

San Diego Unified Port District

Meeting Agenda Board of Port Commissioners

Tuesday, September 10, 2024, 1:00 p.m.
Don L. Nay Port Administration Boardroom
3165 Pacific Hwy.
San Diego, CA 92101

The Board of Port Commissioners (Board) hereby provides notice that it will hold a regular meeting of the Board. It is possible that some of the Commissioners may attend the meeting and participate remotely to the same extent as if they were present in accordance with Assembly Bill 2449.

PUBLIC PARTICIPATION:

The public is welcome to attend in person, or alternatively:

Members of the public may view this meeting via livestream at:
<https://www.portofsandiego.org/about-port-san-diego/board-meetings>

PROVIDING PUBLIC COMMENT:

Public comment is limited to 2 minutes per speaker on both agenda, and non-agenda items. The time allotted for speakers may be adjusted by the Board Chair at his or her discretion. Items under the Consent Agenda section are considered to be routine, and will be acted upon with one vote. If you wish for an item to be removed from the Consent Agenda for further discussion, please submit your request to the District Clerk prior to the commencement of the meeting.

Public comment is available for this meeting by doing one of the following no later than the time the public comment portion for the agenda item is concluded, however the public is strongly encouraged to do so prior to the item being called:

In-Person Participation: Complete and submit a Speaker Slip and give to the District Clerk

Remote Participation:

1. Call 619-736-2155 and leave a brief voicemail message that will be played during the meeting. A voicemail longer than the time allotted for public comment on that item will be stopped after that time has elapsed.
2. Email a request to provide live comment to PublicRecords@portofsandiego.org to receive a link to participate in the meeting to provide live comments. *
3. Submit written comments to PublicRecords@portofsandiego.org. Written comments received at least 2 hours prior to the commencement of the meeting will be distributed to the Board and posted online with the meeting materials. Written comments received after the time frame will be included in the agenda-related materials record for the meeting.

* The Port of San Diego is not responsible for the member of the public's internet connections or technical ability to participate in the meeting. It is highly recommended that you use voicemail rather than provide live comment.

UNA TRANSMISIÓN EN INGLÉS Y EN ESPAÑOL DE LA REUNIÓN DE LA JUNTA ESTARÁ DISPONIBLE AL PÚBLICO A TRAVÉS DE UNA TRANSMISIÓN EN DIRECTO EN:

<https://www.portofsandiego.org/about-port-san-diego/board-meetings>

NOTA ESPECIAL PARA PARTICIPANTES DE COMENTARIOS PÚBLICOS:

Servicios de interpretación estarán disponibles durante la reunión para traducir comentarios públicos del español al inglés.

In keeping with the Americans with Disabilities Act (ADA), the San Diego Unified Port District will make every reasonable effort to encourage participation in all its public meetings. If you require assistance or auxiliary aids in order to participate at this public meeting, please contact the Office of the District Clerk at publicrecords@portofsandiego.org or (619) 686-6200 at least 48 hours prior to the meeting.

Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the San Diego Unified Port District to all or a majority of the Board of Port Commissioners, including those records distributed less than 72 hours prior to that meeting, but received at least 2 hours prior to meeting, can be viewed online at <https://www.portofsandiego.org/about-port-san-diego/board-meetings>, or are available for inspection at the Office of the District Clerk, 3165 Pacific Highway, San Diego, California during normal business hours.

For the agenda online and more information about the Commissioners' names and city representation, and future Board meeting dates, please visit our website at www.portofsandiego.org.

As a courtesy to all who attend these public meetings, please turn all cell phones to off or vibrate before entering the Board Room.

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- A. **Roll Call**
- B. **Statement (just cause) and/or Consideration of a Request to Participate Remotely (emergency circumstances) by a Commissioner, if applicable**
- C. **Pledge of Allegiance**
- D. **Special Order of the Day**
1. **Proclaiming Gratitude for California Senate President Pro Tempore Emeritus Toni G. Atkins, 2024-319**
- Resolution Proclaiming Gratitude for California Senate President Pro Tempore Emeritus Toni G. Atkins for Her Exemplary Service to the San Diego Region and the State of California.**
- E. **Closed Session Report Out**
- F. **Public Communications**
- Please limit comments to 2 minutes per speaker. No actions may be taken on these items.*
- G. **Board Committee Reports**
- Maritime Stakeholder Forum
- H. **Commissioners' Reports**
- No actions may be taken on these items.*
- I. **Special Recognition**
- Michelle White Awards
 - Hispanic Heritage Month
- J. **President's Report**
- K. **District Clerk's Announcements**
- L. **Approval of Minutes**
- October 4, 2023 - Draft Closed Session Meeting Minutes
August 13, 2024 - Draft Closed Session Meeting Minutes
August 13, 2024 - Draft BPC Meeting Minutes
- M. **Consent Agenda**

1. Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal, San Diego California, 2024-290

A)Resolution Adopting a First Addendum to the Final Mitigated Negative Declaration for the B Street Shore Power Project and Authorizing Staff to File a Notice of Determination.

B)Resolution Authorizing Issuance of Amendment No. 1 to the Non-Appealable Coastal Development Permit No. 2010-001 to the District for the B Street Shore Power Project.

C)Resolution Approving the Transfer of Funds Within the District FY 2025 Equipment Outlay and Other Capital Projects Appropriation, transferring \$512,610.00 from Contingency to bring the total project budget to \$1,232,273.00 for the Additional South Berth Shore Power Connection Point Project Pursuant to BPC Policy No. 90.

D)Resolution Approving Plans and Specifications and Awarding Contract No. 2023-24 to Universal Wiring Corp, in the Amount of \$463,500.00 for the Construction of Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal, as Budgeted in the FY 2025 Equipment Outlay and Other Capital Projects Appropriation.

2. 457(b) and 401(a) Plan Record Keeping and Administrative Services, 2024-347

Resolution Selecting and Authorizing a Service Agreement with Empower Retirement for 457(b) and 401(a) Plan Record Keeping and Administrative Services for the Period of January 1, 2025, Through December 31, 2029 for an Amount of 0.12% of Plan Assets. Funds for the Current Fiscal Year are Budgeted; All Funds Required for Future Fiscal Years Will be Budgeted in the Appropriate Fiscal Year, Subject to Board Approval Upon Adoption of Each Fiscal Year's Budget.

The Board will consider staff's request to continue this item to a future Board meeting.

3. Ordinance Establishing a Schedule of Compensation for all Officers and Employees of the San Diego Unified Port District for Salary Year 2024/2025, 2024-324

Ordinance Establishing a Schedule of Compensation for all Officers and Employees of the San Diego Unified Port District for Salary Year 2024/2025

4. Ordinance Granting Lease to NASSCO for, 2024-358

Ordinance Granting a 16-Year and Three-Month Lease to National Steel and Shipbuilding Company for the Lot 20 Temporary Mooring Location at 2798 Harbor Drive, San Diego

5. Establishing Board of Port Commissioners' Meeting Dates, 2024-342

Resolution Establishing the Board of Port Commissioners' Regular Meeting Dates for Calendar Year 2025

6. Memorandum Of Understanding with the Port of Ensenada for 20th Year Anniversary Sister Port Commemoration, 2024-350

Adopt a Resolution Authorizing a new Memorandum of Understanding with the Port of Ensenada to Commemorate the 20th Year Anniversary of the Sister Port Relationship Between the Port of Ensenada and the Port of San Diego and Update Areas of Collaboration and Cooperation

N. Action Agenda

1. Green Port Month, Year In Review, and MCAS Highlights Report, 2024-329

Informational Presentation Celebrating Green Port Month and Providing a Summary of the 2023-2024 Green Port Year in Review and the 2023-2024 Maritime Clean Air Strategy Highlights Report

O. Public Hearing Agenda

1. Ferry Landing Associates Restaurant Development, 2024-333

A) Conduct a Public Hearing and Adopt Resolution Authorizing Issuance of Amendment No. 2 of Appealable Coastal Development Permit 97-3 to Ferry Landing Associates LLC for the Ferry Landing Associates Second Restaurant Building Project at the Ferry Landing in Coronado.

B) Adopt an Ordinance Granting an Option to Lease Agreement to Ferry Landing Associates, LLC, which Option includes an Amended and Restated Lease, a Fifth Amendment to Lease, a Memorandum and Quitclaim Deed, and a Parking and Access Easement Agreement, and also Conditionally Approving a 20-year Long-Term Sublease with Island Times, LLC.

A) Conduct a public hearing and adopt a Resolution authorizing issuance of Amendment No. 2 of Appealable Coastal Development Permit 97-3 To Ferry Landing Associates LLC for the Ferry Landing Associates Second Restaurant Building Project at the Ferry Landing In Coronado.

B) Adopt an Ordinance granting an Option to Lease Agreement to Ferry Landing Associates, LLC, which Option includes an Amended and Restated Lease, a Fifth Amendment to Lease, a Memorandum and Quitclaim Deed, and a Parking and Access Easement Agreement, and also conditionally approving a Long-Term Sublease with Island Times, LLC.

P. Action Agenda Continued

1. Sheraton San Diego Hotel and Marina Preliminary Project Review for Ballroom Expansion, 2024-336

(A) Preliminary Project Review Presentation for Proposed Redevelopment and Expansion of the Ballroom and Outdoor Event Space at Sheraton San Diego Hotel and Marina Located at 1380 Harbor Island Drive in San Diego, California by SSD Holdings, LLC, a Delaware Limited Liability Company dba Sheraton San Diego Hotel and Marina Located at 1380 Harbor Island Drive in San Diego, California; and (B) Resolution Authorizing Staff to Commence Environmental Review in Accordance with the California Environmental Quality Act for the Proposed Project

2. MOU Between SDUPD and SD APCD, 2024-330

Presentation and Direction to Staff Regarding a Preliminary Memorandum of Understanding (MOU) Between the San Diego Unified Port District and the San Diego County Air Pollution Control District to Support Further Implementation of the Maritime Clean Air Strategy (MCAS) and Portside Community Emission Reduction Plan (CERP)

3. Zero Emission Truck Stop, 2024-322

A. Receive Preliminary Project Review Presentation and Project Update on the Proposed Zero Emission Truck Stop in National City Pursuant to Maritime Clean Air Strategy (MCAS) Truck Goal 2

B. Resolution Authorizing Staff to Commence Environmental Review in Accordance with the California Environmental Quality Act for the Development of a Zero Emission Truck Stop in National City

A. Receive preliminary project review presentation and project update on the proposed zero- emission truck stop; and

B. Adopt a Resolution authorizing staff to commence environmental review in accordance with the California Environmental Quality Act for the development of a zero-emission truck stop in National City

4. Review and Consideration of Draft Proposed Board Agenda for the October 8, 2024 Meeting, 2024-331

Q. Consent Agenda Continued

1. Amending the Board of Port Commissioners' October Meeting Date, 2024-369

Adopt a Resolution Amending the Board of Port Commissioners' October 2024 Regular Meeting Date to October 15, 2024

R. Officer's Report

MONTHLY NOTIFICATION OF CHANGE ORDERS PURSUANT TO BPC POLICY NO. 110:

A.) Change Order No. 1 to Contract No. 2024-08 with Cement Cutting, Inc. - 30 Calendar Day Time Extension thru 09-05-2024

MONTHLY NOTIFICATION OF COST RECOVERY USER FEE WAIVERS GRANTED BY THE EXECUTIVE DIRECTOR PURSUANT TO BPC POLICY NO. 106:

A.) Request for User Fee Waiver Form from Skychargers, LLC for Predevelopment Activities for Truck Stop, for total amount \$2,350.00

B.) Request for User Fee Waiver Form from San Diego Bay Aquaculture, LLC for TUOP for FLUPSY Pilot Project, for total amount \$1,100.00

MONTHLY NOTIFICATION OF RENT REVIEWS CONSENTED TO ADMINISTRATIVELY PURSUANT TO BPC POLICY NO. 355 AS AMENDED ON JANUARY 10, 2017:

None to Report

MONTHLY NOTIFICATION OF ENCUMBRANCES CONSENTED TO ADMINISTRATIVELY PURSUANT TO BPC POLICY NO. 355 AS AMENDED ON JANUARY 10, 2017:

None to Report

MONTHLY NOTIFICATION OF LEASE AMENDMENTS CONSENTED TO ADMINISTRATIVELY PURSUANT TO BPC POLICY NO. 355 AS AMENDED ON JANUARY 10, 2017:

A.) Amendment No. 4 to Lease (#51460) with Pier 32 Marina Group, LLC - Amends Sections 2 & 18 Related to Boat Slip Renting and Conformance with Laws

B.) Amendment No. 6 to Lease (#52127) with Point Loma Marina, LLC - Amends Sections 2 & 18 Related to Boat Slip Renting and Conformance with Laws

FILE NUMBER: 2024-319

DATE: Tuesday, September 10, 2024

SUBJECT: Proclaiming Gratitude for California Senate President Pro Tempore Emeritus Toni G. Atkins

DESCRIPTION: Resolution Proclaiming Gratitude for California Senate President Pro Tempore Emeritus Toni G. Atkins for Her Exemplary Service to the San Diego Region and the State of California.

EXECUTIVE SUMMARY:

This resolution would proclaim gratitude for California Senate President pro Tempore Emeritus Toni G. Atkins for her exemplary service to the San Diego Region and the State of California.

RECOMMENDATION:

Adopt resolution.

FISCAL IMPACT:

There is no fiscal impact caused by approval of this action.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- Not applicable.

DISCUSSION:

This leadership of Senate President pro Tempore Emeritus Toni G. Atkins has left an indelible mark on the greater San Diego region and California as a whole. In partnership with the District, Pro Tempore Emeritus has advanced faithful stewardship of the Tidelands Trust and enabled the District to fulfill its mission through her support, courage, and dedication to the Tidelands and the public it benefits.

Staff recommends the District adopt the attached resolution in honor of the Pro Tempore Emeritus and celebration of her legacy of public service.

General Counsel's Comments:

The Office of the General Counsel has reviewed the agenda sheet and attachment, as presented to it, and approves the same as to form and legality.

Environmental Review:

The proposed Board action, including without limitation a proclamation of gratitude for California Senate President Pro Tempore Emeritus Toni G. Atkins for her exemplary service to the San Diego Region and the State of California, does not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because there is not a potential to result in a direct or indirect physical change in the environment. Therefore, the proposed Board action is not subject to CEQA and no further action under CEQA is required.

The proposed Board item complies with Section 21 and 35 of the Port Act, which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or an exclusion finding is not required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

David Yow
Legislative Policy Administrator, Government and Civic Relations

Attachment(s):

Attachment A: Resolution

Attachment A to Agenda File No. 2024-319

RESOLUTION PROCLAIMING GRATITUDE FOR CALIFORNIA SENATE PRESIDENT PRO TEMPORE TONI G. ATKINS FOR HER EXEMPLARY SERVICE TO THE SAN DIEGO REGION AND THE STATE OF CALIFORNIA

WHEREAS, Senate President pro Tempore Toni G. Atkins, born in rural southwestern Virginia to a miner and a seamstress, earned a bachelor's degree in Political Science from Emory & Henry College in Virginia, and in 1985, she relocated to San Diego, California, to assist in caring for her sister's young son while her sister served in the U.S. Navy; and

WHEREAS, in San Diego, before entering public service, Atkins worked as an aide to San Diego City Councilmember and LGBT pioneer Christine Kehoe;

WHEREAS, in 2000, Atkins was elected to succeed Kehoe as the representative for the council's District 3 and served as interim Mayor of San Diego; and

WHEREAS, in 2010, Atkins was elected to the California Assembly, where she served for six years and was chosen by her colleagues as Speaker, becoming the first openly LGBTQ person and San Diegan to hold the position; and

WHEREAS, elected in 2016 to represent the 39th District in the California Senate, Atkins became the first woman and openly LGBTQ person to serve as Senate President pro Tempore, continuing her advocacy for women's rights, LGBTQ rights, climate action, and affordable housing; and

WHEREAS, Atkins is the first person in 150 years, and the third in California's history, to lead both houses of the California State Legislature; and

WHEREAS, among her many legislative accomplishments, she authored legislation that protected the Otay, Sweetwater, and Tijuana Rivers and their watersheds; supported the local fishing industry through the establishment of a dockside fish market; streamlined the management of tide and submerged lands within the San Diego Bay by transferring ownership from the State Lands Commission to the Port of San Diego; directed sea level rise planning, policies, and activities; established defined targets and accountability to ensure California reaches its goal of achieving 100 percent renewable energy use by 2045; and played a key role in securing emergency COVID relief funds used to protect critical infrastructure and essential employees of San Diego Unified Port District (District), boosting the region's economic recovery and enabling the District to continue fulfilling its public-serving mission.

NOW, therefore, be it proclaimed that the District Board of Port Commissioners fully extends to Senate President pro Tempore Toni G. Atkins all due recognition for her many exceptional achievements and salutes her for her decades of exemplary service to the people of San Diego region and to the State of California.

