

FIRST AMENDMENT
TO AMENDED AND RESTATED LEASE

THIS FIRST AMENDMENT (this “**Amendment**”) is made as of September __, 2023, in San Francisco, California, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**” or “**Landlord**”) and the SAN FRANCISCO MARKET CORPORATION, a California nonprofit corporation (“**Tenant**”).

RECITALS

This Amendment is made with reference to the following facts and circumstances:

A. City and Tenant previously entered into that certain Amended and Restated Lease, dated as of November 1, 2022 (the “**Lease**”), for the lease of the Premises (as defined in the Lease), as may be amended from time to time pursuant to the Lease, which together is commonly known as the San Francisco Wholesale Produce Market (the “**Premises**”) located near Jerrold Avenue and Toland Street in San Francisco, California.

B. Tenant is using the Premises for the operation of a produce wholesaling and distribution center serving San Francisco and the Bay Area, and such other uses as specified in the Lease.

C. Although Section 5.1(c) of the Lease states that Tenant is to bear all costs for developing the Premises, it also permits Tenant to obtain City grants or loans for certain costs. The City’s Board of Supervisors and City staff previously stated that City would fund the cost of the street and marshalling yard improvements associated with the Premises, including when the Board of Supervisors authorized the execution of the Lease by Resolution No. 406-22 and pursuant to Budget and Appropriation Ordinance No. 108-21.

D. Pursuant to Budget and Appropriation Ordinance No. 108-21, enacted on July 29, 2021, City previously appropriated \$3 million for Produce Market reinvestment, including certain street and sidewalk improvement work, rehabilitation of the marshalling yard, and predevelopment work associated with the Premises. As City has no access rights to enter the Premises, and Tenant is obligated to perform that work under the Lease, City intends to use those funds to reimburse Tenant’s cost for that work on the terms and conditions of this Amendment.

E. Tenant has, or will, enter into a permit or other access agreement with City to enter and complete certain work on City property that will become part of the Premises, pursuant to Section 6.1 of the Lease.

F. City’s Board of Supervisors and Mayor have approved this Amendment, pursuant to Resolution [_____].

G. Tenant represents that there is currently no Mortgagee (as defined in the Lease), and therefore, no Mortgagee consent is required to enter into this Amendment.

H. The parties now desire to modify the Lease to address the disbursement of City funds on the terms and conditions as set forth herein. Any undefined terms herein shall refer to the corresponding defined terms in the Lease. The City’s Director of Property, in consultation with the City Attorney, has determined this Amendment does not materially increase City’s obligations or liabilities and is necessary to effectuate the purposes of the Lease and Resolution No. 406-22.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, City and Tenant agree as follows:

1. **Lease Amendments**. Section 5.12 is hereby added to the Lease to read as follows:

5.12 Initial Street Improvement, Marshalling Yard Construction, and Predevelopment Scope of Work.

- a) **Scope of Work; Use of Funds**. City has agreed to make a grant of funds of Three Million and 00/100 Dollars (\$3,000,000) (“**Funds**”) to Tenant to fund certain street, marshalling yard and sidewalk improvement and predevelopment costs related to the Premises and future Premises, as more specifically described in Exhibit P (Initial Street Improvement, Marshalling Yard Construction, and Predevelopment Scope of Work) attached hereto (the “**Work**”). Tenant acknowledges that City’s agreement to provide the Funds is based in part on Tenant’s agreement to use the Funds solely for the purposes set forth in Exhibit P (“**Eligible Uses**”), and Tenant agrees to use the Funds solely for those Eligible Uses.
- b) **Disbursement of Funds**. Subject to the terms of this Section, City will disburse the Funds to Tenant in accordance with Exhibit P attached hereto and upon satisfaction of the following conditions:
 1. Tenant must have delivered to City a written request by Tenant for a disbursement of Funds, which must certify that the Work costs covered by the expenditure request have been paid or incurred by Tenant (“**Expenditure Request**”), which Expenditure Request must be in form and substance satisfactory to City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request; and (iv) executed release(s) of mechanics’ liens for any Work. City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by City. Additionally, City must approve all requested reallocations of Funds for line items previously approved by City.
 2. No Event of Default, or Unmatured Event of Default, has occurred that remains uncured as of the date of the Expenditure Request.
 3. With respect to any Expenditure Request that covers rehabilitation or construction costs, Tenant must have certified to City that the Work complies with all applicable labor standards and all applicable laws.
 4. Tenant will work closely with City staff and provide reimbursement-related documentation in a timely fashion, so as to comply with both the Critical Repair and Recovery Stimulus Program Guidelines (“**Guidelines**”) and the Controller’s Office of Public Finance Accounting Policies and Procedures (“**Procedures**”) as relates to record-keeping and submission of reimbursement requests.
 5. Tenant may submit reimbursement requests as the Work is performed, if in compliance with the Guidelines and Procedures.

