

**Attachment B to Agenda File No. 2020-0218****AGREEMENT FOR AMENDMENT OF LEASE  
AMENDMENT NO. 2**

THIS AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 2 ("Amendment No. 2"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("District"), and SEAPORT ENTERTAINMENT, LLC., a Delaware Limited Liability Company ("Tenant").

**Recitals**

WHEREAS, for good and valuable consideration, District and Tenant, on the 10th day of February, 2020, entered into a lease of certain tidelands in the City of San Diego, California, which lease is on file in the Office of the District Clerk and bearing Document No. 70907 ("Lease"); and

WHEREAS, District and Tenant on the 30<sup>th</sup> day of April 2020, entered into an Agreement for Amendment of Lease, Amendment No. 1 ("Amendment No. 1"), which Amendment No. 1 is on file in the Office of the Clerk of Landlord bearing Document No. 71151; and

WHEREAS, Landlord and Tenant are mutually desirous of amending the Lease.

NOW, THEREFORE, for valuable consideration, the 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. The Lease is hereby amended by deleting Section 4 in its entirety and replacing it with the following Section 4:**

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) May 1, 2021 (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 (20<sup>th</sup>) day of each month of the Lease Term. If the Rent Commencement Date is other than the first (1<sup>st</sup>) 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.

**B. The Lease is hereby amended by deleting Section 4.2 in its entirety and replacing it with the following Section 4.2**

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

The Annual Breakpoint shall be calculated according to the Lease Year. In the event the Lease terminates prior to the end of a Lease Year, the Annual Breakpoint shall be pro-rated to reflect the time (in number of days) Tenant was operating. 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.

In the event Tenants Annual Gross Sales are below \$4,000,000.00 only in Lease Year 1, Tenant shall pay Landlord Rent eight (8) percent of Gross Sales. If Gross Sales exceed \$4,000,000.00 Tenant shall pay Rent in accordance with Section 4, 4.1 and 4.2 above

**C. The Lease is hereby amended by adding a Section 4.2.4 to read as follows:**

**4.2.4 Interim Operations**

The Tenant and Landlord agree that they may enter into an interim operating agreement prior to May 1, 2021 for an interim operation to generate on-premise sales revenue, if the Tenant and Landlord agree that it is in their mutual interest and would provide revenue to each party earlier than anticipated and would otherwise be infeasible under the terms of this Lease, as determined at the Tenant and Landlord's discretion. In no event shall any interim operating agreement allow any interim use to continue beyond May 1, 2021.

**D. The Lease is hereby amended by deleting Section 8.1 in its entirety and replacing it with the following Section 8.1**

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 in two separate installments. Half of such reimbursement shall be made to Tenant by District within thirty (30) days following Tenants receipt of all Necessary Approvals. The remainder of the reimbursement shall be paid to Tenant by District within thirty (30) 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

**E. The Lease is hereby amended by deleting Section 8.1.1 in its entirety and replacing it with the following Section 8.1.1**

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.