DRAFT

RESOLUTION 20xx-xxx

**RESOLUTION PROCLAIMING GRATITUDE FOR
CALIFORNIA SENATE PRESIDENT PRO TEMPORE
EMERITUS TONI G. ATKINS FOR HER
EXEMPLARY SERVICE TO THE SAN DIEGO
REGION AND THE STATE OF CALIFORNIA**

WHEREAS, the San Diego Unified Port District (“District”) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (“Port Act”); and

WHEREAS, Section 21 of the Port Act allows the Board of Port Commissioners (“BPC”) to pass all necessary resolutions for the regulation of the District; and

WHEREAS, Senate President pro Tempore Emeritus Toni G. Atkins (“Atkins”), born in rural southwestern Virginia to a miner and a seamstress, earned a bachelor's degree in Political Science from Emory & Henry College in Virginia, and in 1985, she relocated to San Diego, California, to assist in caring for her sister's young son while her sister served in the U.S. Navy; and

WHEREAS, in San Diego, before entering public service, Atkins worked as an aide to San Diego City Councilmember and LGBT pioneer Christine Kehoe; and

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WHEREAS, Atkins is the first person in 150 years, and the third in California's history, to lead both houses of the California State Legislature; and

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watersheds; supported the local fishing industry through the establishment of a dockside fish market; streamlined the management of tide and submerged lands within the San Diego Bay by transferring ownership from the State Lands Commission to the Port of San Diego; directed sea level rise planning, policies, and activities; established defined targets and accountability to ensure California reaches its goal of achieving 100 percent renewable energy use by 2045; and played a key role in securing emergency COVID relief funds used to protect critical infrastructure and essential employees of the District, boosting the region's economic recovery and enabling the District to continue fulfilling its public-serving mission.

NOW, therefore, be it proclaimed that the District Board of Port Commissioners fully extends to Senate President pro Tempore Emeritus Toni G. Atkins all due recognition for her many exceptional achievements and salutes her for her decades of exemplary service to the people of San Diego region and to the State of California.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:



San Diego Unified Port District

Special Meeting Minutes

Board of Port Commissioners

Wednesday, October 4, 2023

10:00 AM

Don L. Nay Port Administration Boardroom

Closed Session

A. Roll Call.

Present: 6 - Chair Rafael Castellanos, Commissioner Dan Malcolm, Commissioner Ann Moore, Commissioner Danielle Moore, Commissioner Frank Urtasun, and Commissioner Michael Zucchet

Excused: 0

Absent: 0

Recused: 1 - Commissioner Sandy Naranjo

Officers Present: Coniglio, Gomez, Medina, Morales, and Yeilding

B. Statement (just cause) and/or Consideration of a Request to Participate Remotely (emergency circumstances) by a Commissioner, if applicable

No requests were received.

C. Public Communications.

The following member(s) of the public addressed the Board with non agenda-related comments: None

CLOSED SESSION

Rebecca Harrington, Assistant General Counsel, announced the Closed Session items as follows:

1. [2023-0251](#) Closed Session Item No. 1

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation Government Code Section 54956.9(d)(2)

Two (2) cases

No reportable action was taken on this item.

*Secretary, Board of Port Commissioners
San Diego Unified Port District*

ATTEST:

Clerk of the San Diego Unified Port District

San Diego Unified Port District
Special Meeting Minutes
Board of Port Commissioners

August 13, 2024, 10:00 a.m.
Don L. Nay Port Administration Boardroom
3165 Pacific Hwy.
San Diego, CA 92101

Commissioners Present: Ann Moore, Dan Malcolm, GilAnthony Ungab, Danielle Moore, Frank Urtasun, Sid Voorakkara, Michael Zucchet

Officers Present: Officers Present: Coniglio, Largent, Medina, Morales, Yeilding

A. Roll Call

Commissioner Ann Moore was excused until she arrived.

B. Statement (just cause) and/or Consideration of a Request to Participate Remotely (emergency circumstances) by a Commissioner, if applicable

Commissioner Dan Malcolm participated remotely under emergency circumstances Brown Act rules due to a family medical emergency.

Moved: Frank Urtasun
Seconded: Michael Zucchet
Results: Passed

C. Public Communications

The following member(s) of the public addressed the Board with non agenda-related comments: None.

D. CLOSED SESSION

Rebecca Harrington, Assistant General Counsel, announced the Closed Session items as follows:

1. Closed Session Item No. 1

CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION
Pursuant to Subdivision (d)(4) of Government Code Section 54956.9

One (1) case

No reportable action was taken on this item.

2. Closed Session Item No. 2

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Subdivision (d)(1) of Government Code Section 54956.9

Trudy Johnson v. San Diego Unified Port District
Superior Court of California, County of San Diego
Case No. 37-2023-00015934-CU-PO-CTL

No reportable action was taken on this item.

3. Closed Session Item No. 3

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Subdivision (d)(1) of Government Code Section 54956.9

Leah Frank v. San Diego Unified Port District
Superior Court of California, County of San Diego
Case No. 37-2024-00025830-CU-PO-CTL

No reportable action was taken on this item.

4. Closed Session Item No. 4

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Subdivision (d)(1) of Government Code Section 54956.9

William Frank v. San Diego Unified Port District
Superior Court of California, County of San Diego
Case No. 37-2024-00028257-CU-PO-CTL

No reportable action was taken on this item.

5. Closed Session No. 5

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Subdivision (d)(1) of Government Code Section 54956.9

Emily Jones v. San Diego Unified Port District
Superior Court of California, County of San Diego
Case No. 37-2023-00044078-CU-PO-CTL

No reportable action was taken on this item.

6. Closed Session Item No. 6

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 146,070 square feet of tideland area located at
1220 Pacific Highway in the City of San Diego, California

Negotiating Parties: LPP Lane Field, LLC – Rob Lankford, Derek White,
Alex Guyott

SDUPD – Anthony Gordon, Adam Meyer, James Hammel

Under Negotiations: Price and Terms

No reportable action was taken on this item.

7. Closed Session Item No. 7

CONFERENCE WITH LABOR NEGOTIATORS

Government Code Section 54957.6

Agency Designated Representatives: Randa Coniglio, Elba Gomez,
Michelle Corbin

Employee Organizations:

- California Teamsters, Public Professional & Medical Employees Union Local 911, Service, Maintenance, Operations and Crafts Unit
- California Teamsters, Public Professional & Medical Employees Union Local 911, Non-Sworn Safety Personnel Unit
- California Teamsters, Public Professional & Medical Employees Union Local 911, Supervisory Unit
- All Units Unrepresented Employees: All Classifications

No reportable action was taken on this item.

8. Closed Session Item No. 8

PERSONNEL EVALUATION

EXECUTIVE DIRECTOR/PRESIDENT/CHIEF EXECUTIVE OFFICER

Government Code Section 54957

No reportable action was taken on this item.

9. Closed Session Item No. 9

PERSONNEL EVALUATION

GENERAL COUNSEL

Government Code Section 54957

No reportable action was taken on this item.

10. Closed Session Item No. 10

PERSONNEL EVALUATION

PORT AUDITOR

Government Code Section 54957

No reportable action was taken on this item.

11. Closed Session Item No. 11

CONFERENCE WITH LABOR NEGOTIATORS

Government Code Section 54957.6

Agency Designated Representatives: Randa Coniglio, Elba Gomez,
Michelle Corbin

Employee Organization:

- San Diego Harbor Police Officers Association

No reportable action was taken on this item.

12. Closed Session Item No. 12

PUBLIC EMPLOYMENT
RECRUITMENT/APPOINTMENT OF EXECUTIVE
DIRECTOR/PRESIDENT/CHIEF EXECUTIVE OFFICER
Government Code Section 54957(B)

No reportable action was taken on this item.

Secretary, Board of Port
Commissioners

San Diego Unified Port District

Clerk of the San Diego Unified Port
District

**San Diego Unified Port District
Meeting Minutes
Board of Port Commissioners**

**August 13, 2024, 1:00 p.m.
Don L. Nay Port Administration Boardroom
3165 Pacific Hwy.
San Diego, CA 92101**

Commissioners Present: Sid Voorakkara, Ann Moore, Danielle Moore, Frank Urtasun, Michael Zucchet, GilAnthony Ungab

Commissioners Excused: Dan Malcolm

Officers Present: Coniglio, Largent, Medina, Morales, Yeilding

A. Roll Call

B. Statement (just cause) and/or Consideration of a Request to Participate Remotely (emergency circumstances) by a Commissioner, if applicable

No requests were received.

C. Pledge of Allegiance

Commissioner Voorakkara led the pledge of allegiance.

D. Closed Session Report Out

Rebecca Harrington, Assistant General Counsel, announced that the Board considered items on the Closed Session Agenda. Ms. Harrington stated that no reportable action was taken.

E. Public Communications

The following member(s) of the public addressed the Board with non agenda-related comments: Katheryn Rhodes.

F. Board Committee Reports

Commissioner Ungab provided a report on the Accessibility Advisory Committee (AAC) meeting held on July 18, 2024. Commissioner Ungab explained that the purpose of the committee is to assist the Board with access, American with Disabilities Act (ADA) compliance, and championing universal design. The committee met with Top Golf and gave feedback on the preliminary design of

their project with emphasis on the need for open space for restroom entrances and lower top seating arrangements for accessibility.

G. Commissioners' Reports

Commissioner Danielle Moore announced that she participated with members of the Port's Executive Leadership Group for General Services Work Day. Commissioner Moore shared that she was hosted by Mike Hastings, Lead Carpenter, who has been at the Port for over two decades and shared his expertise about his experience working at the Port in many different departments. Commissioner Moore explained that there are 82 technicians, each who specialize in one of 19 different trades and disciplines, auto mechanics, electricians, plumbers and painters. They work around the tidelands day and night, 365 days a year and maintain all 34 miles of waterfront for 5 sister cities and more than 20 locations for daily trash and litter cleanup. They maintain over 275 vehicles, including all of the Harbor Police's fleet and the brand new all electric mobile harbor cranes and they also support over 150 cruise calls. They are highly skilled and experienced and help keep every aspect of the tidelands functional. Commissioner Moore also spoke about the 20 Guest Experiences technicians who maintain the 22 Port parks which include 3,903 trees. Commissioner Moore concluded her report by saying that the people who work in General Services and Guest Experiences deserve praise for all of the hard work they do to keep the Port beautiful and a place that we love working at and coming back to.

H. Special Recognition

None

I. President's Report

Randa Coniglio, Acting President/Chief Executive Officer announced the return of CPR/AED/1st Aid training for Port staff. Ms. Coniglio shared that the Port's Safety Team has upgraded the AEDs throughout the Port and refreshed training with new trainer AEDs and adult and infant mannequins. The Electricians and the General Services teams were the first to go through training in July.

Ms. Coniglio shared that on July 25, 2024, the Port hosted Maggie Fried, Vice President of Corporate Development and Audre Kapacinskas, Principle, Corporate Development from S2G Ventures which is a multi-stage investment firm focused on venture and growth stage businesses across food, agriculture, oceans and energy. Jason Giffen, Vice President, Planning and Environment, Paula Sylvania, Program Director, Aquaculture and Blue Tech Team, and Renee Yarmy, Program Director, Maritime, had an opportunity to share some of the exciting work we are doing especially around decarbonization and sustainability. The Port will continue to engage with S2G Ventures and continue conversations on possible funding opportunities.

Ms. Coniglio announced that on July 30, 2024, staff from the Planning and Climate & Sustainability departments in collaboration with the California Air

Resources Board, CALSTART, TEC Equipment, and truck manufacturers, hosted a Zero Emission Truck Outreach Event at the Tenth Avenue Marine Terminal. The purpose of the event was to educate the trucking community about zero emission trucks, funding opportunities to help procure these vehicles and provide the trucking community with resources to prepare for the future of freight transportation.

Lastly, Ms. Coniglio reported that on August 7, 2024, the San Diego County Air Pollution Control District (SDAPCD) successfully installed the air monitoring sensor on the Port's restroom building at the Imperial Beach Pier Plaza. Up to six sensors overall will be deployed in and around the Tijuana River Valley, this will be so SDAPCD can detect odor-causing air pollutants coming from the Tijuana River and Tijuana River Valley and to collect air pollution data. Ms. Coniglio also stated that SDAPCD received a Tidelands Use and Occupancy Permit (TUOP) for a term of approximately 4 years for the purpose of scientific research and instrumentation deployment.

J. District Clerk's Announcements

Donna Morales, District Clerk, announced that additional agenda-related materials were received by the Board after publication of the agenda for the following items: Item N3. - File 2024-335 and Item N5. 2024-327.

Ms. Morales also announced that staff requests that the Board consider the following items be continued to a future Board meeting: Item L2 - File 2024-334 and Item N5 - File 2024-327.

On a motion made by: Michael Zucchet

Seconded by: Sid Voorakkara

Yeas (6): Sid Voorakkara, Ann Moore, Danielle Moore, Frank Urtasun, Michael Zucchet, and GilAnthony Ungab

Excused (1): Dan Malcolm

Passed (6 to 0)

K. Approval of Minutes

March 12, 2024 - Draft Closed Session Meeting Minutes

March 12, 2024 - Draft BPC Meeting Minutes

June 18, 2024 - Draft Closed Session Meeting Minutes

June 18, 2024 - Draft BPC Meeting Minutes

July 02, 2024 - Draft Closed Session Meeting Minutes

July 09, 2024 - Draft Closed Session Meeting Minutes

July 09, 2024 - Draft BPC Meeting Minutes

On a motion made by: Michael Zucchet

Seconded by: Sid Voorakkara

Yeas (5): Sid Voorakkara, Ann Moore, Danielle Moore, Frank Urtasun, and Michael Zucchet

Abstained (1): GilAnthony Ungab

Excused (1): Dan Malcolm

Passed (5 to 0)

L. Consent Agenda

Items 1, 2 and 4 - 9

On a motion made by: Frank Urtasun

Seconded by: GilAnthony Ungab

Yeas (6): Sid Voorakkara, Ann Moore, Danielle Moore, Frank Urtasun, Michael Zucchet, and GilAnthony Ungab

Excused (1): Dan Malcolm

Passed (6 to 0)

1. Authorizing Captain Brian Vanderspek as a San Diego Harbor Pilot, 2024-264

Resolution Authorizing Captain Brian Vanderspek as a U.S. Coast Guard Licensed San Diego Harbor Pilot to Perform Piloting Services for the Navigation of Vessels Entering, Leaving, and Shifting Within San Diego Bay.

On a motion made by Chairman Urtasun seconded by Commissioner Ungab, the Board adopted Resolution 2024-069 as part of the Consent agenda.

2. Chula Vista Bayfront Harbor Park Single-Source Agreement for Design, 2024-334

Resolution Authorizing a Single Source Agreement with Petersen Studio for Design Services Related to Harbor Park Phase 1 in an Amount not to Exceed \$2,656,568.00. Funds for This Design Agreement for This Fiscal Year are Budgeted Within the FY 2024-2025 Equipment Outlay and Other Capital Program Appropriation as Authorized by the Board.

The Board will consider staff's request to continue this item to a future Board meeting.

This item was continued to a future Board meeting.

3. San Diego Gas & Electric Easement at Belt Street, 2024-307

Ordinance (1) Finding the Board Action Exempt Under the California Environmental Quality Act (CEQA), Including Without Limitation CEQA Guidelines Sections 15301, 15302, 15303, and 15304; and (2) Granting a Nine (9) Year and Eleven (11) Month Easement to San Diego Gas & Electric for the Installation, Operation, and Maintenance of Underground and Aboveground Electrical Facilities to Service Bae Systems San Diego Ship Repair, in the City of San Diego, California

Chairman Urtasun, due to stock ownership in SDG&E, recused himself from this item and did not participate.

On a motion made by Commissioner Zucchet seconded by Commissioner A. Moore, the Board adopted Ordinance 3133 as part of the Consent agenda.

On a motion made by: Michael Zucchet
Seconded by: Ann Moore

Yeas (5): Sid Voorakkara, Ann Moore, Danielle Moore, Michael Zucchet, and GilAnthony Ungab

Abstained (1): Frank Urtasun

Excused (1): Dan Malcolm

Passed (5 to 0)

4. Amendment No. 2 for Full-Service HVAC System Maintenance and Repair Services., 2024-309

Resolution Authorizing Amendment No. 2 With Countywide Mechanical Systems, Inc, for Full-Service HVAC System Maintenance and Repair Services at District Facilities from January 1, 2023, to June 30, 2026, in an Amount not to Exceed \$1,640,000. Funds for Fiscal Year 2025 Have Been Budgeted in the Amount of \$230,261. All Funds Required for Future Fiscal Years Will be Budgeted in the Appropriate Fiscal Year, Subject to Board Approval Upon Adoption of Each Fiscal Year's Budget.

On a motion made by Chairman Urtasun seconded by Commissioner Ungab, the Board adopted Resolution 2024-070 as part of the Consent agenda.

