

LEASE

THIS LEASE, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "District," to SEAPORT ENTERTAINMENT, LLC, a Delaware Limited Liability Company, hereinafter called "Tenant," is entered into on this ___ day of _____, 2020 (the "Lease Execution 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 the 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").

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 or add any improvements to a 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 Floor Area and Rentable Square Feet referenced below.

Unit No: Suite # E3 ("Premises I")

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

Rentable Square Feet: 6,600 Square Feet

Outdoor Seating or Display Area as attached in Exhibit B-1: Tenant shall have the exclusive right to use approximately 677 Square Feet of outdoor patio space located adjacent to Suite E-3.

Tenant shall also have the non-exclusive right to use approximately 4,690 Square Feet of the common area courtyard and patio located in the Lighthouse District (the "Lighthouse District Common Area Courtyard") and adjacent to Suite E-3 ") as attached in Exhibit B-1; Tenant shall also have the non-exclusive right to use the walkway surrounding the Lighthouse District Common Area Courtyard ("Courtyard Walkway") for the purposes of facilitating public and customer access, ingress and egress. Tenant may not obstruct or impede public access, ingress and egress over, through, across or on the Courtyard Walkway, unless specifically permitted in writing by District (collectively, the Lighthouse District Common Area 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 Lease Commencement Date

The Lease Commencement Date shall be the date District delivers possession of the Premises to Tenant as evidenced in writing by District to Tenant. The mutual obligations of District and Tenant, as discussed herein, shall not commence until the Lease Commencement Date. However, Tenant may submit and proceed with applications for any Initial Tenant Improvements and/or Necessary Approvals. Any such submission prior to the Lease Commencement Date does not create any obligations on behalf of the District. This date shall not determine the Lease Term Commencement Date or the Rent Commencement Date as provided herein.

2.2 Lease Term Commencement Date

The term of this Lease shall be for ten (10) years, commencing on Tenant's first day open for business to the public as evidenced in writing by Tenant or the Property Manager to District (the "Lease Term Commencement Date"), and ending ten years from the Lease Term Commencement Date (the "Expiration Date"), unless sooner terminated as herein provided (the "Lease Term"). Tenant shall have one option to extend the Lease Term by five (5) years (the "Option to Extend").

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 is in default hereunder (after any applicable notice and cure period) as of the date of exercise of the Option to Extend.

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 Initial 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 Lease Commencement 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

NOT APPLICABLE.

3. USE

3.1 Permitted Use

The Premises shall only be used as follows and for no other purpose (the "Permitted Use"): The operation of a full-service restaurant programed with entertainment holding a California State Department of Alcoholic Beverage Control (ABC) On-Sale General – Eating Place (Type 47) Liquor License covering Premises. The primary purpose and intent of Premises II is for public use; however, Tenant is granted the exclusive right to sell food and beverages that can be consumed in Premises II.

Tenant shall, as a condition of this Lease, program and activate the Lighthouse District Common Area Courtyard with entertainment including but not limited to gaming and live entertainment such as live music, art nights, food tastings, wine tastings, movie nights, cooking demos and other special events for the enjoyment and use of customers and the general public (the "Public Program"). Tenant shall coordinate such programming and activation with District and/or the Property Manager and shall provide District and/or the Property Manager with written notice for such programming and activation events at least five (5) business days in advance of any event (the District acknowledging that only one such notice will be required for multiple pre-scheduled occurrences of the same event). Tenant acknowledges that its programming of the Public Program is an important component of District's decision to enter into this Lease.

Tenant is permitted to hold private events not open to the public, such as corporate events ("Private Events") in the Lighthouse District Common Area Courtyard. To the extent Tenant holds Private Events in the Lighthouse District Common Area Courtyard, Tenant shall be limited to a maximum of three Private Events per week during the months of September through May and two Private Events per week during the months of June through August. Tenant shall provide District and/or the Property Manager with written notice of its intent to hold such Private Events at least ten (10) business days in advance for District's prior approval, not to be unreasonably withheld. District reserves the right to deny a proposed Private Event if there is a previously scheduled event, either by the District or Property Manager, occurring in the Lighthouse District Common Area Courtyard that would conflict with the proposed Private Event. In no event shall Tenant hold private events on Federal Holidays. Each Private Event shall not exceed more than one business day in duration. District reserves the right to make any revisions to the use of the Lighthouse District Common Area Courtyard, from time to time in writing to Tenant, as reasonably necessary to preserve public use of the Lighthouse District Common Area Courtyard.

Tenant shall maintain and keep all of Tenant's Fixtures and personal property and Tenant Improvements, if any, located within Premises II in good condition and repair and Tenant shall be required to operate its business therein in compliance with all applicable laws, including maintaining containers for trash and garbage and keeping the area free and clear of rubbish, litter and any other hazards in Premises II. Tenant shall also be required to repair any damage within Premises II caused by its use of the area. Except as provided above, District shall be responsible for all maintenance, repairs and replacements of and to all portions of Premises II necessary to keep same in good condition as determined by District in its sole and absolute discretion.

Notwithstanding the foregoing, District shall have the right to temporarily suspend Tenant's use of Premises II during such periods as District is conducting special events therein, but no more often than seven (7) times per year and for no longer than one (1) day each. Furthermore, should Tenant's use of Premises II interfere with the public use of or circulation within the area or otherwise constitute a nuisance, District may give written notice of same to Tenant and the parties shall meet and confer in an effort to agree on commercially reasonable modifications to Tenant's business that will abate such material interference or nuisance. If the parties are unable to agree on such modifications within twenty (20) days following District's written notice of same and the material interference or nuisance continues, and/or becomes habitual or routine, District may give Tenant written notice of District's intent to terminate Tenant's right to use Premises II, in which event such right shall terminate unless the material interference or nuisance is cured within ten (10) days following such notice of termination.

Any failure to comply with this Permitted Use clause shall, if same isn't cured within the applicable cure period set forth in Section 15 below, 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. 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.

3.2 Hours of Operations

The Premises shall be open for business to the public 365 days per year at least from 11:00 am to 9:00 pm in the months of September through May and at least from 11:00 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, however, Premises I shall not be required to be open for business to the public for more than the minimum hours set forth in this Section 3.2. 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 in one calendar year, Tenant shall be deemed in default.

3.3 Continuous Operations

From and after the Rent Commencement Date, 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. Unless otherwise required pursuant to law or permit requirements, and except for temporary barriers during Private Events subject to District approval pursuant to Section 3.1., Tenant shall not place any barriers along the perimeter of or within Premises II. 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 Shopping Center, Premises, or the Facilities including the use or development thereof shall constitute a default under this Lease. Subject to the remainder of this Section 3.4, Tenant shall be responsible for making all alterations to the Premises required by applicable laws. Notwithstanding anything in the foregoing to the contrary, but subject to the Structural Alterations Cost Cap (as defined below), District, and not Tenant, shall be responsible for making all structural alterations to the Premises required by applicable Laws and all alterations to the Lighthouse District Common Area Courtyard required by applicable Laws, in each case except to the extent same are triggered by a) Tenant Alterations; or b) Necessary Approvals (but District shall not be required to make such alterations unless and until the requirement to do so has been triggered by a governmental or third-party claim, lawsuit, order, demand, directive, ruling or other action). Notwithstanding the foregoing, District's cost for structural alterations to the Premises required to be made by District pursuant to this Section 3.4 shall not exceed Two Hundred Thousand Dollars (\$200,000) (the "Structural Alterations Cost Cap"), and Tenant shall bear all costs for structural alterations required to be made by District pursuant to this paragraph that exceed the Structural Alterations Cost Cap; provided, however, that if Tenant will have to bear any such excess costs, Tenant may instead elect to terminate the 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 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 and rights-of-way.

3.8 Right of Entry

District and its contractors, employees, Property Manager, and agents shall have the right to enter the Premises during business hours for any purpose upon twenty-four (24) hours' prior notice to Tenant. In exercising such right of entry under this Section, District shall use commercially reasonable efforts to minimize any interruption to Tenant. In the event of an emergency, District and its contractors, employees, Property Manager, and agents shall have the right to enter the Premises with twenty-four (24) hours' notice to Tenant as deemed practicable under the circumstances by District.

4. RENT

Tenant agrees to pay to the District Minimum Monthly Rent, Monthly Percentage Rent and/or Annual Percentage Rent (collectively, "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 the earlier of a) Tenant's first day open for business to the public or b) July 1, 2020 (the "Rent Commencement Date") and shall end on the Expiration Date set forth in Section 2, unless sooner terminated as herein provided.

