

**AMENDED AND RESTATED LEASE AGREEMENT**

This LEASE AGREEMENT (the "Lease") is dated \_\_\_\_\_, 2023, and is entered into by and between SAN MATEO COUNTY HARBOR DISTRICT ("Landlord") and Pelagic Restaurant Group, a California corporation ("Tenant"). Landlord and Tenant are referenced in the aggregate as the "Parties" and sometimes, when a provision applies to each of them individually, as a "Party."

**Recitals**

A. Landlord is the owner of certain real property located at Pillar Point Harbor, in the San Mateo County Harbor District, County of San Mateo, State of California, Assessor's Parcel Number 047-083-060 (the "Property"); and

B. Tenant desires to operate a restaurant, bar, fish market, and commissary kitchen on a portion of the Property, as described on Exhibit "A" (the "Premises").

C. The Parties hereby acknowledge that Tenant currently occupies the Premises pursuant to the terms of three leases (collectively, the "Prior Lease"), assumed from the prior tenants (collectively, the "Prior Tenant"): (1) that certain Lease, dated November 20, 1980, as amended, for Parcel 1 of the concession building located at Pillar Point Harbor, for the former Order at the Corner restaurant ("Parcel 1"), (2) that certain Third Amended Lease Parcel 2 Pillar Point Harbor Concession Building, executed on January 27, 2014, as amended, for the former Ketch Café restaurant ("Parcel 2"), and (3) that certain Lease, dated January 1, 2022, as amended, for the former Ketch Joanne Restaurant and Bar ("Parcel 3").

D. The Parties wish to enter into this Lease to replace the Prior Lease and set forth the terms and conditions for Tenant to continue its use of the Premises for the Tenant Operations, as defined below.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions hereinafter set forth, Landlord and Tenant agree as follows:

**Agreement**

1. Premises.

a. Lease Terms and Conditions. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, upon and subject to the following terms and conditions. This Agreement shall amend and restate the Prior Lease in its entirety.

b. As Is Condition. Tenant accepts the Premises in an "As Is" condition without representation or warranty, express or implied, and subject to all matters of record, and acknowledges and agrees that Landlord shall not be under any obligation to improve the Premises (including without limitation making improvements that may be required by law, changes in laws, or new laws).

c. Common Areas.

(i) Tenant shall have the non-exclusive right to use areas outside of the Premises ("Common Area") that are intended and designated by Landlord from time to time for use by all tenants or the public. Tenant shall comply with all rules and regulations

## DRAFT PENDING BOARD REVIEW/APPROVAL

promulgated by Landlord or Landlord's General Manager for the Common Area provided they are in writing and are applicable to all tenants. Landlord may alter such Common Area at any time, provided that access to the Premises is not substantially affected.

(ii) Tenant will have an exclusive right to use the paved area in front of the Premises. Tenant and Landlord have agreed to the layout plans of the area as defined in Exhibit A. Tenant must maintain and comply with the requirements to provide ADA access across this area.

d. CASp Inspection. The subject Premises have been inspected by a Certified Access Specialist (CASp) and Tenant acknowledges receipt of that certain report entitled "District Facilities Access Compliance Survey Report," dated August 2018 (the "CASp Report"), Exhibit "B". Landlord and Tenant hereby agree that, except as stated in paragraph (e) below, Landlord shall not bear the cost of any repairs necessary to correct any violation of construction-related accessibility standards within the Premises, it being the intent and agreement of Landlord and Tenant that any such repairs be performed by Tenant.

e. Consent Decree. Landlord and the Prior Tenant entered into that certain Consent Decree and Order for Injunctive Relief, Damages, and Attorneys' Fees, Litigation Expenses, and Costs ("Consent Decree") in United States District Court Northern District of California Case No. 3:19-cv-00992-MMC. Pursuant to such Consent Decree:

(i) Landlord shall, at Landlord's sole cost and expense, perform all corrective work required of Landlord by the Consent Decree including, without limitation, the construction of ADA compliant restrooms ("ADA Restrooms").

(ii) Tenant shall, at Tenant's sole cost and expense, perform all the work required of Tenant pursuant to the Consent Decree including the demolition of the existing restroom in the Premises, and addressing the items attached as Schedule 1(e). Within thirty (30) days after acceptance of the ADA Restrooms by Landlord, Tenant shall demolish the existing restroom in the Premises at the Tenants sole cost and expense.