5. Purchase Order with Carahsoft Technology Corporation for DocuSign Licensing and Premier Support., 2024-291

Award Purchase Order with Carahsoft Technology Corporation for DocuSign Licensing and Premier Support Services for the Amount of \$170,334.41 for Fiscal Year 2025 and a Five-Year Total Cost of Ownership not to Exceed \$999,283.95. Expenditures for FY2025 are Budgeted. Funds Required for Future Fiscal Years will be Budgeted

in the Appropriate Fiscal Year, Subject to Board Approval Upon Adoption of Each Fiscal Year's Budget.

On a motion made by Chairman Urtasun seconded by Commissioner Ungab, the Board adopted Resolution 2024-071 as part of the Consent agenda.

**6. Directory of Classification Specifications for Fiscal Year 2024/2025
Resolution Amending the San Diego Unified Port District (District) Directory of Classification Specifications for Fiscal Year 2024/2025**

On a motion made by Chairman Urtasun seconded by Commissioner Ungab, the Board adopted Resolution 2024-072 as part of the Consent agenda.

7. Amended and Restated Exclusive Negotiating Agreement with 1HWY1, LLC, 2024-328

Resolution Authorizing Amended and Restated Exclusive Negotiating Agreement Between the San Diego Unified Port District and 1HWY1, LLC

The following member(s) of the public addressed the Board with agenda-related comments: Katheryn Rhodes.

On a motion made by Chairman Urtasun seconded by Commissioner Ungab, the Board adopted Resolution 2024-073 as part of the Consent agenda.

8. Continuance of a Local Emergency – Caulerpa Prolifera, 2024-312

Adopt a Resolution Proclaiming the Continuance of a Local Emergency Due to the Presence of an Invasive Algae Caulerpa Prolifera

On a motion made by Chairman Urtasun seconded by Commissioner Ungab, the Board adopted Resolution 2024-074 as part of the Consent agenda.

9. Continuance of a Local Emergency – Tijuana River Valley Pollution Crisis, 2024-317

Adopt a Resolution Proclaiming the Continuance of a Local Emergency Relating to the On-Going Tijuana River Valley Transboundary Pollution Crisis

The following member(s) of the public addressed the Board with agenda-related comments: Katheryn Rhodes.

On a motion made by Chairman Urtasun seconded by Commissioner Ungab, the Board adopted Resolution 2024-075 as part of the Consent agenda.

M. Public Hearing Agenda

1. Update to Unified Port District Code Article 8, Section 8.02 to add Sweetwater Park in Chula Vista, 2024-296

Sweetwater Park in Chula Vista: Conduct a Public Hearing and Adopt an Ordinance Amending San Diego Unified Port District Code Article 8, Section 8.02 – Park Areas Regulated, to Add Sweetwater Park in Chula Vista, as a Passive Park.

Larry Hofreiter, Director, Parks & Recreation, joined by Damon Braden, Capital Project Manager, Engineering-Construction, Assistant Chief Jeff Geary, Harbor Police Department, and Jacqueline Godoy, Deputy General Counsel IV, Office of the General Counsel, addressed the Board with staff's report and presentation regarding Agenda Item M1 - File No. 2024-296 (A copy of the staff report, presentations and any agenda-related materials are on file with the Office of the District Clerk).

A public hearing was held.

The following member(s) of the public addressed the Board with agenda-related comments: None.

Chairman Urtasun and Commissioner Ann Moore provided comments.

On a motion made by Commissioner Ann Moore seconded by Commissioner Danielle Moore, the Board adopted Ordinance 3134 as part of the Consent agenda.

On a motion made by: Ann Moore
Seconded by: Danielle Moore

Yeas (6): Sid Voorakkara, Ann Moore, Danielle Moore, Frank Urtasun, Michael Zucchet, and GilAnthony Ungab

Excused (1): Dan Malcolm

Passed (6 to 0)

N. Action Agenda

1. District Offices Update, 2024-298

Presentation and Overview of District Office Buildings, Including Harbor Police Headquarters, Port Administration Building and Maritime Offices, Discussion of Long-Term Strategies to Accommodate District Office Needs, and Direction to Staff.

Tony Gordon, Assistant Vice President, Real Estate, joined by Christian de Manielle, Department Manager, Real Estate, Joel Valenzuela, Director, Maritime, Assistant Chief Jeff Geary, Harbor Police Department, and David Jones, Deputy General Counsel IV, Office of the General Counsel,

addressed the Board with staff's report and presentation regarding Agenda Item N1 - File No. 2024-298 (A copy of the staff report, presentations and any agenda-related materials are on file with the Office of the District Clerk).

The following member(s) of the public addressed the Board with agenda-related comments: Katheryn Rhodes.

Commissioner Zucchet, Chairman Urtasun, Commissioner Ann Moore, Commissioner Danielle Moore, Commissioner Voorakkara, and Commissioner Ungab provided comments and asked clarifying questions. Tracy Largent, Chief Financial Officer / Treasurer, Job Nelson, Assistant Vice President, Strategy and Policy, and Assistant Chief Jeff Geary responded.

2. Presentation on 2024 Employee Engagement Survey Results, 2024-318

Presentation on 2024 Employee Engagement Survey Results

Michael Brown, Assistant Vice President, Marketing and Communications, joined by Tina Ngo Bartel, Consultant, Meaningful Analytics, Michelle Corbin, Director, People Services, Elba Gomez, Vice President, Administration, and Sara Zare, Manager, People Services, addressed the Board with staff's report and presentation regarding Agenda Item N2 - File No. 2024-318 (A copy of the staff report, presentations and any agenda-related materials are on file with the Office of the District Clerk).

The following member(s) of the public addressed the Board with agenda-related comments: None.

Commissioner Voorakkara, Commissioner Danielle Moore, Commissioner Zucchet and Chairman Urtasun provided comments and asked clarifying questions. Tina Ngo Bartel and Elba Gomez responded.

3. Presentation and Update on Assembly Bill 2783, and Direction to Staff., 2024-335

Job Nelson, Assistant Vice President, Strategy and Policy, addressed the Board with staff's report and presentation regarding Agenda Item N2 - File No. 2024-335 (A copy of the staff report, presentations and any agenda-related materials are on file with the Office of the District Clerk).

The following member(s) of the public addressed the Board with agenda-related comments: Katheryn Rhodes, and Sharon Cloward, President, San Diego Working Waterfront.

Chairman Urtasun and Commissioner Zucchet provided comments.

Commissioner Zucchet made a motion to supports staff's recommendation and remove the Port's opposition to the bill. Chairman Urtasun seconded the motion.

On a motion made by: Michael Zucchet
Seconded by: Frank Urtasun

Yeas (6): Sid Voorakkara, Ann Moore, Danielle Moore, Frank Urtasun, Michael Zucchet, and GilAnthony Ungab

Excused (1): Dan Malcolm

Passed (6 to 0)

4. Review and Consideration of Draft Proposed Board Agenda for the September 10, 2024 Meeting, 2024-321

On a motion made by: Danielle Moore
Seconded by: GilAnthony Ungab

Yeas (6): Sid Voorakkara, Ann Moore, Danielle Moore, Frank Urtasun, Michael Zucchet, and GilAnthony Ungab

Excused (1): Dan Malcolm

Passed (6 to 0)

5. Zero Emission Truck Stop), 2024-327

Presentation and Project Update on the Proposed Zero Emission Truck Stop in National City Pursuant to Maritime Clean Air Strategy (MCAS) Truck Goal 2

The Board will consider staff's request to continue this item to a future Board meeting.

This item was continued to a future Board meeting.

O. Officer's Report

MONTHLY NOTIFICATION OF CHANGE ORDERS PURSUANT TO BPC POLICY NO. 110:

A) Change Order No. 1 to Contract No. 2024-11 with Hardware Solutions, LLC – 62 Calendar Day Time Extension thru 08-31-2024

B) Change Order No. 2 to Contract No. 2020-25 with Shimmick Construction Company, Inc – Increase Contract Amount by \$266,211.17

C) Change Order No. 3 to Contract No. 2020-25 with Shimmick Construction Company, Inc. - Increase Contract Amount by \$139,322.57

D) Change Order No. 2 to Contract No. 2023-09 with Schindler Elevator Corporation - 90 Calendar Day Time Extension thru 10-12-2024

E) Change Order No. 4 to Contract No. 2021-12 with 3-D Enterprises, Inc. - Increases Contract Amount by \$72,390.74 & 16 Calendar Day Time Extension thru 10-14-2024

F) Change Order No. 2 to Contract No. 2022-03 with The Ryan Company, Inc. dba The Ryan Company Incorporated - Increases Contract Amount by \$406,727.00 & 30 Calendar Day Time Extension thru 01-16-2025

G) Change Order No. 3 to Contract No. 2022-01R with AMG Demolition and Environmental Service, Inc. - Increases Contract Amount by \$17,842.66

MONTHLY NOTIFICATION OF COST RECOVERY USER FEE WAIVERS GRANTED BY THE EXECUTIVE DIRECTOR PURSUANT TO BPC POLICY NO. 106:

A) Request for User Fee Waiver Form from City of San Diego, Parsons Corporation for Geotech-Potholing for Water Rehabilitation Project, for total amount \$2,350.00

MONTHLY NOTIFICATION OF RENT REVIEWS CONSENTED TO ADMINISTRATIVELY PURSUANT TO BPC POLICY NO. 355 AS AMENDED ON JANUARY 10, 2017:

A) Rent Review with Maritime Museum Association of San Diego for Rental Period Beginning 07-01-2024 thru 06-30-2034

MONTHLY NOTIFICATION OF ENCUMBRANCES CONSENTED TO ADMINISTRATIVELY PURSUANT TO BPC POLICY NO. 355 AS AMENDED ON JANUARY 10, 2017:

None

MONTHLY NOTIFICATION OF LEASE AMENDMENTS CONSENTED TO ADMINISTRATIVELY PURSUANT TO BPC POLICY NO. 355 AS AMENDED ON JANUARY 10, 2017:

A) Amendment No. 2 to Lease (#73289) with Hamptons Newport Beach, LLC dba Shorebird - Amends Sections Related to Annual Percentage Rent, Rent Deferral, Tenant Improvement Allowance, and Extends Termination Option thru 09-30-2029

B) Amendment No. 8 to Lease (#72126) with United States of America, General Services Administration (GSA) on Behalf of the United States Coast Guard - Increases Scope of Work Amount for Water Quality Testing by \$4,468.50

Secretary, Board of Port
Commissioners
San Diego Unified Port District

Clerk of the San Diego Unified Port
District

FILE NUMBER: 2024-290

DATE: Tuesday, September 10, 2024

SUBJECT: Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal, San Diego California

DESCRIPTION:

A) Resolution Adopting a First Addendum to the Final Mitigated Negative Declaration for the B Street Shore Power Project and Authorizing Staff to File a Notice of Determination.

B) Resolution Authorizing Issuance of Amendment No. 1 to the Non-Appealable Coastal Development Permit No. 2010-001 to the District for the B Street Shore Power Project.

C) Resolution Approving the Transfer of Funds Within the District FY 2025 Equipment Outlay and Other Capital Projects Appropriation, transferring \$512,610.00 from Contingency to bring the total project budget to \$1,232,273.00 for the Additional South Berth Shore Power Connection Point Project Pursuant to BPC Policy No. 90.

D) Resolution Approving Plans and Specifications and Awarding Contract No. 2023-24 to Universal Wiring Corp, in the Amount of \$463,500.00 for the Construction of Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal, as Budgeted in the FY 2025 Equipment Outlay and Other Capital Projects Appropriation.

EXECUTIVE SUMMARY:

The San Diego Unified Port District (District) is advancing its commitment to environmental sustainability and operational efficiency through a strategic expansion of its shore power infrastructure. In response to the varied power connection needs of cruise ships, the District recommends the addition of a new shore power connection point at the B Street Cruise Ship Terminal's southern berth (Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal Project [proposed Project]).

The proposed Project advances electrification efforts to meet the California Air Resources Board's (CARB) At-Berth Regulation. It implements Oceangoing Vessel Objective 2A of the District's Maritime Clean Air Strategy (MCAS), improving air quality by significantly reducing Diesel Particulate Matter emission from ships-at-berth.

The construction contract was advertised on July 15, 2024. Construction bids were opened on August 14, 2024. Four bidders responded with bids ranging from \$463,500 to \$1,305,801. The lowest responsive and responsible bid was received from Universal Wiring Corp in the amount of \$463,500.00. The Engineer's construction cost estimate was \$500,000.00. To fund this construction contract and contingency, additional funds are

needed. The additional funds are recommended from FY2025 Contingency appropriation in the amount of \$512,610.00.

A Final Mitigated Negative Declaration (Final MND) for the B Street Shore Power Project (previous Project) (SCH #2009111064; Resolution No. 2010-07; Clerk Document No. 69487) was adopted by the Board of Port Commissioners (Board) on January 5, 2010. A First Addendum to the Final MND, dated September 2024 (Addendum [Attachment A]), has been prepared to analyze the proposed Project and to document that none of the conditions in CEQA Guidelines Section 15162, triggering preparation of a subsequent MND, have occurred. The District finds that there are no substantial changes in the project, nor substantial changes with respect to circumstances under which the project is undertaken, nor new information of substantial importance that shows any new or more severe environmental impacts or any substantially different mitigation measures than were previously identified and adopted. The Final MND and Addendum were provided to the Board via a Board Memorandum dated September 5, 2024.

On January 5, 2010, the Board also authorized the issuance of a non-appealable Coastal Development Permit (CDP) CDP-2010-001 to the District for the B Street Shore Power Project (Resolution No. 2010-08; Clerk Document No. 55970) and is provided as Attachment B to this agenda sheet. An amendment to CDP-2010-001 has been prepared in accordance with the District's Coastal Development Permit Regulations (Attachment C). The proposed Project, as conditioned, is consistent with the certified Port Master Plan (PMP) and applicable sections of Chapter 3 and Chapter 8 of the Coastal Act.

RECOMMENDATION:

A) Resolution adopting a First Addendum to the Final MND for the B Street Shore Power Project and authorizing staff to file a Notice of Determination; and

B) Resolution authorizing Amendment No. 1 to the non-appealable CDP No. 2010-001 to the District for the B Street Shore Power Project; and

C) Resolution approving the transfer of funds within the District FY 2025 Equipment Outlay and Other Capital Projects appropriation, transferring \$512,610.00 from Contingency to bring the total project budget to \$1,232,273.00 for the Additional South Berth Shore Power Connection Point Project pursuant to BPC Policy No.90; and

D) Resolution approving plans and specifications and awarding Contract No. 2023-24 to Universal Wiring Corp in the amount of \$463,500.00 for construction of the Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal as authorized by the Board in the FY 2025 Equipment Outlay and Other Capital Projects (OCP) appropriation

FISCAL IMPACT:

There is no fiscal impact caused by the approval of this action.

Funds for the proposed Project are budgeted in the FY 2025 Equipment Outlay and OCP for \$400,000.00.

Additionally, funds from the FY2025 Equipment Outlay and Other Capital Contingency appropriation will supplement the remaining necessary funds to complete the proposed Project. The Contingency has an FY2025 budget of \$870,000.00. Of those OCP funds, \$512,610.00 will be used to complete the proposed Project.

In addition, approval of this agenda item will authorize the expenditure of the construction bid and allow a 20% construction contingency pursuant to Board Policy No.110 for a revised recommended budget of \$912,610.00.

The projected funding sources are summarized in the table below:

Source	Amount
Additional Shore Power Connection Point at CST – FY2025 (OCP)	\$400,000.00
Contingency – FY2025 (OCP)	\$512,610.00
Total	\$912,610.00

The cost and budget are summarized in the table below:

Cost and Budget Summary Table			
Fiscal Year	2024	2025	Totals
Budget**	\$ 1,000,000.00	\$400,000.00	-
Commitments*	\$676,273.00	\$356,609.72	-
Expended	\$319,663.28	-	-
Remaining	\$680,336.72	-	-
Construction Contract	-	\$463,500.00	-
Construction Contingency (~20%)	-	\$92,500.00	-
Total Recommended Budget	-	\$912,610.00	-
Shortfall	-	-	\$232,273.00
Total Project Cost	-	-	\$1,232,273.00

* The Board authorized a sole source equipment purchase and service agreement with Watts Marine, LLC (Resolution No. 2023-108, Clerk Document No. 76181). The not-to-exceed amount is \$676,273.00 with a remaining FY24 carryover amount of \$356,609.72.

**The FY 2024 budget initially allocated \$1,000,000.00. Of this, \$676,273.00 was committed to the Equipment Procurement (PO) & Service and Installation, with \$319,663.28 spent in FY 2024. The remaining balance of \$680,336.72 from FY 2024 was not carried forward to FY 2025. For FY 2025, \$400,000 was budgeted. The overall project shortfall amount is \$232,273 beyond the original \$1,000,000 budget.

Approval of this agenda item will authorize the expenditure of \$463,500.00.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port with a healthy and sustainable bay and its environment.

DISCUSSION:

Background

In December 2007, the California Air Resources Board (CARB) implemented the At-Berth Regulation, a pivotal step to curb emissions from ships while docked. This regulation mandated the installation of shore power infrastructure or other emission reduction technologies, enabling vessels to power down their diesel engines during berthing. To comply with the CARB At-Berth Regulation, shore power infrastructure at District facilities were required to be operational and accommodate 50% of all cruise ship calls in 2014 and increasing to 80% of all cruise ship calls by 2020.