Rent shall be payable in arrears by not later than the twentieth (20th) day of each month of the Lease Term. If the Rent Commencement Date is other than the first (1st) day of the month and therefore the Lease 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; provided, however, that not more often than one time per calendar year, said late charge shall not apply if Tenant pays the sum that is past due within five (5) days after receipt of District's notice that same is past due. 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 Monthly Rent shall be payable as part of Rent in equal monthly installments, 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	\$132,000.00	\$11,000.00
2	\$135,960.00	\$11,330.00
3	\$140,038.80	\$11,669.90
4	\$144,239.96	\$12,020.00
5	\$148,567.16	\$12,380.60
6	\$153,024.18	\$12,752.01
7	\$157,614.90	\$13,134.58
8	\$162,343.35	\$13,528.61
9	\$167,213.65	\$13,934.47
10	\$172,230.06	\$14,352.51
11	\$177,396.96	\$14,783.08
12	\$182,718.87	\$15,226.57
13	\$188,200.44	\$15,683.37
14	\$193,846.45	\$16,153.87
15	\$199,661.84	\$16,638.49

4.2 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) any 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 six percent (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 covenants to make its best 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	\$4,000,000.00
2	\$4,120,000.00
3	\$4,243,600.00
4	\$4,370,908.00
5	\$4,502,035.24
6	\$4,637,096.30
7	\$4,776,209.19
8	\$4,919,495.46
9	\$5,067,080.33
10	\$5,219,092.74
11	\$5,375,665.52
12	\$5,536,935.48
13	\$5,703,043.55
14	\$5,874,134.85
15	\$6,050,358.90

If Tenant is not open for business during any portion of the first Lease Year (the 365 days following the Lease Commencement), due to any 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 first Lease Year. For any such year, Tenant's Annual Percentage Rent shall be equal to six percent (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 during that period, unless Tenant's Gross Sales during such last year's corresponding period are 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. 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 filled at or from the Premises, 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;
- (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; and
- (f) Gratuities, provided the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that the Tenant has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer.

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.

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 on the basis of the District's reasonably anticipated costs. Notwithstanding the foregoing, (a) during the first Lease Year, Tenant's Proportionate Share of Common Area Maintenance Expenses and Marketing Expenses shall not exceed \$31.00 per Rentable Square Foot and (b) thereafter, Tenant's Proportionate Share of the Common Area Maintenance Expenses and Marketing Expenses shall not increase by more than five percent (5%) in the aggregate over the previous calendar or fiscal year as determined by the District, except for Uncontrollable Expenses, which includes utilities and utility systems (i.e. water, electricity, gas, storm drainage systems, fire protection systems, etc.), real estate taxes, personal property and/or possessory interest taxes and assessments of any kind, insurance and Emergency Repair Expenses ("Uncontrollable Expenses"). Tenant shall remain fully responsible for any increases in Uncontrollable Expenses. At Lease Commencement 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	6,600 SF	\$24.15 / SF	\$159,390.00
Marketing Expenses		\$6.48 / SF	\$42,768.00
TOTAL		\$30.63 / SF	\$202,158.00

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 Section 4.4 below, Tenant shall not be required to also pay for said taxes and assessments under the provisions of this Section 4.3.

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 Rent Commencement 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 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, if Tenant is not in default hereunder, the District shall refund to Tenant the amount of any excess, promptly upon the District's receipt of Tenant's request therefor.

4.4 Taxes and Assessments

Commencing with the Lease Commencement 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.

Notwithstanding anything herein to the contrary, Tenant has not yet been able to complete its due diligence regarding the Tax Expenses. If Tenant determines within the time frame set forth below, there is a significant possibility that the County of San Diego Assessor's will reassess the Premises following the Lease Execution Date, and that same will materially increase the Tax Expenses above what the prior tenant of the Premises was assessed, Tenant may terminate this Lease by providing written notice to District on or before the Lease Execution Date. If Tenant does not provide such notice within the time frame specified, Tenant shall have no right to terminate the Lease pursuant to this provision.

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 4.3 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 Lease Commencement date, Tenant shall pay the District a security deposit in the amount equal to the sum of one times the Minimum Monthly Rent plus one twelfth of the Tenant's Proportionate Share of Operating Expenses (\$27,846.50) (the "Security Deposit"). 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

Except as provided below, the security deposit shall be in the form of an Irrevocable Stand-By Letter of Credit ("Letter of Credit") drawn on a bank having a branch located in San Diego County and having a Moody's Long Term Letter of Credit rating of single A or higher and a Moody's Long Term Deposit rating of single A or higher. The principal sum shall be made payable to the District. Each Letter of Credit provided during the Term shall be valid for a minimum of twelve (12) months from date of issuance. Provided, however, when the remaining Term is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the Expiration Date of this Lease. If a Letter of Credit is not valid for the entire remaining Term plus three (3) months beyond, then such Letter of Credit shall be extended or renewed at least ninety (90) days prior to its expiration.

All or any portion of the principal sum of the Letter of Credit shall be available unconditionally to the District for the purposes and uses provided herein. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the District, in its sole discretion, and if not so acceptable, may be rejected. The Letter of Credit and Drawing Certificate shall not be acceptable if it requires the District to send written notice of default or request or demand payment from Tenant after default, prior to the District drawing on any funds under the Letter of Credit.

5.3 Cash Alternative

Notwithstanding the above, if said security deposit or the cumulative total amount of security deposits required by the District under this Lease does not exceed Thirty Thousand Dollars (\$30,000), Tenant may elect to provide said security deposit in the form of check or cashier's check.

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. The Common Area includes, without limitation, Premises II.

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

Except as otherwise specifically provided in this Lease and except with respect to Premises II, 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, 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

Except as otherwise specifically provided in this Lease, 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, excepting, however, bona fide customers, patrons and service suppliers of Tenant, and other tenants of the District who make use of said areas in accordance with the rules and regulations established by the District and/or the Property Manager from time to time with respect thereto. 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

After the sixtieth (60th) month of the Lease Term, this Lease may be terminated by the Executive Director of District or his or her duly authorized representative upon the giving of ninety (90) days' notice in writing to Tenant of such termination, but only in the event that demolition and/or construction related to any future redevelopment of the Shopping Center, as approved by the BPC, has commenced or will imminently commence and is significantly impactful to the Shopping Center and Premises in District's discretion.

After the sixtieth (60th) month of the Lease Term, this Lease may be terminated by Tenant upon the giving of ninety (90) days' notice in writing to the District of such termination, but only in the event that (a) demolition and/or construction related to any future redevelopment of the Shopping Center, as approved by the BPC, has commenced or will imminently commence and is significantly impactful to the Shopping Center and Premises or (b) in anticipation of future demolition and/or construction related to redevelopment of the Shopping Center, as approved by the BPC, more than fifty percent (50%) of the rentable square footage of the Shopping Center is vacant or (c) demolition and/or construction related to the Shopping Center (but not related to a redevelopment of the Shopping Center), as approved by the BPC, has commenced or will imminently commence and is significantly impactful to the Premises and more than fifty percent (50%) of the rentable square footage of the Shopping Center is vacant.

In the event District exercises its termination right during months 61-72 of the Lease Term (Lease Year 6) or months 73-84 of the Lease Term (Lease Year 7), District shall pay to Tenant a termination fee in the

amount of Three Hundred Twenty-Eight Thousand Five Hundred Seventy-One Dollars and Forty-Three Cents (\$328,571.43), payable on or prior to the termination date of the Lease.

7.1 Relocation of Tenant

District expressly reserves the right after the execution and during the Term of this Lease, or any extension or renewal thereof, at its sole cost and expense, 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 size and condition (and with comparable tenant improvements and other features as the Premises) within Seaport Village. 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 the actual cost of relocating the Tenant and the reasonable moving costs of Tenant actually incurred in connection with the same. In the event District opts to relocate the Tenant, the parties shall meet and confer in an effort to agree on the location of the Relocation Premises. If the parties are unable to agree on the location of the Relocation Premises within thirty (30) days following District's written notice to Tenant of its exercise of the right of relocation reserved in this Paragraph, Tenant shall have the right to terminate this Lease. Such right shall expire after thirty (30) days following District's written notice to Tenant of its exercise of the right of relocation reserved in this Paragraph. If Tenant exercises its right to terminate this Lease before the end of Lease Year 7, District shall pay to Tenant a termination fee in the amount of Three Hundred Twenty-Eight Thousand Five Hundred Seventy-One Dollars and Forty-Three Cents (\$328,571.43), payable on or prior to the termination date of the Lease. If Tenant elects not to terminate within thirty (30) days pursuant to this Section 7.1, Tenant waives all future objections to the Relocation Premises under this Lease. 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 unless Tenant timely exercises the foregoing right to terminate the Lease. The Relocation Premises will become the Premises and all of the other terms and provisions of this Lease shall be apply, without interruption, to the Relocation Premises from and after the date Tenant is required to move.

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") and the installation of certain Tenant Fixtures that will enhance operations, marketability, and revenue generated by the Premises. Therefore, to facilitate these improvements and Tenant Fixtures that will benefit the Premises, District will reimburse Tenant for a portion of the costs of the Initial Tenant Improvements and Tenant Fixtures, in an amount of Four Hundred Ninety-Five Thousand Dollars (\$495,000.00). In no event shall any portion of the reimbursement be spent on Tenant Fixtures that are kitchen equipment, as determined by the District. Such reimbursement shall be made to Tenant by District within sixty (60) days after (a) Tenant has given written evidence to the District of the completion of construction of the Initial Tenant Improvements and installation of any Reimbursed Tenant Fixtures, (b) Tenant has opened for business and (c) Tenant has delivered to the District a final, unconditional lien release from Tenant's general contractor regarding the Initial Tenant Improvements. Tenant shall comply with the requirements set forth in Section 8.1.1.

