

## SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS (this “Agreement”) is made as of December 31, 2023 (“Effective Date”) by and between the City of Morro Bay, a municipal corporation (hereinafter “Landlord”) and Morro Bay Fish Company, a California corporation (hereinafter “Tenant”).

### RECITALS

A. Landlord and Tenant entered into a certain Lease Agreement dated July 1, 2015 (the “Lease”) whereby Landlord agreed to lease to Tenant and Tenant agreed to lease from Landlord Lease Site 129W-131W (the “Premises”).

B. Tenant provided notice to Landlord that Tenant wishes to terminate the Lease prior to its scheduled expiration on June 30, 2025 (the “Scheduled Expiration Date”).

C. In consideration of entering into this Agreement, Tenant has agreed to, rather than terminate the Lease prior to the Scheduled Expiration Date, assign the Lease to a sublessee selected by the City of Morro Bay’s (the “City”) Harbor Director.

D. Landlord and Tenant have agreed to enter into this Agreement to release any claims related to the Agreement, subject to the terms and conditions herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants set forth below, and for other consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by this reference.
2. Vacation of Premises. Tenant shall vacate the Premises pursuant to Section 5(a) by 5:00PM on December 31, 2023 (the “Vacation Date”). If earlier delivery of possession of the Premises is desired by Tenant, then such arrangements can be made by contacting Landlord’s Harbor Director. Vacation of the Premises shall not release Tenant from any indemnity provisions in the Lease with respect to acts or omissions that occurred prior to the Vacation Date.
3. Lease Assignment. Within three days after receipt from Landlord’s Harbor Director, Tenant shall sign an assignment and assumption agreement substantially similar to Exhibit A, attached hereto. Failure to sign that agreement will void the waiver set forth in Section 4, below.
4. Compliance with Obligations. As consideration for Landlord’s consent to early vacation of the Premises, (1) Tenant shall comply with all the requirements of this Agreement; (2) Landlord agrees to waive the outstanding rent amounts owed by Tenant under the Lease and release any claims related to the Agreement; and (3) Tenant acknowledges and agrees it has made no deposits in relation to the Lease and, therefore, releases Landlord from any liability or claim that the Tenant may have relating to the return of such deposits to the Tenant.

5. Condition of Premises; Landlord Property.

a. Condition of Premises. By the Vacation Date, Tenant shall deliver possession of the Premises to Landlord and shall remove all of its personal property (except as provided in Section 5(b)); repair all damage to the Premises, including, without limitation, such damage caused by such removal of Tenant's personal property to the reasonable satisfaction of Landlord; vacate the Premises and leave such Premises in reasonably good condition and repair and otherwise in such condition as is required under the Lease with respect to surrender of the Premises at the end of the term of the Lease; and deliver the key, lock, and any other security access equipment of the Premises to Landlord.

b. Landlord Property. Prior to the Vacation Date, Tenant shall complete the following requirements:

- i. Surrender and deliver all equipment installed and utilized on the Premises and all property owned by Landlord, including, but not limited to, any equipment obtained by Landlord that is placed within the Premises (collectively referred to as the "Landlord Property"). Tenant shall ensure the Landlord Property is left in reasonably good condition and repair, normal wear and tear excepted. Tenant acknowledges the Landlord Property is the property of Landlord and is located at the Premises solely in connection with Tenant's use of the Premises and performance of services under the Lease. Tenant shall make all reasonable efforts to safeguard the Landlord Property while vacating the Premises and shall not remove, damage, or dispose of the Landlord Property without prior written consent from Landlord. Tenant shall leave the Landlord Property within the Premises as applicable. Landlord Property includes, without limitation, the list of equipment provided in Exhibit "B".
- ii. Deliver to the Harbor Director and the City Manager, or their respective designees, an inventory of the Landlord Property at least 10 days prior to the Vacation Date. Such inventory shall consist of Exhibit B, and revised to include any additional property Tenant believes to be the Landlord Property. However, any revision of Exhibit B pursuant to this Subsection 5(b)(ii) shall require the Harbor Director's and City Manager's, or their respective designee's written approval.
- iii. Prior to the Vacation Date, Tenant agrees to permit the Harbor Director and City Manager, or their respective designees, access to the Premises at any reasonable time to inspect or inventory the Landlord Property and Tenant shall cooperate fully with the Harbor Director and City Manager, or their respective designees, to facilitate the return of the Landlord Property to Landlord in the same condition as when received, except for normal wear and tear. In the event Tenant fails to surrender the Landlord Property as required under this Section 5, Tenant shall be responsible for any costs incurred by Landlord in recovering, repairing, or replacing the Landlord Property.

6. Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

**If to Landlord:**

Harbor Director  
City of Morro Bay  
1275 Embarcadero  
Morro Bay, CA 93442

**If to Tenant:**

Morro Bay Fish Company  
Attn: Roger A. O'Brien, President  
5495 Traffic Way  
Atascadero, CA 93422

**With a copy to:**

City Manager  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

**With a copy to:**

Roger A. O'Brien, President & CEO  
Santa Monica Seafood Company  
18531 S. Broadwick Street  
Rancho Dominguez, CA 90220

7. Enforcement. In the event Tenant fails to comply with this Agreement, Landlord shall have all remedies available at law and equity.

8. Knowing and Voluntary. In executing this Agreement, each party hereto acknowledges they have been given the opportunity to consult with and receive the advice of counsel and the parties have executed this Agreement after independent investigation and without fraud, duress, or undue influence.

9. General Release. For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord hereby agrees to release and forever discharge Tenant, including its current and former employees, officials, agents, directors, officers, corporate affiliates, or representatives, or any of them, and the Tenant hereby agrees to release and forever discharge Landlord and the "Releasees" hereunder, consisting of the City of Morro Bay's elected or appointed public officials, officers, employees and agents, including, but not limited to, each of their associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, elected or appointed public officials, attorneys, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, attorneys' fees, costs and/or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which any of the parties now has or may hereafter have against each other and/or the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof including, without limiting the generality of the foregoing, any Claims constituting, arising out of, based upon, or relating to the Lease.

10. Waiver of Civil Code Section 1542. Further, Tenant expressly agrees to waive and relinquish all rights and benefits he may have against the City, and/or the Releasees under Section 9 of this Agreement based on Section 1542 of the Civil Code of the State of California. That section reads as follows:

**“§1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”**

11. Waiver. Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

12. Attorneys' Fees. If any dispute arises between the parties hereto or their legal representatives, successors and assigns concerning any provision of this Agreement or the rights and duties of any person in relation thereto, then the party prevailing in such dispute shall be entitled, in addition to such other relief that may be granted, to recover reasonable attorneys' fees and costs in connection with such dispute.

13. Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Agreement.

14. Governing Law. This Agreement shall be governed and construed under the laws of the State of California and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles. Any action to enforce, invalidate, or interpret any provision of this agreement shall be brought in the Superior Court of California, County of San Luis Obispo.

15. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

16. Final and Complete Expression. This Agreement is the final and complete expression of the parties regarding the subject matter hereof. This Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all of the parties hereto.

17. Severability. If any provision in this Agreement is deemed invalid, then the remaining provisions thereof will continue in full force and effect and will be construed as if the invalid provision had not been a part of this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.

19. Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written below.

