

## LEASE AMENDMENT NO. 2

**PROPERTY:** 39 Fisherman's Wharf, Concession 6, Fisherman's Wharf, Monterey, California

**LESSOR:** CITY OF MONTEREY

**LESSEE:** OLD FISHERMAN'S' GROTTTO, INC.

**LEASE DATE:** March 6, 1992

This Amendment No. 2 to the Lease ("**Amendment**"), is dated as of August 25, 2017, for reference purposes only and is entered into by and between CITY OF MONTEREY, a municipal corporation ("**Lessor**"), and Old Fisherman's Grotto, Inc., a California corporation ("**Lessee**" or "**Fisherman's Grotto**") effective as of the last date set forth below the signatures.

NOW, THEREFORE, in consideration of the foregoing and of their mutual covenants contained herein, the parties hereby agree as follows:

1. **Background.**

A. Lessor and Lessee's predecessor-in-interest, Sabu Shake and Isabelle Shake dba Old Fisherman's Grotto, entered into a Ground Lease dated March 6, 1992, as amended by that Lease Amendment No. 1 dated June 17, 1998 and as assigned on August 12, 2015, (as amended, the "**Lease**"), for certain premises described therein and referred to as 39 Fisherman's Wharf, Concession 6 at the project commonly known as Fisherman's Wharf, Monterey, California (the "**Premises**").

B. In consideration of the factors contained in the Adopted Eligibility Criteria for Wharf I Lease Option Beyond 30 Years adopted December 18, 1990 by the City of Monterey to grant a further 20 year option, City finds that

(i) The Fisherman's Grotto, by virtue of its complete rebuilding in 1982 from the ground up, including new pilings, met the criteria of the 1990 policy for capital investment and improvements.

(ii) Fisherman's Grotto meets the performance factor of the 1990 policy by being the highest performing tenant on the Fisherman's Wharf and by paying the greatest amount of rent to City, thus demonstrating the ability to manage the concession to generate significant market performance.

(iii) Fisherman's Grotto meets the compliance factor of the 1990 policy by paying rent timely and having no recent record of code or other violations.



(iv) Fisherman's Grotto meets the maintenance factor of the 1990 policy by having completed the required deferred maintenance improvements, and has presented a new plan for ongoing maintenance, thus demonstrating a commitment to long-term maintenance.

C. Lessee desires to extend the lease on the same terms and conditions set forth in the Lease, except to the extent modified in this Amendment. Capitalized terms used in this Amendment without definition shall have the same meaning given to such terms in the Lease. This Amendment shall be effective upon the last date set forth below the parties' signatures.

2. Term. The term of the Lease is hereby extended to July 31, 2041.

3. Minimum Rent and Additional Compensation.

A. Minimum Rent. Section III A is modified as contained in this Section 3A. Effective as of August 1, 2021 through the end of the Term, Minimum Rent, shall be adjusted as set forth below:

<u>Year</u>	<u>Monthly Minimum Rent</u>	<u>Annual Minimum Rent</u>
<u>1</u>	\$5,544.00	\$66,528.00
2-20	Adjusted annually by CPI per Lease Section III G beginning August 1, 2022.	

B. Additional Compensation. Section III B is modified as contained in this Section 3B. Effective as of August 1, 2021 through the end of the Term, Additional Compensation shall be adjusted as set forth herein. Effective August 1, 2021, Lessee shall pay the monthly sum of three percent (3%) of all gross sales and business transactions from the restaurant and the fish market combined. The sum is referred to as "gross rent" in the Lease. The amount of additional compensation due shall be the amount of the total gross rent that exceeds the Minimum Rent payments already received.

C. Adjustment of Fair Market Rent. Section II. H of the Lease is replaced in the entirety by this Section 3C. The fair market rent or gross rent shall be adjusted every 15 years beginning in the year 2036 on January 1, to the then fair market value rental for the Premises. The parties shall attempt in good faith to negotiate and reach agreement on a fair market rental rate. If agreement cannot be reached by April 1 of the 16th year, each party shall select an MAI certified appraiser to determine the fair market rental value of the premises as of that date. The appraisers shall meet and attempt to reach agreement in good faith on or before June 1 of the 16th year. If no such agreement can be reached on or before July 1 of the 16th year, the two appraisers shall, within 14 days, select a third MAI certified appraiser who shall review their fair market rental values and determine from that information what the fair market rental value shall be. The decision of the third appraiser shall be made within 45 days of appointment, and shall be binding on the parties. Each party shall bear the cost of their own appraiser and



shall be responsible for one-half the cost of the third appraiser. In no event will the gross rents be adjusted below the gross rent set forth in Amendment Section 3B above. The new rate agreed upon or established by the appraiser process shall be effective January 1 of the 16th year despite the actual date on which the new rates are established.