### 2. Use of Premises.

a. Permitted Uses. Tenant shall use and occupy the Premises for the purpose of operating a restaurant(s) for dine-in or take-out service, a bar, fish and grocery market, and commissary kitchen (the "Tenant Operations"). For clarity purposes, the parties hereby acknowledge that Tenant Operations shall not include any cannabis business operations.

b. Cooperation Among Tenants. Tenant shall cooperate with all other tenants of Landlord who are operating in the vicinity of the Premises and shall conduct its operations so as to avoid unreasonable interference with the operations of other tenants. If the operations of Tenant are impaired because of any acts or omissions of such other tenant. Tenant shall have no claim against Landlord on that account.

c. Continuous Operation. Tenant acknowledges that the Premises are within real property that contains multiple retail tenants and the Premises are adjacent to Johnson Pier, the occupants and users of such properties may be adversely affected if Tenant's Premises were to be vacated or if Tenant were to have limited business hours, and that

## DRAFT PENDING BOARD REVIEW/APPROVAL

Landlord would also be adversely affected. Consequently, Tenant shall continuously and diligently operate the Premises throughout the Term and shall keep or cause the Premises to be kept open for business for not less than twelve (12) hours per day, serving three separate mealtimes to include breakfast, lunch and dinner, and six (6) days per week per calendar year, normally observed holidays excepted, consistent with sound business practice and weather and safety conditions. Provided, however, that:

(i) Landlord agrees to waive Tenant's obligation under Section 2.c as follows: (a) until and through December 31, 2023, for operations on Parcel 2, (b) until and through September 30, 2023, for operations on Parcel 1, and (c) until and through September 30, 2023, for operations on Parcel 3. The parcel order detailed in this Section may be revised based on the actual opening of a Parcel to the public. Rent will be based on the square footage of the parcel opening as a fraction of the total square footage of Parcel 1, 2, and 3 as detailed in Section 7.b. In addition, with Landlord's written consent (which will not be unreasonably withheld), Tenant may be closed for maintenance or cleaning without being in violation of this provision.

(ii) Tenant shall operate on Saturday and Sunday of each week, normally observed holidays excepted.

(iii) Tenant may request reasonable interruptions in the operation for periodic cleaning of the Premises, maintenance, for taking inventory, if it becomes necessary to change the management of the Premises, or if the Premises should be closed and the business of Tenant is restricted or temporarily discontinued therein on account of strikes, lockouts, pandemic, disaster, or similar causes beyond the reasonable control of Tenant. Tenant shall make such request in writing to the General Manager, who may waive Tenant's obligations under this Section 2.c. in the General Manager's sole and absolute discretion.

d. Compliance with Laws. Notwithstanding the foregoing Section 2(a), Tenant shall not cause or permit the Premises to be used in any way that: (i) constitutes a violation of any law, ordinance, or governmental regulation or order regulating the manner of use by Tenant of the Premises (including, without limitation, any law ordinance, regulation or order relating to Hazardous Materials), (ii) constitutes a nuisance or waste, or (iii) increases the cost of any insurance relating to the Premises paid by Landlord. Tenant shall obtain, at its sole cost and expense, all governmental permits, licenses and authorizations of whatever nature required by any governmental agencies having jurisdiction over Tenant's use or improvement of the Premises. Further, Tenant, at its sole cost, will comply with all rules and regulations promulgated by Landlord, and make all improvements to the Premises that may be required by law, including changes in law and new laws.

e. Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Premises by Tenant, its agents, employees, contractors, sub-lessees or invitees in violation of any applicable laws, codes, ordinances or regulations governing the same. As used in this Lease, the term "Hazardous Materials" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic

## DRAFT PENDING BOARD REVIEW/APPROVAL

substances” now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons. Notwithstanding the foregoing, Tenant may use any ordinary and customary materials reasonably required in the normal course of Tenant’s Operations, so long as such use is in compliance with applicable laws and regulations.

f. Nondiscrimination. Tenant shall not unlawfully discriminate, harass or allow harassment against employee or applicant for employment because of race, color, religious creed, citizenship, political activity or affiliation, national origin, ancestry, disability (physical or mental) including HIV and AIDS, marital status, age (40 and above), medical condition (cancer/genetic characteristics), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Tenant shall not unlawfully discriminate, harass or allow harassment against customers due to race, color, religious creed, citizenship, political activity or affiliation, national origin, ancestry, disability (physical or mental) including HIV and AIDS, marital status, age (40 and above), medical condition (cancer/genetic characteristics), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions) or any other characteristics protected under federal, state, or local laws.

### 3. Parking.

a. Tenant and Tenant’s invitees are permitted, except as noted below, to park in unreserved, unassigned parking spaces adjacent to the Premises in compliance with District Ordinances and as posted. Landlord shall not be obligated to, but may, monitor use of such spaces, tow any vehicles at owner’s expense, install any signs, or mark the spaces. Tenant will be issued three (3) annual parking permits, allowing Tenant to park in Lot A-1 nearest to Docks A, B, and C. The annual pass must be affixed to a single car or vehicle and is not transferrable.

### 4. Term.

a. The term of this Lease shall commence on \_\_\_\_\_, 2023 (the “Commencement Date”), and shall expire at 2400 hours (12 midnight) September 30, 2028 (the “Initial Term”). Upon the commencement of this Lease, the Prior Lease shall expire. By written agreement, the General Manager of Landlord and Tenant, upon mutual agreement, may extend the Initial Term by three additional terms of up to two (2) years each (each an “Additional Term” and together with the Initial Term, the “Term”). In addition, after the Additional Term, provided that Tenant is not in material default under the Lease, Landlord agrees to give Tenant the right of first refusal to continue to lease the Premises on terms and conditions similar to the terms set forth in the Lease with reasonable CPI adjustment for rent. Upon the expiration of the Term, or earlier termination of this Lease, Tenant shall remove all of its personal property, including trade fixtures, and return the Premises to their original condition. If Tenant does not remove all of its

