

PORT ORDINANCE NO. 4473

ORDINANCE APPROVING SECOND AMENDMENT TO SPACE/USE PERMIT WITH FOOD AND BEVERAGE CONCESSIONAIRES ANDALE MANAGEMENT GROUP, INC., GOTHAM FOODS TWO, LLC AND HOST INTERNATIONAL, INC. TO EXTEND THE TERM OF EACH PERMIT BY EIGHT MONTHS, ALLOW THE TENANT INFRASTRUCTURE FEE SURCHARGE TO EXPIRE, AND INCREASE THE BENEFITS FEE FROM 2% ON EACH SALES TRANSACTION TO 3% ON EACH SALES TRANSACTION.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.1, dated April 26, 2018 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; now, therefore

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. In acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received.

Section 2. The Board hereby approves the terms and conditions set forth in the Agenda Report for the Second Amendment to Space/Use Permit with **Andale Management Group, Inc.** ("Andale"), **Gotham Foods Two, LLC** ("Gotham") and **Host International, Inc.** ("Host") to extend the term of each Space/Use Permit eight months from May 31, 2018 to January 31, 2019, allow the tenant infrastructure fee to expire on May 31, 2018, and to increase the benefits fee from 2% of the sales transaction to 3% of the sales transaction effective June 1, 2018, all as described in the Agenda Report.

Section 3. The Board hereby authorizes the Executive Director to execute the Second Amendments to Space/Use Permit with Andale, Gotham and Host, subject to approval as to form and legality by the Port Attorney.

Section 4. The Board hereby finds and determines that amending the Space/Use Permits with Andale, Gotham and Host are categorically exempt from the California Environmental Quality Act ("CEQA") Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Section 5. This ordinance is not evidence of and does not create or constitute (a) a contract(s), or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until a separate written contract is duly executed on behalf of the Board as authorized by this ordinance, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective contract.

The Board of Port Commissioners, Oakland, California, April 26, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Cluver, Hamlin, Martinez, Yee and President Story - 6. Excused: Commissioner Butner - 1. Noes: 0.

Daria Edgerly
Secretary of the Board