

SECOND AMENDMENT TO PERMIT NO. 892
BETWEEN THE CITY OF LOS ANGELES AND
TRI-MARINE FISH COMPANY, LLC

THIS SECOND AMENDMENT to Agreement No. 892 is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and TRI-MARINE FISH COMPANY, LLC ("Tenant") as follows:

1. ***Section 3(b) is amended to read:***

"(b) Term. The term of this Agreement shall be for a period of twenty (20) years, commencing on November 6, 2017, the effective date of the First Amendment, unless sooner terminated in accordance with Section 6 of this Agreement."

2. ***The following provision is added to the beginning of Section 4(c)(1) Minimum Annual Rent and Section 4(c)(2) Percentage Rent as amended in the First Amendment:***

"Effective November 6, 2017, the effective date of the First Amendment, the ..."

3. ***Section 10 is replaced in its entirety with the following:***

"Section 10. Assignment, Transfer and Subletting; City's Consent Required.

(a) Generally. Tenant shall not, in any manner, transfer or assign this Agreement, or any portion thereof or any interest therein, ("Assignment") voluntarily or involuntarily without the prior written consent of the Board, nor sublet or sublease the whole or any part of the Premises, nor license or permit the use of the same, in whole or in part, without the prior written consent of the Executive Director (collectively referred to as a "Transfer").

(1) Consent Required; Payment of City's Costs. No Transfer of this Agreement, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by, or of, Tenant (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublease, transfer, gift, hypothecation or grant of total or partial control, or any encumbrance of this Agreement, shall be valid or effective for any purpose unless (i) Tenant receives the prior written consent of City and (ii) Tenant satisfies the requirements in Subsection (c) (Procedure to Obtain Consent

to Transfer). Consent to one Transfer shall not be deemed to be a consent to any subsequent Transfer. For purposes of this Subsection, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Tenant's assets in the hands of a receiver or trustee; or (2) a transfer by Tenant for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a Tenant or of a general partner of a Tenant (except as provided in Subsection (b)(2) (Partnerships)).

Tenant acknowledges and agrees that it shall be required to pay the City for all City Costs incurred to review all documents submitted in response to a request to Transfer.

(2) Transfer of Assets. "Transfer" also shall include the involvement of Tenant or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise) whether or not there is a formal assignment or hypothecation of this Agreement or Tenant's assets, which involvement results in a reduction of the net worth of Tenant (defined as the net worth of Tenant, excluding guarantors, established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth as it was represented at the time of the execution of this Agreement, or at the time of the most recent Transfer to which City has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater.

(b) Transfers of Ownership.

(1) Ownership or Control. The transfer of more than twenty-five percent (25%) of the economic interest in Tenant or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant in one or more transactions, regardless of whether Tenant is a publicly or privately held entity, shall constitute a Transfer within the meaning of this Section.

(2) Partnerships. If Tenant is a partnership, any transfer or attempted transfer by any general partner of Tenant of more than twenty-five percent (25%) of its partnership interest in Tenant in one or more transactions shall be a prohibited Transfer within the meaning of this Section. Notwithstanding the foregoing, if any transfer of a general partner's interest is due to the death of a general partner and results in the transfer to the immediate members of the general partner's family, who will be immediately and personally involved in the operation of the partnership, the City shall not unreasonably withhold its consent to such transfer.

(3) Guarantor. If a parent or other entity has guaranteed or otherwise secured any or all of Tenant's obligations under this Agreement and if the ownership, makeup or financial condition of such parent or other entity has, in the sole reasonable discretion of the Executive Director, materially changed at any

point during the term of this Agreement, the right is reserved for City to require amendments of such guaranty, the provision of new security, or a combination thereof reasonably required by the Executive Director to maintain the level of security as provided by the original guaranty. Following the Effective Date, Tenant shall have a continuing obligation to notify City in writing of any and all events that do or might constitute a material change within the meaning of this Subsection.

(4) Executive Director Authority to Modify. The Executive Director shall have the authority, but not the obligation, to unilaterally modify the foregoing conditions based on the facts of a particular case, provided that any such modifications do not impose additional obligations on Tenant or restrict Tenant's rights hereunder.

(c) Procedure to Obtain Consent to Transfer. If Tenant desires to undertake a Transfer, it may seek City's consent thereto. Tenant covenants that before entering into or permitting any Transfer, it shall provide to City written notice at least ninety (90) days before the proposed effective date of the Transfer. Notwithstanding the foregoing, City reserves the right to allow Tenant, on a case-by-case basis, to submit to City for City's consent, Transfers that would have become effective but for Tenant's failure to seek City's prior written consent. In any event, Tenant's written request to City for consent shall hereinafter be referred to as "Transfer Notice."