## DRAFT PENDING BOARD REVIEW/APPROVAL

personal property, Landlord may do so and may dispose of such property in any manner without liability to Tenant and Tenant hereby waives all statutes and other laws to the contrary.

b. It is the intent of the Landlord to demolish and replace the Pillar Point Harbor Concessions Building including the Premises (the "Existing Building"), at the end of the Initial Term or the end of an Additional Term. If Landlord demolishes the Existing Building and constructs a new commercial building, Tenant shall have the right of first refusal for a space comparable in square footage and location as defined by Landlord in the new commercial building. This provision does not give Tenant a right to occupy the new building or obligate Landlord to construct a space suitable for Tenant Operations. The parties hereby agree to negotiate in good faith for a new lease within the new building.

### 5. Taxes.

a. Personal Property Taxes. Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall use commercially reasonable efforts to have personal property taxed separately from the Premises. If any of Tenant's personal property is taxed with the Premises and paid by Landlord, Tenant shall reimburse Landlord the taxes for the personal property within (30) days after Tenant receives a written statement from Landlord for such personal property taxes, together with reasonable evidence showing the amount of personal property taxes paid by Landlord.

b. Possessory Interest Taxes. Tenant acknowledges that this Lease and Tenant's interest hereunder constitutes a possessory interest subject to property taxation, and as a result tenant is required to pay possessory interest taxes (a property tax) levied on that interest. Tenant shall pay such taxes, when due, to the levying authority.

### 6. Utilities.

Tenant shall pay for all utilities directly to the providers thereof, and acknowledges that electricity, gas and water are separately metered for the Premises. Tenant acknowledges that the District pays for water and sewer. Upon written demand from Landlord, Tenant shall reimburse Landlord for the cost of water and sewer service supplied to the Premises, as additional rent. Tenant shall also pay directly (or promptly reimburse Landlord upon written demand for, as additional rent) the cost of any and all gas, telephone, and all other utilities and services supplied to the Premises by Landlord at Tenant's request. Landlord shall, within twenty (20) days from Tenant's request, deliver to Tenant documentation, as provided to the Landlord by the utility or service provider, to support any such costs billed to Tenant.

### 7. Rent.

a. Rent Required. Commencing on the Commencement Date, Tenant shall pay Landlord, without offset, deduction, notice or demand, monthly rent as described in the following paragraphs. Rent for any period, which is less than one month, shall not be prorated and Tenant shall pay the full rent amount for any portion of a month.

b. Base Rent. On the first day of each calendar month beginning on the Commencement Date through October 31, 2023, Tenant shall pay a monthly base rent of \$7,372.37. Beginning November 01, 2023, through December 31, 2023, Tenant shall

## DRAFT PENDING BOARD REVIEW/APPROVAL

pay a monthly base rent of \$9,449.92, and beginning January 1, 2024, through June 30, 2024, Tenant shall pay a monthly base rent of \$14,000.00. Beginning on July 1, 2024, through June 30, 2025, Tenant shall pay a monthly base rent of \$17,500.00. Beginning on July 1, 2025 through June 30, 2026, Tenant shall pay a monthly base rent of \$20,500.00. Beginning July 1, 2026, and each subsequent year, Base Rent shall increase by the greater of 3% or the percentage increase in the Consumer Price Index, All Urban Consumers ("CPI-U") for San Francisco-Oakland-Hayward, during the twelve month period ending with the most recent month that has been published by the U.S. Department of Labor, Bureau of Labor Statistics. Landlord shall notify Tenant of the adjusted Rent Amount, but Tenant shall continue paying rent at the non-adjusted rate until such notice is delivered, at which point Tenant shall pay the amount of the unpaid adjustments since the adjustment date within ten (10) days after the notice is given.

c. Percentage Rent. On March 31, June 30, September 30 and December 31 of each year, Tenant shall determine the Percentage Rent for each of the preceding three calendar months as follows:

- (i) Percentage Rent shall be the total of:
  - a. Five percent (5%) of gross receipts on food and drinks for each month unless earned through private events, use of the commissary kitchen, bulk or transfer sales, goods sold through the fish market to include unprepared seafood/raw filets, live or cooked/cleaned crabs, or other seafood and shellfish, or customer supplied seafood for preparation (cleaning, fillet, cooking) which shall be assessed a separate percentage rent as detailed below:
  - b. Three percent (3%) of gross receipts gained through private events, and use of commissary kitchen, and
  - c. Two and one-half percent (2.5%) on:
    - i. Bulk and transfer sales
    - ii. Unprepared seafood/raw filets, live or cooked/cleaned crabs, or other shellfish sold through the fish market,
    - iii. Customer supplied seafood for preparation (cleaning, fillet, cooking).

(ii) Notwithstanding the foregoing, Percentage Rent shall not be payable on (1) employee meals; (2) sales and use taxes and surcharges, provided that such taxes and surcharges are added to the selling price, separately stated and collected from customers; (3) tips, (5) delivery fees, (6) gift certificates, (7) complimentary meals, (8) discounts and returns, (9) and (10) sales of fixtures, trade fixtures or personal property.