[SIGNATURES ON FOLLOWING PAGE]

Dated: \_\_\_\_\_, 2023

**LANDLORD:**

CITY OF MORRO BAY, a municipal corporation,

By: \_\_\_\_\_  
Carla Wixom, Mayor

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Chris F. Neumeyer, City Attorney

Dated: \_\_\_\_\_, 2023

**TENANT:**

MORRO BAY FISH COMPANY,  
a California corporation

By: \_\_\_\_\_  
Roger A. O'Brien

Its: President

**EXHIBIT “A”**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

[see attached]

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

This assignment is made and entered as of the 1<sup>st</sup> of day of January 2024 by and between MORRO BAY FISH COMPANY, a California corporation (hereinafter referred to as “Assignor”) and MORRO BAY SEAFOOD COMPANY, a California corporation (hereinafter, referred to as “Assignee”).

1. Assignee acknowledges the City of Morro Bay (the “City”) has, leased the premises, known as Morro Bay Lease Site 129W-131W and as more particularly described in Attachment “A” attached hereto, to Assignor pursuant to that certain unrecorded Lease dated July 1, 2015. Assignee acknowledges any assignment of the Lease is subject to prior approval by the City’s City Council and is also subject to prior execution between Assignor and Assignee.
2. Assignee agrees (i) to comply with all the terms and conditions of the Lease, with the exception of the construction of capital improvements as described in Section 13.06 of the Lease, (ii) to assume all liabilities required under the Lease and any amendments, (iii) to defend, indemnify and hold harmless the City and its officers, employees and representatives from and against, any and all claims, lawsuits, costs and expenses, including reasonable attorney’s fees and court costs arising from, or in any way related to the Lease, and (iv) to maintain liability insurance in the manner, form and amount required by Lease and any amendments, thereto, with the City, its officers, employees and representatives, included as an additional insureds without the offset against the City’s insurance.
3. Assignor hereby assigns to Assignee all rights, title and interest it has in the Lease.
4. Assignor confirms to the City it has no actual knowledge or reasonable cause to believe any release of hazardous substance has come to be located on/or beneath the real property during the term of Assignors’ occupation of the leased premises that has not been reported pursuant to Health and Safety Code section 25359.7.

**ASSIGNOR:**

MORRO BAY FISH COMPANY,  
a California corporation

Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_



The undersigned, jointly and severally, consents to and accepts, on and after January 1, 2024 assignment & assumptions of the payment of rent, including all percentage of gross sales rent, and performance of all duties and obligations as set forth in the Lease, with the exception of the construction of capital improvements as described in Section 13.06 of the Lease.

**ASSIGNEE:**

MORRO BAY SEAFOOD COMPANY,  
a California corporation

Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_  
Garrett Rose,

The City, Lessor named in the Lease, consents to this Assignment upon the conditions set forth above. The City also consents to the agreements by Assignee to assume on and after January 1, 2024, the payment of rent, including all percentage of gross sales rent, and performance of all duties and obligations as set forth in the Lease. This Assignment has been approved by the City's City Council on or prior to the date set forth below.

**LESSOR:**

City of Morro Bay

Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_  
Carla Wixom, Mayor

**ATTACHMENT "A"**  
**LEASE AGREEMENT FOR LEASE SITE 129W-131W**

[see attached]

**EXHIBIT "B"**  
**LIST OF LANDLORD PROPERTY**

The following list includes the Landlord Property as specified in the Lease as exhibit B:

- One 5000 lb. platform scale
- One Ice plant with thrower assembly Forklift
- One Hoist
- One Salt-water wash down pump
- One 40 ft. refrigerated container
- One De-icer
- Four 280-gallon fish tanks with 2 salt water pumps and air compressor
- 10 (approximately) Stainless steel albacore racks with pipes and hooks (10?)
- Various Loading and dump buckets
- Various Metal totes labeled "Driscoll's Wharf"

The following is a list of equipment agreed to be left for new tenant as specified in email dated December 18, 2023 by Fernando Gonzales:

- All equipment in the deck, except one of two forklifts that is under lease and cannot be sold or transferred, the remaining one is in good shape and only needs a tire to be replaced.
- 17 fish totes necessary for the new operator to work.
- New operator would buy all the existing bait inventory. We will work with them with payment terms.