

Resolution 11—13

of the

San Mateo County Harbor District

Consenting to Assignment of the Second Amended Lease of Parcel 2, Pillar Point Harbor Concession Building from Princeton Pantry, a Limited Liability Corporation, to Ketch Joanne Restaurant, a California Corporation, and the Approval of the Third Amended Lease Between the District and Ketch Joanne Restaurant, a California Corporation

Whereas, Princeton Pantry leases the premises known as Parcel 2 of the concession building located at Pillar Point Harbor, El Granada, California per a Second Amended Lease from the San Mateo County Harbor District (the "District"), attached hereto as Exhibit A, and

Whereas, Princeton Pantry, desires to then assign the Second Amended Lease to Ketch Joanne Restaurant, a California Corporation, and

Whereas, Ketch Joanne Restaurant desires to accept the assignment of the Second Amended Lease and all terms and conditions thereto, and

Whereas, in order for the assignment to be effective, the District must consent to the assignment, and

Whereas, in order to effectuate the assignment, permission must be obtained from the Department of Boating and Waterways, and

Whereas, once assigned, Ketch Joanne proposes that the Second Amended Lease be further amended as shown in the Third Amended Lease, attached hereto as Exhibit 1 and incorporated by reference herein, and

Whereas, the District has agreed that the assignment of the Second Amended Lease and subsequent amendment thereof is in the best interest of the District because it will allow for the continuation of this business which provides a benefit to the District and its citizens.

Therefore, be it resolved that San Mateo County Harbor District hereby consents to the assignment of the Second Amended Lease, approves the Third Amended Lease for Parcel 2 as shown in Exhibit 1 and additionally instructs staff to forward the Assignment and Third Amended Lease to the Department of Boating and Waterways for its review and approval.

Approved this 5th day of June, 2013 at the regular meeting of the Board of Harbor Commissioners by a recorded vote as follows:

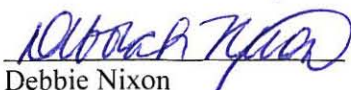
For: Bernardo, Brennan, Holsinger, Parravano, Tucker

Against: None

Abstaining: None

Absent: None

Attested


Debbie Nixon
Deputy Secretary

BOARD OF HARBOR COMMISSIONERS

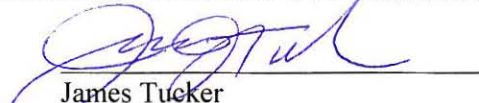

James Tucker
President

EXHIBIT 1

Third Amended Lease Parcel 2 Pillar Point Harbor Concession Building

This third lease amendment is made and entered into by and between the San Mateo County Harbor District, hereinafter referred to as “Lessor” or “District”, and Ketch Joanne Restaurant, a California Corporation, hereinafter referred to as “Lessee”. The parties agree that this Third Amended Lease supersedes all prior versions of the lease between the parties and further agree as follows:

1. LEASE DOCUMENTS

This lease includes these specific provisions together with the lease General Conditions (71 Pages), revised February 27, 1992 and the following Exhibits, which are also made a part hereof:

- Exhibit A - San Mateo County Harbor District Drawing of Parcel 2, Pillar Point Harbor Concession Area
- Exhibit B - Booklet entitled “Design Criteria for Construction by Lessees of the San Mateo County Harbor District – 1980”
- Exhibit C - Lease General Conditions

2. PROPERTY LEASED

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the property located at Pillar Point Harbor, El Granada, County of San Mateo, State of California, described as follows:

The premises depicted in Exhibit A, known as Parcel 2, in the concession building at Pillar Point Harbor consisting of approximately 800 square feet of space, together with the non-exclusive right of ingress and egress over other properties of Lessor.

3. TERM OF LEASE

3.1 The original Lease term began on June 1, 1997. The term shall terminate on June 1, 2027.

4. USES AND SERVICES

4.1 Lessee shall operate and maintain a café serving beverages and food items including Ketch Joanne Restaurant products, and will develop a café with additional items designed to increase walk away and on premises sales.

