

**SECOND AMENDMENT TO “FINGERS” GROUND LEASE
AND SETTLEMENT AND MUTUAL RELEASE AGREEMENT**

This Second Amendment to “Fingers” Ground Lease and Settlement and Mutual Release Agreement (“Agreement”) is entered into as of the last date of execution hereof by and between CITY OF SOUTH SAN FRANCISCO, a municipal corporation (“Landlord”) and REST INVESTMENTS (“Tenant”). Landlord and Tenant are sometimes referred to herein as the “Parties”.

RECITALS

A. Landlord and Tenant are parties to that certain Ground Lease dated as of June 12, 1998 pursuant to which the Tenant leases a City-owned parcel identified in Section 1.1 and Exhibit B to the Ground Lease, which is also known as the “Fingers Parcel”. The Ground Lease was amended on March 18, 2008 (as amended the “Lease”).

B. REST Investments, an affiliate of Tenant, and Landlord are also parties to that certain Construction and Maintenance Agreement dated as of October 30, 1998 (“CMA”) relating to obligations with respect to the Open Space Park located near the Premises under the Lease.

C. Certain disputes have arisen between Landlord and Tenant with respect to the payment of outstanding Base Rent, the amount of the Base Rent, the Rental Adjustment dates and the methodology for calculating the Consumer Price Index under the Lease and with respect to the maintenance obligations and costs under the CMA (collectively, the “Lease Disputes”).

D. To avoid the cost and risk of litigation and to resolve the Lease Disputes, the Parties desire to resolve the Lease Disputes, upon the terms and conditions set forth in this Agreement.

E. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Lease or the CMA, as applicable.

NOW, THEREFORE, for and in consideration of the mutual undertakings contained in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Base Rent.

(a) Base Rent. Notwithstanding anything to the contrary in the Lease, Landlord and Tenant agree that as of the date of this Agreement, the Base Rent under the Lease is Five Thousand Nine Hundred Eighty Nine and 00/100 Dollars (\$5,989.00) per month, and the next date for the Rental Adjustments shall be July 1, 2029.

(b) Index. For clarification, upon each Rental Adjustment date, the reference rate to be used for purposes of calculating the increase shall be the preceding April. The CPI adjustment of the Base Rent shall be calculated for each year of the preceding five (5) years and

the average CPI across the five (5) years shall be applied for each year. For illustrative purposes, if the CPI for each year of the preceding 5 years was 1%, 2%, 3%, 2%, 1%, then the average annual CPI increase would be 1.8%. The CPI adjustment would be calculated by multiplying 1.8% by 5 years for a CPI increase of 9%. Further, notwithstanding the foregoing calculation methodology, the parties agree that in no event shall the CPI rent increase be greater than ten percent (10%).

(c) Late Fees. In consideration of the terms, provisions and agreements contained in this Agreement, Landlord hereby waives any outstanding late fees and interest that could be due under the Lease (if any).

2. CMA.

(a) Maintenance. Notwithstanding the terms of the CMA, Tenant shall continue to perform the maintenance of the Open Space Park until the termination date of the CMA (i.e., June 11, 2028). Notwithstanding the terms of the CMA, in no event shall Tenant have any obligations under the CMA after June 11, 2028.

(b) Waiver of Reimbursement. In consideration of the terms, provisions and agreements contained in this Agreement, Tenant, on behalf of itself and its affiliates, agrees to waive all rights to collect any costs due to Tenant and itself with respect to the maintenance performed to the Open Space Park by Tenant since 1998 and for the maintenance to be performed by Tenant through June 11, 2028.

3. Mutual Release.

(a) Release of Landlord. As of the date of the mutual execution of this Agreement, Tenant hereby agrees to hold harmless and hereby releases and discharges Landlord and each of its affiliates, successors, managers, members, shareholders, officers, directors, agents and employees, and each of their respective predecessors, successors and assigns and the partners, employees, shareholders, officers, directors, agents and employees of each of them (collectively, "Successors"), from any and all claims, demands, causes of action, losses, penalties, fines, expenses, obligations, damages, attorneys' fees, costs and liabilities of any nature whatsoever (collectively "Claims"), whether or not now known, suspected or claimed, which Tenant (or any individual or entity acting through Tenant) ever had, now has or may claim to have, against Landlord or any of its Successors resulting from, arising out of, or related to the Lease Disputes and any defaults or alleged defaults under the Lease accruing prior to the date of this Agreement (the "Landlord Release").

