

LEASE

THIS LEASE, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "District," to 807 SEAPORT LLC, a California limited liability company dba 3rd BASE, hereinafter called "Tenant," is entered into on this ____ day of _____ (the "Effective Date"), and is set forth as follows:

District for the considerations hereinafter set forth, hereby grants to Tenant upon the terms and conditions and for the purposes and uses hereinafter set forth, the right to use and occupy a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California, entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended ("Port Act"), which lands are more particularly described as follows and are referenced in this Lease as "Premises":

This Lease is granted upon the following terms and conditions:

1. PREMISES

The Premises is situated in the Shopping Center. The "Shopping Center" is presently known as Seaport Village and is located on that certain real property in the City of San Diego, County of San Diego, State of California. The legal description of the real property is attached hereto as Exhibit A. The site plan attached hereto as Exhibit B shows, among other things, the approximate principal improvements that comprise the Shopping Center. Tenant acknowledges that the District may change the shape, size, location, number and extent of improvements shown thereon. The District may elect to eliminate, modify, or add any improvements to any portion of the Shopping Center in its sole and absolute discretion. Tenant acknowledges that Exhibit B is for informational purposes only and shall not be deemed to be a representation, warranty, or agreement that the Shopping Center is exactly as indicated on this Exhibit B, or that any tenants shown on the Exhibits or who are currently tenants of the Shopping Center will be or remain occupants of the Shopping Center. Tenant hereby represents that Tenant is in agreement regarding the accuracy of the Total Interior Floor Area, Rentable Square Feet, and Outdoor Seating or Display Area referenced below.

Unit No: Suite # E3

Total Interior Floor Area, as shown in the plan attached as Exhibit B-1: 7,989 Square Feet

Rentable Square Feet: 5,923 Square Feet ("Premises I")

Outdoor Seating or Display Area, as shown in the plan attached as Exhibit B-1: Tenant shall have the exclusive right to use the approximately 622 Square Feet of outdoor patio space located directly adjacent to Suite E-3. Tenant shall also have exclusive right to use the approximately 2,842 Square Feet of the former common area courtyard and patio located in the Lighthouse District (the "Lighthouse District Courtyard") and directly adjacent to Suite E-3 as shown in the plan attached as Exhibit B-1; Tenant shall also have the non-exclusive right to use the walkway surrounding the Lighthouse District Courtyard ("Courtyard Walkway") for the purposes of facilitating public and customer access and ingress and egress related to the Permitted Use; provided, that, Tenant shall not permit customers or invitees from, obstructing or impeding public access, ingress and egress over, through, across or on the Courtyard Walkway, unless specifically permitted in writing by District in advance (collectively, the Lighthouse District Courtyard and the Courtyard Walkway are the "Premises II").

Premises I and Premises II are hereinafter collectively referred to as, the "Premises".

2. TERM

2.1 Term

The Lease shall be effective as of the Effective Date. For the purposes of this Lease, the Term shall be from and after the Effective Date and through the Expiration Date or earlier termination of the Lease, unless extended as provided in Section 2.2 (the "Term"), and all obligations and requirements of this Lease shall be applicable during the Term, unless specifically otherwise stated in this Lease.

The "Expiration Date" shall occur on the tenth anniversary of the Rent Commencement Date, unless terminated earlier or extended as provided in Section 2.2. The "Rent Term" is defined as the period that commences on the Rent Commencement Date and terminates on the Expiration Date or earlier termination of the Lease. Tenant shall have one option to extend the term by one five (5) year term (the "Option to Extend") pursuant to the terms set forth in Section 2.2.

2.2 Option to Extend

Provided that at the commencement of the Option Term Tenant has exercised the applicable Option to Extend in accordance with the terms of this Section 2.2 and the conditions to the valid exercise of the Option to Extend set forth below are satisfied, Tenant shall have the Option(s) to Extend the Term described in Section 2.1. Each Option Term exercised in accordance with the terms of this Section 2.2 shall commence at the expiration of the then immediately preceding Term. If the Term is extended pursuant to an Option to Extend, the Expiration Date shall become the last day of the applicable Option Term, unless this Lease is terminated pursuant to Section 7.

Tenant shall deliver unconditional written notice of Tenant's election to exercise an Option to Extend not less than ninety (90) days prior to the expiration of the immediately preceding Term. Time is of the essence for delivery of each notice to exercise each Option to Extend. Should Tenant fail to give District written notice of its election to exercise an Option(s) to Extend in a timely manner as required herein, the Option to Extend and all subsequent Options to Extend shall thereafter be and become null and void and of no further force and effect. Tenant shall have no Option to Extend beyond the Option(s) to Extend expressly described in Section 2.1. An Option to Extend the Term cannot be validly exercised by Tenant if Tenant at the time of exercising the Option(s) to Extend (i) is delinquent in the payment of Rent, and (ii) is in default hereunder.

Upon timely exercise of said Option to Extend, and provided that Tenant satisfies the above requirements for exercise of the Option to Extend at the commencement of said Option Term, the then existing Term of this Lease shall be extended for such Option Term in accordance with the terms, covenants, and conditions of this Lease with the exception of Rent, which shall be adjusted in accordance with Article 3, and all references herein to the "Term" shall include such Option Term.

Without limitation of the foregoing, no action by Tenant, including without limitation, any investment, improvement, maintenance, repair or alteration in or to the Premises, shall create any right of Tenant, or any obligation of District, to extend the Term of this Lease beyond the Option(s) to Extend expressly set forth in this Section 2.2.

2.3 Prior Agreements

Any and all existing entry agreements, permits, licenses, leases, or rental agreements between the District and Tenant relating to the Premises which have not already expired or terminated are hereby terminated as of the Effective Date. Notwithstanding the foregoing, any obligations of Tenant under such agreements accruing or arising on or prior to such termination, or which are otherwise required to be performed in connection with such termination or surrender of the Premises, or which by their terms survive such termination, shall remain enforceable by the District.

2.4 Tenant's Guarantor

Tenant's performance of all its obligations under this Lease shall be guaranteed by Cedar Restaurant Group, LLC ("Guarantor") and Tenant shall cause the Guarantor to execute and deliver to District and/or the Property Manager, concurrently with Tenant's execution and delivery of this Lease, a Guaranty of Lease in the form and substance of Exhibit D attached hereto (the "Guaranty").

3. USE

3.1 Permitted Use

The Premises shall only be used as follows and for no other purpose (the "Permitted Use"): a full-service restaurant and bar featuring an elevated American fare menu and serving craft beer, wine, liquor, and cocktails; provided, that with respect to the Courtyard Walkway, Tenant shall not permit customers or invitees from, obstructing or impeding public access, ingress and egress over, through, across or on the Courtyard Walkway, unless specifically permitted in writing by District in advance. Tenant shall use the Premises for the Permitted Use and for no other purpose whatsoever. Any failure to comply with this Permitted Use clause shall constitute a default under this Lease and Tenant shall incur a fine of \$50.00 for the first occurrence and \$100.00 for each subsequent occurrence, such fine or fines to be added to Rent and paid by Tenant at the time of the next Rent payment. The District's failure to give notice of default to Tenant shall not be deemed a waiver of Tenant's obligation to comply with this clause. Tenant shall have the right to change the name of its business with the prior written consent of the District which shall not be unreasonably withheld, conditioned or delayed.

3.2 Hours of Operations

The Premises shall be open for business to the public 365 days per year from 10:00 am to 9:00 pm in the months of September through May and from 10:00 am to 10:00 pm in the months of June through August. The District and/or the Property Manager may modify the hours from time to time, with advance written notice to Tenant. If Tenant fails to remain open during the hours set forth in this Section 3.2, such failure shall constitute such a default under this Lease and Tenant shall incur a fine of \$100 for each occurrence, to be added to Rent and paid at the time of the next Rent payment. If Tenant incurs ten or more fines resulting from failing to comply with this Section 3.2, Tenant shall be deemed in default.

3.3 Continuous Operations

From and after the Tenant's first day open for business to the public, Tenant shall actively and continuously use and operate the entire Premises and Facilities for the Permitted Use, except to the extent unable to do so by reason of a Force Majeure Event and except for temporary interruptions reasonably and directly related to Alterations permitted under Section 8.2 (provided an interruption in use and operation related to an Alteration shall not exceed ninety (90) days in the aggregate). Without limitation of the foregoing, at a minimum, the Premises shall be continuously open for business, appropriately staffed with personnel, on such days and for such hours as set forth in Section 3.2. Tenant acknowledges and agrees that said active and continuous use and operation enhances the value of the lands within the District's jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area.

3.4 Compliance with Laws

Tenant agrees that, in all activities on or in connection with the Premises, and in all uses thereof, including without limitation the Permitted Use and any construction of Tenant Improvements or the making of any Alterations, it will abide by and comply with, and cause Tenant Parties to abide by and comply with, all applicable Laws at Tenant's sole cost and expense, and the District shall not have any obligations or responsibilities to comply with any applicable Laws as to the Premises or any use thereby by Tenant. In addition, Tenant shall comply with and abide by such guidelines and requirements established by the

District and/or the Property Manager from time to time pursuant to the terms of the Lease upon written notice by the District and/or the Property Manager to Tenant. Without limitation of the foregoing, any failure of Tenant to fully satisfy and fulfill the requirements and conditions under any Coastal Development Permit ("CDP") (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review conducted in pursuant to the California Environmental Quality Act ("CEQA"), codified at California Public Resource Code Section 2100 et. seq., and the CEQA Guidelines, codified at 14 California Code of Regulations Section 15000 et. Seq.) or any other California Coastal Commission ("CCC") regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Facilities including the use or development thereof shall constitute a default under this Lease.

3.5 Green/Sustainable Leasing

In addition to any other applicable requirements, when Tenant is replacing equipment, Tenant shall use commercially reasonable efforts to replace it with the most energy efficient equipment that is feasible and California Energy Star rated or the environmental equivalent.

3.6 Waste or Nuisance

Tenant shall not use, or fail to maintain, the Premises in a manner that constitutes waste or nuisance.

3.7 Reservations

The District reserves the right and power to grant easements, rights-of-way, and licenses on, over, under and across the Premises to others, and the right and power for the District and/or the Property Manager or the grantee to enter the Premises, for purposes such as constructing, installing, maintaining, repairing, replacing and removing utility systems and equipment and public improvements within the Premises. Should the District and/or the Property Manager so request, Tenant shall promptly join with the District and/or the Property Manager in the execution of such documents as may be requested by the District and/or the Property Manager to create or accommodate such grant. Tenant shall not be entitled to any monetary payment or other remuneration for any such future easements, licenses, and rights-of-way.

3.8 Right of Entry

The District and its contractors, employees, Property Manager, prospective tenants, and agents shall have the right to enter the Premises during business hours for any purpose upon forty-eight (48) hours' prior notice to Tenant. In exercising such right of entry under this Section, the District shall use commercially reasonable efforts to minimize any interruption to Tenant. In the event of an emergency, the District and its contractors, employees, Property Manager, prospective tenants, and agents shall have the right to enter the Premises without prior notice to Tenant.

4. RENT

Tenant agrees to pay to the District Minimum Annual Rent, Annual Percentage Rent, Tenant's Proportionate Share of Operating Expenses, and Additional Rent (collectively "Rent") in accordance with this Article 4. Tenant's obligation to pay Rent for its use and occupancy of the Premises during the term of this Lease shall begin on the earlier of a) Tenant's first day open for business to the public, or b) one hundred eighty (180) days after Tenant's receipt of all Necessary Approvals, as defined in Section 8, such that construction of the Initial Tenant Improvements can legally commence, or c) January 1, 2024 (the "Rent Commencement Date") and shall end on the Expiration Date set forth in Section 2 as herein provided.

Rent shall be payable in arrears by not later than the twentieth (20th) day of each month of the Rent Term. If the Rent Commencement Date is other than the first (1st) day of the month and therefore the Rent Term includes a partial calendar month, the Rent for such partial month shall be equal to the product of the Rent multiplied by a fraction, the numerator of which is the number of days in such initial partial month, and the denominator of which is thirty (30).

Tenant hereby acknowledges that late payment by Tenant to District of Rent and other sums due hereunder will cause District to incur costs not contemplated by this Lease. Accordingly, in the event Tenant is delinquent in remitting the Rent due in accordance with the Rent provisions of this Lease or if Tenant fails to render to District Tenant's monthly statement of Gross Sales in accordance with Section 4.2.1, Tenant shall pay, in addition to any unpaid Rent, five percent (5%) of the corresponding month's Rent. If Rent is still unpaid or Tenant's monthly statement of Gross Sales is still not submitted at the end of fifteen (15) days, Tenant shall pay an additional five percent (5%) [being a total of ten percent (10%)]. The parties hereby agree that said late charges are appropriate to compensate District for loss resulting from Rent delinquency and lack of necessary documentation including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of such late charges and any portion of the late payment by District shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies. The Executive Director of District shall have the right to waive for good cause any late charges upon written application of Tenant for any such delinquency period.