5. IMPROVEMENTS AND INVESTMENTS

All design and construction shall conform with the requirements as set forth in "Design Criteria for Construction by Lessees – 1980" as amended, (Exhibit B), adopted by District, all applicable codes and ordinances, including but not limited to District, City, County, State and Federal. No construction shall be commenced without prior written approval of the District, including approval of all plans, and the granting of a permit by the County of San Mateo for construction within the coastal zone. Completion of construction will be in accordance with the time schedule submitted as part of the proposed construction approval by District.

6. OPERATING SCHEDULE AND CONTROLLED PRICES.

6.1 Lessee shall provide full services on leased premises during regular business hours not less than six (6) days each week of the lease term, with the exception of New Year's Day, Thanksgiving Day, and Christmas Day. Lessee may close shop for vacation not to exceed thirty (30) days per year. During the time shop is closed, Lessee shall ensure available staffing of the store for notification in event of emergency situations exceeding two days. Lessee shall provide District the name and telephone number of contact person. Lessee shall notify District in writing thirty (30) days prior to said action. Lessee shall provide District with a schedule of operating hours.

6.2 Lessee shall, at all times maintain a schedule of prices to be charged for all products and services supplied to patrons on or from the leased premises; whether the same are supplied by Lessee or by sublessees; assignees, concessionaires, permittees, or Lessees, and shall make said schedule available to the District.

6.2.1 All rates and charges to patrons served on or from the leased premises shall be reasonable and consistent with the quality of services and facilities offered, and shall be no more than rates and charges for comparable services and facilities in the counties of San Francisco, Marin, Sonoma, Contra Costa, Alameda, Santa Clara, San Mateo, Santa Cruz and Monterey.

6.2.2 The fees charged to third parties above may be reviewed by the parties every six (6) months during the term of this lease, and may be adjusted, if necessary.

6.3 This lease hereby specifically reserves to the San Mateo County Harbor District the power to fix and determine the rates to be charged by the Lessee for the use by the public of facilities developed or leased by the Lessee, as required by Harbors and Navigation Code, Sections 72 and 72.2.

7. LEASE RENTS AND GROSS RECEIPTS

7.1 Beginning on June 1, 1997 the minimum annual rent was set at Four Thousand, One Hundred, Twenty-Four and 52/100 Dollars (\$4,124.52). It has been adjusted

annually on January 1 of each year by the amount of the percentage change of the Consumer Price Index, All Urban Consumers, San Francisco - Oakland - San Jose for the year ending December 31 and will continue to be so adjusted through the term of the Third Amended Lease.

7.2 Percentage rent for the described premises shall be calculated using the following percentage of total gross receipts from business operations conducted on or from the demised premises and may be adjusted in accordance with the provisions of the lease General Conditions.

<u>Operation</u>	<u>Percentage</u>
All Sales and Services	3%

7.3 Minimum annual rent (adjusted or unadjusted) shall be due and payable in advance, in equal monthly installments, on or before the first day of each month for the term of this Lease.

7.4 Percentage rents shall be payable as follows:

7.4.1 At the end of each quarter, i.e. March 31, June 30, September 30, and December 31, percentage rent based on receipts shall be computed for the prior quarter and the differences between the minimum annual rent for said quarter shall be due and payable on the 15th day following the end of said quarter.

7.4.2 The percentage rent based upon receipts shall be recomputed at the end of each year using the applicable percentages and the balance of rents as computed for each year shall be due and payable on or before March 30 of the following year. Any overpayment of rent shall be credited toward future rents.

8. GROSS RECEIPTS

8.1 Gross receipts are the gross income derived, received, or charged by any sub-lessee, sub-tenant, concessionaire, Lessee, assignee, permittee or any other person, all of which are referred to hereafter as "sub-tenants"; or by Lessee, for sales for charges for service, for use of space made in or on leased premises, or from any and all sources of income derived in whole or in part from any business transacted in, at or from the leased premises; whether from subtenants, customers, or otherwise, whether for cash or credit, and whether payment is actually made or not.

8.2 Gross receipts shall include, without limitation, all:

8.2.1 Deposits not refunded;

8.2.2 Orders taken on or from the leased premises to be filled or paid for elsewhere;

8.2.3 Sales or charges for all services performed, whether such sales are made, or such services are rendered at or arranged through occupied space at the leased premises by long-distance communication, and whether initiated, performed, or completed at another location;

8.2.4 Consideration received by Lessee for value directly from customers, and from sub-tenants, including sub-rents.

8.3 Each sale or charge for service or use of space on credit or installments shall be treated as a sale or charge for the whole price in the calendar year for which the sale or charge is made, whether or not any payments are made within that year.