Tenant shall, as a condition of this Lease, make an investment in the Initial Tenant Improvements and Tenant Fixtures in an amount which shall exceed Four Hundred Ninety-Five Thousand (\$495,000.00) Dollars ("Initial Tenant Improvement and Tenant Fixtures Investment"). The Initial Tenant Improvement and Tenant Fixtures Investment is qualification for the term of this Lease and is not a portion of the rent obligations provided in Article 4. Further, neither such Initial Tenant Improvement and Tenant Fixtures Investment, nor such Initial Tenant Improvements and Tenant Fixtures, 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. To the extent any of the Initial Tenant Improvement Allowance, as contemplated herein, is used to reimburse Tenant for money spent on Tenant Fixtures ("Reimbursed Tenant Fixtures"), Tenant is required to provide District with a detailed accounting of all

Reimbursed Tenant Fixtures purchased and installed on the Premises, together with receipts or purchase contracts for such Reimbursed Tenant Fixtures. Such receipts or purchase contracts must be provided to District prior to any reimbursement. Notwithstanding anything to the contrary herein, District and Tenant agree that upon the purchase and installation of any Reimbursed Tenant Fixtures, such fixtures are owned by and title thereto is vested in District. Once installed, Tenant may not remove any Reimbursed Tenant Fixtures without the written authorization of the District, and Tenant must keep and maintain any Reimbursed Tenant Fixtures in good and working condition. Upon termination of this Lease, District shall have the discretion to require Tenant to remove any Reimbursed Tenant Fixtures at no cost to District. District shall notify Tenant of its election ninety (90) days prior to any termination.

8.1.1 Commencement and Completion of Initial Tenant Improvements

Upon Lease Commencement, Tenant shall diligently pursue and use commercially reasonable efforts to obtain all permits and approvals required to commence and fully complete the Initial Tenant Improvements, install the Tenant Fixtures and operate the Premises for the Permitted Use, 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 Lease Commencement, Tenant shall submit general, concept drawings and/or plans identifying the proposed 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. Should District authorize submittal of a completed Development Services Project Application, District shall notify Tenant in writing if a Performance Bond will be required pursuant to Section 8.1.1 (d).
- (b) **Development Services Project Application:** Within thirty (30) days after the Executive Director 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 do 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 Tenant Improvements; (iii) construction contract form; (iv) construction schedule; and (v) a detailed final construction cost estimate of 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 acceptance of the Working Drawings does not authorize any construction, improvements, or operation of the Tenant Improvements.
- (c) **Necessary Approvals:** Tenant shall submit all plans and documents required to obtain the Necessary Approvals to the appropriate government authorities promptly 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.

- (d) Performance Bond: If District so requires, then prior to commencement of construction of any portion of the initial Tenant Improvements that require a building permit or equivalent permit, Tenant shall provide to District a performance bond in the amount of the total estimated construction cost of the portion of the proposed Initial Tenant Improvements that require a building permit or equivalent permit 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 receive the Necessary Approvals by May 1, 2020 Tenant and/or District shall have the absolute right to terminate the Lease by giving written notice of such termination at any time prior to Tenant obtaining the Necessary Approvals.

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 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.

8.2.1 Diligent Construction; Continuous Operations

Once construction of any Alteration has commenced, Tenant shall diligently pursue construction of the 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; or (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). In order to extend the time for commencement or Completion of the Initial 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.

8.4 Signs and Flags

All signs visible from outside the Premises must comply with the Seaport Village Signage Criteria and otherwise be expressly approved by the District prior to installation. Any signage shall include verbiage indicating that Premises II is open to the general public. 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, not to be unreasonably withheld. Tenant's failure to comply shall constitute 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.

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 Department of Industrial Relations 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 Lease Commencement 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. Unless as specified in Section 8.1, 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 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; provided, however, that (a) District shall not be entitled to require that Tenant remove any portion of the Initial Tenant Improvements and (b) District shall only be entitled to require that Tenant remove subsequent Tenant Improvements if District notifies Tenant at the time of District's approval of same that District will require such removal. 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

On or prior to June 30, 2020, District shall complete the maintenance and repairs set forth in Exhibit F hereto (the "Deferred Maintenance Items"). District shall, during the term of the Lease, maintain the foundation, all structural elements, roof and exterior walls of the Premises (which does not include tenant installed fixtures, lighting or signage). Except as provided in the preceding sentence, Tenant shall assume full responsibility for operation and maintenance of the Premises I throughout the term and without expense to District. Tenant shall perform all maintenance, which includes all painting, repairs, and replacements necessary to maintain and preserve the Premises I in a good, safe, health, and sanitary condition, reasonably satisfactory to District. Tenant hereby agrees that the Premises are in a good and tenable condition, that Tenant will take good care of the Premises and appurtenances, including any structures,

buildings, installations, improvements, Facilities and/or personal property located on the Premises that are owned by 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. Except as set forth above, 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 and such failure continues beyond the applicable notice and cure period under Section 15, 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. Tenant shall, except for District's maintenance and repair obligations as provided in this Lease, 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 or 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. The District's BPC Policy No. 355 shall serve as the District's guideline for granting consent under this Section 14. 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 Tenants 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 Leased Property 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 except to the extent caused by Force Majeure Events.

15.1.2 Failure to Pay

Failure by Tenant to pay, when due, any Rent, other payment, and/or charge herein, is where such failure continues for a period of ten (10) 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 thirty (30) days after written notice thereof; provided that if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) 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.

15.1.7 Other Agreements

Tenant is in default (after applicable notice and cure periods) under any other agreement between the District and Tenant relating to the Premises.

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 or Tenant as a matter of right, at any time upon the giving of thirty (30) days' notice in writing to the other party 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

NOT APPLICABLE.

15.2.5 Payment by Tenant

Upon any default, Tenant shall pay to the District all 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 Lease Commencement 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 this 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 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:

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.

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.

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 Lease Commencement 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 same occurs during the period Tenant is in default under this Lease 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 Alterations to the Premises made by Tenant and all Tenant Fixtures 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, which shall include 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 Twenty-Five Thousand Dollars (\$25,000) 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 Alterations and Tenant Fixtures. 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.
- 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 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 forgoing, 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.
- (C) District shall maintain in full force and effect throughout the Term of this Lease All Risk Property Coverage, including water damage and debris cleanup provisions, in an amount not less than the full replacement value of the Facilities (excluding Alterations made by Tenant and any Tenant Fixtures).

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 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

Should the Facilities be damaged or destroyed by fire, the elements, acts of God, or by any other cause, District shall promptly repair and restore such Facilities (excluding Alterations made by Tenant and any Tenant Fixtures) so that after such restoration and repair, the Facilities are at least as usable as immediately prior to such damage or destruction, provided, however, District shall not be obligated to repair, reconstruct, or replace Facilities if the loss is not covered by insurance carried (or required hereunder to be carried) by the District. Moreover, District shall not be required to undertake any repair, reconstruction, or replacement of Facilities if damage or destruction of the Facilities occurs in or after Lease Year 5. If destruction or damage occurs in or after Lease Year 5, Lease Year 6, or Lease Year 7, and the District elects not to undertake repair, reconstruction, or replacement, this Lease shall terminate and the District shall pay to Tenant the lease termination fee described in Section 7. If damage or destruction occurs and the loss is not covered by insurance carried (or required hereunder to be carried) by the District, and the District elects not to undertake repair, reconstruction, or replacement, this Lease shall terminate unless Tenant elects, in its sole discretion, to pay the costs of such repair, reconstruction or replacement. If District undertakes repair and restoration, Tenant shall promptly repair and restore all Alterations made by Tenant and all Tenant Fixtures.

21.2 Casualty During the Last Part of Term; Casualty that Will Take Longer than 1 Year to Repair

Notwithstanding Section 21.1 to the contrary, if there is damage or destruction to the Facilities (a) during the last year of the Term (including all exercised options) and repairing said damage or destruction will take longer than thirty (30) days following the date of the casualty or (b) at any time during the Term and repairing said damage or destruction will take longer than one (1) year following the date of the casualty, then Tenant shall have the option to terminate this Lease by giving the District written notice of its election to terminate ("Notice of Election to Terminate") within thirty (30) days following the date of the casualty.

21.3 Rental Abatement

In the event that as a result of any such casualty, Tenant is prevented from using, and does not use, the Premises or any portion thereof, then the rent hereunder shall be equitably abated or reduced, as the case may be, during the period that Tenant continues to be so prevented from using and does not use the Premises or portion thereof.

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, including all laws regarding hazardous substances, materials or wastes, or petroleum products or fraction thereof (herein collectively referred to as "Hazardous Materials") 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, its officials, officers, agents, and employees from any and all such responsibilities, damages, claims, fines, liabilities, including without limitation any costs, expenses and attorney's 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.

 _____ 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 25 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 Lease Commencement, except for reasonable wear and tear, and except to the extent the District has elected to 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 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 550 West Date Street, Suite 415, San Diego, CA 92101 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 any Guarantor (Exhibit D) 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 attorneys' fees and other 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

District shall be solely responsible for the payment of any fee or commission due to the District's broker, RI Properties, Inc. dba Retail Insite. Each party agrees to indemnify and defend and hold the other party 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 owed to any other broker in connection with this Lease based on any agreement or act of the indemnifying party. Tenant warrants that it is not using any broker(s) in connection with the leasing of the Premises.

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.