All payments shall be delivered to the San Diego Unified Port District, Finance Department, 3165 Pacific Highway, San Diego, California, 92101. Checks must be made payable to the San Diego Unified Port District and can be hand delivered to the above address or mailed to the SDUPD Seaport Village Lockbox PO Box 840183 Los Angeles, CA 90084-0183. The designated place of payment and filing may be changed at any time by District upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss and responsibilities for late charges, as herein described, if payments are made by mail.

All payments by Tenant to District shall be by a good and sufficient check. No payment made by Tenant or receipt or acceptance by District of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and District may accept such check or payment without prejudice to District's right to recover the balance or pursue any other available remedy.

4.1 Minimum Monthly Rent

The Minimum Annual Rent for each Lease Year is set forth in the chart below. The Minimum Annual Rent shall be payable as part of Rent in equal monthly installments each month in the amounts set forth below ("Minimum Monthly Rent"), beginning on the Rent Commencement Date. The Minimum Monthly Rent shall increase at the end of each Lease Year in accordance with the table below:

Lease Year	Minimum Annual Rent	Minimum Monthly Rent
1	\$266,535.00	\$22,211.25
2	\$274,531.05	\$22,877.59
3	\$282,766.98	\$23,563.92
4	\$291,249.99	\$24,270.83
5	\$299,987.49	\$24,998.96
6	\$308,987.12	\$25,748.93
7	\$318,256.73	\$26,521.39
8	\$327,804.43	\$27,317.04
9	\$337,638.56	\$28,136.55
10	\$347,767.72	\$28,980.64

If an Option to Extend is exercised pursuant to Section 2.2, the Minimum Monthly Rent shall be payable as part of Rent in equal monthly installments, beginning on the first day of the respective Lease Year and shall increase at the end of each Lease Year in accordance with the table below:

Lease Year	Minimum Annual Rent	Minimum Monthly Rent
11	\$358,200.75	\$29,850.06
12	\$368,946.77	\$30,745.56
13	\$380,015.18	\$31,667.93
14	\$391,415.63	\$32,617.97
15	\$403,158.10	\$33,596.51

4.2 Annual Percentage Rent

Consistent with the above, and concurrently with the rendering of each monthly report of Gross Sales, as specified in Section 4.2.1 and 4.2.2, Tenant shall pay to District (1) the Minimum Monthly Rent and (2) a portion of the Annual Percentage Rent ("Monthly Percentage Rent") due pursuant to this Section 4.2. Notwithstanding the above, Tenant's total annual rent to be paid shall be the total of (1) the Minimum Annual Rent and (2) percentage rent equal to 6% of the annual Gross Sales in excess of the Annual Breakpoint ("Annual Percentage Rent"), as outlined in the table below (collectively, the "Annual Rent Due"). Within ninety (90) days after the end of each Lease Year, the District shall use commercially reasonable efforts to reconcile the Minimum Monthly Rent and Monthly Percentage Rent that was paid by Tenant ("Total Rent Paid") as compared to the Annual Rent Due and will determine whether Tenant's Total Rent Paid is greater than or less than the Annual Rent Due. If Tenant's Total Rent Paid is less than the Annual Rent Due, District will invoice Tenant, and Tenant is responsible for remitting any outstanding rent amount to District. Tenant shall pay any outstanding rent within thirty (30) days of receipt of any invoice from the District. If Tenant's Total Rent Paid is greater than the Annual Rent Due, District will credit any such overpayment to Tenant.

Lease Year	Annual Breakpoint
1	\$5,000,000.00
2	\$5,150,000.00
3	\$5,304,500.00
4	\$5,463,635.00
5	\$5,627,544.05
6	\$5,796,370.37
7	\$5,970,261.48
8	\$6,149,369.33
9	\$6,333,850.41
10	\$6,523,865.92

If an Option to Extend is exercised pursuant to Section 2.2, the Annual Breakpoint for each Lease Year shall be in accordance with the table below:

Lease Year	Annual Breakpoint
11	\$6,719,581.90
12	\$6,921,169.35

13	\$7,128,804.43
14	\$7,342,668.57
15	\$7,562,948.62

If Tenant is not open for business due to any permitted Tenant Improvements or other permitted reason for non-operation consistent with the terms of this Lease, the Annual Breakpoint shall be pro-rated to reflect the time (in number of days) Tenant was operating during the respective Lease Year(s). For any such year, Tenant's Annual Percentage Rent shall be equal to 6% of the annual Gross Sales in excess of the pro-rated Annual Breakpoint.

4.2.1 Statement of Gross Sales

On or before the 20th day of each month, Tenant shall render to District and/or the Property Manager, in a form reasonably prescribed by District (current form attached hereto as Exhibit E), a detailed report of Gross Sales for that portion of the calendar year which ends with and includes the last day of the previous calendar month ("Monthly Gross Sales") and a statement of the annual Gross Sales of Tenant within 30 days after the close of each calendar year. Such statements shall be in the form and certified in a manner acceptable to the District in its reasonable discretion, which form the District may revise from time to time. Such statement shall be certified as an accurate accounting of Tenant's Gross Sales by an authorized representative of Tenant. In addition, Tenant shall furnish to the District and/or the Property Manager a copy of Tenant's sales tax return (state and local sales, and use tax returns), with respect to the period covered by such statement. For the purpose of reporting Gross Sales, for any period during which Tenant does not continuously and uninterruptedly conduct its business as required by this Lease, Tenant's Gross Sales shall be deemed to be Tenant's Gross Sales for the corresponding period during the last year in which Tenant operated continuously and uninterruptedly, unless Tenant's Gross Sales during last year's corresponding period is less than that of the current period.

Gross Sales shall be calculated on a monthly basis and shall be based on the following categories of the gross income of the operations and businesses conducted on or from the Leased Premises:

- (1) rental of conference and banquet rooms and sale of related merchandise and services provided to conference and banquet room users (including gross income from recovery charges for materials, utilities, security, and similarly related accommodations, sales and services);
- (2) sale of food
- (3) sale of alcoholic and nonalcoholic beverages
- (4) sale of merchandise including, but not limited to, gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind;
- (5) any admission, cover, ticket sales, or other entertainment charges including vehicle or boat excursions;
- (6) rental of bicycles and other recreational equipment, and rental of recreational facilities;
- (7) sale of recreation lessons;
- (8) sale of any and all California State Lottery tickets;
- (9) rental of office space;
- (10) sale of merchandise and/or services through coin-operated vending or service machines or devices, including telephones, that are owned, rented, or leased by Tenant;
- (11) commissions and other compensation received for the right to install and operate coin-operated vending or service machines or devices, including telephones that are not owned, rented, or leased by Tenant;
- (12) any and all activities, operations, and enterprises permitted under the terms of the Lease and not otherwise addressed within the foregoing provisions;
- (13) any and all services or uses not permitted under the terms of the Lease and not otherwise addressed within the foregoing provisions.

4.2.2 Record of Gross Sales

Tenant shall keep full and accurate records, double entry books of account or other methods of account to be approved in writing by the District and other pertinent data of the Gross Sales and Gross Sales of any subtenant, licensee or concessionaire and such books and records shall be kept for a period of three (3) years after the close of each calendar year. Said records must be supported by source documents of original entry such as sales invoices, purchase invoices or other pertinent documents. In the event of admission charges or rents, Tenant shall issue serially numbered tickets for each such admission or rent and shall keep an accurate record of said tickets both issued and unissued. All of Tenant's books of account records and documentation related to this Lease or to business operations conducted within or from the Premises shall be kept either at the Premises or at such other locations as are acceptable to the District, and the District and/or the Property Manager shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof and of monthly statements of Gross Sales submitted and of the rent paid to the District, but in no event more than twice in any twelve month period. The District shall have the discretion to require the installation of any additional accounting methods or controls the District may deem necessary. In the event Tenant does not make available the original records and books of account at the Premises or within the limits of San Diego County, Tenant agrees to pay all necessary expenses incurred by the District and/or the Property Manager in conducting an audit at the location where said records and books of account are maintained.

Any information gained from such statements or inspection shall be confidential and shall not be disclosed other than to carry out the purposes hereof; provided, however, that District and/or the Property Manager shall be permitted to divulge the contents of any such statements in connection with any financing arrangements or assignments of the District's interest in the Premises or in connection with any public records requests or administrative or judicial proceedings in which the District and/or the Property Manager is involved and when the District and/or the Property Manager may be required to divulge such information.

4.2.3 Definition of Gross Sales

"Gross Sales" of Tenant, as used in this Lease, is the entire gross selling price of every kind and nature, from all merchandise, tickets, or services sold, leased, licensed, or delivered in or from the Premises by Tenant, whether for cash, or on credit or on barter or business exchange (whether collected or not), including the gross amount received by reason of orders taken on the Premises and through internet sales although filled elsewhere, and whether made by store personnel or vending machines (except for vending machines installed exclusively for use by Tenant's employees) or otherwise. Any transaction on an installment basis, including without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes. Gross Sales shall not include (or, as the case may be, deducting therefrom to the extent previously reported as a part of Gross Sales) the following:

- (a) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts, refunds, and allowances made thereon, upon such return by customers;
- (b) Sums and credits received in the settlement of claims for loss of or damage to merchandise;
- (c) Goods returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant;
- (d) Cash refunds made to customers in the ordinary course of business; and
- (e) Sales taxes, so-called luxury taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected separately from the selling price of merchandise or services and collected from customers and remitted to the taxing authority.

Gross Sales shall include all income and receipts of every kind and nature resulting from occupancy or use of the Premises in any manner by Tenant. Gross Sales shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of each excise tax is stated as a separate charge. Bad debt losses shall not be deducted from Gross Sales. All sales originating at the Premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may

be transferred to another place for collection and even though actual filling of the sale or service order and actual delivery of the merchandise may be made from a place other than the Premises. Gross Sales shall also include sales made from a catalog, by internet, by telephone or other means of communication, and from stores, offices and/or warehouses not located on the Premises.

4.3 Tenant's Proportionate Share of Operating Expenses

Tenant's Proportionate Share of the Common Area Maintenance Expenses, Marketing Expenses, and any and all other charges and fees concerning the Shopping Center or the Premises (collectively hereinafter referred to as "Operating Expenses"), shall be estimated annually and assessed on a per Rentable Square Foot basis. Tenant's Proportionate Share of Operating Expenses per square foot shall be reconciled annually pursuant to Section 4.3.3 and may be adjusted periodically by the District based on the District's reasonably anticipated costs. Tenant shall have the right at Tenant's sole cost and expense to audit the costs for Operating Expenses or Tenant's Proportionate Share of Operating Expenses once in any twelve-month period. On the Effective Date, the Tenant's Proportionate Share of Operating Expenses shall be assessed in accordance with the table below:

Operating Expenses	Rentable Square Feet	Estimated \$ / SF	Estimated Proportionate Share (Annual)
Common Area Maintenance Expenses	5,923 SF	\$25.24 / SF	\$149,496.52
Marketing Expenses		\$6.97 / SF	\$41,283.31
TOTAL		\$32.21 / SF	\$190,779.83

District reserves the right to hire a property manager for the management and operation of the Shopping Center, in its sole and absolute discretion, to perform management and operations of the Premises based on certain terms and conditions, hereinafter referred to as "Property Manager."

