Agenda Item No. D-1

DATE SUBMITTED	04/10/15	COUNCIL ACTION	(X)
SUBMITTED BY	PLANNING DIRECTOR	PUBLIC HEARING REQUIRED	( )
		RESOLUTION	( )
		ORDINANCE 1ST READING	( )
DATE ACTION REQUIRED	04/15/15	ORDINANCE 2ND READING	( )
		CITY CLERK'S INITIALS	( )

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: LEASE OF CITY-OWNED PROPERTY AT 401 EAST BARIONI BOULEVARD

1. APPROVE LEASE AGREEMENT WITH PENTAGONAL BREWING COMPANY.

DEPARTMENT INVOLVED:

BACKGROUND/SUMMARY:

Council previously approved a lease arrangement with another party to rent city owned property at 401 East Barioni Blvd, but the lease was never finalized. Pentagonal Brewing Company submitted a request to lease the property which would be used for the manufacture of craft beer with a tasting room. Pentagonal Brewing was previously going to lease the former First Imperial Credit Union building across the street but that deal fell through. The proposed use will have to go to the Planning Commission for a Conditional Use Permit which they cannot apply for unless a lease agreement is in place.

FISCAL IMPACT: F.O. INITIALS: _____

STAFF RECOMMENDATION:

Staff recommends approval of the Lease Agreement.

MANAGER'S RECOMMENDATION: MANAGER'S INITIALS

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

LEASE AGREEMENT

401 EAST BARIONI BOULEVARD
IMPERIAL, CA 92251

BY AND BETWEEN

CITY OF IMPERIAL

AND

PENTAGONAL BREWING COMPANY

LEASE

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LEASE

THIS LEASE ("Lease") is entered into as of August 1, 2015 between City of Imperial ("Landlord") and Pentagonal Brewing Company ("Tenant").

Recitals

WHEREAS, Landlord is the owner of certain improved real property located on 401 East Barioni Boulevard, Imperial, CA 92251; and

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Premises on the terms and conditions in this Lease.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

Section 1. Definitions

As used in this Lease the following terms shall have the following definitions:
"Commencement Date" is defined in Section 3 hereof.
"Event of Default" is defined in Section 20 hereof.
"Monthly Rent" is defined in Section 4(a) hereof.
"Landlord" is defined in the preamble of this Lease.
"Lease" is defined in the preamble of this Lease.
"Premises" is defined in Recital A hereof.
"Tenant" is defined in the preamble of this Lease.
"Term" is defined in Section 3 hereof.
"Termination Date" is defined in Section 3 hereof.
"Trade Fixtures" is defined in Section 15(a) hereof.

Section 2. Lease

Landlord leases to Tenant and Tenant leases from Landlord the Premises on the terms and conditions in this Lease.

Section 3. Term of Lease

The term of this Lease ("Term") shall be for one year commencing on August 1, 2015, ("Commencement Date"), unless sooner terminated pursuant to the terms of this Lease ("Termination Date").

Section 4. Monthly Rent

The monthly rental shall be $750.00. The Monthly Rent shall be payable in lawful dollars of the United States and in advance on the first day of each month at the following address: City of Imperial, 420 South Imperial Avenue, Imperial, California 92251, or at another address that Landlord may from time to time designate by written notice to Tenant.

Section 5. Use

(a) Tenant will occupy and actively use the Premises for the sole purpose of a microbrewry and tasting room. Should the use be discontinued for a period of 3 months without the prior consent of the Landlord, the Lease shall be terminated. Tenant agrees not to use the Premises for any immoral or unlawful purpose. Landlord agrees that, subject to Section 16 and to the prior reasonable review and approval by Landlord and compliance with all applicable governmental requirements and any signage criteria in any covenants, conditions, and restrictions recorded prior to the date of this Lease, Tenant may erect and maintain on the Premises signs advertising Tenant's business.

(b) Tenant shall not commit any acts on the Premises, nor use the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. Tenant shall, at Tenant's own cost and expense, comply with all requirements of Landlord's insurance carriers that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Premises and the improvements on the Premises.

(c) Tenant shall not commit any waste or any public or private nuisance upon the Premises.

(d) Tenant shall comply with all laws, rules, and orders of all federal, state, and municipal governments or agencies that may be applicable to use of the Premises.