In response, the Board took proactive measures. On January 5, 2010, the Board adopted the Final MND for the B Street Shore Power Project (previous Project) (SCH #2009111064; Resolution No. 2010-07; Clerk Document No. 69487). At that time, the Board also authorized the issuance of a non-appealable CDP No. 2010-001 to the District for the B Street Shore Power Project, by Resolution No. 2010-08 (Clerk Document No. 55970). The Final MND addressed the proposed modifications necessary to install shore power equipment at B Street Pier and Broadway Pier Cruise Ship Terminals (CST) so that cruise ships berthing at B Street Pier or Broadway Pier can use electrical power from the shore rather than their engines while at berth. The previous Project allowed for three berths to be equipped with shore power equipment (north and south of B Street Pier and north of Broadway Pier). However, only two berths can provide shore power concurrently, because the south berth at B Street CST and north berth at Broadway CST are connected to the same electrical substation. Power was provided in two phases. Phase 1 was completed in 2011 and marked the establishment of the first connection points on the western ends of the northern and southern berth at B Street CST. Subsequently, Phase Two was completed in 2022, completing the previous Project and establishing shore power at Broadway CST.

In 2020, CARB updated the At-Berth Regulation which requires all cruise ships calling into San Diego to connect to shore power by January 1, 2023, with several exceptions. To continue to align with CARB's stringent At-Berth Regulation and create flexibility for both starboard and port-side vessels, the District proposes the installation of an alternate shore power receptacle at the southern berth of B Street CST.

Additional South Berth Shore Power Connection Project

The proposed Project underscores the dynamic nature of cruise ship needs. Vessels often feature power connection points on both starboard and port sides. This new initiative addresses this variability by introducing an additional connection point. Specifically, it enables ships with starboard connections to access shore power at the southern berth's eastern location.

More specifically, the proposed Project includes the installation of one (1) shore power ground switch; approximately 80 linear feet of under-deck conduit; and, shore power outlet equipment as well as pulling conductors through approximately 750 linear feet of previously constructed duct bank along the south berth and the newly built under-deck conduit. Best Management Practices (BMPs) would be implemented for the below deck work to ensure materials and equipment do not enter San Diego Bay.

Upon Board authorization, construction is expected to begin in October 2024 and be completed by January 2025.

The proposed Project will not result in an increase in capacity and would not enable more than two ships to be connected to shore power, as originally analyzed by the adopted Final MND.

The project advances electrification efforts to continue to meet the CARB's At-Berth Regulation and implements Oceangoing Vessel Objective 2A of the District's MCAS, improving air quality by significantly reducing Diesel Particulate Matter emission from ships-at-berth.

CDP Amendment

The proposed material Amendment No. 1 to non-appealable CDP-2010-001 as described above is necessary to implement the proposed Project, which would enhance the original shore power infrastructure authorized and constructed as part of CDP-2010-001. The proposed amendment to CDP-2010-001 would also update the "Standard Provisions" and "Special Provisions" to reflect current permit language and regulations.

In accordance with Section 14.d. of the District CDP Regulations, the Development Services Director determined that an amendment to CDP-2010-001 is necessary and that the proposed amendment would be a material change due to the nature and extent of the proposed changes. The District CDP Regulations require material amendments to be considered by the Board, along with the consideration of consistency with the Port Master Plan (PMP).

The proposed Project is located in the Civic Zone Subarea of Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified PMP. The land use designations are Marine Terminal, Commercial Recreation, Park/Plaza, and Promenade. The proposed Project will improve the existing shore power system by allowing vessels with starboard connections to access shore power at the southern berth at B Street Pier CST. The existing shore power system is consistent with the land use designation, no other uses are proposed, and existing uses such as the promenade will continue. Therefore, the proposed Project is consistent with the certified land use designations and the certified PMP.

The Project, as conditioned, is fully consistent with California Coastal Act Chapter 8 and Sections 30604(c), 30210-30224, and the public access and recreation policies referenced therein. District staff recommends the Board authorize issuance of Amendment No. 1 to non-appealable CDP-2010-001 to implement the proposed Project.

A copy of the draft amendment to CDP-2010-001 is provided as Attachment C, and a copy of CDP-2010-001 is provided as Attachment B to this agenda sheet.

Conclusion and Recommendation

The proposed Project would enhance existing shore power infrastructure by creating flexibility for cruise ships with either starboard or portside connections to connect to shore power on the eastern or western end of the south berth at B Street Pier CST.

Staff recommends the Board adopt a First Addendum to the Final MND, authorize the issuance of Amendment No. 1 to the non-appealable CDP No. 2010-001 to the District for the B Street Shore Power Project, approve plans and specifications, and award Contract No. 2024-23. There are no substantial changes in the project, nor substantial changes with respect to the circumstances under which the project is undertaken, nor new information of substantial importance resulting in new or more severe environmental impacts or any considerably different mitigation measures than were previously identified.

The construction contract was advertised on July 15, 2024. Construction bids opened on August 14, 2024. Four (4) bidders responded with bids ranging from \$463,500 to \$1,305,801.18. The bids are listed in the following table:

VBID	Vendor	Vendor Type	Bid Amount
390272	Universal Wiring Corp	MBE, HIS, MAL	\$463,500.00
389587	Ace Electric Inc	CADIR, CCR, Local	\$765,900.00
389395	The Ryan Company, Inc.		\$787,650.00
388982	Michels Pacific Energy	CADIR	\$1,305,801.18

Based on the review of bids, the lowest responsive and responsible bid was submitted by the Universal Wiring Corp in the amount of \$463,500.00. The Engineer's construction cost estimate was \$500,000.00.

General Counsel's Comments:

The Office of the General Counsel has reviewed this staff report and the attachments as presented to it and approves them as to form and legality.

Environmental Review:

In accordance with CEQA, a Final MND for the B Street Shore Power Project (previous Project) was adopted by the Board on January 5, 2010, by Resolution No. 2010-07 (SCH #2009111064; Clerk Document No. 69487). The Final MND addressed the proposed modifications necessary to install shore power equipment at B Street Pier and Broadway Pier CSTs so that cruise ships berthing at B Street Pier or Broadway Pier can use electrical power from the shore rather than their own engines while at berth.

The District has determined that the adopted Final MND has continuing informational value with respect to the proposed Project and that none of the conditions in CEQA

Guidelines Section 15162, requiring preparation of a subsequent or supplemental MND or Environmental Impact Report, have occurred. In accordance with Section 15164, a First Addendum to the Final MND has been prepared as: 1) no substantial changes are proposed to the Project; 2) no substantial changes have occurred with respect to the circumstances under which the Project is undertaken that require major revisions to the MND due to the involvement of new significant environmental effects or a substantial increase in severity of previously identified significant effects; and 3) no new information of substantial importance has come to light that (a) shows the Project will have one or more significant effects not discussed in the MND, (b) identifies significant impacts would be substantially more severe than those analyzed in the MND, (c) shows that mitigation measures or alternatives previously found not to be feasible are now feasible and would reduce significant impacts, or (d) shows that mitigation measures or alternatives which are considerably different from those analyzed in the adopted MND would substantially reduce one or more significant effects on the environment. If the Board approves any discretionary action to carry out the proposed Project, staff will file a Notice of Determination pursuant to CEQA Guidelines Section 15094.

The Final MND for the B Street Shore Power Project and the First Addendum to the Final MND for the Additional South Berth Shore Power Connection Point at B Street Cruise Ship Terminal Project were provided to the Board via a Board Memorandum dated September 5, 2024. The Final MND and First Addendum to the Final MND can be accessed on the District's website at:

<<https://www.portofsandiego.org/public-records/port-updates/notices-disclosures/ceqa-documents>>.

The proposed Board actions comply with Section 87 of the Port Act, which allows for all visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The proposed Board actions conform with the Coastal Act process. If the Board authorizes the issuance of Amendment No. 1 to CDP-2010-001, the Coastal Act review would be complete for the proposed Project and the CDP Amendment would be issued as soon as possible after the Board action, in accordance with the District's Coastal Development Permit Regulations.

Diversity, Equity, and Inclusion Program:

Due to limited known subcontracting opportunities, no SBE goal was established for this contract.

PREPARED BY:

Jesus Puebla
Capital Project Manager, Engineering-Construction

Lillian Mattes
Associate Planner, Development Services

Attachment(s):

- Attachment A: Draft First Addendum to the Final Mitigated Negative Declaration for the B Street Shore Power Project
- Attachment B: Coastal Development Permit No. 2010-001 for the B Street Shore Power Project
- Attachment C: Draft Amendment No. 1 to Coastal Development Permit No. 2010-001 for the B Street Shore Power Project

SAN DIEGO UNIFIED PORT DISTRICT

MEMORANDUM

Date: September 5, 2024

To: Board of Port Commissioners

Via: Anthony Gordon
Acting Vice President, Business Operations
agordon@portofsandiego.org

Wileen C. Manaois
Director, Development Services
wmanaois@portofsandiego.org

From: Lillian Mattes
Associate Planner, Development Services
lmattes@portofsandiego.org

Subject: Agenda-Related Materials – CEQA Documents for “Additional South Berth Shore Power Connection Point at B Street Cruise Ship Terminal Project” (Agenda File No. 2024-290)

The purpose of this memorandum is to provide the Board with the California Environmental Quality Act (CEQA) documents for the “Additional South Berth Shore Power Connection Point at B Street Cruise Ship Terminal Project” that will be considered by the Board at its September 10, 2024 meeting (Agenda File No. 2024-290).

The CEQA Documents associated with the project are as follows:

- Final Mitigated Negative Declaration (Final MND) for the “B Street Shore Power Project” (SCH #2009111064; Clerk Document No. 69487)
- First Addendum to the Final MND for the “Additional South Berth Shore Power Connection Point at B Street Cruise Ship Terminal Project,” dated September 2024

These documents are available for download on the District’s website at: <https://www.portofsandiego.org/public-records/port-updates/notices-disclosures/ceqa-documents>.

The District proposes to install an alternative shore power connection point on the eastern end of the southern berth of the B Street Pier Cruise Ship Terminal (proposed Project). The proposed Project will enable vessels with starboard connections access to shore power. The proposed Project would include installation of one shore power ground switch,

Subject: Agenda-Related Materials – CEQA Documents for “Additional South Berth Shore Power Connection Point at B Street Cruise Ship Terminal Project” (Agenda File No. 2024-290)

approximately 80 linear feet of under-deck conduit, and sawtooth shore power outlet equipment, as well as pulling conductors through approximately 750 linear feet of previously constructed duct bank along the south berth and the newly constructed under-deck conduit. Construction of the proposed Project is anticipated to begin in approximately October 2024 and occur over the course of four months.

At the September 10, 2024 Board meeting, staff will request that the Board adopt the First Addendum to the Final MND for the proposed Project, authorize issuance of a material amendment to non-appealable Coastal Development Permit 2010-001, approve transfer of funds, and, approve plans and specifications and award Contract No. 2023-24.

If you have any questions, please contact Lillian Mattes at (619) 686-8200 or via email at lmattes@portofsandiego.org or Wileen Manaois at (619) 686-6282 or via email at wmanaois@portofsandiego.org.

Attachment A to Agenda File No. 2024-290

ADDENDUM

FINAL MITIGATED NEGATIVE DECLARATION

(SCH #2009111064)

B STREET SHORE POWER PROJECT



September 2024

**San Diego Unified Port District
3165 Pacific Highway
San Diego, California 92101**

ADDENDUM

to

FINAL MITIGATED NEGATIVE DECLARATION B STREET SHORE POWER PROJECT

(SCH #2009111064)

for

ADDITIONAL SOUTH BERTH SHORE POWER CONNECTION POINT AT B STREET CRUISE SHIP TERMINAL PROJECT

1.0 INTRODUCTION

PREVIOUS PROJECT AND ADOPTED MND

The Final Mitigated Negative Declaration (MND) for the B Street Shore Power Project (previous Project) was adopted by the Board of Port Commissioners (Board) on January 5, 2010, by Resolution No. 2010-07, Clerk Document No. 69487. At that time, the Board also authorized issuance of a Non-Appealable Coastal Development Permit (CDP) No. 2010-001, by Resolution No. 2010-08. The MND addressed the proposed modifications necessary to install shore power equipment at B Street Pier and Broadway Pier Cruise Ship Terminals (CST) so that cruise ships berthing at B Street Pier or Broadway Pier can use electrical power from the shore rather than their own engines while at berth. The Project allowed for three berths to be equipped with shore power equipment (north and south of B Street Pier and north of Broadway Pier). Power was to be provided in two phases. Phase 1 of the Project provided shore power to one cruise ship at a time for ships berthed at either B Street Pier or at Broadway Pier. Phase 2 of the Project provided shore power simultaneously to two cruise ships, regardless of which of the three berths the ships are docked. The MND identified three cruise ships that typically docked at B Street Pier and Broadway Pier CSTs which were shore power capable - the Dawn Princess, Oosterdam, and Westerdam. Based on the number of visits by these three ships, the previous Project anticipated that there would be approximately 51 vessel visits per year that would connect to shore power compared to a total of approximately 257 vessel visits per year by 33 different cruise ships. The previous Project considered a shore power capable ship as a vessel that contains on-board systems and connections that can be connected to dock-side power systems. As additional ships become shore power capable, the previous Project allowed for capable ships to use shore power and further reduce emissions.

The previous Project, as analyzed and constructed, generally consists of the following improvements on B Street Pier, Broadway Pier, as well as off the piers:

B Street Pier

There are two existing berths at B Street Pier, commonly referred to as the northern and southern berths. The previous Project allowed for shore power capable cruise ships to obtain power from the shore through flexible electrical cables, which were provided and installed by San Diego Gas &

Electric (SDG&E). In general, the B Street CST Shore Power System included shore power electrical equipment, automation and operational software infrastructure at B Street Pier including meters, breakers, relays, two ground switches (one for each berth), capacitors, transformers, control panels, cables, cable conduits, approximately 12-foot-tall jib cranes for cable management and support, concrete mounting pads, fencing, and other ancillary improvements.

Broadway Pier

Several modifications at Broadway Pier were made to allow for cruise ships to connect to shore power. In general, improvements at Broadway Pier were limited to minor cable and equipment installation to connect to the SDG&E Station B Substation and electrical infrastructure located at the eastern end of B Street Pier. One ground switch and a power cable winch were installed on the north berth of Broadway Pier to connect to electrical conduits and cables running through the existing CST Building. The Project also included a 12-foot-tall jib crane on Broadway Pier for cable management. Cruise ship calls are limited to the northern berth on Broadway Pier.

Electrical Improvements

The cables transmitting electricity between the piers are located in conduits hanging from the underside of the wharf along Harbor Drive. The cables installed by SDG&E are located in buried conduits running along Broadway Street and continuing along Harbor Drive. All electrical cables and conduits are connected to the electrical infrastructure located at the eastern end of B Street Pier which connects to the SDG&E Station B Substation, which is located west of Kettner Boulevard and southeast of E Street. The primary electrical equipment necessary to connect a cruise ship to shore power, including the transformers and related equipment, required an approximately 2,100 square foot equipment pad area to serve one ship at any time at any of the three berths (Phase 1). The electrical equipment required to serve two ships at a time at any of the three berths increased the equipment pad area to approximately 3,600 square feet (Phase 2). A safety perimeter barrier was constructed around the electrical equipment, located between the existing security fence and main distribution equipment area, as mitigation to potentially significant noise impacts identified during the analysis of the previous Project.

Following approval of the previous Project by the Board, construction of Phase 1 commenced and was partially completed in 2011, since no improvements were made at Broadway Pier. Phase 2 of the previous Project commenced in 2021 and was completed in 2022 which brought the District into compliance with the 2020 CARB At-Berth Regulation, requiring all shore power capable cruise ships calling to San Diego to use shore power while at berth as of January 1, 2023.

CURRENT PROPOSED PROJECT

The District, as the Project Proponent and Lead Agency pursuant to CEQA Guidelines Section 21067, proposes to install an alternative shore power connection point on the eastern end of the southern berth of the B Street Pier CST (Additional South Berth Shore Power Connection Point at B Street Cruise Ship Terminal Project [proposed Project]). The proposed Project will enable vessels with starboard connections to access shore power at the southern berth's eastern end. The current shore power infrastructure at B Street Pier and Broadway Pier only allows for vessels with a portside connection to utilize shore power while docked at the south berth at B Street Pier. Since completion of Phase 2 of the previous Project, it was noted that additional flexibility was needed to accommodate two cruise ships with starboard connectivity simultaneously.

To enhance the existing shore power infrastructure to allow vessels with starboard connections to access shore power at the southern berth at B Street Pier CST, the proposed Project would consist of the following improvements:

Installation of Shore Power Equipment:

- Installation of one (1) shore power ground switch.

- Installation of approximately 80 linear feet of under-deck conduit.
- Installation of saw-tooth shore power outlet assembly.
- Construction activities include procurement of materials, wire pulling and terminating conductors, securing equipment to the pier deck, testing, programming, and commissioning new equipment with the existing shore power system.