4.3.1 Common Area Maintenance Expenses

The District and/or the Property Manager shall keep or cause to be kept the Common Area in a neat, clean and orderly condition, properly lighted and landscaped, and shall repair, maintain or replace as the District and/or the Property Manager shall deem necessary all equipment and facilities thereof, but all expenses in connection with the Common Area (hereinafter referred to as "Common Area Maintenance Expenses") shall be charged and prorated in the manner set forth in Section 4.3.3. To the extent the District and/or the Property Manager incur any of the following types of expenses, Common Area Maintenance Expenses as used herein shall include but not be limited to all sums expended (including financing costs, if any) for the utilities, janitorial, repairs and maintenance, lot and landscape, security, security consultant, real estate taxes, insurance and site office expenses of the Common Area, including without limitation the following items: the cost of management of the Shopping Center (whether such management services are provided by the District or a third-party contractor) (hereinafter referred to as "Management Fee Expense"), professional management services with respect to the Common Area; general maintenance and repairs; resurfacing; painting; restriping; cleaning; sweeping and janitorial services; exterior walls and faces of the buildings; maintenance and repair of sidewalks, curbs and Shopping Center signs; sprinkler systems, planting and landscaping; special effects in lighting and other utilities; Shopping Center transportation systems, shuttle buses, directional signs and other markers and bumpers; maintenance and repair of any fire protection systems, lighting systems, storm drainage systems and any other utility systems; personnel to implement any of the foregoing services including, if the District and/or the Property Manager deems necessary, the cost of security guards; land and personal property taxes and assessments on the improvements and land and water comprising the Common Area; costs, fees and expenses incurred by the District in connection with appeals of possessory Interest; real property taxes; merchandising audits; any governmental imposition or surcharge imposed against the District or assessed against any automobile parking areas or parking structure or any other portion of the Common Area; all costs and expenses pertaining to the security alarm system for the tenants in the Shopping Center, depreciation on maintenance and operating machinery and equipment (if owned) and rent paid for such machinery and equipment (if

rented); security offices, and nonprofit community buildings as may be located in the Shopping Center from time to time; adequate public liability and property damage insurance on the Common Area and any other insurance deemed necessary by the District in settlement or payment of any claim or potential claim for damages relating to the Common Area, and attorneys' fees and costs incurred in defending against any such claims; fees for required licenses, permits or approvals; and all costs and expenses for maintenance and keeping of the waterways, fountains and piers; and public transit and carpooling facilities and charges.

Also included in the Common Area Maintenance Expenses shall be for the accounting, bookkeeping and collection of the expenses in connection with said Common Area (hereinafter "Administrative Fee"). The District may cause any or all of said services to be provided by an independent contractor or contractors. The parties hereto agree that the District need not itself directly manage or otherwise service all or any part of the Premises and the Shopping Center of which the Premises are a part but may cause such management, maintenance and operation and other services to Tenant to be performed by the Property Manager.

If Tenant has paid to the District Tenant's Proportionate Share of real property taxes and assessments (including possessory interest taxes) on the improvements, land and water comprising the Common Area, under and pursuant to the terms and provisions of Article 4, Tenant shall not be required to pay for said taxes and assessments under the provisions hereof.

4.3.2 Marketing Expenses

Marketing and promotions for the Shopping Center (hereinafter referred to as "Marketing Expenses") shall be calculated separately from Common Area Maintenance Expenses and prorated as set forth in Section 4.3.3.

4.3.3 Method of Payment of Operating Expenses

Tenant shall pay to the District Tenant's Proportionate Share of Operating Expenses in the following manner:

- (a) From and after the Effective Date, Tenant shall pay to the District and/or the Property Manager, by not later than the twentieth (20th) day of each calendar month, an amount estimated by the District to be the monthly amount of Tenant's share of the Operating Expenses, which such initial amount is as set forth in Section 4.3. The estimated monthly charge may be adjusted periodically by the District on the basis of the District's reasonably anticipated costs.
- (b) Portions of the Shopping Center are, or may be, leased from time to time by various persons or entities occupying freestanding facilities or other facilities which maintain, repair and replace their own facilities and, consequently, contribute to the Operating Expenses on a basis other than that described herein (collectively, "Other Stores"). The contributions received from the Other Stores towards the Operating Expenses shall be credited against the total Operating Expenses and the balance thereof shall be prorated in the following manner: Tenant's Proportionate Share of the Operating Expenses shall be determined by multiplying the Operating Expenses that remain after applying the contributions paid by the Other Stores by a fraction, the numerator of which is the number of Rentable Square Feet in the Premises and the denominator of which is the number of square feet of floor area in the Shopping Center. Notwithstanding the foregoing, if certain costs are not attributable to all occupants and/or an occupant maintains a certain service, with the District's permission, at that occupant's own expense (for example, without limitation, water, trash pickup, roof maintenance, fire sprinklers, painting and HVAC maintenance), in such event, the District may, in District's sole and absolute discretion, establish alternative Operating Expenses pools and determine different shares, which may be in addition to or substituted for that described above, and which shall, provided the service or services are applicable to the Premises, be based on the ratio that the Rentable Square Feet of the Premises bears to the Rentable Square Feet of all of occupants of the Shopping Center to which a particular pool cost is attributable. The District may adjust the estimated monthly charge periodically on the basis of the District's experience and reasonably anticipated costs.

- (c) Following the end of each calendar year or, at the District's option, its fiscal year, the District and/or the Property Manager shall furnish to Tenant a statement covering the calendar or fiscal year (as the case may be) just expired, the actual Operating Expenses for that year, the total floor area of the Shopping Center, the amount of Tenant's Proportionate Share of the Operating Expenses for that year, and the total payments made by Tenant during that year for the Operating Expenses. If Tenant's share of the Operating Expenses exceeds Tenant's prior payments, Tenant shall pay to the District the deficiency within ten (10) days after receipt of such annual statement. If Tenant's payments for the calendar year exceed Tenant's actual share of the Operating Expenses, Tenant may offset the excess against payments of Operating Expenses next due the District. Upon termination of this Lease the District shall prepare a final reconciliation of Rent due to the District through the termination of this Lease and apply any excess Operating Expenses against payments of Rent due and refund to Tenant any remaining amount of Operating Expenses paid in excess by Tenant.

4.4 Taxes and Assessments

Commencing with the Effective Date and continuing for the balance of the Term of this Lease, Tenant agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon the Premises or of any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Tenant or by reason of the business or other activities of Tenant upon or in connection with the Premises. Such additional amount for any partial year of the term hereof shall be prorated on a time basis. Tenant shall also pay any fees imposed by law for licenses or permits for any business or activities of Tenant upon the Premises or under this Lease.

- (a) This Lease may result in a taxable possessory interest and be subject to the payment of property and other taxes. To the extent Tenant is not required to pay any Tax Expense pursuant to Article 4 hereof, Tenant shall pay, prior to delinquency, all Tax Expenses attributable to any time period during the Term now or hereafter assessed against, or relating in any way to the Tenant, this Lease, the Premises, the Facilities, or the use or occupancy thereof by Tenant and Tenant Parties. Tenant shall promptly, following written request therefor from the District and/or the Property Manager, provide the District and/or the Property Manager with evidence of the payment of Tax Expenses. "Tax Expenses" shall include, without limitation, all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent, including gross receipts or sales taxes applicable to Tenant's receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used by Tenant in connection with the Premises) and any taxes and assessments relating to the business or other activities of Tenant upon or in connection with the Premises. Tax Expenses also shall include, without limitation:
- (b) Any tax on the District's receipt of Rent, right to Rent or other income from the Premises;
 - (c) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, possessory interest tax or use tax or other Tax Expenses, and any assessments, taxes, fees, levies and charges that may be imposed by government agencies for services such as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and the District that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of Tax Expenses for purposes of this Lease; and
 - (d) Any assessment, tax, fee, levy, or charge, which is levied or assessed based upon the area of the Premises or the Facilities or the Rent payable hereunder, including, without limitation, any gross income tax upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof.

4.5 Reimbursement for Direct Tenant Expense

If under the terms of this Lease an amount expended by the District and/or the Property Manager is to be reimbursed by Tenant then Tenant shall reimburse the District and/or the Property Manager for the subject amount within ten (10) days of Tenant's receipt of an invoice or statement from the District and/or the Property Manager for the subject amount and, if applicable, copies of any applicable third party invoices, work description and/or other reasonable evidence of the work performed for or by, and costs incurred by, the District and/or the Property Manager. Any amounts owed to District and/or the Property Manager pursuant to Article 4 shall constitute Additional Rent.

4.6 Additional Rent

Tenant shall pay as Additional Rent, all sums of money required to be paid pursuant to the terms of this Article 4 and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not the same be designated Rent or Additional Rent. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment of monthly Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of the District.

5. SECURITY DEPOSIT

5.1 Amount of Security Deposit

On or before the Effective Date, Tenant shall pay the District the initial security deposit in the amount equal to Forty-Four Thousand Four Hundred Twenty-Two Dollars and Fifty Cents (\$44,422.50) (the "Security Deposit") in the form of a cashier's check. If Tenant defaults on payment of its last month's rent, it is in the District's sole and absolute discretion whether to apply the Security Deposit to the last month's rent.

No interest shall be paid on the Security Deposit. The District shall not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit. Upon expiration or earlier termination of this Lease, and after Tenant has vacated the Premises in the manner required by this Lease, the District shall remit to Tenant any Security Deposit paid by Tenant which has not been earned by the District under the terms of this Lease. Tenant shall not take any offset of Security Deposit against Rent due to the District. Refund shall be made pursuant to the provisions of the California Civil Code.

5.2 Letter of Credit

NOT APPLICABLE.

5.3 Cash Alternative

NOT APPLICABLE.

5.4 Adjustments

NOT APPLICABLE.

5.5 Maintain Through Term

Tenant shall maintain the required security deposit continuously throughout the Term. The security deposit or the remaining portion thereof not used or applied by the District, shall be rebated, released, assigned, surrendered, or endorsed to Tenant or order, as applicable, within ninety (90) days following the expiration or earlier termination of this Lease.

6. COMMON AREA

6.1 Common Area

6.1.1 Definition

The term "Common Area" as used in this Lease shall be deemed to include those portions of the Shopping Center that are designated by the District from time to time for the general use, convenience and benefit of the District, tenants in the Shopping Center and other authorized users. The "Common Area" may include, without limitation, automobile parking areas, floors, ceilings, roofs, skylights, driveways, roadways, sidewalks, service area, seating areas, pedestrian walkways, public restrooms, landscaped and planted areas, open and enclosed courts and malls, museum pieces, artistic displays, ponds and waterscaping, pedestrian overpasses or underpasses, and other items as the District may designate, from time to time, for the nonexclusive use and benefit of the District, tenants in the Shopping Center and other authorized users. Should a portion of the Shopping Center be owned or leased under another master lease by separate legal entities, Common Area shall include any portions of the Shopping Center under such separate ownership or master lease that may be designated in any reciprocal easement agreement or similar agreement between the District and such other separate owner(s) or master lessor(s), including, but not limited to, that certain Reciprocal License and Use Agreement dated as of March 14, 2012 (together with any and all amendments and modifications thereof, collectively, the "RLUA") by and between Seaport Village Operating Co., LLC, a Delaware limited liability company, and San Diego Unified Port District. The phrase "Common Area" as used in this Lease shall include such specialized areas as enclosed mall(s) and food fair(s) unless otherwise indicated.

6.1.2 Use of Common Area

Subject to the provisions of this Lease, any and all rules and regulations, which shall be established from time to time by the District and/or the Property Manager, concerning the use of the Common Area, and any reciprocal easement agreement or similar agreement affecting the Shopping Center entered into by the District from time to time, including, but not limited to the RLUA, Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease, authorized, empowered and privileged to use the Common Area in common with other persons during the term of this Lease. The Common Area is at all times to be used for the benefit of the customers and patrons of Tenant, and other tenants, owners and occupants of the land constituting the Shopping Center of which the Premises are a part; provided that the District has the right to operate the parking areas and any other area within the Shopping Center for purposes of the District.

6.1.3 The District's Right to Determine Common Area

The District shall at all times have the unqualified right and privilege of determining the nature and extent of the Common Area, and of making such changes therein and thereto from time to time which in its sole and absolute discretion are deemed to be desirable and for the best interests of persons who may from time to time be using said Common Area, including the location and relocation of driveway(s), entrances, exits, automobile parking spaces, the direction and flow of traffic, installation of prohibited areas, landscaped areas and other facilities thereof.

The District shall have the right in connection with any expansion or reconfiguration of the Shopping Center, to close portions of the Common Area and to construct structures, improvements, facilities, landscaping, waterscaping, parking, pedestrian walkways and other features on the Common Area, including, without limitation, any parking area which may exist from time to time.

The District shall have the right to temporarily close the Common Area when required in the opinion of the District's counsel to prevent a dedication of any of the Common Area or the accrual of any rights of any person or public to the Common Area. Further, the District may temporarily close any portion of the Common Area for maintenance purposes, or to conduct promotional activity thereon. The District shall have the right at any time to change the arrangement, character, use and location of entrances, passageways, doors and doorways, corridors, elevators, escalators, stairs, landscaping, toilets and any other portions of the Common Area, parking garage or other parts of the Shopping Center, to change Common Area to gross

leasable area and gross leasable area to Common Area, convert portions of the Common Area to exclusive use by one or more Persons (including any tenant or prospective tenant), and to remodel any or all of the Shopping Center. None of the actions taken by the District as referred to in this Section shall (a) be deemed an actual or constructive eviction of Tenant, (b) entitle Tenant to any reduction of Rent, (c) otherwise reduce Tenant's obligations hereunder, or (d) result in any liability of the District to Tenant. Tenant acknowledges that the foregoing, if and when it may occur, may involve barricading materials, storage, noise, the presence of workmen and equipment, rearrangement and other inconveniences typically associated with construction.