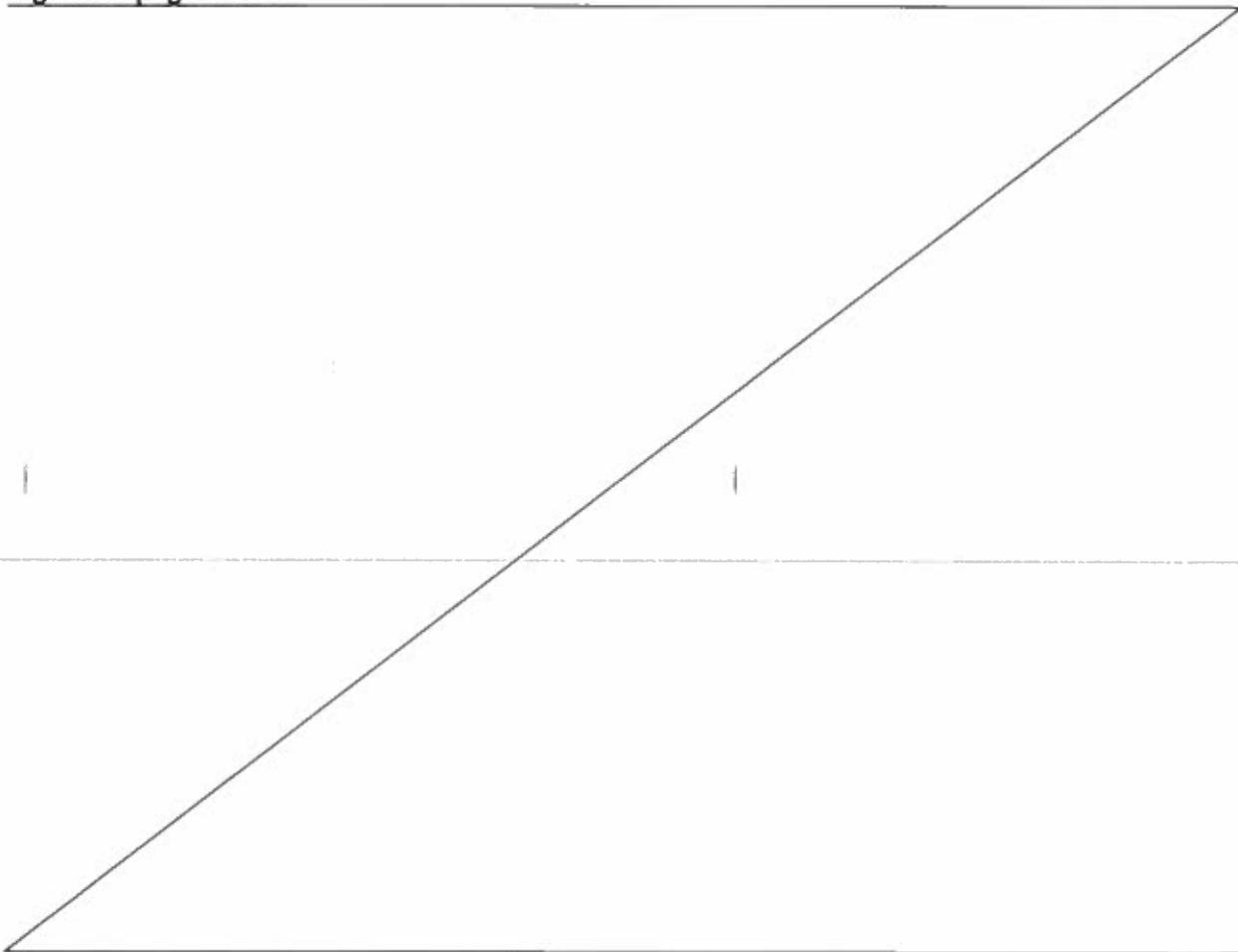
29.18 Estoppel Statement

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")

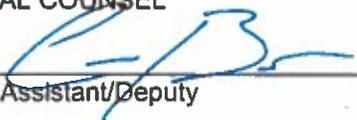
For purposes of Section 1938 of the California Civil Code, the District hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist ("CASp").

Signature page follows.



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

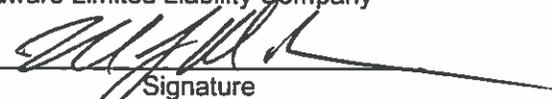
APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

By: 
Assistant/Deputy

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Tony Gordon
Director, Real Estate

SEAPORT ENTERTAINMENT, LLC, a
Delaware Limited Liability Company

By: 
Signature

NAME: Michael Di Norscia

Its: Manager

SDUPD Docs No. 1616271

DEFINITIONS ADDENDUM

This Definitions Addendum contains the following definitions which are incorporated into and constitute a part of the Lease.

Definitions ADDENDUM	
ACOE:	defined in Section 8.6.
ADA:	the Americans with Disabilities Act, 42 U.S.C. §12101 <i>et seq.</i> and the regulations promulgated thereunder, as the same may be amended from time to time.
Additional Rent:	all sums of money other than Rent required to be paid by Tenant to the District under this Lease; defined in Section 4.6.
Addresses for Notices:	defined in Article 28.
Administrative Fee	defined in Section 4.3.1.
Affiliate:	any managing member or general partner of the subject Person (as the case may be), or any Person that Controls, is directly or indirectly Controlled by, or is under common ownership or Control with the subject Person.
Alterations:	any alterations, additions, installations, removals, demolitions, improvements or other physical changes to the Premises or any Facilities thereon, including any Tenant Improvements, and including the alteration, addition, installation or removal of Tenant Fixtures.
Assignment:	any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of Tenant's interest in this Lease (including without limitation any easements), the leasehold estate created hereby, or the Premises, whether by operation of law or otherwise.
Bankruptcy Code:	Title 11 of the United States Code, as amended.
Bankruptcy Event:	the occurrence with respect to Tenant, any Guarantor or any other Person liable for Tenant's obligations hereunder (including without limitation any general partner of Tenant) of any of the following: (a) such Person becoming insolvent, as that term is defined in the Bankruptcy Code; (b) appointment of a receiver or custodian for any property of such Person, or the institution of a foreclosure or attachment action upon any property of such Person; (c) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code or any insolvency laws; (d) filing of an involuntary petition against such Person as the subject debtor under the Bankruptcy Code or any insolvency laws, which either (1) is not dismissed within sixty (60) days after filing, or (2) results in the issuance of an order for relief against the debtor; (e) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors; or (f) an admission by Tenant or Guarantor of its inability to pay debts as they become due.
BPC:	Board of Port Commissioners of the San Diego Unified Port District.
CASp:	defined in Section 29.18.
CCC:	defined in Section 3.4.
CDP:	defined in Section 3.4.
CEQA:	defined in Section 3.4.
Certificates:	defined in Section 19.1.
Change in Entity:	includes, whether through one transaction or a series of transactions:
(i)	with respect to a corporation whose stock is not publicly traded through a nationally recognized exchange, partnership, association, limited liability company, or other entity (other than a corporation whose stock is traded through a nationally recognized exchange) any one or more of the following resulting in a change in Control of the subject entity: (A) the withdrawal, admittance or change, voluntary, involuntary or by

Definitions ADDENDUM	
	operation of law or otherwise, of one or more of the partners, members or other principals or participants unless due to death or disability of the shareholders, partners and/or members, or (B) the assignment, hypothecation, pledge, encumbrance, transfer or sale, whether voluntary or involuntary or by operation of law or otherwise, of any stock, partnership, membership or equity interests (other than (i) to immediate family members by reason of gift or death, or (ii) to a family trust for the benefit of immediate family members), or (C) the dissolution, merger, consolidation or other reorganization of such corporation, partnership, association, limited liability company or other entity;
(ii)	with respect to a corporation whose stock is publicly held and traded through a nationally recognized exchange, the transfer or sale, voluntary or involuntary, of the all or substantially all of the assets or stock of the corporation to a third party. Any event or transaction that would constitute a Change in Entity of a Tenant Parent, also shall constitute a Change in Entity of Tenant.
City:	defined in Section 8.6.
Claims:	defined in Article 20
Common Area:	defined in Section 6.1.
Common Area Maintenance Expenses:	defined in Article 4.
Completion and Complete:	shall mean that Tenant has obtained and delivered to the District (i) a final certificate of occupancy, if such certificate of occupancy can be issued, for substantially all of the Tenant Improvements or Alterations, as applicable, from the appropriate governing authority, (ii) a certificate from Tenant's architect and general contractor in favor of the District stating that, to the best knowledge of such certifying party, the Tenant Improvements or Alterations, as applicable, have been completed in accordance, in all material respects, with the Plans, and (iii) a copy of final lien releases in statutory form from all of Tenant's contractors and all subcontractors.
Condemnation:	defined in Section 17.1.
Condition of the Premises:	defined in Section 23.1.
Construction of Tenant Improvements:	defined in Article 8.
Construction Requirements:	those requirements, conditions and procedures regulating the installation, construction, modification and repair of Facilities and Alterations as described in <u>Exhibit C</u> attached to this Lease, defined in Section 8.2.2.
Continuous Operations:	defined in Section 3.3.
Control, Control, Controlled and Controlling:	shall be deemed to be either or both (i) the ownership of more than fifty percent (50%) of the stock or other voting interest of the subject entity or the ownership of beneficial interests in the subject entity, or (ii) the power to direct the management of the subject entity with respect to major decisions of the subject entity, whether through voting interests or by way of agreement.
Default Rate:	an annual rate equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as the District and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.
Demolition Notice:	defined in Section 21.2.