(e) Tenant shall operate Tenant's business on the Premises with due diligence and efficiency. To this end, Tenant shall maintain the business hours and levels of personnel, and advertising that in Tenant's reasonable judgment is necessary to maximize use of the Premises as authorized by this Lease.

Section 6. Utilities

During the Term, Tenant shall pay, before delinquency, all charges or assessments for telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises.

Section 7. Taxes

(a) Subject to the terms of Section 7(d), Tenant shall pay to the public authorities charged with the collection on or before the last day on which payment may be made without penalty or interest, as additional rent, all taxes, permit, inspection, and license fees, and other public charges of whatever nature that are assessed against the Premises or arise because of the occupancy, use, or possession of the Premises (including but not limited to taxes on, or which shall be measured by, any rents or rental income, and taxes on personal property, whether of Landlord or Tenant), subsequent to the commencement of the Term, and all installments of assessments that are due during the Term.

(b) Landlord agrees to give appropriate written instructions to public authorities for taxes, assessments, and public charges payable by Tenant to make sure that statements and billings will be mailed directly by public authorities to Tenant at the address set forth in Section 26. Tenant shall deliver to Landlord, on demand, original receipts or photocopies evidencing payment of all taxes, assessments, and public charges payable by Tenant. If Tenant fails to pay taxes, assessments, and charges on or before the last day on which payment may be made without penalty or interest, other than as provided for in this Section 7, Landlord may, but shall not be obligated to, pay those taxes, assessments, or charges, together with interest and penalties. Any amounts that Landlord may pay pursuant to this provision, together with interest at the rate of ten percent (10%) per annum, shall be repaid to Landlord by Tenant on demand as additional rent.

Section 8. Condition of Premises

Tenant acknowledges that as of the date of this Lease, Tenant has inspected the Premises and all improvements on the Premises and that the Premises and improvements are in good order, repair, and condition. Tenant further acknowledges that she is leasing the Premises in an "AS-IS"/"WITH ALL FAULTS" CONDITION and that there is no express or implied warranty concerning the condition of the Premises nor is there any warranty of merchantability or representation regarding the Premises' fitness for any particular purpose.

Section 9. Repairs and Maintenance

(a) Tenant agrees, at Tenant's own expense, to keep the Premises in good condition and repair, and to deliver to Landlord physical possession of the Premises at the end of the Term in good condition and repair, reasonable wear and tear and use and loss by fire or other casualty or by earthquake or other act of God excepted. Landlord will not be called upon to perform or pay for any repairs or maintenance whatsoever.

(b) If at any time during the Term, Tenant fails to maintain the Premises or make any repairs or replacements as required by Section 9, Landlord may, but shall not be required to, enter the Premises and perform the maintenance or make the repairs or replacements for the account of Tenant; any sums expended by Landlord in so doing, together with interest at ten percent (10%) per annum, shall be deemed additional rent and shall be immediately due from Tenant on demand of Landlord.

(c) Tenant waives the provisions of Civil Code §§ 1941 and 1942 and any other law that would require Landlord to maintain the Premises in a tenantable condition or would provide Tenant with the right to make repairs and deduct the cost of those repairs from the rent.

Section 10. Alterations

(a) Tenant, at their sole cost, shall make alterations and improvements to the Premises, including, but not limited to, interior improvements, installation of signage, landscaping, in accordance with plans and specifications approved by Landlord. The Parties shall diligently pursue plan approval within 21 days of execution of this Lease. Tenant shall complete the improvements in accordance with the approved plans and specifications within 180 days of plan approval. Failure of the Tenant to complete the improvements, occupy the Premises and operate her business within said time shall constitute a breach of this Lease. All improvements, additions, alterations, and repairs shall be in accordance with applicable laws and at Tenant's own expense. Tenant will indemnify and defend Landlord for all liens, claims, or damages caused by remodeling, improvements, additions, alterations, and repairs. Landlord agrees, when requested by Tenant, to execute and deliver any applications, consents, or other instruments required to permit Tenant to do this work or to obtain permits for the work.

(b) Except as set forth in Section 10(a) and Section 15(a), all alterations and improvements made to the Premises shall become the property of Landlord and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this Lease, including any renewals or extensions.