(iii) Tenant shall pay to Landlord the positive difference for each month determined by the total of all Percentage Rent amounts (calculated pursuant to paragraph c.(i) above) less the Base Rent amount (paid pursuant to paragraph 7b. above) for each calendar month (the "True Up Amount"). The True up Amount for each calendar month is due on the immediately following April 24 (for months January, February and March), July 24 (for months April, May, and June), October 24 (for months July, August, and September), and January 24 (for months October, November and December), respectively.

DRAFT PENDING BOARD REVIEW/APPROVAL

d. Rent Adjustment for New Tenant Operations. Notwithstanding anything to the contrary in this Section 7, Rent shall be adjusted as follows until December 31, 2023:

(i) Tenant shall owe no Base Rent for the month of September 2023; provided, however, that in the event Tenant provides operations on any of Parcel 1, 2, or 3, then Tenant will owe Base Rent based on the square footage as a portion of the total Base Rent listed in Section 7(b) for the Parcel in operation.

(ii) For the months of October 2023 and November 2023, Tenant shall owe Base Rent for Parcel 1, based on the square footage as a portion of the total Base Rent listed in Section 7(b), provided, however, that in the event Tenant provides operations on any of the two other parcels, then Tenant will owe Base Rent based on the square footage of the parcels in operation as a portion of the total Base Rent listed in Section 7(b).

(iii) For the month of December 2023, Tenant shall owe Base Rent for two parcels based on the square footage of the parcels in operation as a portion of the total Base Rent listed in Section 7(b), provided, however, that in the event Tenant provides operations on all three parcels, then Tenant will owe Base Rent in the amount detailed on Section 7(b).

e. Address for Payment. Rent shall be paid to Landlord at its address in Section 21 below, without deduction or offset, in lawful money of the United States of America or to such other place as Landlord may from time to time designate in writing.

8. Security Deposit.

Tenant shall pay Landlord an amount equal to the three months of the Base Rent listed in Section 7(b), as adjusted (the "Security Deposit"). Such amount shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease. Landlord may use the Security Deposit, or any portion of it, to cure Tenant's default or to compensate Landlord for any damage sustained by Landlord resulting from Tenant's default. Tenant shall not be entitled to, and Tenant hereby specifically waives any requirement that Landlord pay interest on the Security Deposit. Tenant hereby waives all statutes and laws governing the use of such Security Deposit and agrees that this Section 8 shall govern in lieu thereof.

9. Lease Guaranty.

Concurrently with Tenant's execution and delivery of this Lease, and as a condition to Tenant's rights under this Lease, David Westendorf, who is affiliated with or own interests in Tenant and will benefit from Landlord entering into this Lease, shall execute and deliver to Landlord a lease guaranty in the form attached hereto as Exhibit "C".

10. Late Charges; Interest.

Tenant acknowledges that late payment of rent or other sums due will cause Landlord to incur costs, the exact amount of which will be difficult to ascertain; accordingly, if any installment of rent or any other sum due from the Tenant is not received by Landlord within five (5) days of the date on which it is due, Tenant shall pay to Landlord as additional rent, sum of five percent (5%) of such overdue amount as liquidated damages.

## DRAFT PENDING BOARD REVIEW/APPROVAL

In addition, after rent payments are five (5) business days delinquent, the Tenant shall pay Landlord any attorneys' fees or notice/process service fees incurred by Landlord by reason of Tenant's failure to pay rent or other charges when due hereunder. In addition, all unpaid amounts shall accrue interest from the date due the lesser of the maximum rate allowed by law or five percent (5%) per annum until paid.

### 11. Alterations.

No structure, sign or other improvement of any kind shall be constructed on the Premises or Property by Tenant, its employees, agents or contractors without the prior written approval of Landlord in each case. However, Landlord agrees that Tenant may replace existing signs with Tenant's new business names provided they are of similar size and design with written approval by Landlord. Approval may be withheld, conditioned or delayed in Landlord's sole and absolute discretion. In making any approved improvements or alterations, Tenant shall comply with all applicable laws, including prevailing wage laws (California Labor Code Sections 1720 et seq.) and shall defend, indemnify and hold Landlord as well as Landlord's, members, officers, directors, contractors, subcontractors, agents, and employees, harmless from and against any and all claims by contractors and subcontractors for prevailing wages. No approval by Landlord of any plans or specifications shall constitute (i) approval of architectural or engineering sufficiency or representation, or (ii) warranty by Landlord as to the adequacy or sufficiency of the plans and specifications or the improvements contemplated for Tenant's use or purpose. Landlord, by approving the plans and specifications, assumes no responsibility or liability for any defect in any improvements constructed on the basis of the plans and specifications. Tenant expressly agrees to comply with all applicable signage ordinances.