Definitions ADDENDUM	
District:	the San Diego Unified Port District and where applicable the District acting through the BPC; defined in the Preamble of this Lease
District Parties:	the District, its officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, successors and assigns.
Emergency Repair Expenses:	shall mean any actual or threatened existence of conditions such as any hurricane, tornado, storm, high water, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion, civil disturbance, other catastrophe, or threat that causes or may cause substantial damage or injury to any person or entity or the Premises or Shopping Center, including without limitation, failure of electrical, plumbing, communications or network systems or devices, which may cause an immediate threat to health and safety.
Entitlements:	defined in Article 11.
Expiration Date:	defined in Section 2.
Facilities:	those buildings, structures and other improvements (including Tenant Improvements, vaults, utilities and other underground improvements) now or hereafter (including Alterations) located on, in, over or under the Premises.
Force Majeure Event:	defined in Section 8.3.
Green/Sustainable Leasing:	defined in Section 3.5.
Gross Sales:	defined in Section 4.2.3.
Hazardous Material:	shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a "Hazardous Material" or "Hazardous Substance" within the meaning of any applicable Law (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 25316 and anything that may result in contamination or pollution as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Law relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Law, Hazardous Material as defined herein includes any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any environmental laws.
Hours of Operation:	defined in Section 3.2.
Initial Tenant Improvements:	shall mean the Tenant Improvements initially proposed by Tenant, as discussed in Section 8 this Lease (as opposed to subsequent Tenant Improvements that may be proposed or constructed by Tenant).
Initial Term	means the Term if there are no Options to Extend and, if there are Options to Extend, the "Initial Term" of this Lease is the Term prior to the exercise of any Option to Extend.
Late Charges:	defined in Section 4.
Laws:	All present and future California state, federal and local laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, including, without limitation, PWL, applicable wage laws, the ADA, and any law of like import, and all rules, regulations and government orders with respect thereto, including without limitation any of the foregoing relating to Hazardous Materials, environmental matters (including, but not limited to, Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, the Clean Water Act, Oil Pollution Act, the Toxic Substances Control Act and

Definitions ADDENDUM

	comparable and supplemental California laws), public health and safety matters and landmarks protection, as any of the same now exist or may hereafter be adopted or amended. Said Laws shall include, but are not limited to laws enacted by the San Diego Unified Port District, including the San Diego Unified Port the District Code; any applicable ordinances of the city in which the Premises are located, including the building code thereof, and any governmental permits, approvals and conditions of approval under the terms of any of the governmental approvals; any approved mitigation measure or project changes pursuant to CEQA environmental review; any CDP(s) or California Coastal Act exclusion(s) applicable to the Premises or the use or development thereof.
Lease Commencement Date:	defined in Section 2.
Lease Term Commencement Date:	defined in Section 2.
Lease Term:	defined in Article 2.
Lease Year:	a period of twelve (12) consecutive months commencing on the Rent Commencement Date, and each successive twelve (12) month period thereafter during the Term; provided, however, that if the Rent Commencement Date is not the first (1 st) day of a month, then the first Lease Year shall be from the Rent Commencement Date until the last day of the month in which the first anniversary of the Rent Commencement Date occurs and the second Lease Year shall commence on the first (1 st) day of the month immediately following the first anniversary of the Rent Commencement Date.
Leasehold Award:	defined in Section 17.7.1.
Letter of Credit:	defined in Section 5.2.
Liens:	defined in Article 13.
Management Fee Expense:	defined in Section 4.3.1.
Marketing Expenses:	defined in Article 4.
Mechanic's Lien:	defined in Section 13.3.
Memorandum of Lease:	defined in Section 4.4.
Minimum Annual Rent	component of Rent defined in Article 4.
Minimum Monthly Rent	component of Rent defined in Article 4.
Monthly Gross Sales	defined in Section 4.2.1.
Necessary Approvals	defined in Section 8.1
Notice of Election to Terminate:	defined in Section 21.2.
Notice of Non-Responsibility:	defined in Sections 14.2 and 14.7.
OFAC:	defined in Section 18.3.
Option Term:	Each extension of the Term pursuant to a properly exercised Option to Extend
Operating Expenses:	defined in Section 4.3.
Option to Extend:	defined in Section 2.2.
Other Stores	defined in Section 4.3.3.
Outside Construction Commencement Date:	defined in Section 8.1.
Outside Construction Completion Date:	defined in Section 8.1.
Percentage Rent:	defined in Section 4.2
Permitted Use:	defined in Section 3.1.
Person:	any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.
Plans:	defined in Section 8.1.

Definitions ADDENDUM	
PMP:	defined in Section 8.1.
Port Act:	defined in the Preamble.
Premises:	defined in Article 1.
Prohibited Person:	defined in Section 18.3.
Prohibited Persons:	defined in Section 18.3.
Prior Agreements:	defined in Section 3.3.
Property Manager:	defined in Section 4.3.
Prevailing Wage (PWL):	defined in Sections 8.5 and 8.8.1 (a).
Related Costs:	any costs, damages (of all kinds including punitive damage, diminution in value and loss of use), claims, liabilities, expenses (including reasonable attorneys', consultants' and experts' fees), losses, fines, penalties and court costs related to the subject matter of the Related Costs and amounts paid in settlement of any claims or actions related to the subject matter of the Related Costs.
Relocation Premises	defined in Section 7.1
Removal of Tenant Fixtures and Tenant Improvements:	defined in Article 9.
Rent:	defined in Article 4
Rentable Square Feet:	Square footage of Premises (specified in Sections 1 and 3.3) used to calculate Minimum Annual Rent and Tenant's Proportionate Share of Operating Expenses.
Rent Commencement Date:	defined in Section 4.
Reservations:	defined in Section 5.7.
Revenue:	shall mean all income, receipts, proceeds, amounts, money, cash, assets, property or other things of value, whether collected, uncollected, received, payable or accrued.
Security Deposit:	defined in Article 5.
Shopping Center:	defined in Article 1.
Signs and Flags:	defined in Section 8.4.
Tax Expenses:	defined in Section 4.4.
Tenant	defined in the Preamble of this Lease.
Tenant Fixtures	shall mean any and all installations, machines, appliances, equipment, furniture and trade fixtures of any kind placed on the Premises by Tenant, but does not include any Tenant Improvements.
Tenant Hazardous Material:	any Hazardous Material either (i) brought onto the Premises during the Term of this Lease by any Person, or (ii) brought onto the Premises or any other property by Tenant or Tenant Party or generated by any of the same.
Tenant Improvements:	shall mean any physical improvements to the Facilities, as authorized by the terms of this Lease.
Tenant Parent:	a Person which Controls, directly or indirectly, Tenant.
Tenant Party(ies):	Tenant, its agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns and its Subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of those Subtenants.
Tenant Related Party:	(i) a corporation or other business entity into or with which Tenant shall be merged or consolidated (such as a "successor corporation"), or to which substantially all of the assets of Tenant may be transferred or sold; or (ii) a corporation or other business entity (a "related corporation") which shall Control, be Controlled by or be under common Control with Tenant.
Tenant's Guarantor	see Exhibit D.

Definitions ADDENDUM	
Tenant's Proportionate Share of Operating Expenses:	defined in Section 4.3.
Term:	defined in Article 2.
Total Floor Area	shall mean the total floor of the Premises as defined in Section 1
Uncontrollable Expenses	defined in Section 4.3
USA Patriot Act:	defined in Section 18.3.
Use:	defined in Article 3.
Waste or Nuisance:	defined in Section 5.6.
Working Drawings:	defined in Section 8.6.

EXHIBIT A**LEGAL DESCRIPTION OF PREMISES****PARCEL NO. 1**

Commencing at Harbor Line Station No. 458 on the U.S. Bulkhead Line, as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426," approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence north $39^{\circ}41'54''$ east a distance of 14.78 feet to a point on the southerly right of way line of Harbor Drive, as said Harbor Drive was established as and for a public street by the Documents of Conveyance on file in the Office of the District Clerk as Document No. 71, subsequently that portion of Harbor Drive being vacated by the City of San Diego, Resolution No. R-256818 adopted July 8, 1982, filed in the Office of the City Clerk and as more particularly delineated on Drawing Nos. 20372-1-D and 20372-2-D; thence along said former southerly right of way line of Harbor Drive north $50^{\circ}18'06''$ west a distance of 712.52 feet to the beginning of a tangent curve concave to the southwest having a radius of 439.88 feet (440.00 feet-Record), the center of which bears south $39^{\circ}41'54''$ west; thence along said 439.88 foot radius curve through a central angle of $18^{\circ}08'01''$ an arc distance of 139.22 feet to a point of cusp which bears north $21^{\circ}33'53''$ east from the center of said 439.88 foot radius curve, said point of cusp being on a curve concave to the southwest having a radius of 25.00 feet, the center of which bears south $44^{\circ}00'14''$ west, said point of cusp also being the TRUE POINT OF BEGINNING of Parcel No. 1; thence leaving said former southerly right of way line of Harbor Drive and southeasterly along the arc of said 25.00 foot radius curve through a central angle of $62^{\circ}28'24''$ an arc distance of 27.26 feet to a point which bears south $73^{\circ}31'22''$ east from the center of said 25.00 foot radius curve; thence south $16^{\circ}28'38''$ west a distance of 200.89 feet; thence south $73^{\circ}31'22''$ east a distance of 4.50 feet to the beginning of a curve concave to the east having a radius of 291.13 feet, the center of which bears south $73^{\circ}31'22''$ east; thence southerly along the arc of said 291.13 foot radius curve through a central angle of $39^{\circ}04'48''$ an arc distance of 198.57 feet to a point on a tangent reverse curve the common radial of which bears south $67^{\circ}23'50''$ west from the center of said 291.13 foot radius curve, said tangent reverse curve being concave to the west having a radius of 101.66 feet; thence southerly along the arc of said 101.66 foot radius curve through a central angle of $30^{\circ}56'18''$ an arc distance of 54.89 feet to a point which bears south $81^{\circ}39'52''$ east from the center of said 101.66 foot radius curve; thence south $8^{\circ}20'08''$ west a distance of 55.81 feet; thence north $89^{\circ}06'03''$ west a distance of 16.66 feet to the beginning of a curve concave to the north having a radius of 103.00 feet, the center of which bears north $47^{\circ}24'48''$ west; thence southwesterly, westerly, and northwesterly along the arc of said 103.00 foot radius curve through a central angle of $110^{\circ}13'12''$ an arc