(c) It shall be Tenant's duty to keep the Premises free and clear of all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Premises.

(d) Tenant will not at any time permit any mechanics', laborers', or materialmen's liens to stand against the Premises for any labor or material furnished to Tenant or

claimed to have been furnished to Tenant or Tenant's agents, contractors, or subtenants, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant

Section 11. Entry

Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Premises at all reasonable times and upon reasonable notice to inspect the Premises to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Premises under this Lease or to perform Landlord's duties under this Lease.

Section 12. Surrender of Premises; Holding Over

(a) On the Termination Date or the end of any extension or renewal of this Lease, Tenant shall promptly surrender and deliver the Premises to Landlord in as good condition as they are now at the date of this Lease, reasonable wear and tear excepted.
(b) Should Tenant hold over for any reason (excepting proper exercise of their option to purchase), it is agreed that in the absence of a written agreement to the contrary, that tenancy shall be from month-to-month only and not a renewal of this Lease, nor an extension for any further term. Tenant shall pay Monthly Rent in an amount equal to $1000.00 per month. The month-to-month tenancy shall be subject to every other term, covenant, and condition in this Lease that is consistent with and not contrary to a month-to-month tenancy.

Section 13. Indemnity

Tenant agrees to indemnify and defend Landlord from any claims, demands, and causes of action of any nature and any expense incident to the defense, for injury to or death of persons or loss of or damage to property occurring on or about the Premises that grow out of or are connected with Tenant's use and occupation of the Premises or the condition of the Premises.

Section 14. Insurance

(a) Tenant agrees at all times during the Term and during any extension, to maintain in force, at Tenant's sole cost and expense, insurance on the building and improvements that may be built or placed on the Premises, against the hazard of fire, with all standard extended coverage, including vandalism and malicious mischief, in an amount equal to

their full insurable value, with a replacement cost endorsement, excluding the cost of excavation and of foundation below the level of the lowest basement floor, or if there is no basement, below the level of the ground. Tenant further agrees that on the one year anniversary of this Lease, Tenant will review with the insurance companies issuing the insurance the costs of building, labor and materials, and other pertinent factors to determine whether the stipulated value of the building and improvements stated in the insurance is adequate. If the stipulated value is determined by the insurance companies to be inadequate, Tenant agrees to immediately adjust the aggregate amount of the insurance to the extent required to make the stipulated value adequate. Landlord agrees to cooperate fully with Tenant in making this determination for stipulated value. Tenant agrees to give prompt, written notification to Landlord as to the results of these periodic determinations for stipulated value

(b) Tenant agrees to procure and maintain comprehensive general liability insurance, including products and completed operations insurance, from a responsible insurance company authorized to do business in California, with a combined single limit of not less than $1,000,000.00 for injury or death to any person or damage to property and $2,000,000.00 aggregate for any claims, demands, or causes of action of any person arising out of accidents occurring on the Premises during the Term or arising out of Tenant's use of the Premises.

(c) Each policy of insurance shall be issued by a responsible insurance company authorized to do business in California, and shall be issued in the names of Landlord, Tenant. Tenant shall deliver a certificate for each insurance policy to Landlord with all relevant endorsements. Each policy of insurance shall be primary and noncontributory with any policies carried by Landlord and, to the extent obtainable, any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in forfeiture of insurance. Each insurance policy shall provide that a thirty (30) day notice of cancellation and of any material modification of coverage shall be given to all named insureds. The insurance coverage required under this Section may be carried by Tenant under a blanket policy insuring other locations of Tenant's business, provided that the Premises covered by this Lease are specifically identified as included under that policy. Tenant agrees that upon the failure to insure as provided in this Lease, or to pay the premiums in the insurance, Landlord may contract for the insurance and pay the premiums, and all sums expended by Landlord for the insurance shall be considered additional rent under this Lease and shall be immediately repayable by Tenant.

(d) So that the business of Tenant may continue with as little interruption as possible, Tenant shall, during the Term maintain at Tenant's own cost and expense, an insurance policy insuring against damage or destruction by fire, theft, or the elements for their full insurable value all fixtures and equipment and, to the extent possible, all merchandise that is on the Premises at any time during the Term or any renewal or extension.