4. Delivery of Possession – Premises. Lessee hereby agrees that the Existing Premises shall continue to be leased in its "AS-IS" condition. Following the mutual execution and delivery of this Amendment, Lessee shall, at Lessee's sole cost and expense, cause the specified capital improvements identified in **Exhibit 1** to be constructed at the Premises. Such capital improvements shall be for a minimum cash injection by Lessee of \$300,000 ("**Lessee's Work**"). The scope of Lessee's Work to be performed is described on **Exhibit 1**. Lessor shall have no obligation to construct any improvements in the Premises. Lessee shall promptly commence such Lessee's Work and complete such work no later than 24 months following the execution of this Amendment. Further, Lessee shall correct any code violations, deferred maintenance items, or mutually agreed upon deficiencies to the building and pilings as described on **Exhibit 2**. The completion of a City inspection to determine the code violations, deferred maintenance items, or mutually agreed upon deficiencies to the building and pilings and agreement of the content of **Exhibit 1** shall be a condition precedent to Lessor's execution of this Amendment. Such deficiencies shall be completed within 6 months of Amendment execution. Commencement of construction shall be evidenced by the issuance of a building permit or execution of an improvement contract for some or all of Lessee's Work. Evidence of completion shall be the recordation of a Notice of Completion of such work.

5. Inspection by Certified Access Specialist. Lessor discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) of which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Lessee acknowledges and agrees that, if Lessee wishes to have the Premises inspected by a CASp: (i) Lessee must notify Lessor on or before the date when Lessee executes this Lease Amendment pursuant to the election below; (ii) the inspection will be at Lessee's sole cost and expense; (iii) the inspection must be scheduled through Lessor and in coordination with the City's Property Manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Lessee's responsibility; and (v) Lessee must provide a copy of the CASp report to Lessor on completion. By initialing below, Lessee represents that:



Lessee wishes to have a CASp inspection of the Premises Initials: ~~SS~~ el

Lessee hereby waives its right to have a CASp inspection of the Premises Initials:

el

6. Demolition; Surrender. Section II B and II C of the Lease are hereby replaced as follows:

A. Surrender Of Premises. At the expiration or earlier termination of this Lease, Lessee shall remove any and all furniture, furnishings, equipment, and fixtures ("FF&E") located on the Premises and under the possession, ownership or control of the Lessee, his subtenants, agents, other representatives, or which have been placed on same leasehold by Lessee, his subtenants, predecessors in interest, agents and/or other representatives. Lessee may not remove any portion of the building. Lessee shall surrender the Premises in good order and condition, fully repaired and maintained, and any damage to the building or Premises occasioned by the removal of the FF&E. Any FF&E not removed in a timely fashion shall conclusively be deemed to have been abandoned by Lessee and may be appropriated, sold, stored, destroyed, converted, or otherwise disposed of by Lessor without notice to Lessee or to any other person and without obligation to account for them, subject to any applicable law. Lessee will pay Lessor for all expenses incurred in connection with Lessor's disposition of such property, including without limitation, the cost of repairing any damage caused by removal of such property. Lessee's obligation to observe and perform the covenants of this paragraph shall survive the end of this lease.

B. Ownership Of Improvements. All improvements constructed on the Premises by Lessee as permitted by this Lease, including all buildings, shall be owned by Lessee until expiration of the term or earlier termination of this Lease when all improvements on the premises shall; without compensation or demand become Lessor's property, free and clear of all claims, liens, and encumbrances to or against them by Lessee or any other person. Lessee shall defend and indemnify City against all liability and loss arising from such claims, liens, and encumbrances or from City's exercise of the rights conferred by this paragraph. Lessee shall execute, acknowledge and deliver to City, within ten (10) days after surrender of the Premises, a valid and recordable quitclaim deed covering all of the leasehold premises including all buildings, fixtures, equipment, and property remaining thereon. Lessee's obligation to observe and perform the covenants of this paragraph shall survive the end of this Lease.