PAGE 1 of 4

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DRAWN <u>BB/mn</u> CHECKED <u>BOURQUE</u> REVIEWED <u>[Signature]</u> APPROVED <u>[Signature]</u> DIRECTOR OF ENGINEERING	SAN DIEGO UNIFIED PORT DISTRICT Within Corporate Limits of San Diego	DATE <u>27 March 1992</u> SCALE _____ REF. <u>3370</u> DRAWING NO. <u>3312-B</u>
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EXHIBIT "A"

distance of 198.14 feet to a point which bears south 62°48'24" west from the center of said 103.00 foot radius curve; thence north 89°06'03" west a distance of 377.98 feet; thence north 40°10'10" west a distance of 327.63 feet; thence north 11°13'58" west a distance of 97.49 feet; thence north 61°55'09" east a distance of 386.05 feet to a point on the southerly right of way line of Harbor Drive as established by the above described Documents of Conveyance No. 71, subsequently that portion of Harbor Drive being vacated by the City of San Diego, Resolution No. R-270246 adopted January 26, 1988, filed in the Office of the City Clerk and as more particularly delineated on Drawing Nos. 23463-1-D and 23463-2-D, said point also lying north 89°26'10" west a distance of 36.04 feet from the point of intersection of the said southerly right of way line of Harbor Drive and the southerly prolongation of the easterly right of way line of Pacific Highway, as said Pacific Highway was established as and for a public street by the above described Documents of Conveyance No. 71, subsequently a portion of Pacific Highway was also vacated by the City of San Diego by the above described Resolution No. R-270246; thence south 89°26'10" east along said former southerly right of way line of Harbor Drive a distance of 331.44 feet to the beginning of a tangent curve concave to the southwest having a radius of 439.88 feet (440.00 feet-Record); thence southeasterly along the arc of said 439.88 foot radius curve through a central angle of 21°00'03" an arc distance of 161.23 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 365,003 square feet or 8.38 acres of tideland area.

PARCEL NO. 2

Commencing at the above described Harbor Line Station No. 458 on the U.S. Bulkhead Line; thence north 39°41'54" east a distance of 14.78 feet to a point on the above described former southerly right of way line of Harbor Drive; thence along said former southerly right of way line north 50°18'06" west a distance of 340.27 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence leaving said former southerly right of way line of Harbor Drive south 0°53'57" west a distance of 201.00 feet; thence north 89°06'03" west a distance of 346.58 feet; thence south 0°30'46" west a distance of 20.00 feet; thence north 89°06'03" west a distance of 57.56 feet; thence north 8°20'08" east a distance of 51.25 feet to the beginning of a tangent curve concave to the west having a radius of 136.66 feet, the center of which bears north 81°39'52" west; thence northerly along the arc of said 136.66 foot radius curve through a central angle of 30°56'18" an arc distance of 73.79 feet to a point on a tangent reverse curve the common radial of which bears north 67°23'50" east from the center of said 136.66 foot radius curve, said tangent reverse curve being concave to the east having a radius of 148.87 feet; thence northerly along the arc of said 148.87 foot radius curve

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DRAWN <u>RB/mn</u> CHECKED <u>BOURKE</u> REVIEWED <u>Wilkinst</u>	<p style="text-align: center;">SAN DIEGO UNIFIED PORT DISTRICT</p> <p style="text-align: center;">Within Corporate Limits of San Diego</p>	DATE <u>27 March 1992</u> SCALE _____ REF. <u>3370</u>
APPROVED  DIRECTOR OF ENGINEERING		DRAWING NO. 3312-B

through a central angle of 39°04'48" an arc distance of 101.54 feet to a point which bears north 73°31'22" west from the center of said 148.87 foot radius curve; thence north 16°28'38" east a distance of 92.38 feet; thence south 73°31'22" east a distance of 5.00 feet; thence north 16°28'38" east a distance of 5.00 feet; thence north 73°31'22" west a distance of 5.00 feet; thence north 16°28'38" east a distance of 145.84 feet to the beginning of a tangent curve concave to the southeast having a radius of 29.50 feet, the center of which bears south 73°31'22" east; thence northeasterly along the arc of said 29.50 foot radius curve through a central angle of 70°22'54" an arc distance of 36.24 feet to a point which bears north 3°08'28" west from the center of said 29.50 foot radius curve, said point being on the above described former southerly right of way line of Harbor Drive, said point also being on a curve concave to the southwest having a radius of 439.88 feet (440.00 feet-record), the center of which bears south 34°25'30" west; thence southeasterly along said former southerly right of way line and along the arc of said 439.88 foot radius curve through a central angle of 5°16'24" an arc distance of 40.49 feet to a point which bears north 39°41'54" east from the center of said 439.88 foot radius curve; thence south 50°18'06" east a distance of 191.05 feet; thence leaving said former southerly right of way line of Harbor Drive south 6°06'08" west a distance of 1.94 feet to the beginning of a tangent curve concave to the northwest having a radius of 19.50 feet, the center of which bears north 83°53'52" west; thence southwesterly along the arc of said 19.50 foot radius curve through a central angle of 28°08'15" an arc distance of 9.58 feet to a point on a tangent reverse curve the common radial of which bears south 55°45'37" east from the center of said 19.50 foot radius curve, said tangent reverse curve being concave to the northeast having a radius of 35.50 feet; thence southwesterly, easterly, and northeasterly along the arc of said 35.50 foot radius curve through a central angle of 186°11'41" an arc distance of 115.37 feet to a point which bears south 61°57'18" east from the center of said 35.50 foot radius curve, said point also being on the said former southerly right of way line of Harbor Drive; thence along said former southerly right of way line south 50°18'06" west a distance of 106.85 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 136,772 square feet or 3.14 acres of tideland area.

PARCEL NO. 3

Beginning at the most westerly corner point of the above described Parcel No. 1, said corner point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence along said Parcel No. 1 south 11°13'58" east a distance of 97.49 feet; thence south 40°10'10" east a distance of 327.63 feet; thence south 89°06'03" east a distance of 336.14 feet; thence leaving said Parcel No. 1 south 0°30'46" west a

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DRAWN <u>BB/mn</u> CHECKED <u>BOURKE</u> REVIEWED <u>BOURKE</u>	SAN DIEGO UNIFIED PORT DISTRICT Within Corporate Limits of San Diego	DATE <u>27 March 1992</u> SCALE _____ REF. <u>3370</u>
APPROVED <u>[Signature]</u> DIRECTOR OF ENGINEERING		DRAWING NO. 3312-8

distance of 20.00 feet; thence north 89°06'03" west a distance of 80.99 feet; thence south 0°30'46" west a distance of 80.00 feet; thence north 89°06'03" west a distance of 301.32 feet; thence north 40°10'10" west a distance of 373.13 feet; thence north 49°49'50" east a distance of 77.15 feet; thence north 11°13'58" west a distance of 102.50 feet; thence north 61°55'09" east a distance of 20.90 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 66,481 square feet or 1.53 acres of water covered area.

PARCEL NO. 4

Commencing at the True Point of Beginning of the above described Parcel No. 2; thence along the easterly line of said Parcel No. 2 south 0°53'57" west a distance of 201.00 feet to the most southeasterly corner point of said Parcel No. 2, said corner point also being the TRUE POINT OF BEGINNING of Parcel No. 4; thence leaving said Parcel No. 2 south 0°53'57" west a distance of 20.00 feet; thence north 89°06'03" west a distance of 346.45 feet; thence north 0°30'46" east a distance of 20.00 feet to a point on the southerly line of said Parcel No. 2; thence along said southerly line of Parcel No. 2 south 89°06'03" east a distance of 346.58 feet to the TRUE POINT OF BEGINNING of Parcel No. 4, containing 6,930 square feet or 0.16 acre of water covered area.

Reserving to the lessor a utility easement 10.0 feet in width, the center line of which lies 4.5 feet southerly, parallel and concentric with the concave portion centrally located along the northeasterly limit line of the above described Parcel No. 2.

ALSO: Reserving an electrical easement 6.0 feet in width extending from the existing electrical transformer, adjacent to Building "E-4", in a northeasterly direction a distance of 30.0 feet, more or less, to a point of intersection with the above described 10.0 foot wide utility easement.

The above described areas are those delineated on Drawing No. 3312-B, dated 27 March 1992, as revised, and made a part of this agreement.