6.1.4 Release of Liability

Nothing contained herein shall be deemed to create any liability upon the District and/or the Property Manager for any loss of, or damage to motor vehicles of customers or employees, or for loss of property from within such motor vehicles. Tenant acknowledges that by providing security guards for the Common Area, the District and/or the Property Manager does not represent, guarantee or assume responsibility that Tenant will be secure from losses caused by the illegal acts of third parties and does not assume responsibility for any such illegal acts. To induce the District and/or the Property Manager to provide such security guards, if any, as the District and/or the Property Manager deems reasonable, appropriate and economically feasible, Tenant hereby waives any present or future claim Tenant may have against the District and/or the Property Manager of the Shopping Center, whether known or unknown, for bodily injury or property damage or loss arising from the performance of such security guards, if any.

6.1.5 Control of Common Area

The District and/or the Property Manager shall at all times during the Term of this Lease have the right to control the use by Tenant and other authorized users of the automobile parking areas, and parking structures, the parking spaces thereon, driveways, entrances and exits and the sidewalks and pedestrian passageways and other Common Area, and may at any time from time to time during the term hereof exclude and restrain any person from use or occupancy thereof. The right of Tenant in and to the parking areas and parking structures shall at all times be subject to the rights of the District as provided in this Lease and shall be subject to the rights of the District, and its employees, other tenants of the District and other authorized users to use the same in common with Tenant. It shall be the duty of Tenant to keep all of said areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operation and to permit the use of any said areas only for normal parking and ingress and egress by the said customers, patrons and service suppliers to and from the building occupied by Tenant and other tenants of the District.

If, in the opinion of the District and/or the Property Manager, unauthorized persons are using any of said areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of the District and/or the Property Manager, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall affect the rights of the District and/or the Property Manager at any time to remove any such unauthorized persons from said areas or to restrain the use of any said areas by unauthorized persons.

7. TERMINATION

Beginning on the 1st day of the fifty-sixth (56) month of Lease Year 5 of the Rent Term, this Lease may be terminated by Executive Director of District or his or her duly authorized representative as a matter of right and without cause at any time upon the giving of one hundred eighty (180) days' advance notice in writing to the Tenant of such termination. For the avoidance of doubt, advance notice of termination may be delivered to Tenant before the fifty-sixth (56) month of Lease Year 5. The Executive Director of District or his or her duly authorized representative shall have the right to terminate this Lease in the Executive Director's reasonable discretion without the approval of the BPC.

If (1) the District exercises its termination right pursuant to this Paragraph 7 during the Lease Years specified below, and (2) the Tenant has made the Initial Tenant Investment, the District as applicable, shall pay a termination fee in the amount specified for the respective Lease Years below. Any termination fee

shall be paid to the Tenant, as applicable, no later than one hundred eighty (180) days following the date the Lease terminates.

1. Months 56 – 59 of Lease Year 5: \$750,000.00
2. Lease Year 6 – 7: \$750,000.00
3. Lease Year 8: \$650,000.00

If District exercises the termination right after Lease Year 8, no termination fee shall be payable to Tenant.

7.1 Relocation of Tenant

Beginning on the 1st day of the fifty-sixth (56) month of Lease Year 5 of the Rent Term and anytime thereafter, the District shall have the right at its sole cost and expense, but subject to the terms of this Section 7.1, to remove the Tenant from the Premises and relocate the Tenant to some other space (the "Relocation Premises") of District's choosing of approximately the same Rentable Square Feet within the Shopping Center. Tenant, by the execution of this Lease, acknowledges the foregoing right of District, and no rights granted in this Lease to Tenant, including, but not limited to, the right of peaceful and quiet enjoyment, shall be deemed to have been breached or interfered with by reason of District's exercise of the right of relocation reserved in this Paragraph. District's sole obligation for costs and expenses of removal and relocation shall be limited to the actual cost of relocating the Tenant and the reasonable moving costs of Tenant actually incurred in connection with the same; provided however, Tenant acknowledges and agrees that in no event shall the District be obligated to increase the Tenant Improvement Allowance or pay for any cost or expense related to the build out, improvement, repair or remodel of the Relocation Premises. Tenant agrees that District's exercise of its election to remove and relocate Tenant shall not terminate this Lease or release the Tenant, in whole or in part, from the Tenant's obligation to pay the Rent and perform the covenants and agreements hereunder for the full Term of this Lease. The Relocation Premises will become the Premises and all of the other terms and provisions of this Lease shall apply, without interruption, to the Relocation Premises from and after the date Tenant is required to move. If the Rentable Square Feet of the Relocation Premises is more or less than the Rentable Square Feet of the Premises, the Minimum Annual Rent and Tenant's Proportionate Share of Operating Expenses will be adjusted accordingly; provided, however if the Relocation Premises are in excess of seven thousand square feet, the District and Tenant shall meet and confer in good faith to determine the amount of additional Rent that Tenant shall pay for the square footage in excess of the Rentable Square Feet of the Premises.

8. CONSTRUCTION OF TENANT IMPROVEMENTS AND ALTERATIONS

8.1 Initial Tenant Improvement Allowance

Tenant is contemplating certain physical improvements to the Premises ("Initial Tenant Improvements") that will enhance operations, marketability, and revenue generated by the Premises. Therefore, to facilitate these improvements that will benefit the Premises, District will reimburse Tenant for a portion of the construction costs of the Initial Tenant Improvements, in an amount of Seven Hundred Sixty Thousand Dollars (\$760,000) ("Tenant Improvement Allowance") in accordance with the terms of this Section 8.1. Such reimbursement shall be made to Tenant as follows:

(a) First Payment: District shall reimburse to Tenant the sum of Three Hundred Seventy-Five Thousand Dollars (\$375,000) ("First Payment") within sixty (60) days after the following requirements are satisfied:

- i. All Necessary Approvals, including but not limited to all building permits required for the construction of the Initial Tenant Improvements have been issued by the City of San Diego and a copy of all such Necessary Approvals have been delivered to the District.
- ii. Tenant has provided to District copies of paid invoices for the Initial Tenant Improvements (other than for Roof Repairs, as defined in Section 8.1(c) below) performed to date equal to or exceeding the amount of the First Payment;
- iii. Tenant has provided to District copies of unconditional lien waivers upon progress payments from all contractors, subcontractors and material suppliers who supplied labor or materials in

connection with the Initial Tenant Improvements performed for which the First Payment is being requested; and

- iv. Tenant has paid to District all amounts owing to District pursuant to this Lease as of date reimbursement is to be made, and Tenant is not otherwise in default of any other term or condition of this Lease as of such date, and no event has occurred which, given the passage of time or the giving of notice or both, could be declared a default under this Lease.

(b) Final Payment: District shall reimburse to Tenant the sum of Three Hundred Seventy-Five Thousand Dollars (\$375,000) ("Final Payment") within sixty (60) days after the following requirements are satisfied:

- i. Tenant has delivered to District final, unconditional lien waivers and releases, in statutory form, for all contractors, subcontractors, and materialmen who performed work or supplied materials in connection with the completion of the Initial Tenant Improvements;
- ii. All required inspections of the Initial Tenant Improvements by governmental agencies have taken place and the completed Initial Tenant Improvements have passed such inspections, and Tenant has submitted to District a copy of all the necessary permits and approvals, including but not limited to all building permits with all sign-offs executed and District has confirmed that the Initial Tenant Improvements substantially conform with the plans approved by the District;
- iii. Tenant has completed the Initial Tenant Improvements and opened for business to the public in the Premises;
- iv. Tenant has delivered to District any necessary Certificate(s) of Occupancy (or equivalent) for the Premises;
- v. Tenant has paid to District all amounts owing to District pursuant to this Lease as of the date reimbursement is to be made, and Tenant is not otherwise in default of any other term or condition of this Lease as of such date, and no event has occurred which, given the passage of time or the giving of notice or both, could be declared a default under this Lease; and Tenant has submitted to District invoices and proofs of payment for the Initial Tenant Improvements (other than for Roof Repairs) which evidence expenditure by Tenant of no less than \$750,000.

(c) Roof Repairs: The District shall reimburse to Tenant the lesser of the actual cost or Ten Thousand Dollars (\$10,000) for repairs to the roof of the Premises required in connection with the Initial Tenant Improvements ("Roof Repairs"). Such reimbursement shall be made to Tenant by District within sixty (60) days after Tenant has given written evidence to the District of Completion of Roof Repairs. Tenant acknowledges and agrees that it is solely responsible for any costs associated with any required Roof Repairs over and above amounts reimbursed by District pursuant to this Section 8.1(c).

Tenant shall, as a condition of this Lease, make an investment in the Initial Tenant Improvements in an amount which shall exceed Two Million Five Hundred Thousand (\$2,500,000) dollars ("Initial Tenant Improvement Investment"). The Tenant Improvement Investment is qualification for the term of this Lease and is not a portion of the rent obligations provided in Article 4. Tenant's failure to satisfy the Initial Tenant Improvement Investment may result in a default under this Lease in the sole and absolute discretion of the District. Further, neither such Initial Tenant Improvement Investment, nor such Initial Tenant Improvements, nor any other Tenant investment or Tenant Improvement shall be considered by the parties hereto or any arbitrator (in the event of arbitration) in determining any rent during the term of the Lease.

8.1.1 Commencement and Completion of Initial Tenant Improvements

Upon the Effective Date, Tenant shall diligently pursue and obtain all permits and approvals required to commence and fully complete the Initial Tenant Improvements, which may include, but may not be limited to, building permits issued by the City of San Diego ("City"), any necessary permits to serve food and alcoholic and non-alcoholic beverages on the Premises, Army Corps of Engineers ("ACOE") permit (if applicable), and a Coastal Development Permit or California Coastal Act exclusion to be processed by the District, in its sole and absolute discretion (collectively, "Necessary Approvals"). The Necessary Approvals shall be obtained at the sole cost and expense of Tenant. Tenant also agrees to adhere to the requirements and processes outlined below:

- (a) Conceptual Plans: Within thirty (30) days after the Effective Date, Tenant shall submit general, concept drawings and/or plans identifying the proposed Initial Tenant Improvements (the "Conceptual Plans") to the District. Within twenty (20) days following submittal of the Conceptual Plans, the Executive Director of District, or his or her designee, will either provide comments on the Conceptual Plans or authorize submittal of a completed Development Services Project Application, consistent with subsection (b), below.
- (b) Development Services Project Application: Within thirty (30) days after the Executive Director, or his or her designee, authorizes submittal of a Development Services Project Application, Tenant shall submit to District for District's review and potential approval by the Executive Director of the District, or his or her designee, a completed Development Services Project Application. Tenant's Development Services Project Application shall include, in addition to those items specifically requested on the application form, six (6) copies of working drawings prepared by an architect or engineer, as appropriate, licensed to business in the State of California, and shall consist of the following, to the extent applicable: (i) complete architectural, civil, structural, mechanical, electrical, plumbing, utility layout, landscaping and irrigation, stormwater and site horizontal (coordinate) and vertical control plans including the civil drawings; (ii) complete specifications, materials, and color list, and engineering calculations for all Initial Tenant Improvements; (iii) construction contract form; (iv) construction schedule; and (v) a detailed final construction cost estimate of the Initial Tenant Improvements, with indirect costs, furniture, fixtures and equipment separately identified (collectively, the "Working Drawings"). The Working Drawings must be in substantial conformance with the Conceptual Plans reviewed by the District. Within twenty (20) days after the Executive Director of District, or his or her designee, provides comments on the Working Drawings, if any, Tenant shall complete all corrections and modifications to the Working Drawings and shall resubmit the Working Drawings to the District. The Executive Director, or his or her designee, will notify Tenant, in writing, when the Working Drawings are sufficient to proceed with processing of the Development Services Project Application. The Executive Director's, or his or her designee's, acceptance of the Working Drawings does not authorize any construction, improvements, or operation of the Initial Tenant Improvements.
- (c) Necessary Approvals: Within ninety (90) days after the Effective Date, Tenant shall submit to the District a written list of all Necessary Approvals required to commence construction of the Initial Tenant Improvements. Once the list of all Necessary Approvals has been submitted to the District, Tenant shall provide the District with an update on the status of the Necessary Approvals every sixty (60) days thereafter until the commencement of construction. Tenant shall submit all plans and documents required to obtain the Necessary Approvals to the appropriate government authorities no later than thirty (30) days following submittal of the Development Services Project Application. All Necessary Approvals, including all required construction and development permits, including, but not limited to, building permits from the City, must be obtained prior to commencement of construction of the Initial Tenant Improvements. Tenant will provide copies of all plans, applications, and other materials submitted to any government authority in connection with Necessary Approvals to the District. Within five (5) days of receipt, Tenant will submit final copies of all obtained Necessary Approvals to the District. Within five (5) days of receiving notice from the appropriate government authority that the Necessary Approvals are ready for issuance to Tenant, Tenant shall pay for any cost and expenses necessary to issue the Necessary Approvals to the Tenant.
- (d) Performance Bond: No later than thirty (30) days prior to commencement of construction, Tenant shall provide to District a performance bond in the amount of the total estimated construction cost of the proposed Initial Tenant Improvements guaranteeing that construction will be timely completed in accordance with the requirements of this Article 8.
- (e) Construction Contract: Prior to commencement of construction, Tenant shall submit an executed construction contract or contracts with competent and financially responsible contractors for construction in accordance with the Working Drawings approved by District.
- (f) Construction Cost: Within thirty (30) days following completion of construction, Tenant shall furnish District an itemized statement of the actual construction cost of the Initial Tenant Improvements. The statement shall be sworn to and signed, under penalty of perjury, by Tenant or its responsible agent.