7. Confidentiality of Records Section III C. (8) Confidentiality of Records is hereby deleted and replaced as follows:

Confidentiality of Gross Sales Reporting. Lessor is a public entity subject to the Public Records Act. Information provided to Lessor pursuant to this Section III may be disclosed publicly as required by law. If Lessor receives a request for records related to information obtained from Lessee pursuant to this section, Lessor agrees to promptly provide Lessee with written notice of the request. Lessee will then have the time specified in the Lessor's notice to determine



**EXHIBIT 1**  
**CAPITAL IMPROVEMENTS**

Immediately after Lease execution, Tenant shall promptly prepare plans for Lessee's Work, all of which shall be capital in nature and not repairs, maintenance, or furniture, fixtures or equipment. Tenant shall submit such plans to the City of Monterey for plan check, and any other regulatory permits, reviews or consents within 60 days of the Commencement Date. Tenant shall then promptly respond to any and all plan check comments and revisions, until the building permit is duly issued by the City of Monterey. Tenant shall diligently and expeditiously commence and duly complete Lessee's Work. Upon completion of construction, evidenced by a Notice of Completion, Tenant shall provide as built plans and final costs to Landlord. To the extent a permit or consent is not required, Tenant shall still obtain Landlord's consent for any and all Lessee's Work as described in the following paragraph.

Except for Lessee's Work previously approved by Landlord attached to this **Exhibit 1** and repairs for code violations, deferred maintenance, building and piling deficiencies under **Exhibit 2**, Tenant shall obtain the prior written consent of Landlord for any and all improvements to be a part of Lessee's Work, which consent shall not be unreasonably withheld with respect to the proposed work which: (a) comply with all applicable regulations; (b) are, in Landlord's opinion, compatible with the Building and its mechanical, plumbing, electrical, heating/ventilation/air conditioning systems and (c) will not interfere with the use and occupancy of any other portion of the Building or Fisherman's Wharf by any other tenant or its invitees. Tenant shall submit, for Landlord's approval, the estimated cost and plans and specification for improvements to be a part of Lessee's Work. Tenant shall also supply to Landlord any documents and information reasonably requested by Landlord in connection with Landlord's consideration of a request for approval hereunder. Tenant shall cause all Lessee's Work to be accomplished in a first-class, good and workmanlike manner, and to comply with all applicable regulations. Tenant shall at Tenant's sole expense, perform any additional work required under applicable regulations due to Lessee's Work hereunder. All such Lessee's Work shall remain the property of Tenant until the expiration or earlier termination of this Lease, at which time they shall be and become the property of Landlord; provided, however, that Landlord may, at Landlord's option, require that Tenant, at Tenant's expense, remove any or all Lessee's Work made by Tenant and restore the Premises by the expiration or earlier termination of this Lease, to their condition existing prior to the construction of any such Lessee's Work.

At least ten (10) business days before beginning construction of improvements to be a part of Lessee's Work, Tenant shall give Landlord written notice of the expected commencement date of that construction to permit Landlord to post and record a notice of non-responsibility. Upon substantial completion of construction, Tenant shall cause a timely notice of completion to be recorded in the office of the Monterey County Recorder.

At the end of the 24 month period from Lease execution to complete Lessee's Work, Tenant shall provide proof of the \$300,000 total Lessee's Work by providing copies of all invoices paid.



**DENNIS  
HODGIN  
AIA  
ARCHITECTS**  
ARCHITECTURE  
AND PLANNING  
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September 22, 2017

Re: Capital Improvement Projects for Old Fisherman's Grotto Restaurant #39 Wharf One, Monterey, CA

To Whom It May Concern,

Our firm has been retained by Chris Shake for two capital improvement projects. They are as follows:

1. Storage Addition to Old Fisherman's Grotto. This project was approved by Housing, Planning, Council and Architectural Review. Wharf Permit # 14-243. Coastal Commission waiver has been applied for. Estimated project cost: \$221,400.
2. Exterior Renovation. This project was approved by Housing, ARC and Planning. Application P 15-075. Estimated project cost: \$112,500.

Both projects had been on hold due to lease negotiations with the City but are now moving forward with building permit applications.