(e) At all times during the Term and any extensions or renewals, Tenant agrees to keep and maintain, or cause Tenant's agents, contractors, or subcontractors to keep and maintain, workers' compensation insurance and other forms of insurance as may from time to time be required by law or may otherwise be necessary to protect Landlord and the Premises from claims of any person who may at any time work on the Premises, whether as a servant, agent, or employee of Tenant or otherwise. This insurance shall be

maintained at the expense of Tenant or Tenant's agents, contractors, or subcontractors and not at the expense of Landlord.

(f) Landlord agrees that it will tender and turn over to Tenant or to Tenant's insurers the defense of any claims, demands, or suits instituted, made, or brought against Landlord or against Landlord and Tenant jointly, within the scope of this Section. However, Landlord shall have the right to approve the selection of legal counsel, to the extent that selection is within Tenant's control, which approval shall not be unreasonably withheld or delayed. In addition, Landlord shall retain the right at Landlord's election to have Landlord's own legal counsel participate as co-counsel, to the extent that claims are made that may not be covered by Tenant's insurers.

Section 15. Trade Fixtures

(a) Tenant shall have the right, at any time and from time to time during the Term and any renewals or extensions, at Tenant's sole cost and expense, to install and affix on the Premises items for use in Tenant's trade or business, which Tenant, in Tenant's sole discretion, deems advisable (collectively "Trade Fixtures"). Trade Fixtures installed in the Premises by Tenant shall always remain the property of Tenant and may be removed at the expiration of the Term or any extension, provided that any damage to the Premises caused by the removal of the Trade Fixtures shall be repaired by Tenant, and further provided that Landlord shall have the right to keep any Trade Fixtures or to require Tenant to remove any Trade Fixtures that Tenant might otherwise elect to abandon.

(b) As security for Tenant's performance of obligations under this Lease, Tenant grants to Landlord a security interest in all Trade Fixtures owned by Tenant and now or later placed on the Premises by Tenant. Any right to remove the Trade Fixtures given Tenant by the provisions of Section 15(a) shall be exercisable only if, at the time of the removal, Tenant is not in default in performance of this Lease. Tenant may, however, at any time Tenant is not in default in performance of this Lease, trade in or replace any Trade Fixture, free of the security interest created by this section. This security interest will then attach to the item that replaced the previous Trade Fixture. Upon default under this Lease, Landlord shall immediately have as to the Trade Fixtures the remedies provided to a secured party under relevant sections of the California Uniform Commercial Code.

(c) Any Trade Fixtures that are not removed from the Premises by Tenant within thirty (30) days after the Termination Date shall be deemed abandoned by Tenant and shall automatically become the property of Landlord as owner of the real property to which they are affixed and not due to the lien provided to Landlord in Section 17(b).

Section 16. Signs

Tenant shall not place, maintain, nor permit on any exterior door, wall, or window of the Premises any sign, awning, canopy, marquee, or other advertising without the

express written consent of Landlord. Furthermore, Tenant shall not place any decoration, lettering, or advertising matter on the glass of any exterior show window of the Premises without the written approval of Landlord. If Landlord consents to any sign, awning, canopy, marquee, decoration, or advertising matter, Tenant shall maintain it in good appearance and repair at all times during this Lease. At the Termination Date, any of the items mentioned in this section that are not removed from the Premises by Tenant may, without damage or liability, be destroyed by Landlord.

Section 17. Damage and Destruction

(a) If the building or other improvements constructed on the Premises are damaged or destroyed, whether partially or entirely, by any cause, Tenant, at Tenant's own cost and expense, and utilizing the proceeds of insurance shall repair, restore, or reconstruct the damaged or destroyed building and other improvements so that the condition and quality of the new building and other improvements shall be as near as reasonably possible to the condition and quality immediately prior to the damage or destruction. Damage to or destruction of any portion of the building, fixtures, or other improvements on the Premises by fire, the elements, or any other cause shall not terminate this Lease or entitle Tenant to surrender the Premises or otherwise affect the respective obligations of the parties, any present or future law to the contrary notwithstanding. However, if the building, fixtures, or other improvements on the Premises are totally destroyed or damaged to the extent that the Premises is wholly unsuitable or inadequate for the purposes for which Tenant was using the Premises prior to the destruction or damage, all Monthly Rent shall abate effective the date of the destruction or damage. Further, if the building constructed on the Premises is damaged to the extent that the Premises is partially unsuitable or inadequate for the purposes for which Tenant was using the Premises prior to the damage, the Monthly Rent otherwise payable by Tenant shall be reduced effective the date of the damage so that the new Monthly Rent payable shall be an amount equivalent to the proportion of the Monthly Rent otherwise payable as the total floor area of the building still reasonably suitable for Tenant's use under this Lease bears to the total floor area of the building prior to the damage. Upon the completion by Tenant of a new building and other improvements after completion of their repair, restoration, or reconstruction, all partial or total abatement of rental shall cease and the full rental provided for in this Lease shall again be payable.