(1) Transfer Notice. Tenant's Transfer Notice shall contain each of the following:

(i) Specific identification of the entity or entities with whom Tenant proposes to undertake the Transfer ("Transferee");

(ii) Specific and detailed description of the Transferee's entity type, ownership (including identification of all parent and subsidiary entities), background/history, nature of the Transferee's business, Transferee's character and reputation and experience in the operations proposed;

(iii) Specific and detailed description of the type of Transfer proposed (e.g., assignment, sublease, grant of control, etc.) and the rights proposed to be transferred;

(iv) Specific and detailed description of the operations proposed to be undertaken at the Premises by Tenant and Transferee if City consents to the Transfer which includes a breakdown of the responsibilities and duties of Tenant and Transferee;

(v) All of the terms of the proposed Transfer, including the total consideration payable by Transferee; the specific consideration (if any) payable by Transferee in connection with the Premises and/or uses under this Agreement if the proposed Transfer is part of an acquisition or purchase

that involves assets outside this Agreement; the proposed use of the Premises; the effective date of the proposed Transfer; and a copy of all documentation concerning the proposed Transfer;

(vi) The proposed form of a guaranty or guaranties providing greater or substantially the same protection to City as any guaranty in effect prior to or contemporaneous with the proposed Transfer;

(vii) A business plan for the Transferee including specific estimates of revenue anticipated under each of the following categories: existing contracts, contracts under negotiation and other specified sources;

(viii) A general description of any planned Alterations or improvements to the Premises;

(ix) A description of the worth of the proposed Transferee including an audited financial statement;

(x) Any further information relevant to the proposed Transfer that City reasonably requests; and

(xi) Written authorization in a form acceptable to City allowing City to inspect and review but not to copy, at times and locations reasonably selected by City, any books and records or other information of Tenant or Transferee (or third-parties acting for or on either of their behalves) reasonably determined by City to be necessary for its assessment of Tenant's request for consent.

(2) Limitations on City's Consent. If City consents to a Transfer, the following limits apply:

(i) City does not agree to waive or modify the terms and conditions of this Agreement;

(ii) Such consent does not constitute either consent to any further or other Transfer by either Tenant or Transferee or a bar disqualifying submittal of additional Transfer Notices in accordance with the terms of this Agreement following such consent;

(iii) If, following such consent, Tenant remains a party to this Agreement, Tenant shall remain liable under this Agreement and any guarantor shall remain liable under its guaranty;

(iv) Such consent shall not transfer to the Transferee any option granted to the original Tenant by this Agreement unless such transfer is specifically consented to by City in writing;

(v) Tenant may enter into that Transfer in accordance with this Section if: (a) the Transfer occurs within one (1) year after City's consent; (b) the Transfer, in the sole and absolute discretion of the Executive Director, is on substantially the same terms as specified in the Transfer Notice; and (c) Tenant delivers to City promptly after execution an original executed copy of all documentation pertaining to the Transfer in a form reasonably acceptable to City;

(vi) If the Transfer occurs more than one (1) year after City's consent or, in the sole and absolute discretion of the Executive Director, the terms of the Transfer materially change from those in the Transfer Notice, Tenant shall submit a new Transfer Notice under this Section, requesting City's consent. A material change for purposes of this Section is one where the terms would have entitled City to refuse to consent to the Transfer initially, or would cause, in the sole and absolute discretion of the Executive Director, the proposed Transfer to be more favorable to Transferee than the terms in the original Transfer Notice;

(vii) Tenant and/or Transferee, upon City's written request, shall provide proof, in a form satisfactory in the sole reasonable discretion of the Risk Manager of City's Harbor Department, demonstrating that insurance of the type and limits required by this Permit is and shall be in full effect at all times in or around the time period in which the proposed Transfer is anticipated to occur. If requested in writing by City, Transferee shall provide a guaranty agreement in a form acceptable to City obligating Transferee to pay any uninsured or underinsured loss on a claim that, in City's sole and absolute discretion, would have been covered by insurance fully compliant with this Permit; and

(viii) Transferee shall execute and deliver a written acceptance of Transfer in a form acceptable to City in which Transferee expressly assumes all of Tenant's obligations under the Agreement.