(b) Release of Tenant. As of the date of the mutual execution of this Agreement, provided Tenant timely performs all of its obligations under this Agreement, Landlord hereby agrees to hold harmless and hereby releases and discharges Tenant and each of its affiliates, successors, managers, members, shareholders, officers, directors, agents and employees, and each of their respective predecessors, successors and assigns and the partners, employees, shareholders, officers, directors, agents and employees, and each of them (collectively, "Tenant Successors") from any and all Claims, whether or not now known, suspected or claimed, which Landlord (or any individual or entity acting through Landlord) ever had, now has or may claim to have, against Tenant or any of its Tenant Successors resulting from, arising out of, or related to the Lease

Disputes and any defaults or alleged defaults under the Lease accruing prior to the date of this Agreement.

(c) Additional Facts. Landlord and Tenant each acknowledge that it may hereafter discover facts different from or in addition to those it now knows or believes to be true with respect to the Claims which are the subject of the Landlord Release set forth in subparagraph (a) above and the Tenant Release set forth in subparagraph (b) above, and Landlord and Tenant each expressly agree to assume the risk of the possible discovery of additional or different facts, and agree that the “Landlord Release” and the “Tenant Release” shall be and remain effective in all respects, regardless of such additional or different facts. In connection with the matters contemplated in the releases set forth above, Landlord and Tenant each expressly agrees that it waives and relinquishes all rights that it may have under Section 1542 of the Civil Code in the State of California.

That section reads as follows:

“§A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

Landlord’s Initials

Tenant’s Initials

4. **Disputed Claims.** No term or provision of this Agreement shall be construed as an admission of liability by any Party, or as an admission with respect to the merit or lack of merit of the contentions of any Party. The provisions and terms of this Agreement are made in settlement of the disputes between the Parties under the Lease and the CMA.

5. **Representations, Warranties and Indemnities.**

A. Tenant warrants and represents to Landlord, and Landlord warrants represents to Tenant, that it has the requisite power and authority to execute and deliver, and have taken all action necessary for the execution and delivery of, this Agreement and for its consummation.

B. The Parties acknowledge that they have been represented by counsel of their own choice throughout all negotiations that preceded the execution of this Agreement and in connection with the preparation and execution of this Agreement.

C. Each of the Parties shall indemnify and hold harmless the other Parties from and against any actual loss, liability, demand, claim, action, cause of action, cost, or damage, including interest, reasonable attorneys’ fees and expenses, and all amounts paid in investigation, defense, or settlement of any of the foregoing which such Party or Parties may suffer, sustain, or

become subject to, as a result of, in connection with, relating or incidental to, the untruth, inaccuracy, or breach of any of the foregoing representations or warranties in this Section 5.

6. **Attorneys' Fees and Costs.** In the event that any action or other proceeding is instituted to enforce any right or obligation under this Agreement, the prevailing party shall be entitled to receive, in addition to any other relief granted, costs and attorneys' fees not unreasonably incurred.

7. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

8. **Integrated Agreement.** This Agreement embodies the entire Agreement of the Parties hereto concerning the resolution of all of the Lease Disputes, and the terms and conditions contained herein shall inure to the benefit of, and be binding upon, the heirs, representatives, successors and assigns of each of the Parties hereto.

9. **Modification.** No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Parties making the waiver.

10. **Counterparts.** This Agreement may be executed in counterparts, which, when counterparts have been executed by all of the Parties, shall constitute this Agreement.

11. **Captions and Interpretations.** The paragraph titles or captions are inserted in this Agreement as a matter of convenience. As such, the paragraph titles or captions are not intended to define or describe the scope of any provision.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto effective as of the date indicated above.

LANDLORD

CITY OF SOUTH SAN FRANCISCO

By:_____

Name:_____

Title:_____

TENANT

ROBERT E. SIMMS, dba Rest Investments