(b) If the Premises are damaged or destroyed in whole or in part, Tenant shall proceed with due diligence to have plans and specifications prepared and obtain approval by Landlord, which approval shall not be unreasonably withheld, to commence rebuilding, reconstruction, or restoration as promptly as possible after the occurrence of the event causing the damage or destruction, and thereafter to diligently complete the work. If Tenant does not proceed with due diligence and does not diligently finish the work, Landlord or any beneficiary under any deed of trust covering the Premises, if permitted by the deed of trust, may, but shall not be obligated to, enter the Premises and do whatever may be necessary for the rebuilding, recordation, repair, or restoration of any building or improvements damaged or destroyed.

(c) Before any contract or subcontract is let or other agreement executed for the performance of any service, or the furnishing of any materials, and before any work of any kind or nature is commenced upon the rebuilding, reconstruction, repair, or restoration, Tenant will procure and deliver to Landlord a completion bond or agreement in form satisfactory to Landlord issued by a reputable surety corporation or bonding corporation qualified to do business in California, guaranteeing or otherwise assuring Landlord that the reconstruction and repair of the building and improvements will proceed to completion with due diligence, that the reconstruction and repair, when completed, will be fully paid for, and that the Premises will remain free of all mechanics', laborers' or materialmen's liens or claimed liens on account of any services or materials furnished or labor or work performed in connection with the performance of the reconstruction and repair.

(d) Regardless of any contrary provisions in this Lease, if the building or other improvements to be constructed on the Premises or any substitute are damaged or destroyed by any cause to the extent of more than twenty-five percent (25%) of its insurable value during the last year of the Term, Tenant may, at Tenant's sole option, terminate this Lease within ninety (90) days of the damage or destruction by giving written notice to Landlord. In the event of termination, Tenant shall pay to Landlord all insurance proceeds, if any, received by Tenant as a result of the damage or destruction to the extent allocable to the building or other improvements owned by Landlord.

Section 18. Condemnation

(a) If, during the Term or any renewal or extension, the whole of the Premises shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of 12:01 a.m. of the date that actual physical possession of the Premises is taken, and after that, both Landlord and Tenant shall be released from all obligations under this Lease.

(b) If, during the Term only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable or adequate for the purposes for which Tenant was using the Premises prior to the taking, or if the Premises should become unsuitable or inadequate for those purposes by reason of the taking of any other property adjacent to or over the Premises pursuant to any condemnation proceeding, or if by reason of any law or ordinance the use of the Premises for the purposes specified in this Lease shall become unlawful, then and after the taking or after the occurrence of other described events, Tenant shall have the option to terminate, and the option can be exercised only after the taking or after the occurrence of other described events by Tenant giving ten (10) days' written notice to Landlord, and rent shall be paid only to the time when Tenant surrenders possession of the Premises. Without limiting the generality of the previous provision, it is agreed that in the event of a partial taking of the Premises pursuant to any condemnation proceeding, if the number of square feet of floor area in the portion remaining after the taking is less than eighty percent (80%) of the number of square feet of floor area at the commencement of the Term, Tenant shall, after the taking, have the option to terminate this Lease on ten (10) days' written notice to

Landlord, and rent shall be paid only to the time when Tenant surrenders possession of the Premises.

(c) If only a part of the Premises is taken pursuant to any condemnation proceeding under circumstances that Tenant does not have the option to terminate this Lease as provided in this Section, or having the option to terminate, Tenant elects not to terminate, then Landlord shall at Landlord's expense promptly proceed to restore the remainder of the Premises to a self-contained architectural unit, and the Monthly Rent payable shall be reduced effective the date of the taking to an amount that shall be in the same proportion to Monthly Rent payable prior to the taking, as the number of square feet of floor area remaining after the taking bears to the number of square feet of floor area immediately prior to the taking.