If Tenant does not commence construction of the Initial Tenant Improvements based on the Necessary Approvals by January 1, 2024, District shall have the right to terminate the Lease upon providing written notice to Tenant.

Tenant acknowledges and agrees that the halting of construction, once commenced, for more than twenty (20) consecutive days shall, unless expressly excused by the provisions of Section 8.3, be deemed a failure by Tenant to pursue the construction of the Initial Tenant Improvements to Completion and shall constitute a default under this Lease without further notice to or cure right by Tenant if Tenant does not resume construction within ten (10) days of receipt of notice from the District and/or the Property Manager to perform the construction. The Initial Tenant Improvements shall be constructed in accordance, in all material respects, with the plans and specifications, including but not limited to the Necessary Approvals. In constructing the Initial Tenant Improvements, Tenant shall also comply with all Construction Requirements as defined in the Definitions Addendum and all Laws. In addition, in connection with the construction of the Initial Tenant Improvements, Tenant shall comply with Section 8.5 regarding prevailing wage requirements.

8.2 Alterations

Tenant shall make no changes or alterations in the Premises or Facilities, nor make, erect, or install any buildings, structures, signs, machines, Tenant Fixtures, or other improvement, including Tenant Improvements, on the Premises without the consent in writing of the District and/or the Property Manager which shall not be unreasonably withheld, conditioned or delayed.

8.2.1 Diligent Construction; Continuous Operations

Once construction of any Tenant Improvements or Alteration has commenced, Tenant shall diligently pursue construction of the Tenant Improvements or Alterations to Completion. Tenant shall continue to operate the Premises and Facilities for the Permitted Use during the course of construction of the Alterations to the greatest extent feasible.

8.2.2 Construction Requirements

In constructing any Alterations, Tenant shall comply with all Construction Requirements and all Laws.

8.3 Force Majeure Event

"Force Majeure Event" means actual delay in Tenant's construction or interference with Tenant's ability to operate actually caused by: (a) a strike or labor dispute other than a strike or dispute which would have been avoided had Tenant complied with laws and any agreements it has entered into with the striking union or parties; (b) inclement weather (that causes a suspension of work) in excess of the ten (10) year average for the area within the District's jurisdiction during the month or months when work was suspended; (c) an earthquake or other natural disaster resulting in suspension of work; (d) inability to procure or general shortage of labor, equipment, materials, or supplies in the open market, or failure of transportation (but, in each case, not attributable to a mere increase in price or Tenant's acts or failure to act); (e) acts of a public enemy, insurrections, riots, mob violence, sabotage, acts of terrorism, and malicious mischief; (f) casualty causing material damage to previously constructed Tenant Improvements; (g) delays in the issuance of any governmental approvals or authorizations from government agencies other than the District necessary to proceed with development or operation of the Tenant Improvements (provided that Tenant has timely and properly filed all applications, submitted all required documents and fees and taken all other actions necessary to obtain such governmental approvals or authorizations and that Tenant is not responsible in any way for the delay in the issuance of such governmental approvals or authorizations). or (h) closures or work stoppages ordered by the State of California or County of San Diego related directly to the COVID-19 epidemic that do not arise from a breach of this Lease, misconduct by Tenant or Tenant Parties, or Tenant's actions or inactions. In order to extend the time for commencement or Completion of the Tenant

Improvements, Tenant must notify the District in writing within twenty (20) days of the commencement of any Force Majeure Event and describe in such notice the Force Majeure Event creating delay or interference, why such delay or interference is occurring, the expected duration of such delay or interference and the best efforts Tenant is taking to minimize the period of delay or interference. Any period of applicable Force Majeure Event shall be added to the times for the commencement and Completion of construction established in Section 8.1 above; provided, however, in no event shall the period of excused delay exceed 365 days in the aggregate. Tenant covenants to make best efforts to minimize and otherwise overcome the impact on Tenant's construction schedule or operation caused by any Force Majeure Event and, in addition to Tenant's initial notice described above, on the District's request from time to time, shall provide District and/or the Property Manager with a report on the status of the Force Majeure Event, its expected duration, Tenant's construction schedule and Tenant's best efforts to minimize and otherwise overcome the impact on Tenant's construction schedule or operation caused by any Force Majeure Event.

Notwithstanding the foregoing, if Tenant is legally prohibited from operating all of its indoor and outdoor sit down dining areas on the Premises, to comply with a governmental order issued by the State of California or County of San Diego related directly to the COVID-19 epidemic and such prohibition is not the result of a breach of this Lease, misconduct by Tenant or Tenant Parties, or Tenant's actions or inactions, then, commencing on the date that is thirty (30) days after the date Tenant is required by law to comply with such governmental order and ending on the earlier of (i) the date that Tenant is no longer required to comply with such governmental order; and (ii) three-hundred and sixty-five (365) days ("Relief Period"), Tenant shall pay Monthly Percentage Rent in the amount of six percent (6%) of Tenant's monthly gross sales for the immediately preceding month and shall not be required to pay Minimum Annual Rent during the Relief Period ("Rent Abatement"); provided, however, in no event shall Tenant be allowed to extend the Relief Period in the event that a new or additional governmental order is issued during the Relief Period and Tenant shall only have the right to exercise the Rent Abatement once during the Term of the Lease (including any extension periods) with respect to the issuance of one (1) governmental order. For the avoidance of doubt, this section shall not prohibit Tenant from seeking rent relief through any rent relief programs adopted by the District provided that such rent relief is not sought for any period of time under the Relief Period.

8.4 Signs and Flags

All signs visible from outside the Premises must comply with the District signage criteria for the Shopping Center ("Seaport Village Signage Criteria") and be expressly approved by the District in writing prior to installation. Tenant agrees that no banners, balloons, inflatables, pennants, flags, signs, digital displays, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Premises in a manner or location clearly visible from outside the Premises without the District's prior written consent. Tenant's failure to comply shall constitute a default under this Lease and in addition to any other remedies set forth in this Lease, Tenant shall incur a fine of \$100 for each occurrence, to be added to Rent and paid at the time of the next Rent payment.

8.5 Prevailing Wage

Tenant acknowledges and agrees that:

- a) Any construction, alteration, demolition, installation or repair work required or performed under this Lease constitutes "public work" under California Prevailing Wage Law, including Labor Code §§ 1720 through 1815, et seq. (collectively, "PWL"), and obligates Tenant to cause such work to be performed as "public work," including, but not limited to, the payment of applicable prevailing wages to all persons or entities subject to the PWL.
- b) Tenant shall cause all persons and/or entities performing "public work" under the Lease to comply with all Laws, including applicable provisions of the PWL and other applicable wage laws.
- c) The District hereby notifies Tenant and Tenant hereby acknowledges that the PWL includes, without limitation, Labor Code § 1771.1(b) that provides that the requirements described in Labor Code § 1771.1(a), copied below, shall be included in all bid invitations and "public work" contracts:

- (a) A contractor or subcontractor shall not be qualified to bid on or be listed in a bid proposal, subject to the requirements of § 4104 of the Public Contract Code, or engage in the performance of any contract for “public work”, as defined in this chapter, unless currently registered and qualified to perform “public work” pursuant to § 1725.5. It is not a violation of this Section for an unregistered contractor to submit a bid that is authorized by § 7029.1 of the Business and Professions Code or by § 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform “public work” pursuant to § 1725.5 at the time the contract is awarded.
- d) Tenant acknowledges that its obligations under the PWL include, without limitation, ensuring:
- i Pursuant to Labor Code § 1771.1(b), a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor’s current registration to perform “public work” pursuant to § 1725.5.
 - ii Pursuant to Labor Code § 1771.4(a)(1) the call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (“DIR”).
 - iii Pursuant to Labor Code § 1771.4(a)(2) that it post or require the prime contractor to post job site notices, as prescribed by regulation.
 - iv Pursuant to Labor Code § 1773.3(a)(1) that it provide notice to the DIR of any “public works” contract subject to the requirements of this chapter, within five days of the award. Pursuant to Labor Code § 1773.3(a)(2) the notice shall be transmitted electronically in a format specified by the department and shall include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information the department specifies that aids in the administration and enforcement of this chapter. PWC-100 is the name of the form currently used by the DIR for providing the notice, but Tenant shall determine and use whatever form the DIR requires.
- e) The District is not responsible for Tenant’s failure to comply with any applicable provisions of the PWL, and
- f) Tenant’s violations of the PWL shall constitute a default under this Lease.

9. TITLE TO AND REMOVAL OF ALTERATIONS AND IMPROVEMENTS

On the Effective Date, all existing structures, buildings, installations, improvements, and Facilities of any kind located on the Premises are owned by and title thereto is vested in the District. Tenant Fixtures of any kind placed on the Premises by Tenant are owned by and title thereto is vested in Tenant and shall be removed by Tenant within thirty (30) days after the expiration of the Term or sooner termination thereof; provided, however, Tenant agrees to repair any and all damage occasioned by the removal thereof. If any such Tenant Fixtures are not removed within thirty (30) days after the termination of this Lease, the same may be considered abandoned and shall thereupon become the property of the District without cost to the District and without payment to Tenant, except that the District shall have the right to have the same removed at the expense of Tenant.

Any Tenant Improvements, once constructed, shall be owned and title thereto vested in Tenant. However, upon termination of this Lease, and consistent with Article 25, District shall have the discretion to either (1) require Tenant to remove any Tenant Improvements at no cost to District, or (2) elect to take ownership of the Tenant Improvements and demand that they be left in place by Tenant. District shall notify Tenant of its election ninety (90) days prior to any termination. If District fails to notify Tenant of its election, the Tenant Improvements shall be left in place and ownership and title thereto will be vested in District.

During any period of time employed by Tenant under this paragraph to remove Tenant Fixtures and/or Tenant Improvements, Tenant shall continue to pay the full rental to the District in accordance with this Lease which said rental shall be prorated daily. The terms of this Article 9 shall survive the expiration or termination of this Lease.

10. MAINTENANCE AND REPAIR

Tenant hereby agrees that the Premises are in a good and tenantable condition, that Tenant will take good care of the Premises and appurtenances, including any personal property belonging to the District; and that Tenant, as a part of the consideration for rental stated above, will at Tenant's sole cost and expense keep and maintain the Premises, appurtenances, and personal property in good and sanitary condition and repair during the term of this Lease, subject to normal and ordinary wear and tear resulting from the use of the Premises as herein provided. The District and/or the Property Manager shall at no time during the Term be required to make any improvements or repairs to the Premises. If Tenant fails to make any necessary repairs, the District and/or the Property Manager may make such repairs on behalf of Tenant and charge the cost of the same back to Tenant. Except for District's maintenance and repair obligations as provided in this Lease, Tenant shall, at its sole cost and expense, at all times during the Term and any extension or renewal of the Term hereof keep and maintain in a first class condition the Premises, the improvements thereon and every part thereof, including but not limited to store fronts, signs, entrances and exits, interior walls, ceilings and floors, plate glass, glazing and skylights, reasonable periodic painting as determined by District, plumbing and other fixtures, electrical systems serving the Premises, air conditioning and other mechanical equipment and appliances serving the Premises, in good and sanitary order, condition and repair and in compliance with all Laws and regulations applicable thereto. In addition, District may, at its option, perform preventive maintenance for the heating and/or air conditioning and water heating equipment serving the Premises and other premises in addition to the Premises, but this shall in no way relieve Tenant of any of its obligation hereunder. The costs of any such preventive maintenance attributable to the Premises shall be paid by Tenant as Additional Rent hereunder. Tenant will be solely responsible for any damage to the interior of the Premises and the contents thereof and will indemnify and hold District harmless therefrom.