Conductor Placement:

- Use of reels and mechanized pulling for conductor placement within the existing conduit duct bank and new under-deck conduit channel.
- Pull conductors through the previously constructed duct bank along the south berth (approximately 750 linear feet).
- Implementation of Best Management Practices (BMPs) for below deck work to ensure materials and equipment do not enter the San Diego Bay.

Laydown Area

- Designate an approximately 50 feet by 50 feet laydown area.
- Implementation of BMPs for perimeter controls.

Construction of the proposed Project is anticipated to begin in approximately Fall 2024 and occur over the course of four months.

The proposed Project will not result in an increase in capacity and would not enable more than two ships to be connected to shore power, as originally analyzed by the adopted MND. The alternative starboard connection at the southern berth at B Street Pier CST allows for flexibility when cruise ships with varying infrastructure call to San Diego.

DETERMINATION TO PREPARE AN ADDENDUM

Section 15162 of the State CEQA Guidelines states the following:

- (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
- 1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

Discussion: The proposed Project does not require major revisions to the adopted MND, because there are no substantial changes that would involve new or more severe significant environmental effects. The previous Project analyzed the construction of the initial shore power systems and electrical infrastructure at B Street and Broadway Pier CST. The previous Project, as analyzed and constructed, allowed for three berths to be equipped with shore power equipment (north and south of B Street Pier and north of Broadway Pier). However, only two berths can provide shore power concurrently, because the south berth at B Street CST and north berth at Broadway CST are connected to the same electrical substation. Following construction of the previous Project, it was noted that additional flexibility was needed to accommodate two cruise ships with starboard connectivity concurrently at B Street CST. The proposed Project would involve installation of a starboard

connection point on the eastern end of the south berth at B Street Pier CST and would enhance the existing shore power infrastructure by creating flexibility for cruise ships with either starboard or portside connections to connect to shore power at this location. Minor electrical improvements will be required to connect the alternative starboard connection to the existing SDG&E substation, but new conduit and cable will be pulled through previously constructed duct banks. Currently, cruise ships are limited to the north berth at B Street Pier CST or Broadway for starboard connections or the south berth at B Street CST for a portside connection. The alternative starboard connection to be installed at B Street CST would resolve scheduling conflicts between cruise ships by providing an additional option for which berth they can plug into for shore power and would minimize the number of CARB At-Berth Regulation exemptions used in case a vessel is unable to connect to shore power while at berth. Similar to the previous Project, there would be no increase in capacity as a result of the proposed Project. Therefore, there are no substantial changes from the proposed Project that would involve new or more severe significant environmental effects than what was previously analyzed.

- 2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

Discussion: No substantial changes in the circumstances of undertaking the Project have been identified during the preparation of this Addendum. The MND identifies several commercial establishments north of the project site, including Anthony's Fish Grotto which was redeveloped to become Portside Pier in 2020. Otherwise, the environmental setting remains the same as what was previously analyzed in the MND.

The adopted MND identified noise impacts as less than significant with mitigation incorporated. The MND utilized the City of San Diego CEQA Significance Determination Thresholds established in 2007 to determine that there would be a potentially significant impact from the operational noise of the two (2) transformers that were installed at the B Street Pier CST as part of Phase 1 and Phase 2 of the previous Project. To mitigate for the noise omitted from the transformers during operation, a noise barrier was constructed along the eastern fence line adjacent to the transformer. The adopted MND indicates that potential impacts on aesthetics have already been analyzed, and no effects would occur beyond those analyzed. The alternative starboard connection would not require installation of an additional transformer, and the noise barrier, as constructed, continues to address any concerns regarding noise from operations. There will not be core drilling on the deck during construction of the proposed Project. Construction related noise will be temporary, and all construction activities will be conducted in accordance with the City of San Diego Noise Ordinance (San Diego Municipal Code, Section 59.5.01), which limits loud construction noises to the hours of 7 a.m. to 7 p.m., Monday through Saturday, as analyzed in the adopted MND. Therefore, the noise analysis previously conducted in the adopted MND remains the same, and there would be no change in circumstances resulting in new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

All new electrical equipment required for the proposed Project would connect to existing electrical infrastructure located on the eastern end of B Street Pier, which connects to the SDG&E Substation B located west of Kettner Boulevard and southeast of E Street. No additional transformers would be required to power the additional starboard connection point, and the maximum number of cruise ships able to connect to shore power would still

be limited to two vessels.

It was previously assumed that there would be approximately 51 vessel visits per year that would connect to shore power compared to a total of approximately 257 vessel visits per year by 33 different cruise ships. In 2022, it was estimated that B Street CST receives approximately 90-100 vessel calls annually; whereas Broadway CST receives approximately 12-14 vessel calls annually¹. On average, the demand for cruise ships calling into San Diego has decreased since adoption of the 2010 MND. The approximately 257 vessel visits per year previously estimated in 2010 is now closer to a total of approximately 114 vessel visits per year as of 2022. Although the proposed Project would add an alternative starboard connection point at B Street CST, there would not be an increase in capacity of vessels to connect to shore power at B Street and Broadway CST, and the updated average number of vessel trips per year does not exceed the number of calls previously analyzed.

- 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration,
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Discussion: There is some new information, which was not known and could not have been known with the exercise of reasonable due diligence at the time the 2010 MND was adopted. Specifically, since adoption of the 2010 MND, there have been several updates to State regulations and District policies as detailed below. For the reasons described herein, this new information does not show any new or more severe environmental impacts or identify any substantially different feasible mitigation measures than were previously identified and adopted in the MND.

In December 2007, CARB adopted the At-Berth Regulation, also known as the Shore Side Power Rule, to reduce diesel particulate emissions from ships while docked at berth by January 1, 2014. The CARB At-Berth Regulation mandated that shore power infrastructure at District facilities must be operational and able to accommodate 50% of all cruise ship

¹ The following information on annual vessel calls was reported as part of the CARB Terminal and Port Plans. The requirements for a terminal and port plan are found in Section 93130.14(a) and 93130.14(b) of the At-Berth Regulation. Terminal and Port Plans for the B Street and Broadway CST were deemed complete by CARB on December 29, 2022.

calls in 2014 and escalated to 80% of all cruise ship calls by 2020. Implementation of the previous Project was a necessary step for eventual compliance with the 2007 CARB At-Berth Regulation. Since construction of Phase 1 of the previous Project was completed in 2011 and Phase 2 completed in 2022, the previous Project complied with the CARB At-Berth Regulation.

As a result of the revised 2020 CARB's At-Berth Regulation, shore power regulations became more stringent mandating that all cruise ships calling into San Diego would need to connect to shore power by January 1, 2023, with several exceptions. The 2020 At-Berth Regulation supersedes the 2007 At-Berth Regulation which remained relevant until December 31, 2022. The Project continues to comply with the updated 2020 CARB At-Berth Regulation, because Phase 2 of the Project completed the electrical infrastructure improvements in 2022 necessary for two cruise ships to connect to shore power simultaneously, with one ship connected at the northern berth at B Street CST and the other ship connected at either the southern berth at B Street CST or the northern berth at Broadway CST. The southern berth at B Street CST and the northern berth at Broadway CST are connected to the same electrical substation, and therefore, two ships cannot connect to shore power at those berths simultaneously.

Current and future District operations at the B Street and Broadway Pier CST allow for a maximum of two cruise ships to be connected to shore power simultaneously. Based on previous and current District operations, it is rare that three cruise ships would call to San Diego and require concurrent shore power connections. For the upcoming 2024/2025 cruise ship season, it is anticipated that the District will have one instance of three cruise ships calling to San Diego simultaneously. If a third vessel needs to call concurrently, the CARB At-Berth Regulation allows for exceptions to be implemented, including the following: a CARB Approved Emissions Control Strategy (CAECS), a Terminal Incident Event (TIE), a Vessel Incident Event (VIE), or contributions to the CARB Remediation Fund. In 2022, it was estimated that B Street CST receives approximately 90-100 vessel calls annually; whereas Broadway CST receives approximately 12-14 vessel calls annually. On average, all vessels required to comply with CARB At-Berth Regulations at B Street CST represent an estimated 90% or more of total vessel calls. The remaining 10% of vessel calls estimated at B Street CST utilize CARB At-Berth Regulation exemptions, which are mostly TIEs or VIEs.

The Broadway Pier CST is considered a low activity terminal, which is a designation pursuant to the At-Berth Regulation. Terminals that receive fewer than 20 vessel visits per calendar year in 2021 and 2022 are considered "low activity terminals". If a low activity terminal sees an increase in vessel calls and has two consecutive years with 20 or more visits, they will become a regulated terminal for the purposes of the At-Berth Regulation and must comply with all control and planning requirements. Due to Broadway Pier CST's designation as a low activity terminal, vessels without shore power infrastructure can dock at the northern berth as long as the District retains the designation. The previous Project allowed for shore power infrastructure to be installed at Broadway Pier CST, allowing shore power capable vessels to connect, when possible. Therefore, the shore power infrastructure installed as part of the previous Project and the additional shore power connection on the southern berth of B Street CST to be installed as part of the proposed Project would enable all shore power capable cruise ships calling to San Diego to be plugged to shore power, while continuing to comply with the CARB At-Berth Regulation. The proposed Project would not increase the capacity of vessel visits to B Street and Broadway Pier CST than what was analyzed from the previous Project, and the District would continue to comply with the CARB At-Berth Regulation, as revised.

In 2013, the District developed a Climate Action Plan (CAP) to reduce greenhouse gas (GHG) emissions on District tidelands and proactively prepare for potential impacts associated with climate change. The CAP is a science-based, long-term planning document that includes an overview of baseline GHG emissions for all existing uses and operations on tidelands, GHG reduction goals for 2020, and GHG reduction policies and measures to achieve those goals over time. The District developed the CAP as a result of the California Global Warming Solutions Act of 2006, which set a statewide goal to reduce GHG emissions to 1990 levels by 2020, and Executive Order S-3-05, which extended statewide GHG emission reduction goals to 80% below 1990 levels by 2050. The GHG reduction goals for 2020 are no longer valid, because the proposed Project is being considered in 2024. However, the GHG reduction policies and measures established by the CAP are still applicable to all District projects. The proposed Project would be consistent with the GHG reduction policies and measures in the CAP, including the shore power candidate control measure, as the additional shore power connection point at B Street CST's southern berth would further reduce GHG and encourage alternative means for vessels to connect to shore power while at berth in San Diego. Additionally, the proposed Project would be consistent with measure TA5 from Table F-1 of the Reduction Measures Summary Table for Implementation, because the proposed Project would develop and encourage the use of shore power for ocean going vessels. The proposed Project would implement GHG reduction policies and measures identified in the CAP. The CAP could not have been known with the exercise of reasonable due diligence at the time the 2010 MND was adopted; and, the proposed Project would not create a conflict with the adopted CAP and would not result in a significant physical impact due to a conflict.

Additionally, the District developed the Maritime Clean Air Strategy (MCAS), which is a strategic planning document, adopted by the Board of Port Commissioners (Board) on October 12, 2021, that identifies short-term and long-term goals and objectives intended to facilitate achievement of a clean, sustainable, and modern seaport. The proposed Project would implement policies and goals identified in the MCAS. For example, the proposed Project implements Oceangoing Vessel Objective 2A of the Port's Maritime Clean Air Strategy (MCAS), improving air quality by significantly reducing Diesel Particulate Matter emission from ships-at-berth. Therefore, the proposed Project would not result in a conflict with the MCAS and would not result in a significant physical impact due to a conflict.

Following adoption of the 2010 MND, The Portside Community's Community Emissions Reduction Plan (CERP) was adopted by the San Diego Air Pollution Control District (SDAPCD) on July 16, 2021, and CARB on October 14, 2021. The CERP is a plan for action to reduce air pollutant emissions and community exposure to those emissions in the Portside Community. The District is an identified agency with a responsibility to contribute to the implementation of the CERP. The proposed Project area is not located within a Portside Community, and therefore, would not result in a conflict with the CERP nor result in a conflict that would result in a significant physical impact.

As a result of State Bill 743 which took effect July 1, 2020, transportation impacts of new projects must be analyzed using a metric known as vehicle miles traveled (VMT) instead of levels of service (LOS). VMT measures how much actual auto travel (additional miles driven) a proposed project would create on California roads. If the project adds excessive car travel onto our roads, the project may cause a significant transportation impact. The 2010 MND prepared for the previous Project used LOS to analyze potentially significant transportation and traffic impacts. There were no significant impacts or mitigation measures identified for the previous Project related to transportation and traffic. Despite the mandated

metric change from LOS to VMT, the proposed Project would not cause or contribute to a significant impact, because transportation and traffic would only be construction related and thus temporary in nature.

The updated State and District regulations outlined above were not known and could not have been known with the exercise of reasonable due diligence at the time the 2010 MND was adopted. However, based on the discussions above, this new information did not result in a) one or more significant effects not discussed in the previous MND; b) more severe significant effects than what was previously analyzed in the MND; c) newly identified mitigation measures that would be more feasible for the proposed Project; or, d) mitigation measures which are considerably different from those analyzed in the previous MND.

Section 15164(a) of the State CEQA Guidelines states that "the lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." Furthermore, State CEQA Guidelines Section 15164(b) states that "an addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred." Based on the provisions of State CEQA Guidelines Sections 15162 and 15164, the Port District finds that none of the conditions described in Section 15162 call for preparation of a subsequent mitigated negative declaration have occurred and that an addendum to the B Street Shore Power Project shall be prepared for the proposed Project. In accordance with Section 15164(c), the Addendum is not required to be circulated for public review. The Board "shall consider the addendum with the ... adopted negative declaration prior to making a decision on the project", pursuant to State CEQA Guidelines Section 15164(d). The addendum is anticipated to be considered by the Board at its September 10, 2024 meeting.

INTENDED USES OF MND AND ADDENDUM

The MND and the Addendum will be considered by the Board with respect to the following discretionary actions related to the project:

- Approval of issuance of Amendment No. 1 to Coastal Development Permit No. 2010-001 for the B Street Shore Power Project.
- Approval of plans and specifications and award contract for the construction of Additional South Berth Shore Power Connection Point at B Street Cruise Ship Terminal Project.



Unified Port of San Diego

Attachment B to Agenda File No. 2024-290

3165 Pacific Highway, San Diego, CA 92101
P.O. Box 120488, San Diego, CA 92112-0488
619.686.6200 • www.portofsandiego.org

(11)

COASTAL DEVELOPMENT PERMIT

Applicant: Mark McIntire, Project Manager
Engineering-Construction Department
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

San Diego Unified Port District
Document No. **55970**
Filed **JAN 19 2010**
Office of the District Clerk

Project: B Street Shore Power Project

Location: 1140 and 1000 North Harbor Drive in San Diego, California

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a Emergency Non-appealable Appealable Coastal Development Permit.

Date of Board Action: January 5, 2010

Board of Port Commissioners Resolution Number: 2010-08

Date of Permit: January 15, 2010

Application Number: 2009 013-33-142

Permit Number: CDP-2010-001

The Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

BACKGROUND

The Project site is principally the existing man-made pier (B Street Pier) and secondarily the Broadway Pier; both are located in the PMP Planning District 3, Center City Embarcadero Area (Subarea 33). The land use designations are Marine Terminal, Commercial Recreation, Park/Plaza, and Promenade uses. Above surface

ORIGINAL

COASTAL DEVELOPMENT PERMIT

Applicant: Mark McIntire, Project Manager
Engineering-Construction Department
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

Project: B Street Shore Power Project

Location: 1140 and 1000 North Harbor Drive in San Diego, California

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a Emergency Non-appealable Appealable Coastal Development Permit.

Date of Board Action: January 5, 2010

Board of Port Commissioners Resolution Number: 2010-08

Date of Permit: January 15, 2010

Application Number: 2009 013-33-142

Permit Number: CDP-2010-001

The Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

BACKGROUND

The Project site is principally the existing man-made pier (B Street Pier) and secondarily the Broadway Pier; both are located in the PMP Planning District 3, Center City Embarcadero Area (Subarea 33). The land use designations are Marine Terminal, Commercial Recreation, Park/Plaza, and Promenade uses. Above surface

improvements will occur on the piers only in areas designated as Marine Terminal or Commercial Recreation. The types of uses allowed in the Commercial Recreation category include hotels, restaurants, convention center, recreational vehicle parks, specialty shopping, pleasure craft marinas, and sport fishing. Marine Terminal uses consist of facilities required for the docking of ships and unloading/loading a variety of cargo types. The improvements in areas with designations other than Marine Terminal or Commercial Recreation consist of laying cable beneath the surface. Promenade use indicates a shoreline public pedestrian promenade-bicycle route system. Park/Plaza uses include urban type recreational developments and amenities, public art, public parks, public fishing piers, vista areas, scenic roads, and recreational facilities.

The B Street Pier consists of a 9.1-acre deck area pier with a pier foundation of hydraulic-fill mole structure (approximately 60% fill in the center area) and a bearing pile supported reinforced concrete deck and girder marginal wharf at the remaining 40% perimeter area of the pier. The Broadway Pier is approximately 3.0 acres of impervious paved deck and is constructed entirely on piles. Both piers currently provide support to cruise ship operations.