(d) Factors Germane to City Consent. In evaluating any Transfer Notice, it shall not be unreasonable for City to withhold or condition its consent to a Transfer based on the following factors, among others:

(1) The net worth, financial condition and creditworthiness of the Transferee and the existence of any guaranty provided by the Transferee's parent or related entity or entities;

(2) The character, experience and reputation of the Transferee (or its operator) in operating the business contemplated by the Transfer;

(3) Whether the Transfer will negatively impact the short-term or long-term development, land use or other plans of City's Harbor Department, and whether consent to such Transfer would violate any of the legal duties of City's Harbor Department, including duties owed to other tenants;

(4) Whether the proposed Transfer is consistent with the terms and conditions of this Agreement in existence when Tenant submitted the Transfer Notice and with the laws, rules and regulations applicable to the Premises and Tenant's use and occupancy thereof;

(5) Whether the information provided by Tenant in connection with Subsection (c)(1) (Transfer Notice) justifies such consent;

(6) The Transferee's level of commitment and specific plans to invest to improve the Premises following approval of the proposed Transfer, if any;

(7) Whether there are uncured defaults including, without limitation, unpaid Rent and, if there are, whether the proposed transferee agrees to cure, remedy or otherwise correct any default by Tenant existing at the time of the Transfer, in a manner satisfactory to the Board; and

(8) Whether the Transferee, its operator or any Affiliate of the Transferee or its operator is listed on any of the following lists maintained by the Officer of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of the Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the City may not do business under Applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, and the Debarred List.

(e) Additional Conditions for Subleases. If Tenant requests consent to a Transfer consisting of a sublease of all or a portion of the Premises, the following terms and conditions shall also apply:

(1) Notwithstanding Subsection (c) (Procedure to Obtain Consent to Transfer), Tenant may request consent for a sublease with less than ninety (90) days' notice.

(2) City reserves the right to recapture any portion of the Premises proposed by Tenant to be subleased (with appropriate amendments to this Agreement) and to undertake the transaction with the proposed Transferee directly;

(3) Tenant in no event shall be allowed to sublet more than twenty percent (20%) of the Premises to any one sublessee unless this Agreement expressly provides otherwise;

(4) Tenant shall owe to City as Additional Rent, fifty percent (50%) of any amount collected from the sublessee as compensation that exceeds, on a pro rata basis, based on the preceding year's Rent, the compensation due City from Tenant under this Permit;

(5) Tenant must provide City with a copy of the Sublease Agreement; and a copy of any notice of default or breach of the sublease; and

(6) No sublessee shall further Transfer or sublet all or any part of the Premises without City's prior written consent.

(f) Assignments for Security Purposes. Tenant's request to assign this Agreement to secure financing of improvements on the Premises will require Board approval and will be considered on a case-by-case basis. Consent to Assignments for security purposes will not be granted unless Tenant and its lenders satisfy the following conditions, among others, which may be reasonably imposed by the Board:

(1) Monies borrowed will be used exclusively to construct improvements or alterations on the Premises.

(2) Monies borrowed must be in a fixed amount. New borrowings or refinancing require further Board approval.

(3) The collateral covered by the security agreement securing Tenant's loan shall cover only Tenant's leasehold interests and interest in improvements on the Premises, not the interests of City in improvements or land, and not any improvements or fixtures which, if removed, would leave the Premises untenable. In this Subsection, "untenable" means, the removal of improvements or fixtures which, in the City's sole and absolute discretion, would leave the Premises in a condition that prevents City from renting the Premises.

(4) Nothing in the instrument which creates the security interest in the lender shall amend, modify, or otherwise affect the rights of City under this Agreement or any guaranty.

(5) In the event the lender initiates any action to foreclose the interest of Tenant in this Agreement, the lender agrees to deliver to the Board in person or by registered mail a copy of any notice of default sent to Tenant and agrees, ten (10) calendar days in advance of any foreclosure sale, to give written notice to Board by registered mail. Such notices shall be addressed as follows:

Board of Harbor Commissioners
c/o Director of Real Estate Division
P.O. Box 151
San Pedro, CA 90733-0151

Such notice shall specify which of the below alternative courses of action the lender will take with respect to the Agreement and any guaranty. Any and all of the below stated alternatives are contingent upon the Board's approval in accordance with the conditions in subsection (6) below. Lender may:

(i) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement; or

(ii) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement, and hire an operator, acceptable to the Executive Director, who shall operate the Premises pursuant to the Agreement; or

(iii) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date, and thereafter reassign the Agreement with the consent of Board. Notwithstanding any provision of this Agreement to the contrary, in the event the lender initiates any action to foreclose the interest of any subsequent assignee of the Agreement, the lender agrees to make the notifications and elections required herein.

The foregoing election by the lender shall be without prejudice to any rights the City may have with respect to Tenant's default of this Agreement; provided, however, that the City shall mail to both Tenant and lender a copy of any written notice of default in the performance of the terms and conditions of the Agreement, by registered mail, return receipt requested, addressed as follows:

(Name and Address of Tenant and lender is to be specified by Tenant. If no lender is specified, notice to Tenant alone is agreed to be sufficient.)