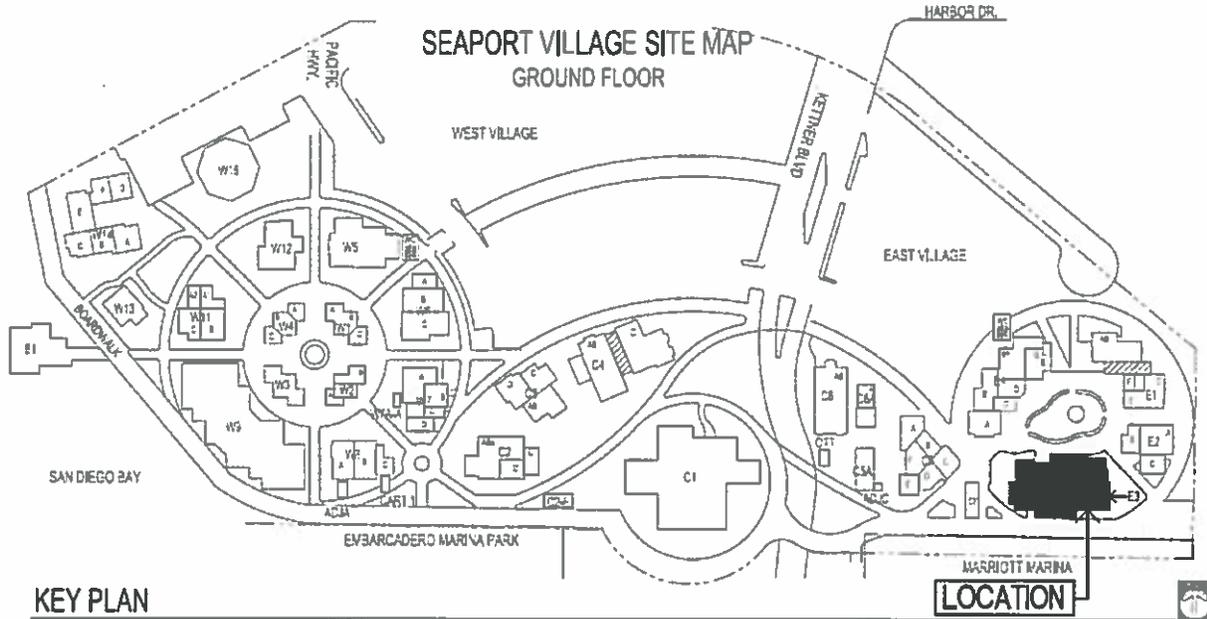
PAGE 4 of 4

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DRAWN <u>BB/mn</u> CHECKED <u>BOURKE</u> REVIEWED <u>W. Weiss</u>	SAN DIEGO UNIFIED PORT DISTRICT Within Corporate Limits of San Diego	DATE <u>27 March 1992</u> SCALE _____ REF. <u>3370</u>
APPROVED  DIRECTOR OF ENGINEERING		DRAWING NO. 3312-B

EXHIBIT B

SITE PLAN



KEY PLAN

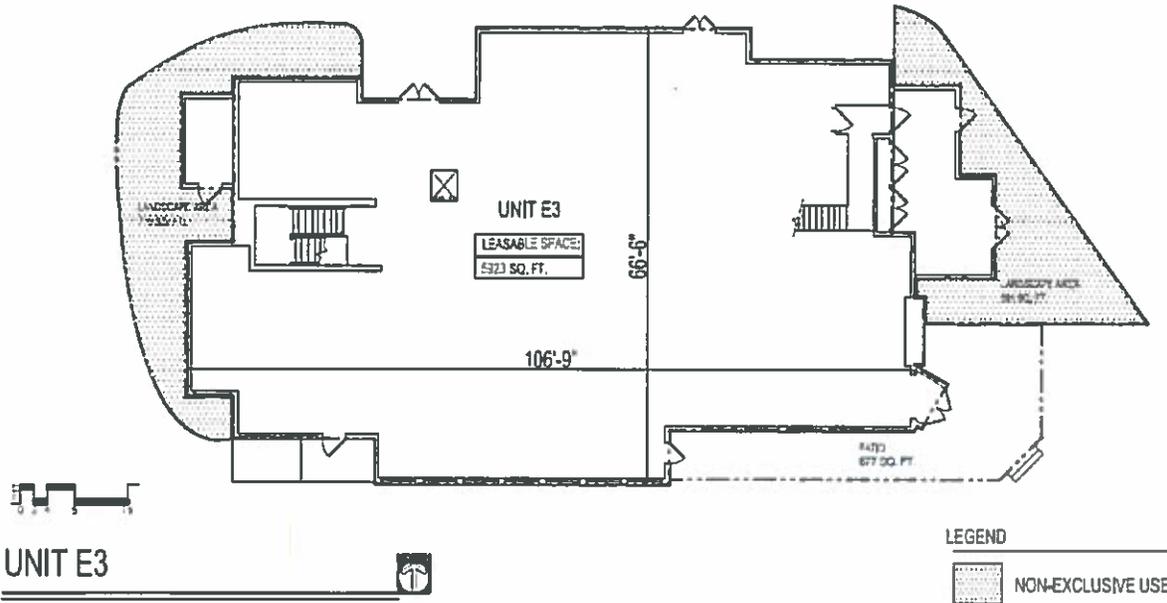
LOCATION

JWDA
JOSEPH WONG DESIGN ASSOCIATES
2319 414 AVENUE
SAN DIEGO, CA 92101
(619) 233-6777

PROJECT SEAPORT VILLAGE LEASE EXHIBIT / JOB NO 3458 / DATE SEPTEMBER 2019
849 W. HARBOR DRIVE, SAN DIEGO, CA 92101

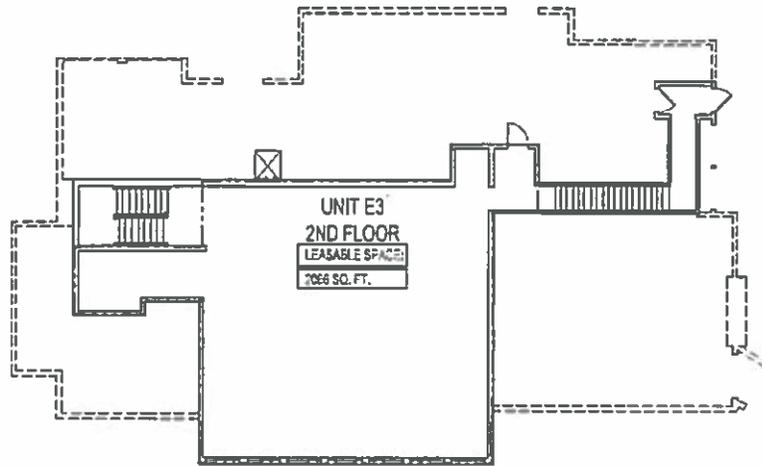
EXHIBIT B-1

LEASE PREMISES



JWDA
JOSEPH WONG DESIGN ASSOCIATES
2319 4TH AVENUE
SAN DIEGO, CA 92101
(619) 235-6777

PROJECT: SEAPORT VILLAGE LEASE EXHIBIT / JOB NO 3458 / DATE: SEPTEMBER 2019
549 WEST HARBOR DRIVE, SAN DIEGO, CA 92101



UNIT E3 2ND FLOOR

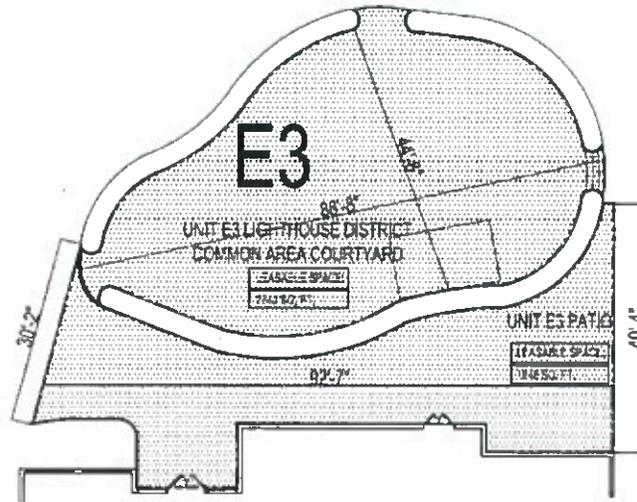


JWDA
JOSEPH WONG DESIGN ASSOCIATES
2359 46th AVENUE
SAN DIEGO, CA 92101
(619) 233-6777

PROJECT: SEAPORT VILLAGE LEASE EXHIBIT / JOB NO. 3458 / DATE: SEPTEMBER 2019
547 WILSON HARBOUR DRIVE, SAN DIEGO, CA 92101