Current operations consist of cruise ship berthing to load and unload passengers and their luggage, as well as supplies for the voyages. In 2008, 255 ships called at the B Street and Broadway piers. In general, cruise ships spend between 3 to 14 hours at berth. While at berth, a ship's hotelling needs (i.e., on-board electricity) are provided by a ship's engine, usually an auxiliary engine burning marine diesel oil (MDO) or other on-board fuel; thus, hotelling can result in appreciable criteria, toxic and greenhouse gas emissions. The Project allows for shore power to provide hotelling needs while cruise ships are at berth rather than the on-board fuel combustion. The Project is partly funded by grant money from the California Air Resources Board because it would reduce air emissions of criteria, toxic, and greenhouse gas pollutants from cruise ships when they are at berth in San Diego Bay. Implementation of this project is also a necessary step for eventual compliance with the California Air Resources Board Shore Side Power Rule, adopted in December 2007, which requires shore power infrastructure to be operational by January 2014.

DEVELOPMENT

By December 31, 2010, the Port District plans to have three berths equipped to provide shore power to cruise ships capable of using the shore-power equipment, over 3 years in advance of the CARB requirements. Although three berths will be equipped with shore power equipment upon implementation of this Project, power will be provided in two phases. Phase 1 of the Project would provide shore power to one ship at a time, regardless of which berth it is at. Phase 2 operations are scheduled to begin in 2017 and would be able to provide shore power to two berths simultaneously, regardless of which of the three berths they berth at. The Project entails installation of both infrastructure and above ground facilities to provide shore power to both B Street and Broadway Piers.

B Street Pier

In general, the B Street CST Shore Power System includes shore power electrical equipment, automation and operational software controls infrastructure at B Street Pier within a fenced area at the eastern edge of the pier. Infrastructure on the B Street Pier (connected to two berths) consists of:

- Electrical system components will be housed in multiple utility boxes between 8 and 12 feet tall with a combined length of approximately 70 feet and a combined width of approximately 40 feet.
- Electrical system components include primary electrical infrastructure (i.e., provided by SDG&E), primary equipment, two transformers, a 12 kV main circuit breaker, a capacitor bank, secondary equipment, meters, relays, capacitors, control panels, cables, ground switch, and cable management controls.
- Transformers will provide electricity at a specified voltage (i.e., 6.6kV or 11kV) per ship.
- Power cables will connect power lines from the transformers to the on-dock shore-side connection locations and from those locations to the ships.
- Communication cables will synchronize the power to the ship's on-board electrical equipment.
- Up to three (3) approximately 20-foot tall jib cranes will facilitate lifting the cable enabling cruise ships to 'plug-in' on the north and south sides of the pier.
- System components will be enclosed in an 85 foot long by 41 wide by 8-foot tall enclosure fence behind an existing 12-foot tall security fence along the Harbor Drive Promenade.
- Concrete mounting pads and other ancillary improvements will secure the system components and jib cranes.

Broadway Pier

Infrastructure on the Broadway Pier (connected at one berth) consists of:

- Power cables will connect power lines from the transformers to the on-dock shore-side connection locations and from those locations to the ships.
- An approximately 20-foot tall jib crane will facilitate lifting the cable enabling cruise ships to 'plug-in' on the north side of the pier.
- Ancillary improvements will secure the jib cranes.

North Harbor Drive

Infrastructure along North Harbor Drive to allow shore-power capable cruise ships to obtain power pier-side through flexible electrical cables consists of cable installation beneath the promenade and right of way, which may include portions extending under the existing wharf. No in-water alignment is anticipated.

STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
6. Permittee shall commence development within two (2) years following the date of permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to Pacific Ocean, to the maximum extent practicable.

SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise impacts during construction, the permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 10:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.

4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately covered.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary. If visible soil material is carried onto adjacent public paved roads, use of a water sweeper will be required to clean the public road.
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent inactive trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Diesel equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.
13. Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. All Port of San Diego tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District (Municipal Permit). The Municipal Permit prohibits any activities, including those related to

construction that could degrade stormwater quality. The project shall be in compliance with the Municipal Permit and the District Jurisdictional Urban Runoff Management Document (JURMP). The JURMP is available on the District website: http://www.portofsandiego.org/sandiego_environment/susmp.asp or by contacting the Environmental Services Department, (619) 686-6254.

The construction activity herein requires the implementation of Best Management Practices (BMPs) used to control discharges to the storm water conveyance system from construction activities. (NOTE: Based on the reported square footage and project activities, this project is not subject to State Water Resources Control Board Order No. 99-08-DWQ, (NPDES General Permit No. CAS000002) Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (General Construction Storm Water Permit).

SPECIAL PROVISIONS

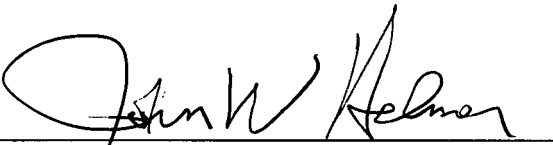
1. In order to reduce noise generated by transformers on the B Street Pier to below the City of San Diego noise limits six feet from the transformer yard easement boundary, either:
 - i. a noise barrier will be constructed along the eastern property boundary; or
 - ii. the transformer will be internally insulated.

Attachments


- Exhibit 1 – Location Map
- Exhibit 2 – Overall Site Plan
- Exhibit 3 – B Street Pier Component Housing Site Plan

If you have any questions on this permit, please contact the Land Use Planning Department of the San Diego Unified Port District.

CHARLES D. WURSTER
President/Chief Executive Officer

By: 
JOHN W. HELMER
Director, Land Use Planning

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.


Signature of Permittee
Mark McIntire
Project Manager, Engineering-Construction

1/15/10
Date



Exhibit 1 – Location Map

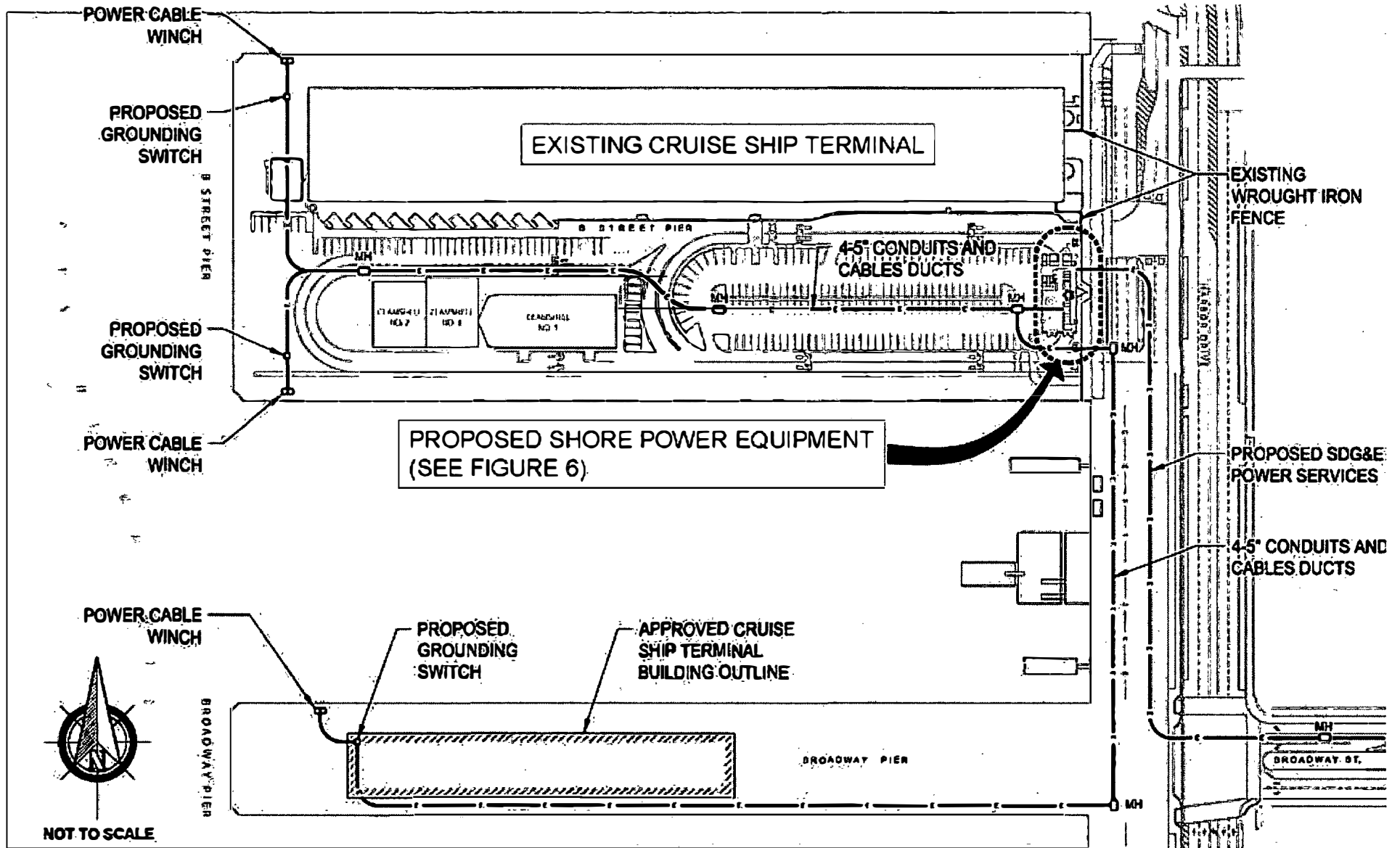


Exhibit 2 – Overall Site Plan

55970 //

EQUIPMENT LINE-UP SCHEDULE

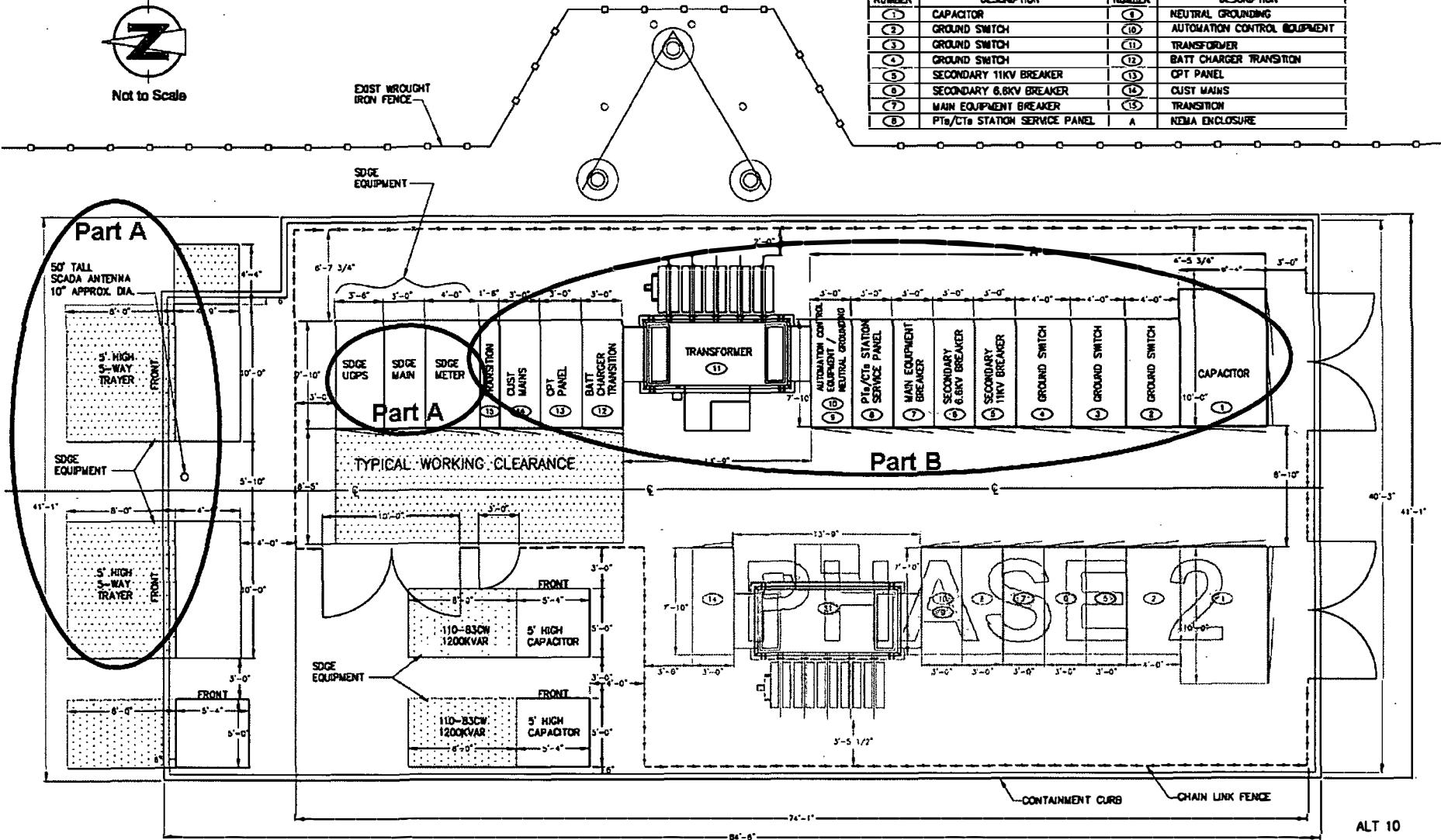
NUMBER	DESCRIPTION	NUMBER	DESCRIPTION
(1)	CAPACITOR	(4)	NEUTRAL GROUNDING
(2)	GROUND SWITCH	(10)	AUTOMATION CONTROL EQUIPMENT
(3)	GROUND SWITCH	(11)	TRANSFORMER
(4)	GROUND SWITCH	(12)	BATT CHARGER TRANSITION
(5)	SECONDARY 11KV BREAKER	(13)	CPT PANEL
(6)	SECONDARY 8.8KV BREAKER	(14)	CUST MAINS
(7)	MAIN EQUIPMENT BREAKER	(15)	TRANSITION
(8)	PTs/CTs STATION SERVICE PANEL	A	NEMA ENCLOSURE



Not to Scale

EXIST WROUGHT IRON FENCE

SDGE EQUIPMENT



ALT 10

Exhibit 3 – B Street Pier Component Housing Site Plan

Re Coastal Development Permit -]
]]
"B Street Shore Power Project"]]
]]
1140 and 1000 North Harbor Drive,]]
]]
San Diego, California]]
_____]]

RESOLUTION 2010-08

WHEREAS, the B Street Shore Power Project (Project) will develop infrastructure facilities so that cruise ships can turn off their engines and then "plug" into shore power while berthed at B Street and Broadway Piers; greatly reducing diesel engine emissions while cruise ships are berthed; and

WHEREAS, the Project would initially facilitate the use of shore power for approximately Fifty One (51) vessel visits per year; and

WHEREAS, said Project is intended to comply with the California Air Resources Board (CARB) Shore Power Rule which requires that at least Fifty Per Cent (50%) of an operator's fleet (passenger vessels that visit more than five times per year) ship calls to the San Diego Unified Port District (District) will be shore powered by 2014; and

WHEREAS, these rules require that shore power use will increase to Seventy Per Cent (70%) in 2017 and to Eighty Per Cent (80%) in 2020; and

WHEREAS, the District desires to install infrastructure and above-ground facilities to provide shore power to both the B Street and Broadway Piers; and

WHEREAS, the District is trustee of said tidelands; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for the construction of said Project; and

WHEREAS, the Board of Port Commissioners (Board) of District finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the District Master Plan; and

WHEREAS, the Board has considered the Mitigated Negative Declaration for said Project and authorized and directed the Executive Director of the District or his authorized representative to file a Notice of Determination with the Secretary for Resources and the San Diego County Clerk, NOW THEREFORE,

BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Board further finds:

1. The Project, in general, consists of providing shore power to the B Street Pier and Broadway Pier, with cable along North Harbor Drive in the City of San Diego, as follows:

a. B Street Pier Cruise Ship Terminal shore power system includes shore power electrical equipment, automation and operational software controls infrastructure within a fenced area, located at the eastern edge of said Pier; infrastructure on said B Street Pier (connected to Two [2] berths) consists of:

- ◆ Electrical system components to be housed in multiple utility boxes between 8 and 12 feet tall with a combined length of approximately 70 feet and a combined width of approximately 40 feet;
- ◆ Electrical system components include primary electrical infrastructure (i.e., provided by San Diego Gas & Electric Company), primary equipment, Two (2) transformers, a 12 kV main circuit breaker, a capacitor bank, secondary equipment, meters, relays, capacitors, control panels, cables, ground switch and cable management controls;
- ◆ Transformers to provide electricity at a specified voltage (i.e., 6.6kV or 11kV) per ship;
- ◆ Power cables to connect power lines from the transformers to the on-dock shore-side connection locations and from those locations to the ships;

- ◆ Communication cables to synchronize the power to the ship's on board electrical equipment;
- ◆ Up to Three (3) approximately 20 foot tall jib cranes to facilitate lifting the cable, enabling cruise ships to "plug-in" on the north and south sides of the Pier;
- ◆ System components to be enclosed in an 85 foot long by 41 foot wide by 8 foot tall enclosure fence behind an existing approximately 12 foot tall security fence along the Harbor Drive Promenade;
- ◆ Concrete mounting pads and other ancillary improvements to secure the system components and jib cranes;

b. **Broadway Pier Infrastructure** (connected at One [1] berth), consists of:

- ◆ Power cables to connect power lines from the transformers to the on-dock shore-side connection locations and from those locations to the ships;
- ◆ An approximately 20 foot tall jib crane to facilitate lifting the cable enabling cruise ships to "plug-in" on the north side of the Pier;
- ◆ Ancillary improvements to secure the jib cranes;

c. **North Harbor Drive infrastructure** to allow shore power capable cruise ships to obtain power pier-side through flexible electrical cables will consist of cable installation beneath the promenade and right-of-way, which may include portions extending under the existing wharf; no in-water alignment is anticipated;

said Project is located within Planning District 3, Center City Embarcadero Area (Subarea 33) of the District Master Plan, the Precise Plan for which provides for uses as follows: "Marine Terminal", "Commercial Recreation", "Park/Plaza" and "Promenade".

