BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LEASE WITH UNITED FOOD SOLUTIONS FOR THE PREMISES LOCATED AT 31 WEBSTER STREET AND 38 WEBSTER STREET, OAKLAND, FOR A TEN (10) YEAR TERM WITH ONE (1) OPTION TO EXTEND FOR AN ADDITIONAL SIX (6) YEARS FOR A MINIMUM RENTAL AMOUNT OF $1,260,876 OVER TEN YEARS.

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WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.5, dated November 21, 2019 (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; and

WHEREAS, Section 706 of the City of Oakland ("City") Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote the development, construction, and operation of all waterfront properties, including piers, wharves, sea walls, docks, and other improvements; and

WHEREAS, the proposed action will provide service for members of the public who use the waterfront, and is consistent with the Port's duty to use and manage Port property in trust for the people of the State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the proposed lease will not interfere with the Tidelands Trust; 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 finds and determines as follows:

A. The Port owns property located at 31 Webster Street, Oakland consisting of a building of approximately 3,451 square feet of restaurant space and two patio areas of approximately 780 square feet and 485 square feet, as well as approximately 415 square feet of storage room located in a portion of 38 Webster Street, Oakland (the "Premises"); and

B. The Premises are currently vacant after the expiration of the former lease for the Premises for the Il Pescatore Ristorante, but Jennifer Le, principal of United Food Solutions ("UFS") has expressed interest in leasing the Premises; and

C. Port staff have negotiated and recommend entering into a Lease with UFS under the following key terms, as further described in the Agenda Report:

<u>Premises</u>: Restaurant located at 31 Webster Street, Oakland consisting of Port Building F-109 (approximately 3,451 square feet) and two patio areas (approximately 780 square feet and 485 square feet); and Storage Room located at 38 Webster Street, Oakland consisting of a room located on the first floor of the Harbormaster Building (Port Building F-101) of approximately 415 square feet.

<u>Parties</u>: Port and United Food Solutions.

<u>Permitted Use</u>: Operation of a quick service, casual seafood restaurant for lunch and dinner.

<u>Term</u>: Commencing on February 1, 2020 and terminating on January 31, 2030.

<u>Minimum Monthly Rent</u>: During Months 1-12 of the Lease, $0 for the Restaurant Space and $269 for the Storage Room; for Months 13-24 of the Lease, $9,812 for the Restaurant Space and $279 for the Storage Room; as such rent is increased as set forth in the Agenda Report.

<u>Common Area Expense Reimbursement ("CAM")</u>: During Months 1-12 of the Lease, $2,319, as increased as set forth in the Agenda Report.

<u>Percentage Rent</u>: 7% of Gross Sales less Minimum Monthly Rent, as further described in the Agenda Report.

<u>Performance Deposit and Personal Guarantors</u>: Three times' the current Minimum Monthly Rent. Jennifer Le, Anh Nguyen, Ricky Giang, and Hoang Huynh shall be personal guarantors of the Lease for the first 60 months of the Term.

<u>Option Term</u>: One option to extend for a six (6) year term, with Minimum Monthly Rent to increase by 10% and CAM to increase by 4%. Both the Minimum Monthly Rent and CAM Reimbursement shall increase by 4% annually thereafter.

<u>Maintenance</u>: UFS to maintain, at its sole cost and expense, the entire Premises except for the roof and underlying wharf, which shall be maintained by the Port.

<u>Tenant Improvement Allowance</u>: The Port will provide up to $200,000 in reimbursement for UFS's tenant improvements, as further described in the Agenda Report.

D. The Board further finds and determines that the proposed approval of the Lease is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, which exempts the leasing and licensing of existing facilities, involving negligible or no expansion of existing or former use.

Section 3. The Board hereby approves and authorizes the Executive Director or his designee to execute the proposed Lease with UFS (and such additional documents as may be necessary to consummate the transaction) for the Premises, as further described above and in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed Lease is not fully executed within thirty (30) days after the effective date of this ordinance, the Board's approval shall be null and void, unless extended in the sole and absolute discretion of the Executive Director or his designee.

Section 4. This ordinance is not evidence of and does not create or constitute (a) a contract, 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 agreement 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 the other contracting party, there shall be no valid or effective agreement.

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President.

Attest: _____
Secretary.

Approved as to form and legality:

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Port Attorney