11. ENTITLEMENTS

Should Tenant desire to undertake any project, including but not limited to improvements, including Tenant Improvements or, alterations, including Alterations, or demolition, District approval shall be acquired prior to the commencement of development pursuant to the provisions of the CEQA, PMP, California Coastal Act, Port Act, and Public Trust doctrine. In no event shall a project be submitted that may, at the District's sole discretion, result in a new significant impact pursuant to CEQA or require an amendment to the PMP. Participation in "District Development Consultation" or substitute process if in place with the District is encouraged prior to submission of an application for development.

12. GENERAL DEFINITIONS

Certain initially capitalized terms used in this Lease are more particularly defined or are cross-referenced in the Definitions Addendum attached to this Lease. The definitions set forth in the Definitions Addendum are incorporated herein by this reference.

13. LIENS

13.1 No Right to Bind District

Neither Tenant, nor any Tenant Party, shall have any power or authority to do any act or thing, or to make any contract or agreement which will bind the District and/or the Property Manager in any way whatsoever, and the District shall have no responsibility to Tenant, Tenant Party or other Person who performs, causes to perform, engages in or participates in any construction of any Tenant Improvements, Alterations or any other work on the Premises at the request of Tenant or Tenant Party or other Persons. The District shall not be required to take action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

13.2 Notice of Non-Responsibility

Tenant shall give written notice to all contractors, subcontractors and materialmen of the District's non-responsibility in connection with any Tenant Improvements or Alterations or other work on the Premises, and shall immediately provide the District with true copies of such notices not less than fifteen (15) days prior to the commencement of any work on the Premises.

13.3 Mechanic's Liens

Tenant shall timely pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Premises. Tenant will keep the Premises free and clear of all mechanic's liens and other liens on account of work done for or at the Premises. Tenant shall indemnify, defend, release and save the District and/or the Property Manager free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for or at the Premises and all Related Costs.

13.4 Contest of Lien

If Tenant in good faith wishes to contest any claim of lien, Tenant shall be entitled to do so, provided that Tenant first records a surety bond sufficient to release the lien.

13.5 District's Right to Pay

If Tenant shall be in default in paying any charge for which a lien claim has been filed, and if Tenant shall not have recorded a surety bond as required under Section 13.4 above, the District may, but shall not be so obliged to, pay said lien claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to the District, and Tenant shall pay the same to the District together with interest on the full amount thereof at the Default Rate from the dates of the District's payments until paid.

13.6 Notice of Liens

Should any claims of lien be filed against the Premises or any action affecting the title to the Premises be commenced, the party receiving notice of such lien or action shall give the other party written notice thereof within five (5) business days of receipt.

13.7 Notices of Non-Responsibility

Nothing herein shall imply any consent on the part of the District and/or the Property Manager to subject the District's estate to liability under any mechanic's lien, materialmen's lien, or any other lien. Without limiting Tenant's responsibilities under Section 13.2 above, the District and/or the Property Manager and the District Parties shall have the right to enter upon and inspect the Premises at all times, without notice, and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which the District and/or the Property Manager may deem to be proper for the protection of the District's interest in the Premises. Tenant shall, before the commencement of any work which might result in any such lien, give the District and/or the Property Manager written notice of its intention to commence such work in sufficient time (which in no event shall be less than the statutory period for posting notices of non-responsibility prior to the commencement of work) to give the District and/or the Property Manager adequate opportunity to post and record such notices.

14. PROHIBITION OF ASSIGNMENT AND SUBLETTING

Tenant acknowledges that District has entered into this Lease in reliance on the personal services and business expertise of Tenant. Tenant may not assign, sublet, mortgage, hypothecate, pledge, grant a right of first refusal or transfer any interest in this Lease, or in the Premises, in whole or in part without the prior written consent of the District, that may be withheld in the District's sole and absolute discretion; provided however, the District shall use the criteria set forth in BPC Policy No. 355 Section IV (A) to determine whether the District will grant or deny consent under this Section 14. If granted, the District shall either receive 50% of the share of the proceeds of the sale or have the right to adjust the rent to market rent as a condition of its consent. The following transactions are considered an assignment or sublease and not permitted without the prior written consent of the District: [i] an assignment by operation of law; [ii] an imposition (whether or not consensual) of a lien, mortgage, or encumbrance upon Tenant's interest in the Lease; [iii] an arrangement (including, but not limited to, management agreements, concessions, licenses, and easements) which allows the use or occupancy of all or part of the Premises by anyone other than Tenant; and [iv] a change of ownership of Tenant.

15. DEFAULTS AND REMEDIES

15.1 Defaults

In addition to any terms hereof expressly providing for a default hereunder, the occurrence of any one (1) or more of the following events shall constitute a material default by Tenant hereunder:

15.1.1 Abandonment of the Premises

"Abandonment" is herein defined to include, but is not limited to, any absence by Tenant from the Premises for ten (10) consecutive days or longer.

15.1.2 Failure to Pay

Failure by Tenant to pay, when due, any Rent, other payment, and/or charge herein, where such failure continues for a period of five (5) days after the date due.

15.1.3 Failure to Perform

Failure by Tenant to perform any express or implied covenants or conditions in this Lease (other than as provided in the other subsections in this Article 15), should such failure continue for fifteen (15) days after written notice thereof; provided that if the nature of such failure is such that the same cannot reasonably be cured within such fifteen (15) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of sixty (60) days after written notice thereof from District and/or the Property Manager to Tenant.

15.1.4 Bankruptcy Event

The occurrence of a Bankruptcy Event.

15.1.5 Specified Defaults

The occurrence of any event expressly stated to constitute a default under the Lease.

15.1.6 Health Rating

If the use of the Premises involves the sale and/or preparation of food, Tenant's failure to maintain a health department rating of "A" (or such other highest health department or similar rating as is available), which failure continues for more than ninety (90) days after the change in rating from the health department (provided if the sole reason Tenant has been unable to upgrade its health rating is due to the failure of the health department to promptly re-inspect the Premises after Tenant has taken all steps necessary to remedy the downgrade, then such ninety (90)-day period shall be extended by the same number of days by which the health department delayed such inspection).

15.1.7 Other Agreements

Tenant or an entity that is Controlled as defined in the Definitions Addendum by or under common Control with Tenant or which Controls Tenant is in default (after applicable notice and cure periods) under any other agreement between the District and Tenant or such entity.

15.2 Remedies

Upon any default, the District may, in addition to all other rights and remedies afforded the District hereunder or by law or equity, take any one or more of the following actions:

15.2.1 Termination of Lease due to Default

In addition to the termination rights specified in Article 7, in the event of a Default, this Lease may be terminated by Executive Director of District or his/her duly authorized representative as a matter of right, at any time upon the giving of thirty (30) days' notice in writing to the Tenant of such termination. Should the District terminate this Lease by giving Tenant written notice thereof, Tenant shall immediately surrender the Premises to the District. In the event that the District shall elect to so terminate this Lease pursuant to Section 15.2.1, then the District may recover from Tenant:

- (a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus
- (b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss Tenant proves reasonably could have been avoided; plus
- (c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves reasonably could be avoided; plus
- (d) Any other amount necessary to compensate the District for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering possession of the Premises, expenses of reletting (including necessary repair, renovation and alteration of the Premises), reasonable attorneys' fees, and any other reasonable costs; plus
- (e) At District's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in subparagraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Default Rate. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

Failure by District to enforce one or more of the remedies herein provided upon a default shall not be deemed or construed to constitute a waiver of such default. Tenant hereby waives for Tenant and for all those claiming under Tenant all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

15.2.2 Continue Lease in Effect

The District may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due.

15.2.3 Perform Acts on Behalf of Tenant

The District and/or the Property Manager may perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse the District on demand for any expenses which the District and/or the Property Manager may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate.

15.2.4 Increased Security Deposit

The District may require Tenant to increase the Security Deposit to equal a total of Sixty-Six Thousand Six Hundred Thirty-Three Dollars and Seventy-Five Cents (\$66,633.75) at any time during the Term.

15.2.5 Payment by Tenant

Upon any default, Tenant shall pay to the District all reasonable costs incurred by District and/or the Property Manager (including court costs and reasonable attorneys' fees and expenses and staff time) in: (1) obtaining possession of the Premises; (2) removing and storing Tenant's or any other occupant's property; (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant; (4) performing Tenant's obligations which Tenant failed to perform; and (5) enforcing, or advising the District of, its rights, remedies, and recourses arising out of the default.

15.2.6 Assignment of Plans and Other Matters

After the Effective Date, if this Lease is terminated or the District otherwise takes possession of the Premises by reason of Tenant's default, Tenant hereby agrees to reasonably cooperate with the District in seeking any consent from the preparer of any plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, to the extent assignable, to an Assignment which may be required for the District to rely on such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises.

16. BANKRUPTCY

In the event Tenant commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent, or a judicial sale is made of Tenant's interest under this Lease, this Lease shall at the option of the District immediately terminate and all rights of Tenant hereunder shall immediately cease and terminate.

17. EMINENT DOMAIN

17.1 Eminent Domain

If all or any portion of the Premises shall be condemned pursuant to exercise of the power of eminent domain, or acquired under an actual threat of the exercise of such power (collectively, "Condemnation") the rights and obligations of the District and Tenant with respect thereto shall be as set forth in this Article 17. Nothing in this Article 17 shall be interpreted to prevent the District from exercising its power of eminent domain as to Tenant's leasehold interest and/or Premises.

17.2 Notice of Condemnation

If either party hereto receives notice of any Condemnation or intended Condemnation (including, without limitation, service of process), within five (5) business days of receipt, the party in receipt thereof shall deliver to the other party an exact copy of such notice of or relating to any intended Condemnation and the date such notice was received.

17.3 Representation of Interest

The District and Tenant shall each have the right to represent its respective interests in such proceeding or negotiation with respect to a Condemnation or intended Condemnation and to make full proof of its claims. The District and Tenant each agrees to execute and deliver to the other any instrument which may be required to effectuate or facilitate the provisions of this Article 17.

17.4 Early Termination due to Condemnation

In the event of a Condemnation of all of the Premises or such portion of the Premises so that Tenant cannot reasonably and economically use the remainder of the Premises for the purposes permitted under this Lease (as reasonably determined by Tenant and approved by the District in its sole discretion), this Lease shall terminate as of the date of such Condemnation. A termination of this Lease pursuant to this Section

shall act to relieve Tenant from any further liability under this Lease except as to obligations accruing or arising on or prior to termination or which are otherwise required to be performed in connection with such termination or surrender of the Premises or which otherwise expressly survive termination. Tenant shall deliver the Premises to the District in the condition required for the surrender of the Premises under this Lease.

17.5 Partial Condemnation

If only a portion of the Premises is subject to Condemnation and this Lease is not terminated pursuant to Section 17.4 above, then this Lease shall continue in full force and effect upon the same terms and conditions as set forth herein, and the Minimum Annual Rent shall be reduced in proportion to the reduction in the value of the Premises after the Condemnation as compared to the value of the Premises immediately prior to the Condemnation (as reasonably determined by the District and approved by Tenant in its reasonable discretion).

17.6 Temporary Condemnation

If any portion of the Premises, including the entirety thereof, is subject to a temporary Condemnation, then this Lease shall continue in full force and effect and there shall be no adjustment or abatement in Rent during the term of such temporary Condemnation. Any portion of an award, settlement or other compensation or damages which may be given for such temporary Condemnation of the Premises attributable to the Term shall be the property of Tenant and any portion attributable to any period following the expiration of the Term shall be the property of the District. As used herein, a "temporary Condemnation" shall mean any taking which is not intended by the condemning authority to be permanent at the time such Condemnation initially occurs.

17.7 Award

17.7.1 Leasehold Award

In the event of any Condemnation of all or any portion of the Premises (other than a temporary Condemnation), the District shall be entitled to any and all awards and/or settlements or other compensation or damages which may be given for (a) any "bonus value" respecting this Lease (i.e., the excess value of the leasehold arising from the fact that the scheduled rent is less than the market rent for the Premises), and (b) the land (and water, if applicable) comprising the Premises. Any and all other awards and/or settlements or other compensation or damages (collectively, "Leasehold Award") for Tenant Improvements constructed by Tenant and the leasehold estate created by this Lease (excluding any bonus value thereof) shall be paid as follows:

(a) Provided this Lease is not terminated pursuant to Section 17.4 above, the Leasehold Award shall be payable in trust, and shall be disbursed for the payment of the costs of repairing and restoring the remaining portion of the Premises to substantially its value, condition and character prior to such Condemnation to the extent the same may be feasible. The trustee may disburse the progress payments in accordance with its normal disbursement procedures (e.g. upon receipt of appropriate mechanics' lien releases, invoices, etc.) so long as such disbursement procedures are reasonably acceptable to the District and ensure that the Leasehold Award is applied to the costs of repairing and restoring the Premises. The trustee shall be a party mutually agreed upon by District and Tenant in each party's reasonable discretion.