2. The proposed use for the Project is consistent with the use and development concept for the Center City Embarcadero area as provided in said District Master Plan and, as such, is a Non- Appealable Development which conforms to the certified District

Master Plan. The proposed Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea, and said Project is consistent with Public Resources Code Sections 30604(c) and 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

3. The proposed Project which is entitled "B Street Pier Shore Power Project" is consistent with and conforms to the District Master Plan, and, accordingly, the Executive Director or his authorized representative is hereby authorized and directed to issue a Coastal Development Permit for said Project. Said Coastal Development Permit shall require compliance with the Standard Provisions, Short-Term Construction Measures and in particular the conditions listed under the Special Provisions section pertaining to the reduction of noise generated by transformers on the B Street Pier.

ADOPTED this 5th day of January, 2010.

sw
1/5/10

SAN DIEGO UNIFIED PORT DISTRICT**Reference Copy:
Document No 55970**

DATE: January 5, 2010

SUBJECT: B STREET PIER SHORE POWER PROJECT

- A) CONDUCT PUBLIC HEARING AND ADOPT A RESOLUTION ADOPTING THE FINAL MITIGATED NEGATIVE DECLARATION FOR THE B STREET PIER SHORE POWER PROJECT, AND DIRECT THE FILING OF THE NOTICE OF DETERMINATION
- B) RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT

EXECUTIVE SUMMARY:

The B Street Shore Power Project (Project) will develop infrastructure facilities so that cruise ships can turn off their engines and then 'plug' into shore power while berthed at B Street and Broadway Piers. This will greatly reduce diesel engine emissions while cruise ships are berthed. The Project would initially facilitate the use of shore power for approximately 51 vessel visits per year. This Project is intended to comply with the California Air Resources Board (CARB) Shore Power Rule which requires that at least 50% of an operator's fleet (passenger vessels that visit more than five times per year) ship calls to the San Diego Unified Port District (District) will be shore powered by 2014. These rules require that shore power use will increase to 70% in 2017 and to 80% in 2020.

A Draft Mitigated Negative Declaration (MND) was prepared for the Project in accordance with the provisions of the California Environmental Quality Act (CEQA). After a 30-day public review period which ended on December 18, 2009, comment letters were received. Copies of the comment letters and responses are included in the Final MND provided as Attachment A to this agenda. Staff recommends that the Board conduct a public hearing and adopt a resolution adopting the Final MND for the Project and direct the filing of the Notice of Determination.

A Draft Non-Appealable Coastal Development Permit (CDP) for the Project has also been prepared and is provided as Attachment B to this agenda. The Project is consistent with the intent of the language specified in the certified Port Master Plan. Staff recommends that the Board adopt a resolution authorizing the issuance of a Non-Appealable Coastal Development Permit for the Project.

RECOMMENDATION:

B Street Pier Shore Power Project

- A) Conduct a public hearing and adopt a resolution adopting the Final Mitigated Negative Declaration for the B Street Shore Power Project and direct the filing of the Notice of Determination.
- B) Adopt a resolution authorizing the issuance of a Non-Appealable Coastal Development Permit for the Project.

FISCAL IMPACT:

Conducting a public hearing, adopting a Mitigated Negative Declaration and issuing the Non-Appealable Coastal Development Permit will not result in a fiscal impact. The approvals will mark a continuation of the District's efforts to ensure that the necessary deadlines are met to maintain receipt of Carl Moyer Program grant funds from the San Diego Air Pollution Control District (APCD).

COMPASS STRATEGIC GOALS:

Conducting a public hearing, adopting a Final Mitigated Negative Declaration and issuing the Non-Appealable Coastal Development permit will mark an important step toward achieving shore power for cruise ships within the District, and will greatly reduce the air pollution emissions and greenhouse gas emissions associated with cruise ship engines running on diesel while berthed.

This agenda item supports the following Strategic Goal(s).

- Promote the Port's maritime industries to stimulate regional economic vitality.
- Enhance and sustain a dynamic and diverse waterfront.
- Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- Ensure a safe and secure environment for people, property and cargo.
- Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- Develop a high-performing organization through alignment of people, process and systems.
- Strengthen the Port's financial performance.
- Not applicable.

DISCUSSION:**Project Need**

The proposed Project is a necessary step for compliance with the CARB Shore Power Rule adopted in December 2007, which requires shore power infrastructure to be operational by January 2014. This Project also is critical to meet the requirements of the Carl Moyer Program grant funding, which requires that the shore power infrastructure be operational by December 31, 2010. Because some cruise ships already are capable of using shore power, the emission reductions related to these ships can begin immediately after the proposed Project is complete, three years in advance of the 2014 compliance date.

Project Location

The proposed Project site is located on B Street Pier on North Harbor Drive in downtown San Diego. The adjacent Project area is characterized by a variety of low- and mid-rise uses, such as Anthony's Fish Grotto, the Star of India, and the San Diego Maritime Museum. The Project backdrop also consists of the nearby USS Midway, boats anchored along the bayshore, flagpoles, and lighting standards.

The Project would be developed mainly on the B Street Pier, with minor cable and equipment installation (a jib crane) on Broadway Pier. The 9.1-acre B Street Pier deck currently supports the following:

- Large one-story Cruise Ship Terminal (CST) building. The CST is a 108,000-square foot masonry building (870 feet long by 132 feet wide) with an arched metal joist and beam-framed roof, ranging from 20 to 25 feet in height;
- Two 30-foot high canvas and metal frame structures (sprung structures) used for cruise ship passenger baggage laydown (approximately 9,000 square feet and 4,500 square feet in size, respectively);
- 30-foot high tent used for cruise ship passenger baggage laydown, approximately 4,800 square feet in size;
- 20-foot high electronic marquee;
- Associated structural elements such as fences and signage

In addition, a 12-foot high metal security fence runs along the front of B Street Pier, parallel to the Harbor Drive. This security fence will soon be replaced with new 12-foot security fence enhanced with public art. The existing buildings and associated structural elements mentioned above result in narrow, interrupted views of the bay.

Project Description

The proposed Project entails installation of both infrastructure and above ground facilities to provide shore power to both B Street and Broadway Piers. The primary system components would consist of multiple utility structures situated within close

proximity to one another at the foot of B Street Pier, approximately 20 feet back from the bayfront promenade. The utility structures would cover an area of approximately 2,450 square feet (70 feet long by 35 feet wide) and be enclosed by a proposed eight-foot high safety fence behind the existing 12-foot high security fence. The total Project area enclosed by the safety fence would be approximately 3,500 square feet (85 feet long by 41 feet wide) or a little more than one percent of the 9.1-acre B Street Pier. Exhibit A shows an existing view of the B Street Pier looking north from the promenade. Exhibit B shows the proposed Project and new security fence viewed from the same perspective.

The shore power system components include primary electrical infrastructure (i.e., provided by SDG&E), primary equipment, two transformers, a 12 kV main circuit breaker, a capacitor bank, secondary equipment, ground switch, and cable management controls. The transformers are needed to provide electricity at a specified voltage (i.e., 6.6kV or 11kV) to each ship.

Power cables will be used to connect power lines from the transformers to the on-dock shore-side connection locations and then from those locations to the berthed cruise ships. Communication cables will be used to synchronize the power to the ships' on-board electrical equipment. The shore power system also includes automation and operational software controls infrastructure at B Street Pier including meters, breakers, relays, ground switches, capacitors, transformers, control panels, cables, and cable conduits. The cable necessary for connecting Broadway Pier to the transformers on B Street Pier, as well as the SDG&E utility cable running to the B Street Pier, will be installed beneath the surface.

There will be an approximately 20-foot jib crane for cable management and support, concrete mounting pads, fencing and other ancillary improvements located on each pier. These cranes will lift the cable to the appropriate input on each cruise ship facilitating cruise ships 'plugging-in'. There will be commissioning and testing of the system, in coordination with SDG&E before regular operations begin. Vessel modifications are not included in the Project and are the responsibility of each cruise ship operator.

This Project will provide shore power connections to two berths on B Street Pier and one berth on Broadway Pier. It will allow shore-power capable cruise ships to obtain power pier-side through flexible electrical cables and turn off their engines while in port. To meet the requirements of the Carl Moyer Program grant funding, the District plans to have these three berths equipped to provide shore power to cruise ships three years in advance of the 2014 CARB requirements. Although all three berths will be equipped with shore power equipment upon completion of Project construction, power will be provided in two phases. Phase 1 power will be available upon completion of equipment installation and will provide shore power to one ship at a time. Phase 2 power will be available in 2017 and will provide shore power to two ships simultaneously.

CEQA Analysis

On November 18, 2009, the District released a Notice of Intent to Adopt a Mitigated Negative Declaration for the B Street Shore Power Project and Notice of a Public Hearing initiating a 30-day public review period. The public review period ended on December 18, 2009. Only one comment letter was received from the Navy Broadway Complex Coalition (NBCC). The NBCC letter in general indicated their support for the Project but a desire that a long-range goal be developed to find a more permanent home for the equipment. A copy of the letter and staff responses to their comments is provided as part of the Final MND.

Mitigation measures will be incorporated into the overall Project to avoid the potential adverse environmental effects or to mitigate the effects of noise generated by Project components, to a point where clearly no significant environmental effects would occur. The Project would not result in potentially significant adverse impacts to Air Quality, Biological Resources, Land Use and Planning, Population and Housing, Geology, Hazards, Energy and Mineral Resources, Recreation, Utilities and Service Systems, Transportation/Circulation, Water Quality, Hydrology, Public Services, Aesthetics, or Cultural Resources.

The overall purpose of this project is to reduce air and green house gas emissions, measured in Carbon Dioxide Equivalents (CO₂eq). It important to note that upon implementation of Phase 1, the Project is expected to result in a reduction of CO₂eq/year from approximately 3,197 metric tons to approximately 1,824 metric tons, a decrease of approximately 1,374 metric tons CO₂eq/year. Full implementation of the Project (Phase 2) is expected to result in greater reductions if shore-power capable ships happen to be berthed on the same day. In addition, the Project will reduce emissions of criteria and toxic air pollutants such as Nitrogen Oxides, Ozone, Carbon Monoxide, Sulfur Oxides and particulate matter, consistent with the CARB's Shore Power Rule, the District's Clean Air Program, and the District's Green Port Policy. A copy of the Final MND including the comment letter and responses is provided as Attachment A to this agenda.

Coastal Analysis

The Project is located in Planning District 3 (Centre City Embarcadero), which is delineated on Precise Plan Map Figure 11 in the certified Port Master Plan. The above ground components of the project would be located on the B Street Pier, designated as Commercial Recreation and Marine Terminal in the Port Master Plan and a portion of the Broadway Pier designated as Marine Terminal.

The Project consists of infrastructure components to provide shore power to existing terminal operations at the B Street and Broadway piers with the result of reducing air pollutant emissions and green house gas emissions. The provision of infrastructure for existing operations is ancillary and consistent with the Marine Terminal use

designations and existing operations on B Street Pier and Broadway Pier. The Project will not result in any change in use and supports marine dependent uses. Therefore, the project is consistent with the certified Port Master Plan.

The proposed project is not considered Excluded under the District's Coastal Development Permit Regulations because it would not qualify as a conversion of small structures. In accordance with the Regulations, the proposed project is Non-appealable because it does not qualify as an Appealable or Emergency development.

Copies of the Categorical Determination, CDP application are available from the Land Use Planning Department. A copy of the draft Non-Appealable CDP for the Project is provided as Attachment B to this agenda. Special conditions are incorporated into the CDP to ensure project conformance with the Final MND mitigation requirements.

Staff recommends the Board conduct a public hearing, adopt the Final MND, direct staff to file the Notice of Determination, and authorize the Executive Director to issue the Non-appealable CDP.

Port Attorney's Comments:

The Port Attorney has reviewed and approved the document for form and legality.

Environmental Review:

The Board's approval of the MND will complete environmental review for this Project. Upon adoption of the Final MND, no further environmental review is required under CEQA.

Equal Opportunity Program:

Not applicable.

PREPARED BY: Matt Valerio
Senior Redevelopment Planner, Land Use Planning

Enclosures:

- Exhibit A – Existing View North from Bayfront Promenade
- Exhibit B – View North from Bayfront Promenade with Concept Simulation of Proposed Project

- Attachment A – Mitigated Negative Declaration for the B Street Shore Power Project
- Attachment B – Non-Appealable Coastal Development Permit for the B Street Shore Power Project



Exhibit A – Existing Conditions



Exhibit B – Concept simulation of proposed project

**FINAL
MITIGATED NEGATIVE DECLARATION
FOR
B STREET SHORE POWER PROJECT**

December 2009

RESPONSE TO COMMENTS

MITIGATED NEGATIVE DECLARATION FOR THE B STREET PIER SHORE POWER PROJECT

Introduction

The Mitigated Negative Declaration (MND) for the B Street Shore Power Project (Proposed Project) (page 1) clearly sets out the purpose and procedure followed by the District, as required by the California Environmental Quality Act (CEQA), for the MND. The District appreciates the time and effort expended in providing comment on this Mitigated Negative Declaration (MND). Unlike requirements for Environmental Impact Reports (EIRs) formal written responses to comments are not required. Although the CEQA Guidelines do not require a lead agency to respond to comments on an MND, the District has elected to provide the following responses to comments received. The entire comment has been provided followed by an underlined response. The numbering of comments and responses has been added to clarify distinct comments.

December 15, 2009

The Navy Bayfront Complex Coalition

Comment 1: Thanks for this opportunity to provide comments on this proposed project. The Navy Broadway Complex Coalition is a local group of civic organizations and individuals dedicated to preserving and enhancing public access and the natural environment of San Diego's Downtown Waterfront.

Response to Comment 1: This comment is an introductory statement that does not address the adequacy of the Mitigated Negative Declaration (MND) for the B Street Shore Power Project (Proposed Project). This comment is included in the record and will be considered by the Board of Port Commissioners when determining whether or not to approve the Proposed Project.

Comment 2: We have carefully reviewed Port staff's Draft Mitigated Negative Declaration for B Street Pier Shore Power Project, and generally support the proposed project's overarching goal of decreasing the soot and other emissions generated by docked cruise ships while they are in port. We agree that this action is required to address the requirements of AB32, SB 1368, and other state laws, pending rules and gubernatorial edits.

Response to Comment 2: This comment acknowledges the importance and the benefits that will result from the Proposed Project. This comment is included in the record and will be considered by the Board of Port Commissioners when determining whether or not to approve the Proposed Project. This comment does not address the adequacy of the MND.

Comment 3: However, we believe that this project should be pursued as a temporary, interim solution to reducing cruise ship emissions, with a long-range goal

of finding a more permanent shore power solution that will have fewer negative impacts on public access and views from Harbor Drive to the Bay.

Response to Comment 3: This comment advocates that a new long-range goal be devised to find a more permanent home for shore power that has fewer negative impacts on public access and views from Harbor Drive to the Bay. The District will consider the recommendation in the design of the redevelopment of the B Street Cruise Ship Terminal. The MND described that the shore power equipment is a series of utility boxes industrial in nature and determined that no views of the Bay are obstructed and the existing character of the views over B Street Pier are of the marine industrial cruise ship terminal operations (see sections 7. and 3.I of the MND). No significant impacts associated with public views have been identified as a result of the Proposed Project. Since release of the MND an additional concept simulation of the shore power equipment has been generated and is included in these responses to comments (Exhibit A and B). The simulation demonstrates that the Proposed Project would result in a relatively small additional feature to the existing large-scale pier with existing larger scale structures (the total Project area would be a little more than one percent of the 9.1-acre B Street Pier) and further support the finding of no significant impact. The Proposed Project would not result in any physical change to public access.