8.4 The following matters only may be excluded or deducted from gross receipts at the time they are ascertained, and where not ascertainable during the period covered by a statement of gross receipts, from time of subsequent statement when they are known:

8.4.1 Gratuities such as tips retained by employees, lessee or sub-tenant, for their personal benefit;

8.4.2 All sums collected and paid out for sales taxes, luxury taxes, excise taxes, and similar taxes required by law be added to the total purchase price, whether now or hereafter in force, to be collected from customers and paid by Lessee or sub-tenant;

8.4.3 Merchandise transferred or exchanged between other stores or warehouses owned by or affiliated with Lessee or any sub-tenant; if such transfers or exchanges are made solely for the convenient operation of Lessee's or sub-tenant's business and not for the purpose of consummating a sale previously made at, on or from the leased premises or for the purpose of depriving District from the percentage of gross receipts of a sale that otherwise would be made at, on, or from leased premises;

8.4.4 Merchandise returned to shippers or manufacturers;

8.4.5 All refunds made on any sale or charge for service or use of space previously included as gross receipts;

8.4.6 All cash or credit received in settlement of any claims for loss or damage;

8.4.7 Gift certificates or like vouchers, if not issued for value, until converted into a sale by redemption;

8.4.8 Bulk sales made by Lessee or sub-tenant not in the ordinary course of business and subject to prior written approval of District;

8.4.9 Any income or receipts, under generally accepted accounting principles, which are derived from sale or disposal of any capital assets (excluding any assets normally sold during business conducted on leased premises) or from retirement of any indebtedness; or from lessee's or sub-tenant's investments of any funds not invested in the leased premises or the operation of Lessee's or sub-tenant's business on leased premises;

8.4.10 Agency fees and commissions paid by third party users directly to Lessee.

8.4.11 Any income or moneys generated from the sale of fishing licenses or stamps on behalf of the State of California Department of Fish and Wildlife.

8.4.12 Assignee Vessels shall submit to District three percent (3%) of all Gross Receipts from transactions aboard vessel, above seven thousand five hundred dollars (\$7,500). Excluded from Gross Receipts are transactions resulting from the resale of merchandise purchased through Lessee.

8.5 None of the above exclusions or deductions from gross receipts shall be excluded or deducted if in substance it is a typical sale, charge for Service, or other source of gross income ordinarily the subject of percentage rent, but arranged only to avoid such rent, or if actually contracted for elsewhere on other premises such as a typical sale, charge for service or other source of gross income which is ordinarily the subject of percentage rent, but such sale, charge for service, or other gross income is for the Lessee's or sub-tenant's business benefit.

9. SUBLEASE/ASSIGNMENT OR SALE OF LEASEHOLD

9.1 Notwithstanding any other provision of this lease to the contrary, should Lessee, or any affiliate of Lessee be allowed to sublet, assign or sell any portion or all of said Lessee's interest in this leasehold to any other person, entity or group, said Lessee shall pay the District a minimum of \$1,000.00 to reimburse the District for the costs of effecting the transfer, or ten percent (10%) of the gross sales price, including the value of any traded property, leasehold, equipment or services involved in the "purchase", whichever is greater, as a return to the District for the general maintenance, construction, improvement, advertising, and expansion of the Pillar Point Harbor area.

9.2 The "gross sales price" in the Sale of any above described interest in this leasehold shall not include the sale of any fishing vessels or equipment on those vessels, nor any standard and removable stock on hand or other personal property which may normally be removed by a tenant at the end of a leasehold, not having attained the status of fixtures. The "gross sales price" shall include the value of the Leasehold, any generalized goodwill associated with the leasehold on the premises, the right to complete the terms of the lease and utilize the structure involved, the berthing provided, the Commercial Activity Permits, and any and all fixtures in place on site which are not excluded above.

10. LATE PAYMENTS

10.1 Payments not paid by the due date shall bear interest at 10.00% per annum until paid. Lessee shall have the right to charge interest to sub-tenants for monies not paid promptly when due and payable.