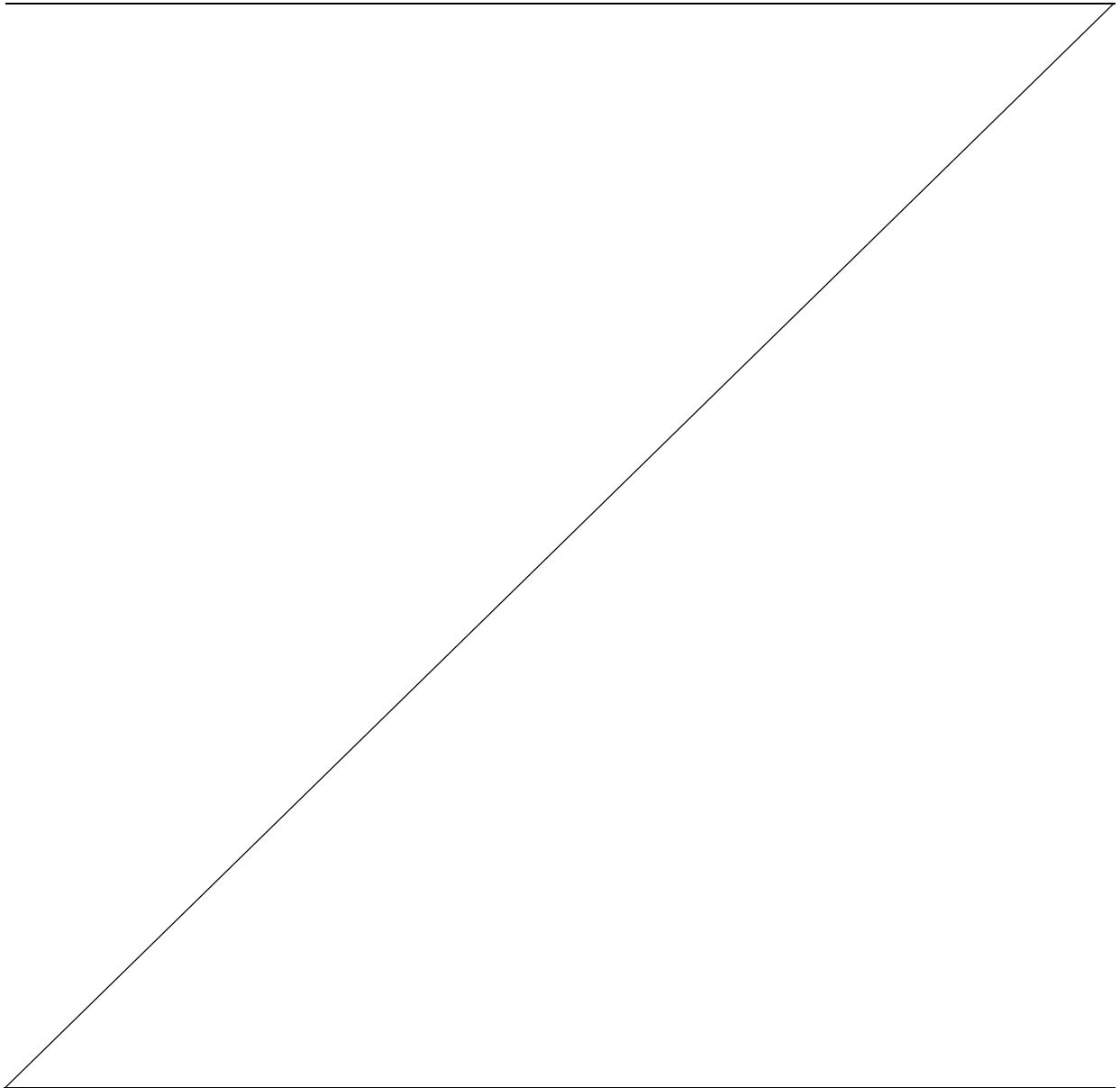
- (c) Necessary Approvals: Tenant shall submit all plans and documents required to obtain the Necessary Approvals to the appropriate government authorities promptly following submittal of the Development Services Project Application. All Necessary Approvals, including all required construction and development 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 March 1, 2021 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.

SIGNATURE ON FOLLOWING PAGE



APPROVED AS TO FORM AND LEGALITY  
GENERAL COUNSEL

By: Christopher Burt Jun 16, 2020  
Assistant/Deputy

**SAN DIEGO UNIFIED PORT DISTRICT**

By: \_\_\_\_\_  
Tony Gordon  
Director, Real Estate

**SEAPORT ENTERTAINMENT, LLC., A  
Delaware Limited Liability Company**

By: Michael Di Norscia Jun 15, 2020  
Signature

PRINT NAME: Michael Di Norscia

PRINT TITLE: Ceo