In addition to the above improvement projects, Mr. Shake is contracting for a main electrical service relocation at an estimated cost of \$75,000.

Signed,



Dennis Hodgin AIA  
C8270



**EXHIBIT 2**  
**CODE VIOLATIONS, DEFERRED MAINTENANCE ITEMS, BUILDING AND PILING DEFICIENCIES**



**OBSERVATION REPORT**  
**OLD FISHERMAN'S GROTTO – 39 WHARF #1**

**SCOPE AND PURPOSE:**

*The Permit and Inspection Division was requested to conduct a property observation and condition report. This report is based on a field inspection conducted on July 27, 2017 by John Kuehl CBO, Chief of Inspection/Building Official. The items listed below are based on observation only and do not include any support structure or piling inspections. There was not any deconstruction or material removal to establish the findings. This is not a CASp inspection or report.*

**EXTERIOR COMPONENTS:**

- **General:**
  - The exterior paint is in good condition with no visible signs of wood dry rot.
  - The roof material is composition. There appears to be numerous loose shingles and has many worn spots. The roof appears to be at the end of its useful life.
  - The exterior gas meter box is in disrepair.
  - Some of the exterior electrical outlets do not have exterior rated waterproof covers.
  - The sink in the outside sales area has a non code approved p-trap.
  - In the upstairs back area there is a water heater/utility protection structure that has been added without City approvals. This structure is not constructed using conventional construction practices. There are numerous code violations with wood clearance for water heater ventilation and roof drainage issues.
  - The top shelf of the outside sales area has material stored within 18" of fire sprinkler heads.
  
- **Required Action:**
  - Roof to be replaced. **By the end of calendar year 2018**
  - All exterior electrical outlets to install waterproof and exterior rated covers. **Within 30 days of report.**
  - Permit to be obtained and all work at the second floor exterior utility area and substandard work repaired or replaced. **By February 1, 2018**
  - Replace non-approved p-trap with approved. **Within 30 days of report.**
  - Remove all items within 18" of ceiling. **Within 30 days of report.**

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Exhibit 2

**INTERIOR COMPONENTS:**

**EXIT SYSTEM:**

- **General:**
  - There are the correct number and placement of illuminated exit signs and a clear path of exit travel. The first floor exit door behind the bar does not open to 90 degrees.
- **Required Action:**
  - Modify the existing door to properly open and operate. **Within 30 days of report.**

**STORAGE OF MATERIALS:**

- **General:**
  - There are numerous storage areas throughout the building. In many of these storage areas material is stored within 18" of the ceiling or fire sprinkler head. In other areas storage material was stored directly in front of electric sub-panel equipment.
- **Required Action:**
  - Move storage of material which blocks access and blocks sprinkler head protection. **Within 30 days of report.**

**KITCHEN:**

- **General:**
  - The kitchens on both levels appear to be very clean and well maintained. The grease trap and hood maintenance reports were not available during the inspection. The operator indicated the reports would be available upon request and both items are cleaned and serviced on a regular basis.
- **Required Action:**
  - Provide both the grease trap and hood cleaning maintenance records for the last six months. **Within 30 days of report.**

**PLUMBING SYSTEM:**

- **General:**
  - The plumbing systems appear to be in operational conditions with no known deficiencies. **No action required**

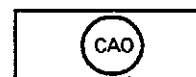


Exhibit 2

**MECHANICAL SYSTEM:**

- **General:**
  - The mechanical systems appear to be in operational conditions with no known deficiencies. No action required

**ELECTRICAL SYSTEM:**

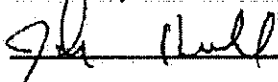
- **General :**
  - In numerous locations the outlet plate covers have either been removed or are damaged.
  - The electrical sub-panel requires additional labeling.
  - All main and sub panels must be provided with 36" working clearance.
  - The main electric service is located in a busy operational kitchen on the lower floor. This location is a potentially damp location and is subject to physical damage.
  - In second floor dining room, there is a fixture missing from the light housing.
- **Required Action:**
  - Replace or install all electric covers. Within 30 days of this report.
  - Clearly label all sub-panels. Within 30 days of report
  - Remove stored material in front of all sub and main electric panels. Within 30 days.
  - Suggestion to move the main electric service equipment out of the kitchen. This would take coordination with PG&E and the City for best location. The goal would be to have the service equipment relocated within 12 months. This is a recommendation and not a code requirement.
  - Replace or reinstall the missing fixture. Within 30 days of report.