11. NON-SUFFICIENT FUNDS

11.1 Lessee shall be charged a fee pursuant to Section 1719 of the Civil Code for the State of California for each check that is returned to Licensor for lack of sufficient funds.

12. SECURITY DEPOSIT

12.1 Lessee shall be required to post a security deposit of \$6,000, which may be used by the District for payment of any lease moneys, rents, fees or other charges due and payable to the District, but in arrears for over ninety (90) days. Lessee shall be required to reinstate security deposit within 30 days, and to the satisfaction of the District if District is required to use said security deposit to satisfy Lessee's obligations under this lease.

13. MAINTENANCE AND SERVICES TO PREMISES

13.1 Lessee shall be responsible for all interior maintenance to the Premises, including doors, windows, or other means of egress or ingress to the premises. Lessee shall maintain all fixtures, piping, wiring, etc. that were constructed as a part of the buildout of the Premises, excluding only the main sewer and water lines constructed to serve the common interest of other lessees within the same structure.

13.2 Lessee shall be responsible, if an appropriate billing mechanism exists, for the following utilities and services in connection with the Premises:

13.2.1 Garbage and Trash Disposal

13.2.2 Electricity

13.2.3 Water

13.2.4 Sewer

14. APPROVAL BY DEPARTMENT OF VESSELING AND WATERWAYS

14.1 Approval of this lease by District may be subject to final approval by the California Department of Boating and Waterways, or its successor; and approval of this lease by the District shall become final only after the lease has been approved by said Department or successor.

15. NOTICES AND PAYMENTS

15.1 All notices and communications required under this lease shall be in writing, and all notices and payments shall be made as follows:

15.1.1 All notices and payments to District shall be given or mailed to:

General Manager
San Mateo County Harbor District
One Johnson Pier
P.O. Box 39
El Granada, CA 94018

15.1.2 All notices and payments to Lessee shall be given or mailed to:

Joanne Franklin, Albert Dunn and Heidi Franklin
Ketch Joanne Restaurant
P.O. Box 1082
El Granada, CA 94018

15.2 Either party may designate a different address by giving notice as set forth in this section.

15.3 All notices and communications referred to herein shall be deemed given on the date of service, if served personally; or on the date of delivery if such delivery is documented by a certified mail receipt; or the fifth day following date of mailing, if utilizing ordinary, first class mail.

15.4 If Lessee is not a resident of the County of San Mateo or is an association or partnership without a member or partner resident of said county, or is a foreign corporation, Lessee shall file with District a designation of agent, who must reside in San Mateo County. Said designation shall include the name, residence and business address of the agent, and shall designate the person as an agent of Lessee for the service of process in any court action between Lessee or Encumbrance Holder and District, arising out of or based on this lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

16. PREVAILING PROVISIONS

In the event of conflict between the provisions set forth in this lease and the general conditions incorporated herein, this provision expressly set forth herein shall prevail.

17. ENTIRE AGREEMENT

This agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreement or understandings (whether oral or written) between the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

18. AGREEMENT JOINTLY PREPARED

This lease shall conclusively be presumed to have been drafted jointly by the parties hereto.

Executed this ____ day of June, 2013.

LESSEE:
Joanne Franklin, Albert Dunn, and
Heidi Franklin dba Ketch Joanne
Restaurant

LESSOR:
San Mateo County Harbor District

Joanne Franklin
Owner

James Tucker
President, Board of Harbor
Commissioners

Attested:

Albert Dunn
Owner

Debbie Nixon
Deputy Secretary to the Board

Heidi Franklin
Owner

ASSIGNMENT OF LEASE AND CONSENT OF LESSOR

THIS AGREEMENT is made this _____ day of _____, 2013 by and between Princeton Pantry, LLC, hereinafter referred to as "Assignor," and Ketch Joanne Restaurant, a California Corporation, hereinafter collectively referred to as "Assignee."