(d) If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to Tenant's unsalvageable Trade Fixtures.

Section 19. Assignment and Subletting

Without the written consent of Landlord, which may be given or withheld in Landlord's sole and unfettered discretion, Tenant shall not assign or sublease the Premises or any portion thereof.

Section 20. Default

Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by Tenant to pay any amount in full when it is due under the Lease;

(b) The failure by Tenant to perform any obligation under this Lease, which by its nature Tenant has no capacity to cure;

(c) The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of ten (10) days after Landlord demands in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Tenant may have a longer period as is necessary to cure the failure, but this is conditioned upon Tenant's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. Tenant shall indemnify and defend Landlord against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(d) Any of the following: A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary filing, petition, or application by Tenant under any law relating

to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Premises by Tenant without Landlord's prior written consent; or the dispossession of Tenant from the Premises (other than by Landlord) by process of law or otherwise;

(e) The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Tenant, or any general partner of Tenant if Tenant is a partnership, of

(i) a petition to have Tenant, or any partner of Tenant if Tenant is a partnership, declared bankrupt, or

(ii) a petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days;

(f) The abandonment of the Premises by Tenant.

Section 21. Remedies

Upon the occurrence of an Event of Default, Landlord, in addition to any other rights or remedies available to Landlord at law or in equity, shall have the right to

(a) terminate this Lease and all rights of Tenant under this Lease by giving Tenant written notice that this Lease is terminated, in which case Landlord may recover from Tenant the aggregate sum of

(i) the worth at the time of award of any unpaid rent that had been earned at the time of termination;

(ii) the worth at the time of award of the amount by which (A) the unpaid rent that would have been earned after termination until the time of award exceeds (B) the amount of the rental loss, if any, as Tenant affirmatively proves could have been reasonably avoided;

(iii) the worth at the time of award of the amount by which (A) the unpaid rent for the balance of the term after the time of award exceeds (B) the amount of rental loss, if any, as Tenant affirmatively proves could be reasonably avoided;

(iv) any other amount necessary to compensate Landlord for all the detriment caused by Tenant's failure to perform Tenant's obligations or that, in the ordinary course of things, would be likely to result from Tenant's failure; and

(v) all other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California law.

As used in clauses (i) and (ii) of Section 21(a), the worth at the time of award is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (iii) of Section 21(a), the worth at the time of award is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). As used in this Section, the term rent shall include Monthly Rent any other payments required by Tenant under this Lease.

(b) continue this Lease, and from time to time, without terminating this Lease, either

(i) recover all rent and other amounts payable as they become due or

(ii) relet the Premises or any part on behalf of Tenant on terms and at the rent that Landlord, in Landlord's sole discretion, may deem advisable, all with the right to make alterations and repairs to the Premises, at Tenant's cost, and apply the proceeds of reletting to the rent and other amounts payable by Tenant. To the extent that the rent and other amounts payable by Tenant under this Lease exceed the amount of the proceeds from reletting, the Landlord may recover the excess from Tenant as and when due.

(c) Upon the occurrence of an Event of Default, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises. Landlord may store the property removed from the Premises in a public warehouse or elsewhere at the expense and for the account of Tenant.

(d) None of the following remedial actions, alone or in combination, shall be construed as an election by Landlord to terminate this Lease unless Landlord has in fact given Tenant written notice that this Lease is terminated or unless a court of competent jurisdiction decrees termination of this Lease: any act by Landlord to maintain or preserve the Premises; any efforts by Landlord to relet the Premises; any re-entry, repossession, or reletting of the Premises; or any re-entry, repossession, or reletting of the Premises by Landlord pursuant to this Section. If Landlord takes any of the previous remedial actions without terminating this Lease, Landlord may nevertheless at any later time terminate this Lease by written notice to Tenant.