**CONCLUSIONS:**

- My overall assessment of this property is that it is and has been well maintained. There are a few items that require action within 30 days, while other items a bit longer. It is highly recommended that the main electric service equipment be moved out of the lower kitchen area. The tenant will need to work with the City of Monterey, a California Licensed Electrician and PG&E to resolve this location issue. The tenant also needs to work with the City on the second floor mechanical equipment to obtain all required approval and permits to reconstruct or remove the structure to bring this area into conformance with City requirements.

I am recommending a follow-up inspection within 30 days of this report to verify identified items have been completed. I am also suggesting an annual inspection be completed to verify the structure remains in good condition.

John Kuehl, CBO  
Chief of Inspection Services/Building Official

  
\_\_\_\_\_

Date:

9-5-2017  
\_\_\_\_\_



Exhibit 2



187 El Dorado Street, Suite B, Monterey, California 93940 tel 831-372-4455 fax 831-372-4459  
**STRUCTURAL ENGINEERING, INC.**  
MayoneStructural.com

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**2017 Substructure Inspection Report**  
**Concession #6**  
Formerly "Old Fisherman's Grotto"  
#39 Wharf #1, Monterey, CA

Prepared for:  
Janna Aldrete  
City of Monterey  
Commercial Leasing and Property Management  
580 Pacific Street, Monterey, CA 93940

**Purpose of Report**

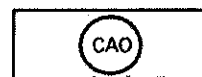
Janna Aldrete of the City of Monterey requested a substructure inspection report for Concession #6 (formerly Old Fisherman's Grotto restaurant), to include piles above and below water, pile capitals, bracing, deck joists, deck sheathing and catwalks. The underwater inspection for timber piles includes observing and documenting for all piles a percentage rating of pile integrity by hammer-sounding submerged portion of timber piles, and integrity of pile wraps.

**Method of Inspection and Report**

The underwater inspection of the Concession #6 piles was performed by divers Jared Berg and Billy Palmer of Monterey Bay Diving. Submerged portions of timber piles were hammer-sounded. Where a timber pile is found to be damaged, the extent of damage is recorded as the percentage of total pile area that remains intact. Piles not otherwise noted were found to be 100% intact. Any deficiencies in pile wraps are also noted.

The above-water portion of the piles and substructure was observed, measured and photographed by the engineer while crawling along the catwalks and/or while seated in a kayak at the water surface. The engineer documented the above-water substructure framing and recorded apparent structure deficiencies.

Site observations, a review of the April 26, 2005 Continuing Maintenance Report (prepared for Mr. Chris Shake), and discussions with divers Jared Berg and Billy Palmer of Monterey Bay Diving, provide the basis for the discussion, recommendations and conclusions of this 2017 Substructure Inspection Report.



## Exhibit 2

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### Substructure Observations

Concession #6 is composed of two or three originally separate buildings or building additions. The southern portion has 12x14 pressure-treated timber capitals, 2X12R untreated joists at 16" spacing and plywood decking. The northern portion has both glue-laminated wood (GLB) capitals and 12x12 pressure-treated capitals, pressure treated 4x10 joists at 16" and 24" spacing, and diagonal 2X plank decking.

Concession #6 is supported on wrapped timber piles with pressure-treated timber and GLB capitals, treated and untreated wood joists and treated timber cross-bracing. The pile wraps extend above the tidal zone and usually extend down into the sandy bottom, prolonging the service life of the timber piles. There are a total of 49 timber piles. Wraps at 17 piles are deficient with 16 wraps not extending into the seabed and one wrap that is loose. All deficient wraps are located in the northern portion of Concession #6, as noted in the paragraph above.

In sounding the piles, 46 of the 49 piles were found to be 100% sound. For the three piles with damage, percentage of sound timber was 60%, 80% and 50%. These piles respectively are at grids 23,4 (90%), 24,4 (80%) and 25,3 (50%).

The GLB capitals are 12-1/2" wide and appear to be in good repair, except for isolated portions. 80% to 90% of the total length of GLB capitals appears sound and dry. However, checking is evident in the remaining 10% to 20% of the total length, where portions of the GLB capitals have substantial water-staining and have been saturated with fine debris filtered through the floor and/or from bird waste, etc. The GLB capitals are in fair repair where they are substantially water-stained and checked.