### 12. General Maintenance and Repairs.

a. Tenant Obligations. Tenant shall perform general maintenance and repair of the Premises and keep all portions of the Premises, and any exterior areas under the exclusive control of tenant, including the area used for the trash containers, in a clean and orderly condition, as determined in the sole discretion of Landlord. Tenant's obligation to maintain and repair includes, but is not limited to, water, sewer, electric and gas lines located inside the Premises. Tenant at its own cost and expense shall provide for any janitorial, pest control, trash collection, and security services for the Premises and Landlord shall have no such obligations. Tenant shall be responsible for any damage done in or to the Premises caused by Tenant or its employees, agents, contractors and invitees. If Tenant fails to clean, maintain or repair the Premises or portions of the exterior area under exclusive control of the Tenant, as required by this Section, Landlord may, upon a ten (10) days' prior written notice to Tenant, enter the Premises, as necessary, and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all costs incurred in performing such maintenance or repair within ten (10) days after delivery of invoice. Tenant shall fulfill all of Tenant's obligations under this Section at Tenant's sole expense.



DRAFT PENDING BOARD REVIEW/APPROVAL

b. Landlord Obligations. Landlord shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises, except that Landlord shall maintain the exterior and roof of the structure containing the Premises, including painting the exterior of the structure, and provided that Landlord shall maintain the Common Area.

13. Signage Program.

Tenant agrees to comply with Landlord's regulations, policies and guidelines governing signage, and pay costs and operational expense of installing and maintaining signage for the Premises on the Property. No signs, directional, guiding, or other stripes, lines, directions, or markings shall be installed or painted in or upon the Premises or removed by Tenant without prior written consent of Landlord. Notwithstanding the foregoing, the name "Pelagic" is proprietary to Tenant and all signage containing such name may be removed by Tenant upon termination or expiration of this Lease.

14. Insurance; Indemnity.

Tenant shall procure and maintain insurance issued by an insurer reasonably satisfactory to Landlord. The Tenant shall purchase, maintain, and keep in force during the term of this Lease at Tenant's sole cost and expense the following insurance:

a. **Certificate of Workers' Compensation Insurance** as required by the statutory laws of the State of California Labor Code.

b. **Certificate of General Liability** with accompanying "Additional Insured" endorsement documents. All endorsements shall clearly state policy number.

(i) Commercial General Liability policies shall include endorsements naming San Mateo County Harbor District, Its Commissioners, Officers, Agents, Volunteers and Employees as additional insured.

(ii) Endorsements for General Liability shall state that the Tenant's insurance is "primary" and San Mateo County Harbor District is "non-contributory," or copies of the complete policy which state the equivalent may be submitted in their entirety.

(iii) Minimum Insurance Requirements – General Liability Insurance:

- Two million dollars (\$2,000,000) each occurrence (combined single limit)
- Two million dollars (\$2,000,000) for personal injury liability
- Four million dollars (\$4,000,000) in the aggregate
- One million dollars (\$1,000,000) for damage to rented premises including fire protection.

Or other acceptable means of coverage acceptable by Landlord.

c. **Certificate of Auto Liability Insurance** with accompanying "Additional Insured" endorsement documents. All endorsements shall clearly state policy number.

(i) Commercial Auto Liability policies shall include endorsements naming San Mateo County Harbor District, Its Commissioners, Officers, Agents, Volunteers and Employees as additional insured.

## DRAFT PENDING BOARD REVIEW/APPROVAL

(ii) Endorsements for Auto Liability shall state that the Tenant's insurance is "primary" and San Mateo County Harbor District is "non-contributory," or copies of the complete policy which state the equivalent may be submitted in their entirety.

(iii) The Auto Liability Insurance requirement may be waived if Tenant and Tenant's employees will not be using any vehicle for business purposes on District property. This waiver will only be effective if the Tenant signs and delivers to the District a waiver form for non-auto use.

(iv) Minimum Insurance Requirements – Auto Liability Insurance:

- One million dollars (\$1,000,000) per occurrence for bodily injury and/or property damage
- Policy shall cover any auto.

d. **Certificate of Insurance for Claims arising out of the Americans with Disabilities Act:** Tenant shall, at its sole cost and expense, obtain the required insurance in accordance with the above-mentioned Consent Decree no later than 30 days after completion of the ADA Restroom project.

e. All policies shall state by their terms and by an endorsement that said policy shall not be canceled until District shall have had at least thirty (30) days written notice of such cancellation.

f. Tenant shall deliver to Landlord, certificate(s) of insurance evidencing that such insurance is in force and effect and evidencing that Landlord, as well as Landlord's, members, officers, directors, contractors, subcontractors, agents, and employees have been named as an additional insured thereunder, if applicable. As a material part of the consideration to Landlord, Tenant shall indemnify, defend (with counsel acceptable to Landlord) and hold Landlord, as well as Landlord's, members, officers, directors, contractors, subcontractors, agents, and employees harmless from any third party loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property (collectively, "Claims") arising from or related to Tenant's use of the Premises before, during, and after the Term, the conduct of Tenant's business and/or any act or omission of Tenant, its employees, agents, contractors or invitees. All obligations under this Section shall survive the expiration or termination of this Lease.

### 15. Disclaimer; Risk of Loss.

Landlord shall not be liable for injury to any person or for any damage to personal property sustained by Tenant or others, or any service facilities or due to the happening of accident, including any damage caused by water, wind storm, or by any gas, steam, electrical wiring, sprinkler system, plumbing, heating or conditioning apparatus; or acts or omissions of other occupants of the Property or due to any part or appurtenance thereof, including any and all furniture, fixtures, and equipment of Tenant becoming out of repair.