(e) If Landlord relets the Premises, Landlord shall apply the revenue from the reletting as follows: first, to the payment of any indebtedness other than rent due from Tenant to Landlord; second, to the payment of any cost of reletting, including without limitation finder's fees and leasing commissions; third, to the payment of the cost of any maintenance and repairs to the Premises; and fourth, to the payment of rent and other amounts due and unpaid under this Lease. Landlord shall hold and apply the residue, if any, to payment of future amounts payable under this Lease as the same may become due, and shall be entitled to retain the eventual balance with no liability to Tenant. If the

revenue from reletting during any month, after application pursuant to the previous provisions, is less than the sum of (i) Landlord's expenditures for the Premises during that month and (ii) the amounts due from Tenant during that month, Tenant shall pay the deficiency to Landlord immediately upon demand.

(f) After the occurrence of an Event of Default, Landlord, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event of Default for the account and at the expense of Tenant. However Landlord must by prior notice first allow Tenant a reasonable opportunity to cure, except in cases of emergency, where Landlord may proceed without prior notice to Tenant. Tenant shall, upon demand, immediately reimburse Landlord for all costs, including costs of settlements, defense, court costs, and attorney fees, that Landlord may incur in the course of any cure.

(g) No security or guaranty for the performance of Tenant's obligations that Landlord may now or later hold shall in any way constitute a bar or defense to any action initiated by Landlord for unlawful detainer or for the recovery of the Premises, for enforcement of any obligation of Tenant, or for the recovery of damages caused by a breach of this Lease by Tenant or by an Event of Default.

(h) Except where this is inconsistent with or contrary to any provisions of this Lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by a party of any violation or nonperformance by the other party of any obligations, agreements, or covenants under this Lease shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by either party to exercise a remedy for any violation or nonperformance by the other party be deemed a waiver by that party of the rights or remedies with respect to that violation or nonperformance.

Section 22. Waiver of Breach

Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of rent accepted.

Section 23. Estoppel Certificates

At any time, with at least fifteen (15) days' prior notice by Landlord, Tenant shall execute, acknowledge, and deliver to Landlord a certificate certifying:

(a) the Commencement Date and the Term;

(b) the amount of the Minimum Monthly Rent;

(c) the dates to which rent and other charges have been paid,;

(d) that this Lease is unmodified and in full force or, if there have been modifications, that this Lease is in full force, as modified, and stating the date and nature of each modification;

(e) that no notice has been received by Tenant of any default by Tenant that has not been cured except, if any exist, those defaults must be specified in the certificate, and Tenant must certify that no event has occurred that, but for the expiration of the applicable time period or the giving of notice or both, would constitute an Event of Default under this Lease;

(f) that no default of Landlord is claimed by Tenant, except, if any, those defaults must be specified in the certificate; and

(g) other matters as may be reasonably requested by Landlord.

Any certificate may be relied on by prospective purchasers, mortgagees, or beneficiaries under any deed of trust on the Premises or any part of it.

Section 24. Attorney Fees

If any action at law or in equity is brought to recover any rent or other sums under this Lease, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs reasonable attorney fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

Section 25. Authority

If Tenant is a corporation, trust, or general or limited partnership, all individuals executing this Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity. If Tenant is a corporation, trust, or partnership, Tenant shall, prior to the execution of this Lease, deliver to Landlord evidence of that authority and evidence of due formation, all satisfactory to Landlord. If Tenant is a partnership, Tenant shall furnish Landlord with a copy of Tenant's partnership

agreement and with a certificate from Tenant's attorney, stating that the partnership agreement constitutes a correct copy of the existing partnership agreement of Tenant.

Section 26. Notices

Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

Tenant: Pentagonal Brewing Company

Landlord: City of Imperial
420 South Imperial Avenue
Imperial, CA 92251

Either party, Tenant or Landlord, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

Section 27. Heirs and Successors

This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant.

Section 28. Partial Invalidity

Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease shall remain in effect, unimpaired by the holding.

Section
29. Entire Agreement

This instrument constitutes the sole agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, and the specified lease term, and correctly sets forth the obligations of Landlord and Tenant. Any agreement or representations respecting the Premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are void.

Section
30. Time of Essence

Time is of the essence in this Lease.

Section
31. Rent

All monetary obligations of Tenant to Landlord under the Lease shall be deemed rent.