Wood deck joists are generally in good repair, though joist damage was evident at the southeast corner, and is suspected along grids 23.7 and 24, and at a water leak near the pile at grids 24.3. Damage and apparent damage is related to water. Similarly, about 90% of the floor decking appears sound, and much of this has no water staining. However, damage to floor decking is suspected where water-staining is extreme. This condition occurs along the north and south exterior walls (at adjacent concession buildings) and in areas along the east ends of grids 23.7, 24 and 25.

Cross-braces are 4x6 pressure-treated fir, and bolts for cross-braces are 7/8-inch or larger diameter and hot-dip galvanized. For the most part, bolts and braces are in good repair. Bolts are missing at the braces that should connect to the pile at grids 25.4. In several other locations, bolts may be corroded or nuts missing or in need of tightening.

The catwalks are in overall good repair with the exception of the catwalk cantilevering south from the capital at grid 24. This catwalk was extended by lap-splicing untreated 2X joists to the treated 4X10 joists. The catwalk extension supports a wooden boat as a display. Catwalk decking planks at this extension (under the boat) are broken and missing. The lap-spliced attachments of joist extensions are of questionable integrity.

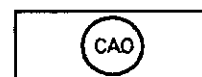


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**Discussion and Recommendations**

The wharf level platform joists and decking, catwalks, piles, caps and bracing appear sound and acceptable for three more years of service, with implementation of the repairs/upgrades listed in this section.

Percentage of sound timber was 90%, 80% and 50% in the three piles found to be damaged. In prior structural upgrade work at Wharf #1, we judged structural timber piles at least 75% intact would be acceptable for three more years of service. This precept also seems appropriate for Concession 8, where of a total of 49 timber piles, three are rated below 100% and one is rated below 75%. We recommend that one new pile be installed to replace the one pile rated at 50% intact. We also recommend that for the 17 timber piles with deficient wraps, 16 piles have their wraps extended into the sandy seabed and the loose wrap on one pile be tightened or re-attached as appropriate.

It is critical that the 12-1/2" wide GLB capitals that have been subjected to wetness are protected from further wetting. Under conditions where these laminated members suffer checking, the checking can develop into delaminating. Furthermore, there is serious concern with the 12-1/2" GLB width, which introduces vertical as well as the more usual horizontal laminations. Thus vertical lamination joints as well as horizontal lamination joints are subjected to the deleterious effects of wetting and drying. Based on observations made 12-years apart (for the 2006 and 2017 reports), the checked and water-stained GLB capitals currently in fair repair should remain serviceable for another decade or more, if the sources of wetting or dampness are removed, and the members protected from wetting, and preservative-treated if feasible, where they have been stained and saturated with debris. In addition to removing the source of moisture and installing protection and possible preservative treatment, these members should be closely monitored in future maintenance investigations.

Regions of the wharf-level deck with potentially damaged deck joists and/or decking must be explored. Damaged joists and decking must be replaced. Where water staining is evident but joists and decking are serviceable and can be conserved, measures should be taken to remove the source of water. Such conserved framing might also be treated with preservative if appropriate and feasible.

Deficiencies noted at bolted cross-bracing are minor. Maintenance of these minor conditions should be included with any major work such as pile replacement.

The catwalk located south of grid 24 supporting the boat, with damaged decking planks and joist extensions of questionable integrity, must be explored and qualified and/or upgraded and repaired as needed. Alternately the joist extensions, deficient planks and the boat can be permanently removed.

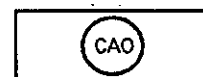


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**Conclusions**

The Concession #6 substructure is in generally good repair but requires specific maintenance measures that include one pile replacement and repair to 17 pile wraps. Water-related damage to the deck and substructure must be mitigated by removing the sources of water. Most significant is the potential for exacerbated water-damage to GLB capitals that are already marginally compromised due to checking. These large elements are costly to replace, so it is prudent to protect them from further water-related damage. Wet and/or water-stained portions of the wharf-level decking and joists must be explored and repaired as needed. Minor deficiencies in the cross-bracing attachments should be repaired and the catwalk supporting the boat should be addressed: these items are clarified under Discussions and Recommendations.

