

## FIRST AMENDMENT TO MUNICIPAL WHARF LEASE AGREEMENT

This First Amendment to Municipal Wharf Lease Agreement (“**Amendment**”) is made and entered into effective as of \_\_\_\_\_, 2025, by and between the City of Capitola, a California municipal corporation (“**Landlord**”), and TDD, LLC, a California limited liability company (“**Tenant**”).

### RECITALS

A. Landlord, and Tenant’s predecessor in interest, JFS, Inc., California corporation, are parties to that certain Municipal Wharf Lease Agreement dated June 24, 2024 (“**Agreement**”), pursuant to which Landlord, among other things, leased to Tenant the Premises described in the Agreement.

B. The Term of the Agreement expires on December 31, 2025, and Landlord and Tenant desire to extend the Term, as described herein.

C. Landlord and Tenant also desire to amend certain other terms and conditions of the Agreement, as described in this Amendment.

D. Defined terms used herein and not otherwise defined shall have the meaning given to them in the Agreement.

NOW, THEREFORE, in consideration of the foregoing, which are incorporated herein by reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### AGREEMENT

1. Tenant. Effective as of the date of this Amendment, all references to Tenant in the Agreement, as amended hereby, shall refer to TDD, LLC, a California limited liability company.

2. Term. The Term of the Agreement shall be extended for a period of twelve (12) months, such that the extended term commences on January 1, 2026 (“**Extension Commencement Date**”) and continues until December 31, 2026 (“**Extension Term**”).

3. Premises Floor Area. The description of the Premises Floor Area set out in Section 1.05 of the Agreement is deleted in its entirety and replaced with the following in order to incorporate an additional 416 square feet of space located on the Wharf:

“A total of approximately 2,938 square feet, including 1,332 square feet on the Wharf, the two 20” long shipping Containers, the existing shed, the Additional Storage Shed, and the approximately 25 square feet Fuel Shed, all as depicted on Exhibit A.”

4. Rent.

(a) During the Extension Term, the Annual Rent shall increase effective as of the Extension Commencement Date with reference to the Consumer Price Index (“CPI”) to be adjusted as follows (“CPI Adjustment Amount”):

CPI shall be determined with reference to the Consumer Price Index, All Urban Consumer, San Francisco-Oakland, California, published by the United States Department of Labor, Bureau of Labor Statistics (“**Index**”) in effect on the Commencement Date (“**Beginning Index**”). The Index published most immediately preceding the Extension Commencement Date (“**Extension Index**”) will be used to determine the CPI Adjustment Amount. If the Extension Index has increased over the Beginning Index, the CPI Adjustment Amount shall be the product of the Annual Rent in effect during the immediately preceding original Term multiplied by the “CPI Fraction.” The CPI Fraction shall be a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. If the Index changes so that the base year differs from that in effect on the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during after the Commencement Date, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Notwithstanding the foregoing, in no event shall the Annual Rent for the Extension Term be less than the Annual Rent for the original Term.

(b) The CPI Adjustment has been determined to be \_\_\_\_ percent (\_\_\_%), which means that the Annual Rent during the Extension Term, taking into account the CPI Adjustment Amount and the total Premises Floor Area of 2,938 square feet, is \$\_\_\_\_\_ and the Monthly Rent during the Extension Term is \$\_\_\_\_\_.

5. Premises. The definition of Premises set out in Section 2.02 of the Agreement is deleted in its entirety and replaced with the following:

“Landlord leases to Tenant and Tenant leases from Landlord the Premises designated as 1400 Municipal Wharf, Capitola, California, comprised of the Containers, the existing storage shed, the Additional Storage Shed, the Fuel Shed and 1,132 square feet of wharf space (collectively, “**Premises**”), all located on the wharf structure belonging to the City of Capitola and commonly known as the Capitola Municipal Wharf (“**Wharf**”). The Premises shall not include, and Tenant shall have no rights in, the Wharf decking, substructure and support elements underlying or surrounding the Premises, unless otherwise permitted herein. A diagram of the location of the Premises on the Wharf is attached to this Agreement as Exhibit A and incorporated herein by reference.”

Further, Exhibit A attached to the Agreement is replaced in its entirety with the version of Exhibit A attached to this Amendment.

6. Reservations. Section 2.03(b) of the Agreement shall be deleted in its entirety and replaced with the following:

“Landlord reserves the right during the Term to temporarily close to the public and prohibit Tenant from accessing all or any part of the Premises and License Area: (i) to protect public safety, and (ii) for City of Capitola sponsored events and gatherings, including a maximum of five (5) days during a calendar year for any event, and one (1) additional day for the Annual Monte Foundation Fireworks Show, typically held the second Sunday in October. In connection with such closures, Tenant shall have no right to any abatement of Rent (including Annual Rent, Monthly Rent and/or Additional Rent).”

7. Insurance. On or prior to the Extension Commencement Date, Tenant shall deliver to Landlord a certificate(s) of insurance evidencing to Landlord’s reasonable satisfaction that Tenant has in effect all insurance coverages described in Article 12 of the Agreement. Landlord’s receipt from Tenant of such reasonably acceptable insurance certificate(s) is a condition precedent to the effectiveness of this Amendment and the Extension Term.

8. Remedies. The following is added to the Agreement as Section 13.03(h):

“In the event of any breach by Tenant of the Agreement, in addition to other rights or remedies of Landlord at law, in equity or under the Agreement, Landlord shall have the right, as an additional remedy, to charge Tenant the following fees in connection with a breach:

- First written warning for breach - \$0
- Second written warning for breach - \$100
- Third written warning for breach - \$200
- Fourth written warning for breach - \$300.”

9. Agreement. Except as modified by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect.

10. Counterparts. This Amendment may be executed in counterparts and/or by electronic signature, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the Agreement effective as of the date first written above.

**LANDLORD:**

The City of Capitola, a California municipal corporation

By: \_\_\_\_\_  
Jamie Goldstein, City Manager

Approved as to form:

By: \_\_\_\_\_  
Marc Tran, City Attorney

**TENANT:**

TDD, LLC, a California limited liability company

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

Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

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

## Exhibit A

Location of Premises and License Area on Capitola Municipal Wharf, including location of Containers, Existing Storage Shed, Additional Storage Shed and Fuel Shed