### 16. Default and Remedies; Holding Over; Waiver of Relocation Assistance.

a. Events of Default. Should Tenant be in default with respect to any monetary obligation pursuant to the terms of this Lease for a period of five (5) days after written notice from Landlord, or should Tenant fail to have any other default under this Lease within thirty (30) days after written notice from Landlord, then Landlord may treat any such

DRAFT PENDING BOARD REVIEW/APPROVAL

event as a material breach of this Lease. Provided, that if such default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default. In addition to any or all other rights or remedies of Landlord provided by law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to Tenant, or any other person, to immediately terminate this Lease by written notice to Tenant and to re-enter and take possession of the Premises and remove all persons and property therefrom, and dispose of any property in any manner, without liability to Tenant. The form of notice of default hereunder may be in the form required by unlawful detainer statutes, such that Landlord need not give additional cure time to Tenant before termination and unlawful detainer proceedings.

b. Remedies; Damages. If Landlord terminates this Lease based on a default by Tenant, Landlord shall have rights to damages as provided by California Civil Code Section 1951.2. Landlord may also keep this Lease in effect and sue for rent as it comes due under California Civil Code Section 1951.4. Landlord reserves all of its equitable remedies, including rights to obtain injunctive relief.

c. No Relocation Assistance. Tenant acknowledges that Landlord may develop the Premises at some future date and Tenant may be displaced, but Tenant hereby agrees that Landlord shall have no obligation to Tenant under the California Relocation Assistance and Real Premises Acquisition statutes and guidelines. Tenant, after diligent review and consideration of possible impacts, hereby waives and forever releases Landlord, including its successors, officers, employees, attorneys, agents, representatives and anyone else acting on Landlord's behalf, of and from any and all claims, demands, actions or causes of action, obligations, liabilities, or claims for further compensation, known or unknown, based upon or relating to the California Relocation Assistance and Real Premises Acquisition statutes and guidelines and Landlord's subsequent use and development of the Premises, or Tenant's displacement therefrom. By such release, Tenant expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

\_\_\_\_\_  
Tenant's Initials

17. Waiver by Landlord.

Any waiver by Landlord of any default or breach of any covenant, condition, term, and agreement contained in this Lease, shall not be construed to be a waiver of any subsequent or other default or breach. The rights, powers, options, privileges, and remedies available to Landlord under this Lease shall be cumulative.

DRAFT PENDING BOARD REVIEW/APPROVAL

18. Attorneys' Fees.

Should either party to this Lease resort to litigation to enforce any provision of this Lease, the prevailing party shall be entitled to its attorneys' fees and reasonable costs incurred in litigating any dispute. However, if reasonable, prior to commencing litigation, the parties agree to meet and use good faith efforts to resolve their dispute within sixty (60) days.

19. Inspections by Landlord.

Landlord and its representatives, employees, agents or independent contractors may enter and inspect the Premises or any portion of the Premises or any improvements on the Premises at any time during business hours, or in an emergency, and at other times after Landlord has provided Tenant with 48 hours advance notice, for any purpose Landlord reasonably deems necessary.

20. Prohibition on Assignment and Subletting.

Tenant may not sublet or assign the Premises, or any portion of the Premises, or otherwise transfer its interest under this Lease without Landlord's prior written consent, which consent shall not be unreasonably withheld. Any attempted assignment, sublet or transfer made in violation of this provision shall be void. If Tenant requests Landlord's consent to an assignment or subletting, then Tenant shall pay to Landlord, as additional rent, within ten (10) days after written demand, Landlord's actual attorneys' fees incurred in connection with evaluating the request and any assignment documents or sublease and in connection with processing any required documents, or \$10,000.00, whichever is greater.

21. Notices.

All notices, demands and requests which may be given or which are required to be given by any party to this Agreement must be sent by (i) certified U.S. mail, postage prepaid, return receipt requested or (ii) a recognized private courier company (i.e., UPS, FedEx), to the following addresses, and shall be deemed delivered upon the date received:

To Landlord: San Mateo County Harbor District  
P.O. Box 1449  
El Granada, California, 94018  
Attn.: General Manager

To Tenant: At the Premises.

22. No Principal/Agent Relationship.

Nothing contained in this Lease shall be construed as creating the relationship of principal and agent, or of partnership or joint venture between Landlord and Tenant.

23. General Manager as Authorized Agent.

The General Manager of the San Mateo Harbor District is authorized to take any and all actions and to make any and all determinations on behalf of the Landlord for the purposes of this Lease.

24. Joint and Several.

If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

25. Complete Agreement.

This Lease constitutes the entire agreement between Landlord and Tenant pertaining to the specific subject matter of this Lease and supersedes all prior and contemporaneous agreements, representations and understandings of Landlord and Tenant, oral or written.

26. Modification.

No supplement, modification, amendment or change in any terms of this Lease shall be binding on the Parties unless in writing and executed by Tenant and Landlord.