LEGEND

NON-EXCLUSIVE USE



UNIT E3 LIGHTHOUSE DISTRICT COMMON AREA COURTYARD & PATIO

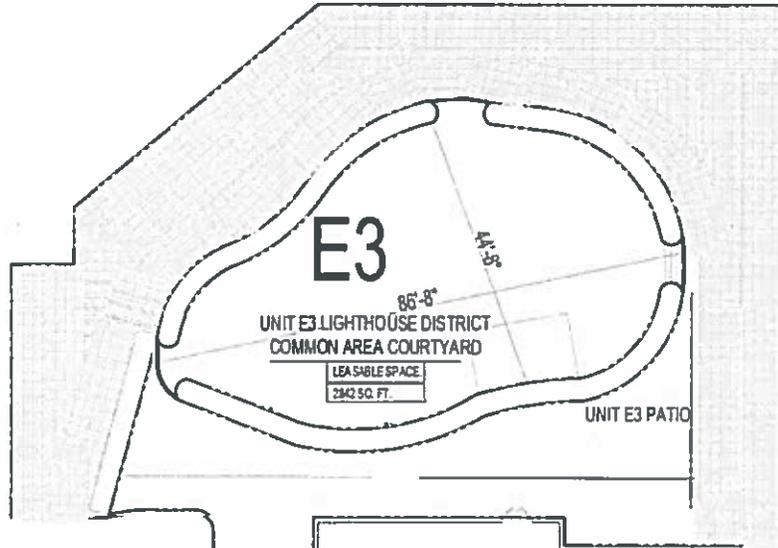
JWDA

JOSEPH WONG DESIGN ASSOCIATES
2319 4TH AVENUE
SAN DIEGO, CA 92101
(619) 233-4777

PROJECT: SEAFORT VILLAGE LEASE EXHIBIT / JOB NO: 3458 / DATE: SEPTEMBER 2019
947 WEST HARBOR DRIVE, SAN DIEGO, CA 92101

LEGEND

 NON-EXCLUSIVE USE
COURT YARD WALKWAY



UNIT E3 LIGHTHOUSE DISTRICT COMMON AREA COURTYARD & PATIO



JWDA

JOSEPH WONG DESIGN ASSOCIATES
2357 47th AVENUE
SAN DIEGO, CA 92101
(619) 233 4777

PROJECT: SEAPORT VILLAGE LEASE EXHIBIT / JOB NO: 3458 / DATE: SEPTEMBER 2019

849 WEST HARBOR DRIVE, SAN DIEGO, CA 92101

EXHIBIT C
CONSTRUCTION REQUIREMENTS

1. **GENERALLY.** TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT C, THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT C-1, SUCH OTHER GENERAL CONSTRUCTION RELATED RULES AND REQUIREMENTS AS THE DISTRICT MAY ADOPT OR REQUIRE FROM TIME TO TIME FOR CONSTRUCTION BY TENANTS, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE PREMISES ("CONSTRUCTION WORK").

2. **Contractors.** the District shall have the right to approve the general contractor for Construction Work. All contractors and subcontractors performing any Construction Work must be licensed in the State of California.

3. **Architects and Engineers.** All architects and engineers must have an active license to practice in the State of California.

4. **Contractors, Architects and Engineers Agreements.** the District shall have the right to approve the architectural, engineering and construction contracts for all the Alterations. All such contracts shall provide, in form and content reasonably satisfactory to the District, (i) for the assignment thereof to the District as security to the District for Tenant's performance hereunder (ii) that if this Lease is terminated the District may, at its election, use any plans and specifications created by such architect, engineer or contractor for the contemplated Alterations at the Premises.

5. **Construction Barricades.** Tenant shall install a construction barricade around the area of Construction Work, and erect such other protective measures as may be reasonably required by the District.

6. **Dust and Trash Control.** Tenant shall take commercially reasonable steps to minimize dust resulting from any Construction Work, and shall promptly dispose of all trash generated from the Construction Work.

7. **Performance Bonds.** If District so requires, Tenant shall furnish the District with the following separate corporate surety bonds not less than ten (10) days prior to the commencement of any portion of Construction Work which requires a building permit or equivalent permit with a hard cost reasonably estimated by Tenant to be greater than Zero Dollars (\$0.00):

7.1 A corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the projected cost of such Construction Work. The Performance Bond and its issuer shall be in all material respects satisfactory to the District. The Performance Bond shall name Tenant as principal and the District as obligee, assuring full completion by Tenant of such Construction Work.

7.2 If District so requires, a corporate surety Payment Bond, issued by a surety company licensed to transact business as such in the State of California, with Tenant as principal and the District as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with such Construction Work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the Construction Work or for labor done thereon and protecting the District from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments ("Payment Bond").

7.2 Intentionally Omitted.

7.3 The Payment Bond shall be in form and content satisfactory to the District.

8. **Financial Assurances.** At least ten (10) days prior to commencing any Construction Work, Tenant shall deliver to the District evidence reasonably demonstrating to the District that Tenant has obtained or retains financial resources and capabilities in an amount sufficient to complete the Construction Work.

9. **Construction Schedule.** Tenant shall, at least ten (10) days prior to date on which Tenant intends to commence construction of any Construction Work, deliver to the District a construction schedule. Tenant shall use commercially reasonable efforts, subject to Force Majeure Events, to perform the Construction Work in accordance with the construction schedule.

10. **Contractor Insurance.** All contractors and subcontractors performing Construction Work shall obtain and thereafter maintain so long as such Construction Work is occurring, at least the minimum insurance coverages set forth below, which insurance coverages may be modified by the District from time to time in its sole and absolute discretion:

(i) Workers' compensation and employer's liability insurance:

- (a) Workers' compensation insurance as required by any applicable law or regulation.
 - (b) Employer's liability insurance in the amount of \$1,000,000 each accident/employee/disease.
 - (ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
 - (a) Required coverages:
 - (1) Premises and Operation;
 - (2) Products and Completed Operations;
 - (3) Contractual Liability;
 - (4) Broad Form Property Damage (including Completed Operations);
 - (5) Explosion, Collapse and Underground Hazards; and
 - (6) Personal Injury Liability.
 - (b) Minimum limits of liability:
 - (1) \$1,000,000 each occurrence (for bodily injury and property damage);
 - (2) \$1,000,000 for Personal Injury Liability;
 - (3) \$2,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and
 - (4) \$5,000,000 general aggregate applying separately to this work as a per project aggregate limit.
 - (iii) Automobile Liability Insurance: Automobile liability insurance including coverage for owned, leased, rented, hired, and/or non-owned automobiles. The limits of liability shall not be less than \$1,000,000 for each accident limit for bodily injury, death and property damage.
 - (iv) Umbrella/Excess Liability Insurance: The general contractor shall also carry umbrella/excess liability insurance in the amount of \$4,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.
 - (v) Contractor's Pollution Liability Coverage: If the District determines, in its sole and absolute discretion, that Tenant performs or contracts for any work which involves a Hazardous Materials or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher. The District Parties shall be named as an additional insured on the forgoing insurance, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to the District. The foregoing insurance shall include a waiver of subrogation in favor of the District Parties.
11. Notice of Completion. Within ten (10) days after Completion of any Construction Work, Tenant shall record a Notice of Completion in the office of the San Diego County Recorder and furnish a copy thereof to the District upon such recordation.
12. Lien Releases. Within sixty (60) days after Completion, Tenant shall deliver to the District unconditional final lien waivers from all contractors and materialmen.
13. Copy of Record Set of Plans and Certificate of Completion. At the conclusion of any Construction Work, deliver to the District (i) a set of "as-built drawings", (ii) a certificate from Tenant's architect and general contractor in favor of the District stating that, to the best knowledge of such certifying party, the Construction Work has been Completed in accordance, in all material respects, with the approved plans therefor, and (iii) a copy of the certificate of completion issued by the applicable government agency.
14. Conflict. In the event of conflict between the terms of these Construction Requirements and terms of the Lease, the terms of the Lease shall control.

EXHIBIT C-1
Conditions of Approval

NOT APPLICABLE.

EXHIBIT D
CONTINUING GUARANTY

NOT APPLICABLE.

EXHIBIT E



Finance Department
 P.O. BOX 120488
 SAN DIEGO, CA 92112-0488
 (619)686-6258

LEASE-OUT NUMBER _____

DATE _____

TENANT NAME _____
 TENANT DBA _____
 ADDRESS _____

CONCESSION INVOICE PERIOD COVERED _____

GROSS SALES (RENT CATEGORY)		GROSS AMOUNT
(1)		0.00
(2)		0.00
(3)		0.00
(4)		0.00
(4)		0.00
(5)		0.00
TOTAL		0.00

OPERATING EXPENSES (RECOVERABLE)		GROSS AMOUNT
(1)	CAM UTILITIES	0.00
(2)	CAM JANITORIAL	0.00
(3)	CAM REPAIRS & MAINTENANCE	0.00
(4)	CAM LOT & LANDSCAPE	0.00
(5)	CAM SECURITY	0.00
(6)	SECURITY CONSULTANT	0.00
(7)	REAL ESTATE TAXES	0.00
(8)	INSURANCE	0.00
(9)	SITE OFFICE EXPENSES	0.00
TOTAL		0.00

MARKETING & PROMOTIONS (RECOVERABLE)		GROSS AMOUNT
TOTAL		0.00

MANAGEMENT FEE EXPENSE (RECOVERABLE)		GROSS AMOUNT
TOTAL		0.00

I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE
 AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES
 MADE HEREIN ARE TRUE AND COMPLETE.

PRINT NAME _____

SIGNATURE _____

Checks may be made payable to the San Diego Unified Port District and mail to the following address:
 Finance Department, P.O. Box 120488, San Diego, Ca 92112-0488

EXHIBIT F
DEFERRED MAINTENANCE ITEMS

Premises I Repairs: Replacement of window sash, apron, repairs of portions of wood siding, fascia and trim, painting of entire building exterior.