The lender shall have the option to cure such default within the time specified in such notice, provided that if such default is noncurable in nature, City shall have the right to immediately reclaim the Premises and lender shall have no further interest.

(6) Any lender proposal to Transfer its interest in this Agreement or interest therein or right or privilege thereunder requires the Board's consent. The Board may withhold its consent in its reasonable discretion if the Board determines that the proposed transferee cannot meet all of the following conditions, and any other conditions which may be reasonably imposed by the Board:

(i) This Agreement shall be in full force and effect and no default shall exist or the lender shall agree in writing to cure all such defaults before the transfer.

(ii) When requesting the Board's consent to such a Transfer, the

lender shall demonstrate that: (a) the financial condition of the proposed transferee is as sound as that of Tenant at the time this Agreement was initially entered into or as at the time of the proposed transfer - whichever provides the better financial security to the City; (b) the proposed transferee has the requisite experience and reputation or has retained an operator with the requisite experience and reputation to operate the Premises; and (c) the proposed Transfer will not unfavorably affect the revenues of the City, employment or the services available to the maritime community; and the proposed transferee, its operator or any Affiliate of the proposed transferee or its operator is listed on any of the following lists maintained by the Officer of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of the Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the City may not do business under Applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, and the Debarred List .

(iii) Even if the Board consents to such a proposed Transfer, the Board may first require that the transferee and the Board agree on a new compensation for the Premises transferred. If the Board modifies the compensation, it shall take into account the then existing Board policy for setting compensation and the prevailing market conditions.

(7) The form of all instruments and documents affecting the City's interests in the Premises shall be acceptable to Executive Director and City Attorney of City in their sole and absolute discretion.

(8) The Board shall have the authority, but not the obligation, to modify any of the foregoing conditions based on the facts of a particular case.

(g) Assignment Fee. In the case of Assignments other than Assignments for Security Purposes permitted under Subsection (f) above, in recognition of the value added to the Assignment by virtue of the location of the Premises, Tenant shall pay to City a fee ("Assignment Fee") based on the following formula:

(1) Less than Ten (10) Years Left on Term: Tenant shall pay to City an Assignment Fee equal to ten percent (10%) of the economic value attributable to the assignor's leasehold interest derived from, or as a result of the use of the Premises; or

(2) Greater than Ten (10) Years or More Left on Term: Tenant shall pay to City an Assignment Fee equal to fifteen percent (15%) of the economic value attributable to the assignor's leasehold interest derived from, or as a result of the use of the Premises.

(h) Charter and Administrative Code. Tenant acknowledges that this Agreement is subject to the Charter of City and the Administrative Code of City and that approval of a Transfer may require action by several separate entities, including but not limited to the Los Angeles City Council.

(i) Tenant Remedies. If City wrongfully denies or conditions its consent, Tenant may seek only declaratory and/or injunctive relief. Tenant specifically waives any damage claims against City in connection with the withholding or conditioning of consent.

(j) Indemnity in Favor of City; Tenant's Rights. In addition to and not as a substitute for the indemnities Tenant provides to City pursuant to this Permit, Tenant shall indemnify, defend and hold harmless City and any and all of its boards, officers, agents, or employees from and against any and all claims and/or causes of action of any third-party (including but not limited to Transferee) arising out of or related to a proposed Transfer except for claims arising from the sole negligence or willful misconduct of City in withholding its consent in which case Tenant's sole remedy shall be entitled only to seek specific performance.

(k) Rent or Performance. City, in its sole discretion, may accept Rent or performance of Tenant's obligations under this Agreement from any person other than Tenant pending approval or disapproval of a Transfer. City's exercise of discretion to accept Rent or performance shall be reflected in writing.

(l) Written Certification. If requested in writing by the Executive Director, Tenant shall, within ten (10) days of its receipt of such written request, certify under penalty of perjury under California Law whether it has or has not undertaken a purported Transfer."

Except as amended herein, all remaining terms and conditions of Permit No. 892 and its amendments shall remain in full force and effect.

[SIGNATURE PAGE ON NEXT PAGE]

IN WITNESS THEREOF, the parties hereto have executed this Second Amendment to Permit No. 892 on the date to the left of their signatures.

THE CITY OF LOS ANGELES,
by its Board of Harbor Commissioners

Dated: _____, 2018

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

Dated: DECEMBER 10, 2018

TRI-MARINE FISH COMPANY, LLC

By: _____
ANTHONY N. VUOSO - PRESIDENT
(Print/type name and title)

Attest: _____
Julio Guzman - Controller
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

_____, 2018
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: _____
MINAH PARK, Deputy City Attorney