(b) If this Lease is terminated pursuant to Section 17.4, or if there are excess proceeds available after completion of the repair and restoration of the Premises as provided above, then any portion of the Leasehold Award not used for the repair and restoration of the remaining portion of the Premises pursuant to subparagraph (a) above, or used to place the Premises in the condition required for the surrender of same to the District, shall be divided between the District and Tenant, with the District to receive a sum computed by multiplying such excess funds awarded with respect to such Tenant Improvement by a fraction, the numerator of which shall be the number of years (or portion thereof) of the Term that have, at

the time of such Condemnation, expired, and the denominator of which shall be the total number of years in the full Term. The remaining amount shall be paid to Tenant.

(c) Any remaining portion of the Leasehold Award after payment as described above shall be paid to Tenant. Notwithstanding the foregoing sentence, with respect to any Leasehold Award received in connection with any Condemnation for street widening or the installation of utilities, public sidewalks or walkways which occurs at any time following the Effective Date, and provided such Condemnation does not result in material physical damage to then existing buildings or driveways, parkway access or access ways serving the Tenant Improvements on the Premises located on the Premises, the District instead of Tenant, shall be entitled to receive, in addition to any award otherwise payable to the District pursuant to this Article 17, all of that portion of the Leasehold Award distributed to Tenant pursuant to this subparagraph (c).

17.7.2 Default

Anything in this Article 17 to the contrary notwithstanding, Tenant shall not be entitled to any funds, awards, rights, benefits or entitlement of any kind arising from or out of a Condemnation, except so far as is designated for damage to Tenant's personal property, if the Condemnation occurs during the period that Tenant is in default under this Lease beyond any applicable cure period or after the District has exercised any remedy referred to in Section 15.2 above by reason of Tenant's default. Tenant shall be entitled to any award allocated by a court of competent jurisdiction to Tenant's personal property.

18. EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION AND OFAC

18.1 Nondiscrimination

Tenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the ADA; and any other applicable Laws now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such Laws, including without limitation the ADA, Tenant shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between the District and Tenant.

18.2 Compliance with Employment and Labor Requirements

Tenant shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other Laws now existing or hereinafter enacted, regarding employment and labor practices. Tenant shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

18.3 OFAC Compliance

Tenant represents and warrants that (i) Tenant and each Person owning an interest in Tenant is not now, and shall not during the term of this Lease become, a Person with whom the District or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("Prohibited Persons") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list pursuant to any authorizing statute, executive order or regulation, nor a Person (also, a "Prohibited Person") with

whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person, (iii) no Prohibited Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (iv) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and (v) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

19. INSURANCE

19.1 Insurance.

Tenant shall maintain insurance acceptable to the District in full force and effect throughout the Term of this Lease. The policies for said insurance shall, as a minimum, provide the following:

(A) Forms of Coverage

- i. "OCCURRENCE" form Commercial General Liability, including Fire Legal Liability covering the Premises, operations, and contractual liability assumed by Tenant in this Lease in the amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be Four Million Dollars (\$4,000,000) unless a Two Million Dollars (\$2,000,000) per location aggregate limit is provided separate by endorsement.

If alcoholic beverages are served or sold on the Premises, Liquor Liability coverage in the amount of not less than One Million Dollars (\$1,000,000) shall be obtained. If no alcoholic beverages are served or sold on the Premises, the proof of insurance shall so state.

- ii. All Risk Property Coverage, including water damage and debris cleanup provisions, in an amount not less than the full replacement value of all Facilities located within the Premises without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include business interruption and extra expense for full recovery of the net profits and continuing expenses (including the Rent to the District) for the duration of the period of restoration, a vandalism and malicious mischief endorsement, sprinkler leakage coverage and, if so required by the District, flood and earthquake coverage. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of the District. It is agreed that any insurance proceeds in excess of Fifty Thousand Dollars (\$50,000) resulting from a loss under said policies shall be payable jointly to the District and Tenant to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Premises and any damaged or destroyed improvements located thereon. All proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of the District so as to ensure the application of such proceeds in compliance with this Lease.

In the event that this Lease is terminated with consent of the District, and the Facilities are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability, by the District.

- iii. Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million (\$1,000,000) combined single limit per accident for bodily injury and property damage.

- iv. Workers' Compensation, statutory limits, is required of the Tenant (or be a qualified self-insured) under the applicable Laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.

(B) General Requirements

- i. All required insurance shall be in force the first day of the Term of this Lease, and shall be maintained continuously in force throughout the Term of this Lease. In addition, the cost of all required insurance shall be borne by Tenant. During the entire Term of this Lease, Tenant shall provide the District and/or the Property Manager with certificates, in a form acceptable to the District, evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Paragraph (the "Certificates"). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the foregoing, the District reserves the right to require complete, certified copies of all required policies at any time.
- ii. All liability insurance policies shall name, or be endorsed to name the District and its officers, employees, agents and the Property Manager, as additional insureds and protect the District and its officers, employees, and agents, against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in coverage or in limits, except after Tenant has furnished the District and/or the Property Manager with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess or contributory to any insurance issued in the name of the District. Further, all insurance companies must be satisfactory to the District.
- iii. Any deductibles or self-insured retentions must be declared and acceptable to the District. If the deductibles or self-insured retentions are unacceptable to the District, then Tenant shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions with respect to the District and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- iv. The District shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the opinion of the District, the insurance provisions in this Lease do not provide adequate protection for the District and/or members of the public using the Premises or using services connected with Tenant's use or occupancy of the Premises, the District may require Tenant to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The District's requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.
- v. The District may require that Tenant obtain and maintain additional or increased insurance from time to time. The District and/or the Property Manager shall notify Tenant in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit Certificates evidencing acceptable insurance policies with the District and/or the Property Manager incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit Certificates evidencing acceptable insurance policies with the District and/or the Property Manager, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event Tenant fails to deposit insurance Certificates as required herein, this Lease shall be in default without further notice to Tenant, and the District shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish the District and/or the Property Manager with renewals or

binders in a timely manner, the District may (but shall not be required to), procure said insurance on Tenant's behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant within thirty (30) days of written demand with interest at the Default Rate from the date such sums are expended.

- vi. If Tenant fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, the District has the right to declare this Lease in default without further notice to Tenant, and the District shall be entitled to exercise all legal remedies.
- vii. The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Tenant shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease, or with the use or occupancy of the Premises.
- viii. Tenant agrees not to use the Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance the District may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjoining premises. Tenant further agrees not to keep on the Premises or lease to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises.

20. INDEMNITY

Tenant hereby indemnifies and shall defend the District Parties, at Tenant's sole cost and expense and with counsel selected by the District, and hold the District Parties harmless from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (i) the performance by Tenant of its obligations under this Lease, (ii) the construction of any Tenant Improvements or Alterations, (iii) any breach by Tenant of its obligations under this Lease, (iv) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Premises, (v) the use, occupancy, possession or operation of the Premises by any Tenant Party, or any acts or omissions of any Tenant Party, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of the District. The District, at its election, may conduct its own defense with its own counsel independent from Tenant's counsel (and in that event Tenant will select its own counsel) and the reasonable costs incurred by the District in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to immediate payment once incurred. The terms of this Article 20 shall survive the expiration or earlier termination of this Lease. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease or otherwise.

21. DAMAGE OR DESTRUCTION

21.1 Casualty

In the event of any damage to or destruction of any Facilities, whether or not from a risk coverable by the insurance described in Article 19, Tenant shall promptly repair and restore such Facilities, in a manner approved in writing by the District, so that after such restoration and repair, the Facilities are at least as valuable and usable as immediately prior to such damage or destruction. Tenant shall be entitled to have any insurance policy proceeds held in trust with the trustee selected mutually by the District and Tenant in each party's reasonable discretion, disbursed as progress payments as the work of repair, restoration or replacement progresses, to be used solely for paying for such work; and upon completion of such work free and clear of liens, any remaining balance of any insurance proceeds shall be paid to Tenant. To the extent that the insurance proceeds are insufficient to pay for the costs of repairing the damaged Facilities, Tenant shall pay such deficiency to the trustee for application to the restoration costs on or before the earlier to

occur of (i) sixty (60) days from the date of such damage or destruction, or (ii) the date the insurer first makes available such insurance proceeds for repair, restoration or replacement. In the event Tenant fails to commence to repair, restore or replace the damaged Facilities within ninety (90) days of such damage or destruction or to diligently prosecute such work to completion, Tenant shall be deemed to be in default hereunder upon written notice thereof from the District and/or the Property Manager to Tenant and, in addition to any other remedies, the District shall be entitled to receive and retain such insurance proceeds to apply them to the repair, restoration and replacement of the Facilities. The provisions of Articles 8 and 9 shall apply to all work performed pursuant to this Article 21. Notwithstanding the foregoing, if Tenant is not able to obtain sufficient insurance proceeds (in the case of an insured casualty) or construction funds (in the case of an uninsured casualty) to commence repair, restoration or replacement of the damaged Facilities within ninety (90) days of such damage or destruction, and in the case of an insured casualty, Tenant has used its best efforts to so obtain such insurance proceeds, or in the case of an uninsured casualty, Tenant has used its best efforts to obtain sufficient construction funds, then Tenant shall have such additional time as is necessary to obtain such insurance proceeds or construction funds (but in no event to exceed one hundred eighty (180) days from the date of such damage or destruction) in which to commence to repair, restore or replace the damaged Facilities.

21.2 Casualty During the Last Part of Term

Notwithstanding Section 21.1 to the contrary, if there is damage or destruction to the Facilities during or after Lease Year 5 of the Term (including all exercised options) and the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Facilities as determined by the District in its reasonable discretion, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (a) Tenant shall, within ninety (90) days after the date of the casualty, give the District written notice of its election to terminate ("Notice of Election to Terminate"); and (b) Tenant shall, at the election of the District (which election shall be communicated in writing to Tenant ("Demolition Notice") within thirty (30) days of the District and/or the Property Manager's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed Facilities and any other Facilities that the District may designate in the Demolition Notice and, if applicable, remediate the Premises, and shall complete said demolition, removal and remediation and shall vacate the Premises within ninety (90) days of the District's delivery of the Demolition Notice (which vacation date shall fix the termination date of this Lease). Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's personal property that would be retained by Tenant at the end of the Term) paid as a result of the damage or destruction giving rise to the termination, shall be distributed in accordance with the following order of priority: first, to the payment of the costs to raze and remove the Facilities as required above, and second, to the District all remaining insurance proceeds.

21.3 No Rental Abatement

Tenant shall not be entitled to any abatement or reduction in the Rent during any period of time that any Facilities located on the Premises are in need of repair, restoration or replacement or are under construction for such repairs, restoration or replacements or any other period of time during the Term of this Lease.

21.4 Waiver of Statutory Provisions

The provisions of this Lease, including this Article 21 constitute an express agreement between the District and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or Facilities, or any other portion thereof, and any California statute or regulation, now or hereafter in effect, regarding the rights or obligations of a tenant concerning damage or destruction following a casualty event are waived and shall have no application to this Lease or any damage or destruction to all or any part of the Premises or Facilities as a result of a casualty event.

22. HAZARDOUS MATERIALS

Tenant shall comply with all Laws regarding Hazardous Materials or that otherwise relate to the public safety or the protection of the environment (herein collectively referred to as "Environmental Laws") relative

to occupancy and use of the Premises. Tenant shall be liable and responsible for any Hazardous Materials arising out of the occupancy or use of the Premises by Tenant. Such liability and responsibility shall include, but not be limited to, (i) removal from the Premises any such Hazardous Materials; (ii) removal from any area outside the Premises, including but not limited to surface and groundwater, any such Hazardous Materials generated as part of the operations on the Premises; (iii) damages to persons, property and the Premises; (iv) all claims resulting from those damages; (v) fines imposed by any governmental agency, and (vi) any other liability as provided by law. Tenant shall defend, indemnify and hold harmless the District Parties from any and all such responsibilities, damages, claims, fines, liabilities, including without limitation any costs, expenses and attorneys' fees therefor. The District shall have a direct right of action against Tenant even if no third party has asserted a claim. Furthermore, the District shall have the right to assign said indemnity.