27. Severability.

If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

28. Applicable Law and Venue.

This Lease shall be construed and enforced in accordance with, and governed by, the laws of the State of California. The parties' consent to the jurisdiction of the California courts with venue in San Mateo County.

29. Counterparts.

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

30. Time of Essence.

Time is of the essence of every provision of this Lease in which time is a factor.

31. No Brokers.

Each party represents and warrants that it has not engaged a broker, salesperson or finder to whom might be owed fees or commissions, and shall defend, indemnify and hold the other party harmless from and against any and all claims and liabilities for fees or commissions based on communications with that party.

32. In Trust.

The parties hereto acknowledge that District holds all portions of the District (including, but not limited to, the Premises and tidelands) in trust for the People of the State of

DRAFT PENDING BOARD REVIEW/APPROVAL

California. As trustee, the District must exercise continuous supervision and control over the Premises. This Lease is subject to District's obligation, as trustee, with respect to the Premises, as such obligation has been, or may in the future be, further defined or described under California law. Notwithstanding anything to the contrary, express or implied in this Lease, this Lease is subject and subordinate to that certain grant of lands from the State to San Mateo County Harbor District pursuant to Stats. 1960, first Extraordinary Session, Chapter 68, effective July 7, 1960 (the "Grant Conditions"), including without limitation Sections 1(a) and (b) (affecting permitted uses, and allowing use by the State of California), 1(c) (prohibiting discrimination in charges, uses and services) and 1(f) (giving the State the right to use for highway purposes without compensation). Tenant hereby acknowledges, represents and warrants that it has reviewed and approved the Grant Conditions. Tenant hereby agrees to comply with and not violate the Grant Conditions.

Signatures on following page:

DRAFT PENDING BOARD REVIEW/APPROVAL

IN WITNESS WHEREOF, Landlord and Tenant have executed this instrument as of the Effective Date.

**LANDLORD:**

SAN MATEO COUNTY HARBOR  
DISTRICT

By: \_\_\_\_\_  
James B. Pruett  
General Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Trisha Ortiz, General Counsel

**TENANT:**

PELAGIC RESTAURANT GROUP, a  
California corporation

By: \_\_\_\_\_  
Title:

By: \_\_\_\_\_  
Title:

*(Two signatures of corporate officers  
required for corporations under  
Corporations Code Section 313, unless  
corporate documents authorize only one  
person to sign this Agreement on behalf  
of the corporation.)*

**EXHIBIT "A"**

**DESCRIPTION OF PREMISES**

The premises described as Parcels 1, 2 and 3 at Pillar Point Harbor, El Granada, California consisting of approximately \_\_\_\_ square feet of space within the existing concession building and \_\_\_\_ acres of land.

[Attach Schematic of the Premises]

SMCHD DRAFT 10/11/2023



DRAFT PENDING BOARD REVIEW/APPROVAL

EXHIBIT "B"

District Facilities Access Compliance Survey Report," dated August 2018 (the  
"CASp Report")

SMCHD DRAFT 10/11/2023

## EXHIBIT "C"

### FORM OF LEASE GUARANTY

#### GUARANTY OF LEASE

THIS GUARANTY OF LEASE ("Guaranty") is made by \_\_\_\_\_  
\_\_\_\_\_ ([collectively and jointly and severally,] "Guarantor"), in favor of the  
SAN MATEO COUNTY HARBOR DISTRICT ("Landlord") in connection with that certain  
Lease Agreement dated \_\_\_\_\_, 2021 (the "Lease") pursuant to which Landlord  
leases to Ketch Joanne Restaurant and Harbor Bar, a California corporation ("Tenant"), certain  
"Premises" (as more particularly defined in the Lease) on property owned by the Landlord in the  
County of San Mateo.

As a material inducement to and in consideration of Landlord entering into the Lease,  
Landlord having indicated that it would not enter into the Lease without the execution of this  
Guaranty, Guarantor does hereby agree with Landlord as follows:

1. Guarantor does hereby unconditionally and irrevocably guarantee, as a primary obligor and not as a surety, and promise to perform and be liable for any and all obligations and liabilities of Tenant under the terms of the Lease
2. Guarantor does hereby agree that, without the consent of Guarantor and without affecting any of the obligations of Guarantor hereunder: (a) any term, covenant or condition of the Lease may be hereafter amended, compromised, released or otherwise altered by Landlord and Tenant, and Guarantor does guarantee and promise to perform all the obligations of "Tenant" under the Lease as so amended, compromised, released or altered; (b) any guarantor of or party to the Lease may be released, substituted or added; (c) any right or remedy under the Lease may be exercised, not exercised, impaired, modified, limited, destroyed or suspended; (d) Landlord or any other person acting on Landlord's behalf may deal in any manner with Tenant, any guarantor, any party to the Lease or any other person; and (e) all or any part of the Premises or of the rights or liabilities of "Tenant" under the Lease may be sublet, assigned or assumed. This is a continuing guaranty.
3. Guarantor hereby waives and agrees not to assert or take advantage of (a) any right to require Landlord to proceed against Tenant or any other person or to pursue any other remedy before proceeding against Guarantor; (b) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other person; and (c) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant (other than any defense based on Landlord's acts or omissions), of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement. Without in any manner limiting the generality of the foregoing, Guarantor hereby waives the benefits of the provisions of Sections 2809, 2810, 2819, 2845, 2849, 2850, 2899 and 3433 of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction.

