

**AGREEMENT FOR AMENDMENT OF LEASE  
AMENDMENT NO. 1**

THIS AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 1 ("Amendment No. 1") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and THE BRIGANTINE, INC., a California corporation, DBA Portside Pier, hereinafter called Lessee," WITNESSETH:

WHEREAS, Lessor and Lessee, on the 27<sup>th</sup> day of April, 2018, entered into a Lease of certain tidelands in the city of San Diego, California, which Lease is on file in the Office of the Clerk of Lessor bearing Document No. 67501 ("Lease"); and

WHEREAS, Lessor and Lessee are mutually desirous of amending said Lease.

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, said Lease is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants, and conditions of said Lease shall remain in full force and effect:

A. Said Lease is hereby amended by deleting Paragraph 3(b) in its entirety and replacing it with the following Paragraph 3(b):

"(b) Commencing on the beginning of the first year of Rental Period 1, the "Minimum Annual Rent" shall be as follows:

<u>Rental Period 1 Year(s)</u>	<u>Minimum Annual Rent</u>
1	\$366,666
2	\$550,000
3-10	\$1,130,000

The Minimum Annual Rent is subject to adjustment as described in Paragraphs 3.1 and 3.2 of the Lease."

B. Said Lease is hereby amended by deleting Paragraph 5(a) in its entirety and replacing it with the following Paragraph 5(a):

"(a) On or before December 31, 2017, Lessor shall commence the demolition of the existing structure and substructure including pilings, platform, dock, and restaurant structure (Demolition) and on or before May 1, 2018, Lessee shall commence the construction of and diligently proceed to completion of a two-story restaurant structure with approximately 1,000 seats upon a new platform and supporting piles adjacent to a new recreational dock (Construction), collectively

referred hereinafter as, "Project." The Project shall be substantially in accordance with plans and specifications, including but not limited to working drawings, hereinafter "Plans," previously approved in writing by Lessor, subject to changes thereto as may be approved by Lessor, in Lessor's sole discretion. Said Plans, and any approved changes thereto, are by this reference made a part hereof. Construction of the Project shall be completed by no later than August 31, 2020. Provided, however, the commencement and completion dates may be extended pursuant to Paragraph 5(e) herein. In the event of any inconsistency between the Plans and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail."

- C. Said Lease is hereby amended by deleting Paragraph 6 in its entirety and replacing it with the following Paragraph 6:

For the purpose of this Paragraph 6, "improvements" shall include, but are not limited to aboveground and subsurface structures, buildings, installations, and other facilities. On the Commencement Date of this Lease, all existing improvements located on, under, above, and through the Leased Premises are owned by and title thereto is vested in Lessee, with the exception of title to artwork created in compliance with Board of Port Commissioners' Policy No. 608 – Tenant Percent for Art which title shall be outlined in a tenant art agreement. All said existing improvements of any kind placed on, under, above, and through the Leased Premises by or on behalf of Lessee, or consented to by Lessee, subsequent to the Commencement Date of this Lease, including without limitation any improvements installed, constructed, or placed by a utility company, shall, at the option of Lessor, be removed by Lessee or a third party at Lessee's expense. Lessor may exercise said option as to any or all of the improvements either before or after the Termination Date or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove, or pay a third party to remove, such improvements within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier. Provided, however, Lessee agrees to repair any and all damage occasioned by their removal. Title to any such improvements not so removed within said sixty (60) days shall vest in Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to reject title to such improvements and/or have such improvements removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

Lessee acknowledges and agrees that Lessor is considering entering into an Easement for Utility Purposes with San Diego Gas & Electric Company, a California corporation ("SDG&E") consistent with the Lessee's request and the parties' intentions for the improvements contemplated by the Lease ("Easement"). Lessee consents to Lessor entering into the Easement without monetary payment or other remuneration to Lessee and agrees that any improvements installed by SDG&E, or otherwise, regardless of whether they are located on, under, above, through, adjacent or outside the Premises, pursuant to the Easement shall qualify as "improvements" under this

Section 6 and shall be removed or relocated by Lessee, SDG&E, or a third party, at Lessor's option, at Lessee's expense.