**Limitations**

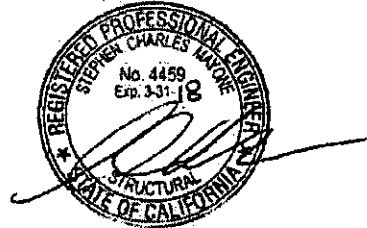
An evaluation of the capacity of the Concession #6 substructure under gravity or seismic/wind lateral loads is not within the scope of this report. Nor has there been recommendation to upgrade the substructure to present building code requirements at this time. No structural details of suggested upgrade measures are in the scope of this report and none have been provided.

This report is issued with the understanding that it is the responsibility of the leaseholders or property owners or their representatives to ensure that the recommendations contained herein are incorporated into future reports and the design of upgrade maintenance measures, and ultimately that the necessary steps are taken to see that the maintenance is properly carried out in the field.

The findings and recommendations of this report are considered valid at the present date. Due to the exposure of the piles and substructure and the accelerated weathering of the marine environment, and the potential for impact damage from waterway vessels or other human error, this report shall be considered valid for a period of not more than three (3) years.

If you have any questions or would like to discuss this report, please contact Stephen C. Mayone, SE 4459 at 831-372-4455.

Sincerely,  
MAYONE STRUCTURAL ENGINEERING, INC.



Stephen C. Mayone SE 4459

Attachments: Monterey Bay Diving September 2017 Piling Inspection Report  
Old Fisherman's Grotto Pile Repair Plan September 2017

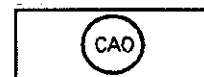


Exhibit 2



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PHONE 831.642.9966  
www.montereybaydiving.com  
info@montereybaydiving.com

September 2017

Steve Mayone:

The 49 wrapped timber piles under Concession #6 (formerly Old Fisherman's Grotto) were inspected by Billy Palmer and Jared Berg of Monterey Bay Diving on 9/11/17. The piles were visually inspected and sounded. All but one of the wraps are tight and intact. For 16 piles, the wrap ends between 3" to 16" above the sand line.

46 piles sounded 100% intact. Three piles with damage sounded at 90%, 80%, and 50% intact. These are located at grids 23, 4 (90%), 24, 4 (80%) and 25, 3 (50%). The balance of pilings are sound and do not appear to have any hollow spots behind the wraps.

Jared Berg  
Monterey Bay Diving  
625 Unit C California Ave  
Sand City, CA 93953  
831-642-9966