4. Guarantor hereby waives and agrees not to assert or take advantage of any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Tenant or other facts which increase the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind.
5. Until all Tenant's obligations under the Lease are fully performed, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor under this Guaranty; and (b) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant under, arising out of or related to the Lease or Tenant's use or occupancy of the Premises.
6. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor relating to the Lease shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord by law and/or in equity.
7. This Guaranty applies to, inures to the benefit of and binds all parties hereto, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns (including any purchaser at a judicial foreclosure or trustee's sale or a holder of a deed in lieu thereof). This Guaranty may be assigned by Landlord voluntarily or by operation of law.
8. Guarantor shall not, without the prior written consent of Landlord, commence, or join with any other person in commencing, any bankruptcy, reorganization or insolvency proceeding against Tenant. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Tenant, or by any defense which Tenant may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims which Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor and will assign to Landlord all rights of Guarantor thereunder. Landlord shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Landlord the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Landlord all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Landlord receives cash by reason of any such payment or distribution. If Landlord receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.
9. During the Term of the Lease, Guarantor shall, upon ten (10) days prior written notice from Landlord, provide Landlord with current financial statements for Guarantor and if requested by Landlord, financial statements of the two (2) years prior to the current

financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, shall be audited by an independent certified public accountant. Notwithstanding anything to the contrary contained herein, if Guarantor is a publicly traded corporation making annual 10-K filings with the Securities and Exchange Commission, Guarantor may satisfy the requirements of this section with respect to delivery of financial information by delivery of Guarantor's most recent annual report filed with the Securities and Exchange Commission.

10. As a further material part of the consideration to Landlord to enter into the Lease with Tenant, Guarantor agrees: (a) the law of the State of California shall govern all questions with respect to the Guaranty; (b) any suit, action or proceeding arising directly or indirectly from the Guaranty, the Lease or the subject matter thereof shall be litigated only in courts located within the county and state in which the Premises is located; (c) Guarantor hereby irrevocably consents to the jurisdiction of any local, state or federal court located within the county and state in which the Premises is located; and (d) without limiting the generality of the foregoing, Guarantor hereby waives and agrees not to assert by way of motion, defense or otherwise in any suit, action or proceeding any claim that Guarantor is not personally subject to the jurisdiction of the above-named courts, that such suits, action or proceeding is brought in an inconvenient forum or that the venue of such action, suit or proceeding is improper.
11. This Guaranty shall constitute the entire agreement between Guarantor and the Landlord with respect to the subject matter hereof. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any Guarantor be released from any obligation hereunder except by a writing duly executed by an authorized officer or director of Landlord. When the context and construction so requires, all words used in the singular herein shall be deemed to have been used in the plural. The word "person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof. Time is strictly of the essence under this Guaranty and any amendment, modification or revision hereof. If Guarantor is a corporation, limited liability company, partnership or other entity, each individual executing this Guaranty on behalf of such corporation, limited liability company, partnership or other entity represents and warrants that he or she is duly authorized to execute and deliver this Guaranty on behalf of such corporation, limited liability company, partnership or other entity in accordance with the governing documents of such corporation, limited liability company, partnership or other entity, and that this Guaranty is binding upon such corporation, limited liability company, partnership or other entity in accordance with its terms. If Guarantor is a corporation, limited liability company, partnership or other entity, Landlord, at its option, may require Guarantor to concurrently with the execution of this Guaranty, deliver to Landlord a certified copy of a resolution of the board of directors of said corporation, or other authorizing documentation for such entity authorizing or ratifying the execution of this Guaranty. If either party hereto participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall be entitled to have and

recover from the other party reasonable attorneys' fees, collection costs and other costs incurred in and in preparation for the action. The term "Landlord" whenever hereinabove used refers to and means the Landlord in the foregoing Lease specifically named and also any assignee of said Landlord, whether by outright assignment or by assignment for security, and also any successor to the interest of said Landlord or of any assignee of such Lease or any part thereof, whether by assignment or otherwise. The term "Tenant" whenever hereinabove used refers to and means Tenant and also any assignee of the interest of "Tenant" in the Lease or any subtenant of all or any part of the Premises and their respective successors in interest. If there is more than one undersigned Guarantor, (a) the term "Guarantor", as used herein, shall include all of the undersigned; (b) each provision of this Guaranty shall be binding on each one of the undersigned, who shall be jointly and severally liable hereunder; and (c) Landlord shall have the right to join one or all of them in any proceeding or to proceed against them in any order.

12. Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and shall be delivered by certified mail or reputable overnight delivery service addressed to the party to be notified at the address set forth below, or to such other place as the party to be notified may from time to time designate by at least ten (10) days' notice to the notifying party.

To Landlord:

San Mateo County Harbor District  
Attn.: General Manager  
P.O. Box 1449  
El Granada, California 94018

To Guarantor

Guarantor:

\_\_\_\_\_

Executed as of \_\_\_\_\_, 2023.