Section
32. Amendments

This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

Section
33. Governing Law

This Lease shall be governed by and construed in accordance with California law.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD:

CITY OF IMPERIAL
By:

Date: _____

_____
Mark Gran, Mayor

By:

Date: _____

_____
Marlene Best, City Manager

Attest:

Form Approved by City Attorney

_____
Debra Jackson
City Clerk

_____
Dennis Morita
Attorney at Law

Date: _____

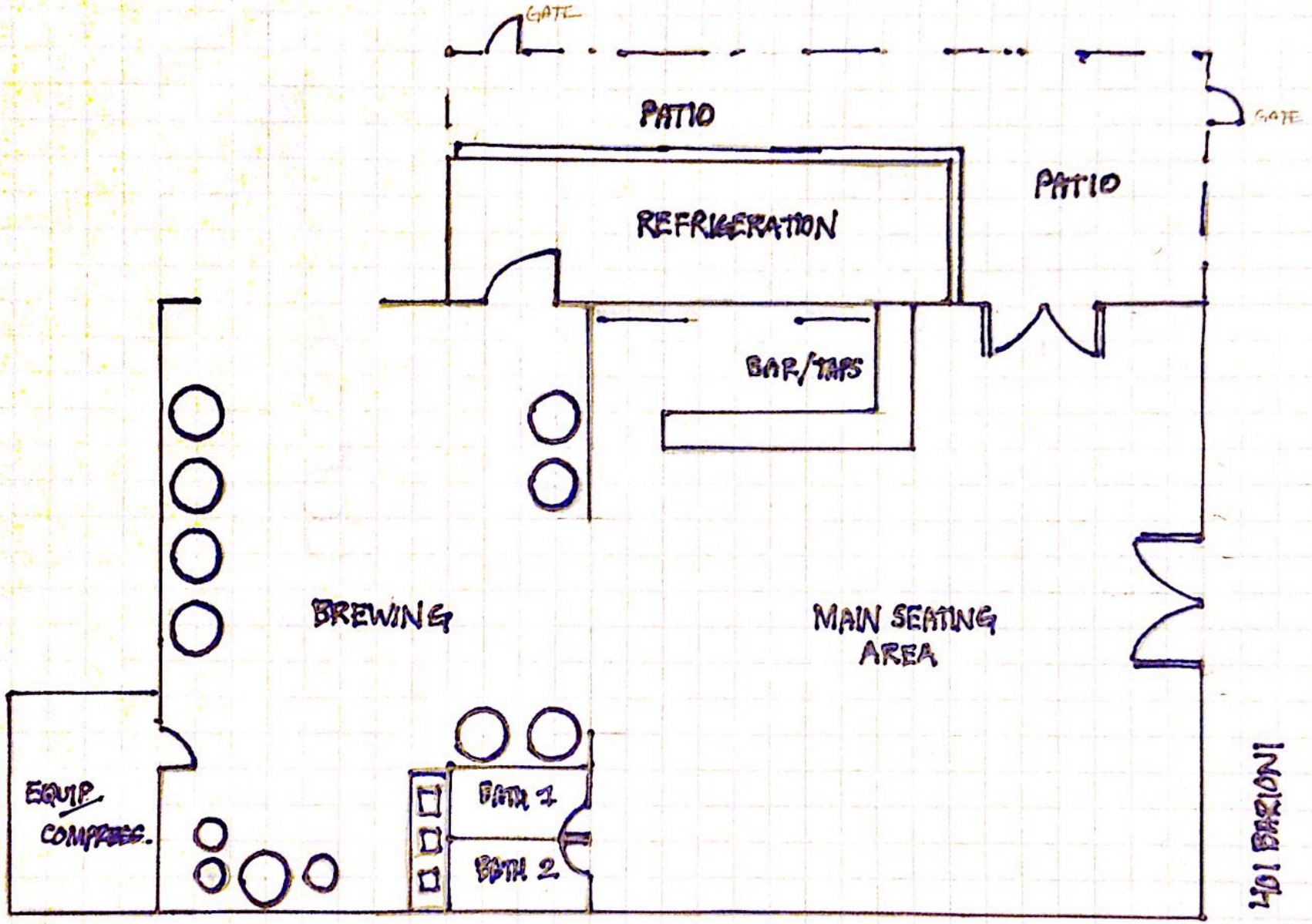
Date:_____

TENANT
By:

Date: _____

_____
Name

_____
Title



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