Oakland/San Jose as published by the U.S. Department of Labor's Bureau of Labor Statistics.

In addition, Sublessee shall pay to Sublessor, as additional rent, the greater of the sum of \$2,750.00 or a percentage rent equal to four percent (4%) of Sublessee's gross receipts on retail sales, and three percent (3%) of Sublessee's gross receipts for restaurant and alcohol sales for

each quarter (or three-month period). This amount shall be payable to Sublessor on or before the last day of the month following each quarter (or three-month period).

4. Property Taxes.

Sublessee shall pay all property taxes assessed on the Leased Premises.

5. Insurance.

Each party shall carry and pay for liability insurance and personal property insurance. Sublessee shall provide a certificate of "all risk" or "all perils" liability insurance in an amount of no less than \$300,000 with Sublessor as a named co-insured.

6. Signage.

Exterior signs will be in compliance with all Monterey County codes.

7. Maintenance and Repair.

Sublessee shall be responsible for all maintenance and repairs of the Leased Premises.

8. Common Area Maintenance.

If Landlord shall, after the Effective Date of this Agreement, implement a program for the common maintenance and landscaping of common areas situated within 500 feet of the Leased Premises, Sublessee agrees to pay its reasonable share of expenses incurred in maintaining and landscaping such common areas, including the vehicle parking area closest to the Leased Premises.

9. Option to Purchase.

Sublessee shall pay a non-refundable deposit of Sixty Thousand Dollars (\$60,000.00) to Sublessor for an option to purchase the furnishings, fixtures, equipment, goodwill, and other tangible and intangible assets used in connection with the operation of the business. This option shall remain open for the initial term of the Sublease Agreement to purchase the business from Sublessor for the purchase price of Seven Hundred Ninety Thousand Dollars (\$790,000). If Sublessee fails to exercise the option to purchase on such terms, the deposit shall be non-refundable.

10. Consent of Landlord.

Article Seventeen of the Lease requires the written consent of the Landlord to this Sublease. Such consent shall be a condition precedent to the obligations of the parties to this Sublease.

11. Notices.

Notice required or permitted to be given under the Lease, or under this Sublease, shall be addressed to Sublessor or Sublessees at that party's then-current business address.

12. Sublessor's Right of Re-Entry.

In the event Sublessees default in any performance required by Tenant under the Lease or under this Sublease, Sublessor shall have all the rights of enforcement of Landlord under the Lease or under then-prevailing California law, including without limitation the right to re-enter the Leased Premises and take possession thereof.

13. Indemnification and Hold Harmless.

Sublessee shall defend all suits brought against Sublessor, its officers, agents, or employees, or naming Sublessor, its officers, agents, or employees as a defendant wherein it is alleged that operations by Sublessee or conditions on the Leased Premises create a liability of Sublessor, its officers, agents, or employees, and Sublessee shall pay any and all judgments against and save and hold Sublessor, its officers, agents, and employees harmless from any liability, cost, expense, or loss on account thereof, except that judgments solely based on acts or omissions of Sublessor, its officers, agents, or employees need not be paid by Sublessee and further except that Sublessee need not hold Sublessor, its officers, agents, or employees harmless therefrom.

Sublessor shall give written notice to Sublessee within ten (10) days after any suit shall have been served on Sublessor wherein it is alleged that operations by the Sublessee or conditions on the Leased Premises create a liability of the Sublessor. Sublessor shall give written notice to Sublessee within thirty (30) days after the filing of any written claim against Sublessor wherein it is alleged that operations by the Sublessee or conditions on the Leased Premises create a liability of the Sublessor.

14. Arbitration.

Any controversy between the parties involving the construction and application of any of the terms, covenants or conditions of this Agreement, shall be submitted to arbitration on the request of any party, and the arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280-1294.2 of the California Code of Civil Procedure, as amended, and be held within the County of Monterey, California.

15. Attorneys' Fees.

In the event of any dispute between the parties regarding any aspect of this Agreement, the prevailing party in such dispute shall be entitled to recover from the non-prevailing party, the prevailing party's reasonable costs in connection therewith including, without limitation, reasonable attorneys' fees, through final disposition of the matter, including final appeal.

16. Post Judgment Fees And Costs.

Any party who is awarded attorneys' fees and costs under the terms of this Agreement shall also be entitled to additional attorneys' fees and costs incurred in enforcement of any judgment. This clause is intended to survive any judgment rendered on this Agreement and is not to be deemed merged into any such judgment.

17. Governing Law and Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of California that would apply if all parties were residents of California and this Agreement was made and performed in California. Any disputes not resolved pursuant to Section 14 of this Agreement between the parties to this Agreement shall be brought in the Superior Court of Monterey, Monterey County, California.

18. Counterpart Copies.

This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

19. Time Of The Essence.

All times and dates in this Agreement are of the essence.

20. Headings

The titles and headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any provisions of this Agreement.

21. No Waiver.

The failure of any party to insist on the strict performance of any covenant or duty required by this Agreement, or to pursue any remedy under this Agreement, shall not constitute a waiver of the breach or the remedy.

22. Severability.

If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall remain in effect.

23. Successors and Assigns.

This Agreement and all of its provisions shall be binding on and inure to the benefit of the successors, heirs and assigns of the parties hereto.

24. Independent Tax and Legal Counsel.

Sublessee acknowledges that they have been urged to seek independent tax and legal counsel with respect to the meaning and effect of this Agreement.

25. Transfer of Sublessee's Interest.

Sublessee shall not assign or otherwise transfer this Agreement or any right or interest hereunder, or in or to any of the Improvements, or sublet or license under the use of the Leased Premises without the prior written consent and approval of Sublessor and Landlord.

26. Other Terms and Conditions.

Except to the extent set forth in this Sublease, all other terms and conditions of the Lease shall continue in full force and effect, with no change or modification.

27. Entire Agreement.

This Agreement contains all representations and the entire understanding and agreement between the parties. Correspondence, memoranda, and oral or written agreements that originated before the date of this Agreement are replaced in total by this Agreement unless otherwise expressly stated in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have signed this Sublease effective \_\_\_\_\_, 2017.

"Sublessor"  
DEYERLE BROTHERS ENTERPRISES, LLC.

By: \_\_\_\_\_  
Richard S. Deyerle, Manager

By: \_\_\_\_\_  
Daniel S. Deyerle, Manager

"Sublessee"

\_\_\_\_\_  
Veronica G. Pirl

\_\_\_\_\_  
Bruce D. Pirl

**CONSENT OF LANDLORD**

I, \_\_\_\_\_, on behalf of Moss Landing Harbor District, a political subdivision of the State of California, Landlord under said Lease, do hereby consent to the terms of above Sublease in which DEYERLE BROTHERS ENTERPRISES, LLC Tenant under said Lease and Sublessor will sublet said Leased Premises to Sublessee, Veronica G. Pirl and Bruce D. Pirl.

Dated: \_\_\_\_\_, 2017.

“Landlord”  
MOSS LANDING HARBOR DISTRICT

By: \_\_\_\_\_  
Name:  
Title:

Exhibit A

Copy of Ground Lease Agreement