- c) Insurance, Bonds and Security. Before starting any demolition, rehabilitation or construction on the Premises, Tenant must deliver to the City proof of insurance as required by Article 24 (Insurance) hereof. At all times, Tenant must take prudent measures to ensure the security of the Premises.
- d) Rehabilitation/Construction Standards. All rehabilitation or construction must be performed in a first-class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable laws.
- e) Records. Tenant must maintain and provide to City upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures of the Funds, and must keep all estimates, invoices, receipts and other documents related to expenditures of the Funds. In addition, Tenant must provide to City promptly following Tenant's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all Funds (including accrued interest) in each Account have been disbursed for Eligible Uses.
- f) Compliance With Other Lease Terms. Tenant must comply will all other terms of this Lease, including but not limited to Article 4 (Uses), Article 5 (Development of Project), Article 9 (Operations and Management), Article 13 (Taxes and Assessments), Article 14 (Contests), Article 15 (Compliance With Laws), Article 18 (Subsequent Construction), Article 22 (Liens), Article 23 (Indemnification), Article 24 (Insurance), Article 25 (Hazardous Materials), Article 28 (Events of Default; Termination), Article 42 (Inspection of Premises By City), Article 46 (Representations and Warranties), and Article 47 (Special Provisions).

2. Additional City Approvals. Tenant understands and agrees that City is entering into this Amendment in its proprietary capacity and not as a regulatory agency with certain police powers. Tenant understands and agrees that neither entry by City into this Amendment nor any approvals given by City under this Amendment shall be deemed to imply that Tenant will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including but not limited to the future Premises. By entering into this Amendment, City is in no way modifying or limiting the obligations of Tenant to develop the Premises in accordance with all local laws. Tenant understands that any development of the Premises shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Premises, which may include, without limitation, the San Francisco City Planning Commission, San Francisco Public Works, and the San Francisco Board of Supervisors. Notwithstanding anything to the contrary in this Amendment, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

3. No Joint Venture. This Amendment or any activity by City hereunder does not create a partnership or joint venture between City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by City of any activity conducted by Tenant, and City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

4. **Governing Law.** This Amendment will be construed and enforced in accordance with the Legal Requirements of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Amendment shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Amendment has been brought in an inconvenient forum.

5. **References.** No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

6. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

7. **Notification of Prohibition on Contributions.** By executing this Amendment, Tenant acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to (a) a City elected official if the lease must be approved by that official, (b) a candidate for that City elective office, or (c) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date City approves the lease. Tenant acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that (i) the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in Tenant; any subtenant listed in the lease; and any committee that is sponsored or controlled by Tenant; and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Tenant is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subtenant. Additionally, Tenant certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

8. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

9. **Effective Date.** The date of which this Amendment shall become effective as of the date this Amendment is duly executed and exchanged by the parties hereto.

10. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver or relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

[signatures follow]

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

TENANT:

SAN FRANCISCO MARKET CORPORATION,
a California nonprofit corporation

By: _____

Name: _____

Title: _____

LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____

Jessica Alfaro-Cassella
Deputy City Attorney

Exhibit P

Initial Street Improvement, Marshalling Yard Construction, and Predevelopment Scope of Work

Attached.