If Tenant has in the past or continues to use, dispose, generate, or store Hazardous Materials on the Premises, the District, or its designated representatives, at the District's sole discretion, may at any time during the term of this Lease, enter upon the Premises and make any inspections, tests or measurements the District deems necessary in order to determine if a release of Hazardous Materials has occurred. The District and/or the Property Manager shall give Tenant a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in the District's sole judgment, circumstances require otherwise, and such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Tenant's operations. If such tests indicate a release of Hazardous Materials, then the District, at the District's sole discretion, may require Tenant, at Tenant's sole expense, and at any time during the term of this Lease, to have tests for such Hazardous Materials conducted by a qualified party or parties on the Premises. If the District has reason to believe that any Hazardous Materials that originated from a release on the Premises have contaminated any area outside the Premises, including but not limited to surface and groundwater, then the District, at the District's sole discretion, may require Tenant, at Tenant's sole expense, and at any time during the term of this Lease, to have tests for such Hazardous Materials conducted by a qualified party or parties on said area outside the Premises.

The tests conducted by Tenant's qualified party shall include, but not be limited to, applicable comprehensive soil, emission, or groundwater sampling test or other procedures to determine any actual or possible contamination. Tenant shall expeditiously, but no longer than thirty (30) days after the District's request for such tests, furnish to the District the results of said tests, sampling plans, and analysis thereof identifying any Hazardous Materials which exceed then applicable levels permitted by federal, state, or local Laws. Tenant shall report such contamination to the District within seventy-two (72) hours and shall diligently proceed to identify the extent of contamination, how it will be remediated, when it will be remediated, by whom, and the cost of such remediation.

The terms of this Article 22 shall survive the expiration or earlier termination of this Lease.

23. "AS-IS" LEASE AND WAIVERS

23.1 Tenant's Acknowledgment

TENANT IS LEASING THE PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE TENANT'S EXECUTION OF THIS LEASE. BY SIGNING THIS LEASE, TENANT REPRESENTS AND WARRANTS THAT IT HAS INDEPENDENTLY INSPECTED THE PREMISES AND MADE ALL TESTS, INVESTIGATIONS AND OBSERVATIONS NECESSARY TO SATISFY ITSELF OF THE CONDITION OF THE PREMISES. TENANT HAS INSPECTED THE PREMISES AND THE COMMON AREAS OF THE SHOPPING CENTER AND TENANT AGREES IT IS RELYING SOLELY ON SUCH INDEPENDENT INSPECTIONS, TESTS, INVESTIGATIONS AND OBSERVATIONS IN MAKING THIS LEASE. TENANT ALSO ACKNOWLEDGES THAT THE PREMISES ARE IN THE CONDITION CALLED FOR BY THIS LEASE, THAT DISTRICT AND/OR THE PROPERTY MANAGER HAS PERFORMED ALL WORK WITH RESPECT TO PREMISES AND THAT TENANT DOES NOT HOLD THE DISTRICT RESPONSIBLE FOR ANY DEFECTS IN THE PREMISES. TENANT FURTHERMORE ACCEPTS AND SHALL BE RESPONSIBLE FOR ANY RISK OF HARM TO ANY PERSON AND

PROPERTY, INCLUDING WITHOUT LIMITATION EMPLOYEES OF TENANT, FROM ANY LATENT DEFECTS IN THE PREMISES.

<u>FB</u> Tenant	 District
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23.2 No Warranties

The District makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Premises, including the physical condition thereof, or any condition which may affect the Premises; and it is agreed that the District will not be responsible for any loss or damage or costs which may be incurred by Tenant by reason of any such condition or conditions.

23.3 Waiver and Disclaimer

Tenant hereby fully and forever waives, and the District hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability habitability or use.

23.4 Survival

The terms of this Article 23 shall survive the expiration or earlier termination of this Lease.

24. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION

Subject to the terms of this Article 24 and Article 9, upon the expiration or earlier termination of the Lease, all Facilities, excluding Tenant Fixtures, installed or constructed on the Premises, shall become the property of the District and a part of the realty and shall be surrendered to the District. In order to confirm such transfer of ownership, at the District's request following the expiration or earlier termination of the Lease, Tenant shall deliver to the District a Tenant-executed quitclaim deed in recordable form conveying the Improvements to the District free and clear of any mechanic's or materialmen's liens and other encumbrances. Without limitation of the foregoing, Tenant hereby appoints the District as Tenant's attorney-in-fact to execute such deed in the name and on behalf of Tenant and may record same in the official records of San Diego County, California. This power of attorney is irrevocable and coupled with an interest.

25. PEACEABLE SURRENDER

Upon expiration of this Lease or earlier termination thereof, Tenant shall peaceably surrender the Premises to the District in a broom clean condition with all refuse removed and in as good condition and repair as the Premises were at the Effective Date, except for reasonable wear and tear, and except to the extent the District has elected for Tenant to leave certain Tenant Improvements as directed by the District and/or the Property Manager pursuant to Article 9, and surrender the Premises in the condition required under this Article 25. If Tenant fails to surrender the Premises at the expiration of this Lease or the earlier termination or cancellation thereof in the condition required under this Lease, in addition to the District's other remedies, Tenant shall defend and indemnify the District from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding tenant claims based on Tenant's failure to surrender or the District's failure to deliver the Premises.

26. WAIVER

No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently. Any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall

affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by the District from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, the District may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment. The District shall have the power and authority to waive any requirement of Tenant under this Lease without the approval of the BPC except as such authority may be limited by the Port Act or BPC from time to time; provided, however, the District may elect to obtain approval of the BPC as a condition to exercising this authority.

27. HOLDOVER

This Lease shall terminate without further notice at expiration of the Term. Any holding over by Tenant after either expiration or termination without the District's written consent shall be a tenancy-at-sufferance upon all of the provisions of this Lease, except those pertaining to the Term. If Tenant, with the District's consent, remains in possession of the Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. All provisions of this Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and Tenant shall continue to pay all Rent required by this Lease.

28. NOTICES

Any notice or notices provided for by this Lease or by law to be given or served upon Tenant may be given or served by certified or registered letter addressed to Tenant at 6925 Hollywood Blvd., Los Angeles, CA 90028 and deposited in the United States mail, or may be served personally upon said Tenant or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided for by this Lease or by law to be served upon District may be given or served by certified or registered letter addressed to Executive Director of District at the Administrative Offices of the San Diego Unified Port District, Post Office Box 120488, San Diego, California 92112-0488 and deposited in the United States mail, or may be served personally upon said Executive Director or his and her duly authorized representative; and that any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

29. GENERAL PROVISIONS

29.1 Terms; Captions

The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.2 Binding Effect

Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of the District and of Tenant, but also of their respective heirs or successors, provided this clause shall not permit any Assignment by Tenant contrary to the provisions of Article 14 of this Lease.

29.3 No Merger

If both the District's and Tenant's estates in the Premises become vested in the same owner (other than by termination of this Lease following a default hereunder), this Lease shall not be terminated by application of the doctrine of merger except at the express election of the District.

29.4 Recording

Unless the parties agree otherwise in writing no memorandum of this Lease shall be executed or recorded.

29.5 Transfer of the District's Interest

Tenant acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, the District has the right to transfer all or any portion of its interest in the Premises and in this Lease, and Tenant agrees that in the event of any such transfer, the District shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of the District's obligations hereunder after the date of transfer. Each landlord hereunder shall be liable only for those obligations arising during its period of ownership and shall be released from further obligations upon any transfer. The liability of the District and any transferee of the District shall be limited to their respective interests in the Premises, as the case may be, and the District and such transferee shall be without personal liability under this Lease, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.

29.6 Time of Essence

Time is of the essence with respect to this Lease and each of its provisions.

29.7 Partial Invalidity

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

29.8 Entire Agreement

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter hereof. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. However, Tenant acknowledges and agrees that other documents may restrict Tenant's use of the Premises or impose other obligations not specifically referenced in this Lease including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

29.9 Joint and Several

If there is more than one Person constituting Tenant (i) the obligations imposed upon such persons or entities under this Lease shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of such persons and entities with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

29.10 Tenant's Authority

If Tenant is a corporation, partnership or limited liability company, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises is located and that Tenant has full right and authority to execute and deliver this Lease and that each Person signing on behalf of Tenant is authorized to do so.

29.11 Financial and Other Information Supplied by Tenant

Tenant represents and warrants that any financial or other information supplied by Tenant to the District regarding Tenant or Guarantor prior to entering into the Lease or during the Term or regarding any Transfer, or to Tenant's actual knowledge, regarding any transferee, is true and accurate and not misleading in any material respect. The breach of this warranty shall be a default of this Lease by Tenant.

29.12 Attorneys' Fees

Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by the District under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

29.13 Transaction Costs

To the extent Tenant requests any approval, consent or other action by the District (including, without limitation, in connection with any proposed Alterations, Financing Transaction or Transfer), Tenant shall pay or reimburse the District, upon written demand therefor, all of the District's reasonable attorneys' fees and other reasonable third party costs incurred by the District relating to the District's review, together with the District's then current processing or cost recovery fee for similar transactions consistent with any schedule of such fees then utilized by the District. The District will provide Tenant with a copy of any such fee schedule following written request therefor from Tenant. Such costs and fees shall be payable to the District whether or not the District grants such approval or consent, or undertakes the action requested by Tenant.

29.14 Governing Law

Venue for any legal proceeding shall be in San Diego County, California. This Lease shall be construed and enforced in accordance with the Laws of the State of California.

29.15 Brokers

Tenant shall be solely responsible for the payment of any fee or commission due to any broker and agrees to indemnify and defend and hold the District harmless from any and all claims, demands, losses, liabilities, lawsuits and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing by the District.

29.16 Counterparts

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

29.17 Drafting Presumption; Review Standard

The parties acknowledge that this Lease has been agreed to by both the parties, that both the District and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against the drafting party. Any deletion of language from this Lease prior to its execution by the

District and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Lease, any approval or consent to be given by the District may be given or withheld in the District's sole discretion.

29.18 Estoppel Statement

At any time and from time to time upon not less than fifteen (15) business days' notice by the District, Tenant shall execute, acknowledge and deliver to the District and/or the Property Manager or any other party specified by the District an estoppel statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rent has been paid, and stating whether or not the District is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying such default of which Tenant may have knowledge, and any other information regarding the Lease or Tenant's performance requested by the District.

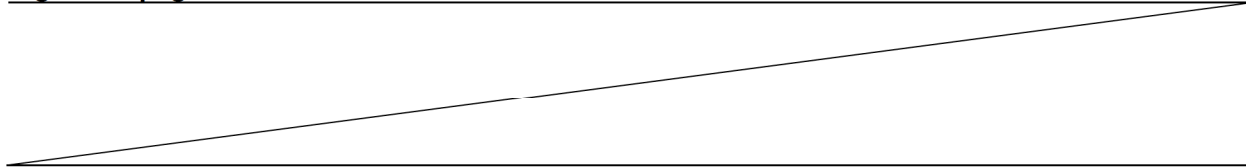
29.19 Certified Access Specialist ("CASp")

For purposes of Section 1938 of the California Civil Code, District hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist ("CASp") (defined in California Civil Code Section 55.52(a)(3)). Pursuant to Section 1938 of the California Civil Code, District hereby provides the following notification to Tenant: "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." If Tenant requests to perform a CASp inspection of the Premises, Tenant shall, at its sole cost, retain a CASp approved by District (provided that District may designate the CASp, at District's option) to perform the inspection of the Premises at a time agreed upon by the parties. Tenant shall provide District with a copy of any report or certificate issued by the CASp (the "CASp Report") and Tenant shall, at its sole cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CASp Report, which modifications will be completed in accordance with terms of this Lease, including, but not limited to, Section 8 hereof. Tenant agrees to keep the information in the CASp Report confidential except as necessary for the Tenant to complete such modifications.

29.20 Electronic Signature

This Lease may be executed by the parties by electronic signature, including, but not limited to, by manual signature and electronic transmission (email or facsimile) or DocuSign. Pursuant to and consistent with Section 29.16, counterparts executed by electronic signature shall each be deemed an original and shall together be deemed to constitute one and the same instrument.

Signature page follows.



IN WITNESS WHEREOF, the District and Tenant have executed this Lease as of the date first set forth above.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Elizabeth Alonso
Assistant/Deputy

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Anthony Gordon
Director, Real Estate

807 SEAPORT LLC, a California limited
liability company dba 3rd Base

By: 
Signature

NAME: Freddy Braid

Its: Secretary