RECITALS

1. On August 3, 2011 the Board of Harbor Commissioners approved the assignment of the Second Amended Lease for Parcel 2, Pillar Point Harbor Concession Building to Princeton Pantry, LLC, a California Limited Liability Corporation. The assignment was thereafter approved by the Department of Boating and Waterways. The Second Amended Lease is attached as Exhibit A and the assignment as Exhibit B.
2. On October 14, 2011, Princeton Pantry, LLC exercised its option to extend the Master Lease for the fifteen (15) year period as provided in Section 3.2 (Exhibit C). The Second Amended Lease will now terminate on June 1, 2027.
3. Princeton Pantry, LLC ("Assignor") now desires to assign the Second Amended Lease to Ketch Joanne Restaurant, a California Corporation ("Assignee"), and Assignee desires to accept the assignment thereof, on the terms and conditions set out herein below, superseding any and all prior agreements between the parties.

NOW, THEREFORE, Assignor and Assignee agree as follows:

AGREEMENT

1. FOR VALUABLE CONSIDERATION, hereby acknowledged to have passed from Assignee to Assignor and subject to the conditions set out below, Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the Second Amended Lease. This assignment shall become effective upon approval of the assignment by the Department of Boating and Waterways.
2. Assignor hereby covenants with Assignee that it is the true and lawful tenant pursuant to the Second Amended Lease and of the leasehold interest created thereby, that its interest therein is free of any encumbrance and that, subject to the written consent of Lessor, which is set out below, it has the right to bargain, sell and transfer the Second Amended Lease in the manner and form above written. Assignor further covenants that, as of the effective date of this Agreement, it has performed all of its

duties and obligations under the Second Amended Lease, including, without limitation, making all payments to Lessor as required thereunder.

3. Assignee hereby agrees to and does accept the assignment of the Second Amended Lease and it expressly assumes and agrees to keep, perform and fulfill all of the terms, covenants, conditions and obligations required to be kept, performed, and fulfilled by Assignor as Lessee there under, including, without limitation, the making of all payments to Lessor when due and payable.
4. The assignment hereunder of the Second Amended Lease and the leasehold estate created thereby is expressly conditioned upon the execution by Lessor of the Consent of Lessor, as specifically set out below, which accepts and acknowledges that Assignor will no longer have any continuing liability for the Second Amended Lease terms. It is acknowledged and agreed by the parties hereto that the release of Assignor under the terms of this Assignment and as specifically set out in the Consent of Lessor below, is a material consideration in Assignor's willingness to enter into this Agreement.
5. Assignee hereby agrees to indemnify and hold harmless Assignor, its successors and assigns, from any claims, damages, liabilities, expenses or penalties arising out of or relating to any default, breach or failure of performance of the Second Amended Lease occurring or alleged to have occurred prior to the effective date of the Agreement.
6. Assignor hereby agrees to indemnify and hold harmless Assignee, its successors and assigns, from any and all claims, damages, liabilities, expenses or penalties arising out of or relating to any default, breach or failure of performance of the Second Amended Lease occurring or alleged to have occurred prior to the effective date of this Agreement.
7. In the event of any controversy, claim or dispute between Assignor, Assignee, and/or Lessor arising out of or relating to this assignment or the breach thereof, the prevailing party or parties shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses, in addition to any other relief to which the prevailing party or parties may be entitled.

8. All other terms and conditions of the Master Lease, and any amendments thereto, are to remain in full force and effect, except as specifically amended herein.

9. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement on the date first set out above.

ASSIGNOR:

Princeton Pantry, LLC

By _____

(print name)

Title _____

ASSIGNEE:

Ketch Joanne Restaurant, a California Corporation

By _____

(print name)

Title _____

By _____

(print name)

Title _____

By _____

(print name)

Title _____

CONSENT OF LESSOR

The undersigned is the Lessor under the Second Amended Lease described in the foregoing assignment. The undersigned hereby consents to the assignment of the Second Amended Lease, and all rights and obligations thereunder, to Ketch Joanne Restaurant, a California corporation (“Assignee”) waiving none of Lessor’s rights under the Second Amended Lease as to the Assignee and releasing Princeton Pantry, LLC (“Assignor”) from any further obligation or liability arising out of the Second Amended Lease, except as provided in paragraph 5 of the Assignment of Lease.

Dated: _____, 2013.

SAN MATEO COUNTY HARBOR DISTRICT

By _____
James Tucker
President, Board of Harbor Commissioners