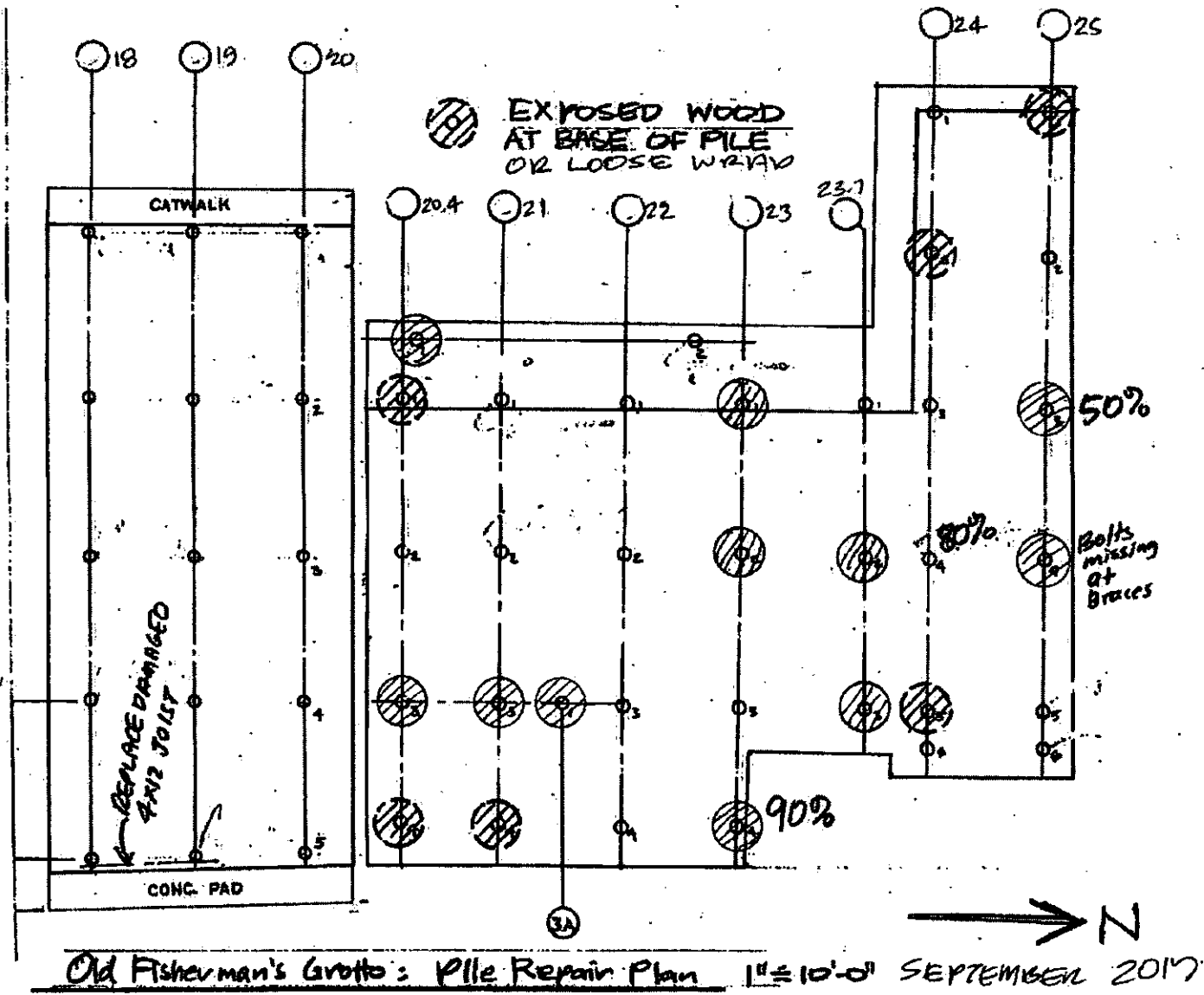
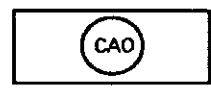


Exhibit 2



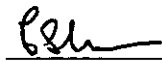


GUARANTOR CONSENT

This Guarantor Consent to Lease Amendment and reaffirmation of Guarantee ("Consent") is dated August \_\_, 2017, Christopher Shake as Guarantor to the Lease dated Ground Lease dated March 6, 1992, as amended by that Lease Amendment No. 1 dated June 17, 1998 between City of Monterey ("Lessor") and Sabu Shake and Isabelle Shake dba Old Fisherman's Grotto (collectively, the "Lease"), later assigned to Old Fisherman's Grotto, Inc. ("Lessee"). The Lease was guaranteed by Guarantor under a Guarantee of Lease dated August 12, 2015 (the "Guarantee"). Guarantor understands and agrees that Lessor and Lessee are extending the term of the Lease which may or may not extend, enlarge or expand Guarantor's obligations under the original Lease, and agrees that the obligations contained in the Guarantee in full force and affect and include the revised obligations anticipated by the Lease extension. Guarantor acknowledges that Lessor has no obligation to obtain Guarantor's consent or affirmation under the terms of the Guarantee, and the execution by Guarantor of this Consent creates no obligation in the future of Lessor to obtain consent from or give notice to Guarantor. Without affecting any of the obligations of Guarantor under the Guarantee, Guarantor agrees and reaffirms that (a) Lessor and Lessee may amend, compromise, release, or otherwise alter any term, covenant, or condition of the Lease, and Guarantor guarantees and promises to perform all the obligations of Lessee under the Lease as so amended, compromised, released, or altered; (b) Lessor may release, substitute, or add any guarantor of or party to the Lease; (c) Lessor may exercise, not exercise, impair, modify, limit, destroy, or suspend any right or remedy under the Lease; (d) Lessor or any other person acting on Lessor's behalf may deal in any manner with Lessee, any guarantor, any party to the Lease, or any other person; and (e) Lessor may permit all or any part of the Premises or of the rights or liabilities of Lessee under the Lease to be sublet, assigned, or assumed. This is a continuing guaranty, and Guarantor waives the benefit of the provisions of section 2815 of the California Civil Code.

Entered into this 2 day of Nov, 2017.

GUARANTOR:

  
\_\_\_\_\_  
Christopher Shake

