

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (“**First Amendment**”) dated as of May 16, 2023, is made by and between the City of Richmond, a public body corporate and charter city (“**Landlord**”) and Point San Pablo Inc., a California corporation (sic Point San Pablo Harbor, Inc.) (“**Tenant**”). Landlord and Tenant are sometimes individually referred to as a “Party” and sometimes jointly referred to as the “**Parties**”.

RECITALS

- A. Landlord and Tenant entered into that certain Lease dated June 1, 2021 (“**Lease**”).
- B. Pursuant to the Lease, Landlord leased to Tenant that certain property shown on Exhibit A, located in Terminal 4, at the Port, in Richmond, California (“**Premises**”).
- C. The Lease currently terminates on May 31, 2023. The current Base Rent is \$8,820.
- D. As no demolition or development is to be done to the Property, this Lease is exempt under the Surplus Land Act (“**SLA**”).
- E. The Parties desire to amend the Lease as set forth below including extending the Lease term as set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree to amend the Lease as follows:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.
2. **Lease Term Extension.** The lease term (“**Term**”) is hereby extended to May 31, 2024 (“**Expiration Date**”), unless sooner terminated or extended pursuant to the terms of this First Amendment. The Base Rent for this extended term commencing on June 1, 2023 shall be increased in accordance with Section 2.01(c) below.
3. **Defined Terms.** Defined terms not otherwise specifically defined in this Amendment shall have the meaning in the Lease.
4. **Effective Date.** This First Amendment shall be effective upon the date this First Amendment is approved by Landlord and two (2) copies are executed by Landlord after execution by Tenant and delivered to Landlord.
5. **Amendments to Lease.** As of the Effective Date, the Lease is hereby amended as follows:

5.1 **Section 2.01(b):** Section 2.01(b) is hereby deleted in its entirety and replaced with the following:

“(b) **Option To Extend.** Provided Tenant is not in default under the Lease

and no Event of Default (as defined in Section 6.07) has occurred during the existing Term, Tenant shall have five (5) successive options (“**Options**”) to extend the Term each for one (1) year periods commencing when the prior term expires upon prior written consent from the Landlord in Landlord’s sole discretion. Tenant must exercise each Option in writing delivered to Landlord at least sixty (60) days but not more than One hundred twenty (120) days prior to the expiration of the then existing Term (“**Option Exercise Notice**”). The Options must be exercised sequentially. If an Option is not exercised in the time and manner specified, the Option and all future Options shall automatically terminate and be of no further force or effect.

During each extension period, provisions of this Lease, as it may be amended in writing prior to the date of the commencement of such extended period, shall continue in effect except that Tenant shall continue to occupy the Premises in its then AS IS condition and shall pay Base Rent as provided in Section 2.01(c).

Notwithstanding the foregoing, if the State of California determines that this Lease is subject to the SLA, Landlord shall have the right to terminate this Lease upon written notice to Tenant.”

5.2 Section 2.01(c). Section 2.01(c) is hereby deleted in its entirety and replaced with the following:

“2.01(c) Rent for Option Periods. Base Rent for the extension period following exercise of an Option pursuant to Section 2.01(b) shall be calculated as follows: during the extension option period, effective as of the first day of the extension option, the Base Rent shall be increased (“**CPI Increase**”) to equal the sum of (i) the Base Rent for the Lease Year immediately preceding the extension option, plus (ii) the product obtained by multiplying such amount by the percentage increase in the Consumer Price Index measured from the measuring month which is two (2) months preceding the commencement of such extension option to the measuring month fourteen (14) months preceding the commencement of the specific extension option. However, in no event shall the annual CPI Increase be less than seven percent (7%) nor more than nine percent (9%) of Base Rent for the immediately preceding Lease Year. As used herein, the term “Consumer Price Index” (“**Consumer Price Index**”) shall mean the United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, California (1982-84 equals 100), or the successor of such index. Tenant shall continue paying the current Base Rent until the increased Base Rent has been calculated. Upon such calculation, Landlord shall give written notice to Tenant of the amount of the new Base Rent which shall be due and payable effective as of the commencement of the extension period (“**Rent Increase Notice**”) and Tenant shall, upon the receipt of the Rent Increase Notice, promptly pay Landlord any shortage in Base Rent accruing

between the commencement of the extension period and the date of the Rent Increase Notice.”

5.3 New Section 1.05 Mandatory Disclosure. A new section 1.05 is added to the Lease as follows:

“Pursuant to California Civil Code Section 1938, Landlord provides the following statutory notice to Tenant:

“A Certified Access Specialist (CASp) can inspect the subject Leased Premises and determine whether the subject Leased Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject Leased Premises, the commercial Leased Premises owner or Landlord may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject Leased Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Leased Premises.”

Landlord advises Tenant that the Leased Premises has not gone through CASp Inspection.”

5.5 Notices to Landlord. The Basic Lease Information is amended to require any notice to Landlord to also be copied to:

Office of the City Attorney
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804-1630
Attn: David Aleshire, City Attorney

6. **Attorney’s Fees.** If any legal action is commenced to enforce any of the terms of this First Amendment, the prevailing party will have the right to recover its reasonable attorney’s fees and costs from the other Party.
7. **Effect of First Amendment.** Except as provided in this First Amendment, all other terms of the Lease are unamended and shall remain in full force and effect. In case of any inconsistencies between the terms and conditions contained in the Lease and the terms and conditions contained herein, the terms and conditions of this First Amendment shall control. This First Amendment supersedes any and all other documents pertaining to the subject matter of this First Amendment.
8. **Counterparts.** This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

9. **Authorization.** The person(s) executing this First Amendment on behalf of Tenant represents and warrants that: (i) Tenant is duly organized and existing under the laws of California; (ii) they are duly authorized to execute and deliver this First Amendment on behalf of Tenant; (iii) upon execution, this First Amendment is binding upon Tenant; and (iv) entering into of this First Amendment does not violate any provision of any other agreement to which Tenant is bound.
10. **Exhibits.** Exhibit A attached hereto is incorporated herein by reference.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their properly authorized representatives as of the date and year specified below.

TENANT:

Point San Pablo Inc, a California corporation
(sic Point San Pablo Harbor, Inc.)

By: _____
Robert Fyfe,
Chief Executive Officer

By: _____
Daryl Henline,
Secretary

LANDLORD:

City of Richmond, a municipal corporation &
charter city

By: _____
Eduardo Martinez, Mayor

Dated: _____, 2023

ATTEST:

Pamela Christian, City Clerk

Approved as to form:

David J. Aleshire, City Attorney

EXHIBIT A

DEPICTION OF PREMISES

To be added prior to execution