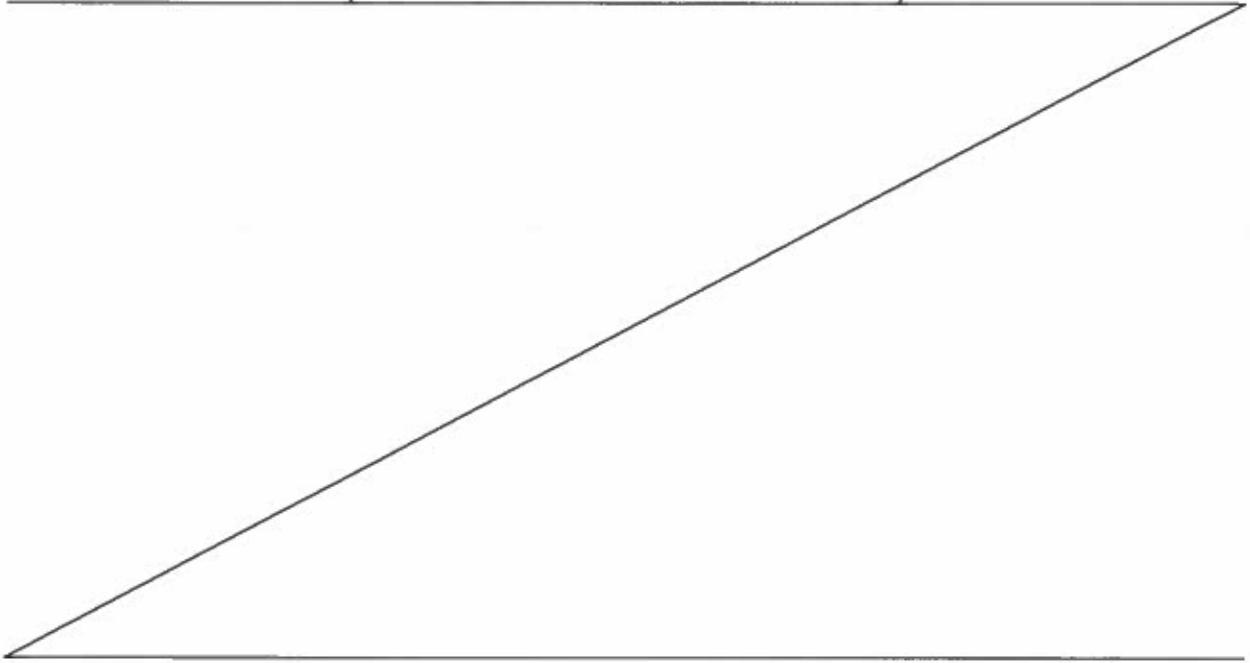
On the Commencement Date of this Lease, all existing machines, appliances, equipment, and trade fixtures located on the Leased Premises are owned by and title thereto is vested in Lessee. Furthermore, all machines, appliances, equipment, and trade fixtures placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease are owned by and title thereto is vested in Lessee. All machines, appliances, equipment, and trade fixtures shall be removed by Lessee, at Lessee's expense, within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier. Provided, however, Lessee agrees to repair any and all damage occasioned by their removal.

Notwithstanding the foregoing, any machines, appliances, equipment, and trade fixtures placed on the Leased Premises by Lessee as qualification for the term of this Lease may only be removed by Lessee, at Lessor's option. If machines, appliances, equipment, and trade fixtures required by Lessor to be removed are not removed by Lessee within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier, the same may be considered abandoned and shall thereupon become the property of Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

During any period of time employed by Lessee under this Paragraph 6 to remove improvements, machines, appliances, equipment, and trade fixtures, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily."

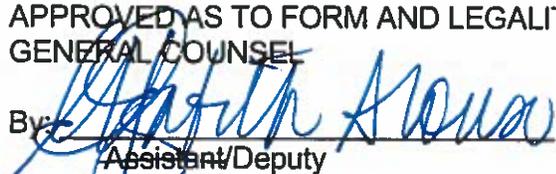
- D. Venue for any legal proceeding shall be in San Diego County, California. This Amendment No. 1 shall be construed and enforced in accordance with the laws of the State of California.
- E. Capitalized terms not defined herein shall have the same meaning ascribed to them in the Lease.
- F. Lessee warrants and represents to the Lessor that it has the legal authority, capacity and direction from its principal(s) to enter into this Amendment No. 1 and that all resolutions, ordinances or other actions have been taken so as to enter into this Amendment No. 1.
- G. Except as modified by this Amendment No. 1, the Lease is hereby ratified and confirmed.

(SIGNATURES ON FOLLOWING PAGE.)



IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 as of the day and the year first above written.

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

**THE BRIGANTINE, INC.,**  
a California corporation, DBA  
PORTSIDE PIER

By:   
Signature

PRINT NAME: Michael A. Morton Jr.

PRINT TITLE: President + CEO

D2 No. 1607053

(FOR USE BY THE BRIGANTINE, INC.)

STATE OF CALIFORNIA)  
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On 12/4/2019 before me, Liza Anderson  
Notary Public, personally appeared Michael AMES Horton,  
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document Title or Type of Document: Amendment no. 1 to Lease between District and Brigantine  
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name \_\_\_\_\_

- Individual
Corporate Officer - Title(s):
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer is Representing: \_\_\_\_\_



Signer's Name \_\_\_\_\_

- Individual
Corporate Officer - Title(s):
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer is Representing: \_\_\_\_\_