Comment 4: We also believe that this new project should not be extended to serve the proposed Broadway Pier cruise ship terminal until after several pending court actions are fully resolved, and that proposed Broadway Pier project and all viable alternatives have been more fully vetted as part of the Port's North Embarcadero Port Master Plan Amendment Environmental Impact Report currently being developed by Port staff.

Response to Comment 4: This comment requests that the Proposed Project implementation not include the connection to the Broadway Pier until after pending court actions are resolved and alternatives are evaluated in the North Embarcadero Port Master Plan Amendment Environmental Impact Report (EIR). The connection to the Broadway Pier is a key component for the District to achieve the requisite number of shore powered hotelling events. The pending court cases and the pending North Embarcadero Port Master Plan Amendment EIR do not affect the continued use of Broadway Pier for cruise ship berthing. This comment is included in the record and will be considered by the Board of Port Commissioners when determining whether or not to approve the Proposed Project. This comment does not address the adequacy of the MND.

Comment 5: We note that Port staff, in the Draft Negative Declaration, assert that the proposed new shore powering facilities would create no negative impacts on public views from Harbor Drive to the Bay over the B Street Pier because those views are currently blocked by temporary, tent-like structures that already exist in the pier. We note with some irony that the Port has been using those temporary structures for several years at the same time that Port staff has argued that it cannot construct similar tent-like structures to serve cruise ships on the Broadway Pier due to legal restrictions by local fire agencies and the US Department of Homeland Security.

Comment 5: This comment makes an observation regarding the effect from existing tent structures on the aesthetics analysis and questions the reasons for presence of the tent structures. The MND analysis of aesthetics is undertaken in accordance with the CEQA regulations and considers the existing conditions as they are. The sprung or tent structures are present on the pier and thus included as part of the existing conditions against which project impacts are evaluated. The rationale for existing conditions is not analyzed in the MND.

Comment 6: We have noticed that the Port Commission's agenda for December 2, 2009 included a request by staff for authorization to hire a new architectural team to begin the design of a new replacement cruise ship terminal structure on the B Street Pier. At the moment, the only permanent building on the pier is the existing cruise ship terminal, located along the northern half of the pier.

Response to Comment 6: This comment is included in the record and will be considered by the Board of Port Commissioners when determining whether or not to approve the Proposed Project. This comment does not address the adequacy of the MND.

Comment 7: We believe that the design of a new B Street Pier cruise ship terminal should be based on clear planning principals that adhere to the mandate in the Port's enabling legislation, the San Diego Unified Port Act of 1962, that requires the Port to preserve and enhance public access and views to the Bay. We believe that the design of a new B Street Pier cruise ship terminal should include goals of encapsulating more permanent shore power facilities within the new building(s), while preserving enhancing public access and views to the water over the pier.

Response to Comment 7: This comment advocates for incorporation of a permanent shore power equipment installation into the design for the redevelopment of the B Street Pier Cruise Ship Terminal. The District will consider the recommendation in the design of the redevelopment of the B Street Cruise Ship Terminal. The MND described that the shore power equipment is a series of utility boxes industrial in nature and determined that no views of the Bay are obstructed and the existing character of the views over B Street Pier are of the marine industrial cruise ship terminal operations (see sections 7. and 3.I of the MND). No significant impacts associated with public views have been identified as a result of the Proposed Project. Since release of the MND additional concept simulations of the shore power equipment have been generated and are included in these responses to comments. The simulations demonstrate that the Proposed Project would result in a relatively small additional feature to the existing large-scale pier with existing larger scale structures (the total Project area would be a little more than one percent of the 9.1-acre B Street Pier) and further support the finding of no significant impact. The Proposed Project would not result in any physical change to public access.

Comment 8: As an alternative, we believe that the Port should fully explore locating permanent shore power facilities in a below grade vault in conjunction with the construction of a new public plaza just east of the B Street Pier on property recently

obtained via the buyout of the US Navy's long term lease of the 1220 Pacific Highway site.

Response to Comment 8: This comment advocates that a new long-range goal be devised to find a more permanent home for the shore power equipment at alternative locations or below grade. The District has explored the potential for under-grounding the equipment and has determined that it is not feasible from safety, equipment access, engineering, and cost perspectives. The District will consider the recommendation in the design of the redevelopment of the B Street Cruise Ship Terminal. This comment is included in the record and will be considered by the Board of Port Commissioners when determining whether or not to approve the Proposed Project. This comment does not address the adequacy of the MND.

Comment 9: We also recommend that each of each of these alternatives, as well as the design and construction of a new cruise ship terminal on the B Street Pier be fully analyzed as part of the pending North Embarcadero Port Master Plan Amendment EIR.

Response to Comment 9: This comment requests that alternatives to the Proposed Project be evaluated in the North Embarcadero Port Master Plan Amendment EIR. The MND analyzed the Proposed Project and determined that all impacts would be less than significant with mitigation; therefore, no additional review is required under CEQA. The District has no plans to change the Proposed Project. This comment is included in the record and will be considered by the Board of Port Commissioners when determining whether or not to approve the Proposed Project. This comment does not address the adequacy of the MND.

Comment 10: To ensure that the new shore power facilities will be fully utilized to help clean up the air around our downtown bayfront, we recommend that the Port Commission adopt clear policies and regulations requiring that all cruise ships utilizing San Diego Bay docking facilities hook up to the new shore power system as soon as the new system is up and operating, and pay the cost of shore power purchased from SDG&E by the Port as part of their regular docking fees.

Response to Comment 10: This comment advocates that the Board of Port Commissioners adopt polices and regulations related to cruise ships and shore power. This comment is included in the record and will be considered by the Board of Port Commissioners when determining whether or not to approve the Proposed Project. This comment does not address the adequacy of the MND.



Exhibit A – Existing Conditions



Exhibit B – Concept simulation of proposed project

DRAFT
MITIGATED NEGATIVE DECLARATION
FOR
B STREET PIER SHORE POWER PROJECT
SAN DIEGO, CALIFORNIA

Prepared for:

San Diego Unified Port District
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Prepared by:

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November 2009

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Chapter 1 Project Description

1 Introduction

This draft Mitigated Negative Declaration has been prepared for the San Diego Unified Port District (Port or Port District) B Street Pier Shore Power Project (Project). The proposed Project includes modifications necessary to install shore-power equipment at the B Street Pier and Broadway Pier Cruise Ship Terminals (CST) so that cruise ships berthing at B Street or Broadway Piers can use electrical power from the shore rather than from their own engines while at berth. This document has been prepared pursuant to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code §21000 *et seq.*) and the implementing regulations, the “CEQA Guidelines” (California Code of Regulations, Title 14, Division 6, Chapter 3, §15000, *et seq.*). Specifically this document meets the requirements of CEQA Guidelines §15071. Based on the CEQA analysis contained in this document, the potential environmental impacts associated with this proposed Project after mitigation are expected to be less than significant.

2 Purpose of a Mitigated Negative Declaration

CEQA requires that the potential environmental impacts of proposed “projects” be evaluated and that feasible methods to reduce, avoid or eliminate significant adverse impacts be identified and implemented. The Port District’s proposed modifications constitute a “project”, as defined by CEQA. To fulfill the purpose and intent of CEQA, the Port District, the “lead agency” for the proposed Project, has prepared this draft Mitigated Negative Declaration to address the potential environmental impacts associated with the Port District’s proposed Project at the B Street Pier and Broadway Pier CST.

The CEQA, Public Resources Code (PCR) Section 21064.5, defines a ‘Mitigated Negative Declaration’ as a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to, by the applicant before the proposed negative declaration and initial study are released for public review would avoid or mitigate the effects to a point where no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Public Resources Code Section 21064 defines a “Negative Declaration” as a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.

Public Resources Code Section 21068 defines a significant effect on the environment as a substantial, or potentially substantial, adverse change in the environment.

Public Resources Code Section 21082.2 (a) requires the lead agency to determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record. The lead agency is the public agency that has the principal responsibility for

carrying out or approving a project that may have a significant adverse affect upon the environment (PCR §21067). Because the proposed project requires discretionary approval from the Port District for installation of electrical equipment and associated auxiliary equipment, the Port District has the greatest responsibility for supervising or approving the project as a whole. Therefore the Port District is the most appropriate public agency to act as the lead agency [CEQA Guidelines §15051(b)].

3 Project Proponent

The Project proponent is the Port District. The Port District is a special district which was created in 1962 by the San Diego Unified Port District Act, Harbors and Navigation Code, Appendix 1, Section 1, *et seq.* The Port District is responsible for the development, operation, maintenance, control, regulation and management of the harbor of San Diego and the tidelands and lands lying under the inland navigable waters of San Diego Bay, and for the promotion of commerce, navigation, fisheries and recreation thereon. The Port District has jurisdiction and land use management authority over the tidelands and submerged lands conveyed to it by the cities of San Diego, Chula Vista, Coronado, National City and Imperial Beach pursuant to the Act. The tidelands and submerged lands subject to the jurisdiction of the Port District include the site of the proposed Project.

4 Project Purpose & Need

The Port District seeks to modify its facilities located at 1140 and 1000 North Harbor Drive in San Diego, California to install shore-power equipment at the B Street Pier and Broadway Pier. Shore power, also known as “cold-ironing,” supplies power to ships at berth (also know as “hotelling”) rather than the ships using their own engines to provide hotelling power. (Hotelling in this context means those operations on a marine vessel that require electric energy to power operations that include, but are not limited to, lights, ventilation, heating, cooling, and loading and unloading operation that are used when a marine vessel is at berth.) Shore power can dramatically reduce air emissions of criteria, toxic, and greenhouse gas pollutants. The proposed Project is consistent with the Port’s 2007 Clean Air Program¹ (CAP), including the CAP’s shore power candidate control measure, as well as the Port’s Green Port Policy.² Implementation of this project is also a necessary step for eventual compliance with the California Air Resources Board (CARB) Shore Side Power Rule (CCR, 2008), adopted in December 2007, which requires shore power infrastructure to be operational by January 2014. Because some cruise lines’ ships already are capable of using shore power, the emission reductions can begin immediately after the proposed Project is complete. (In contrast, many other types of ships that call at the Port, including break-bulk and roll-on/roll-off ships, are not currently cold-ironing capable and would need to be retrofitted to use any future shore-power facilities at those terminals.)

¹ See <http://www.portofsandiego.org/environment/clean-air.html> for more information on the Port’s Clean Air Program.

² See <http://www.portofsandiego.org/environment/green-port.html> for more information on the Port’s Green Port Policy and Program.

5 Project Location

The entire system to provide shore power to calling cruise ships requires the installation of equipment on the B Street and Broadway piers as well as off the piers. This Project includes the proposed on-deck shore power equipment on B Street Pier as well as on deck cable management equipment on both piers, the cable laying between the B Street Pier and Broadway Pier, and the cable laying by SDG&E from the Station B Substation along Broadway and continuing north along Harbor Drive to the B Street Pier.

The Project site is located at the northern end of the San Diego Bay in southern California (Figures 1 and 2). The location for the proposed Project is mainly on the B Street Pier in downtown San Diego (Figure 3), with minor cable and equipment installation (a jib crane) on Broadway Pier. The cables transmitting electricity between the piers will be located in conduits hanging from the underside of the wharf along the Harbor Drive. The cable being installed by SDG&E will be located in buried conduits running along Broadway Street and continuing along Harbor Drive. The B Street and Broadway piers are west of North Harbor Drive in between West Ash Street and G Street. The Project site is approximately 600 feet west of the end of West B Street, which does not extend through to the Bay. The site is approximately one mile west of Interstate 5 (I-5). To the north and east is downtown San Diego, and to the south and west is San Diego Bay. The Project site is located on the west side of the San Diego Air Basin, which is within the jurisdiction of the San Diego Air Pollution Control District (SDAPCD).

Downtown San Diego encompasses an area of mixed land uses, with industrial, recreation, residential and commercially zoned areas. Specifically, the CST is adjacent to Public Recreation and Commercial Recreation areas. The land use designations in the Port Master Plan (PMP) for B Street Pier and Broadway Pier, including the Project site, are Marine Terminal, Promenade, Park/Plaza and Commercial Recreation. The water use designation for the water areas adjacent to B Street Pier and Broadway Pier is Terminal Berthing. The on-site construction and operational activities associated with the proposed Project cover an area of approximately 3,600 square feet (0.08 acres).

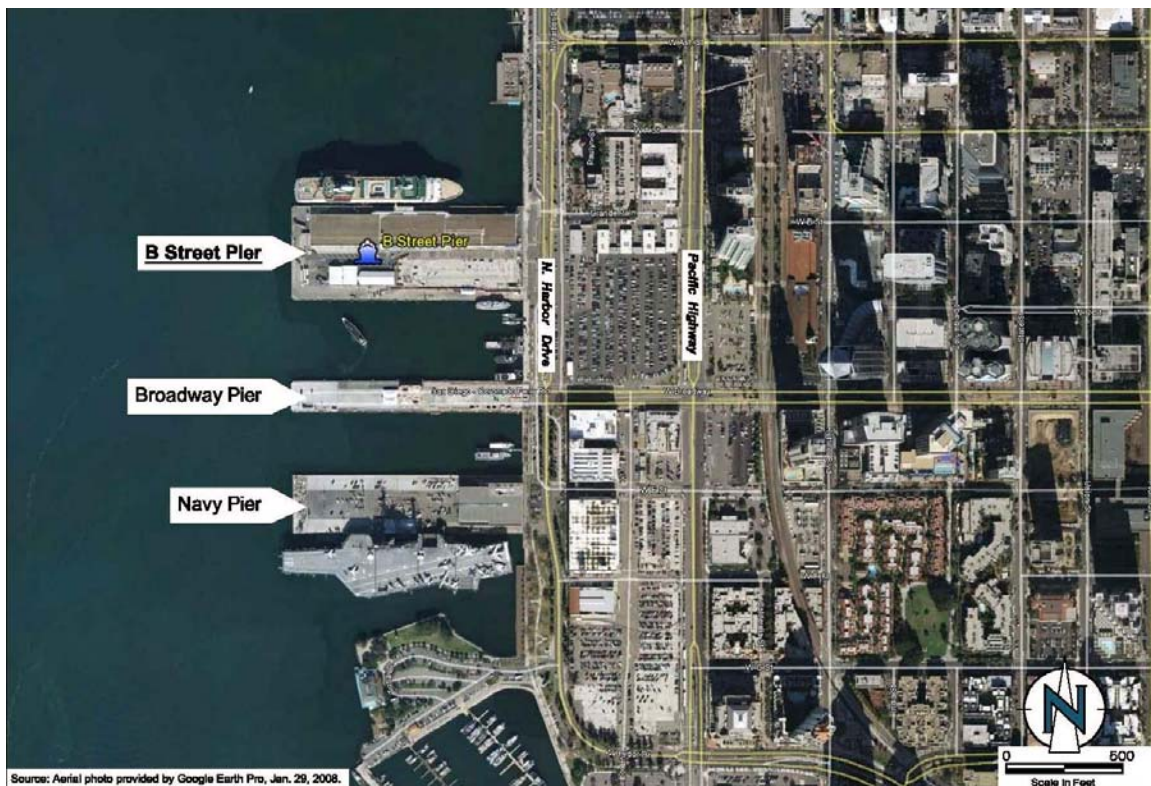
Figure 1: Port of San Diego Facilities Map



Figure 2: Aerial of the Port of San Diego



Figure 3: Aerial Photo of B Street Pier and Immediate Vicinity



6 Existing Environmental Setting

The Project site is principally the existing man-made pier (B Street Pier) and secondarily the Broadway Pier; both are located in the PMP Planning District 3, Center City Embarcadero Area (Subarea 33). The land and water designations are Marine Terminal, Commercial Recreation, Park/Plaza, and Promenade uses. The types of uses allowed in the Commercial Recreation category include hotels, restaurants, convention center, recreational vehicle parks, specialty shopping, pleasure craft marinas, and sport fishing. Promenade use indicates a shoreline public pedestrian promenade-bicycle route system. Park/Plaza uses include urban type recreational developments and amenities, public art, public parks, public fishing piers, vista areas, scenic roads, and recreational facilities. Marine Terminal uses consist of facilities required for the docking of ships and unloading/loading a variety of cargo types.

The B Street Pier lies at the bayfront between Broadway and Ash Streets in downtown San Diego. The north side of the B Street Pier faces open deep water. North of the site area is Anthony's Fish Grotto, the Star of India, and the Maritime Museum of San Diego. All of these small-scale sites are designated as Commercial Recreation and extend out into the San Diego Harbor, which lies north and east of the Pier. To the south of the B Street Pier lies Broadway Pier and south of that is the USS Midway at the Navy Pier. Across the street to the east of the B Street Pier lies public parking, Lane Field, Navy buildings, the Holiday Inn, Santa Fee Railroad Depot and downtown San Diego.

The B Street Pier consists of a 9.1-acre deck area pier with a one-story building. The pier foundation is a hydraulic-fill mole structure (approximately 60% fill in the center area) with a bearing pile supported reinforced concrete deck and girder marginal wharf that extends 60 feet toward the bay on the north and south side, and 60 feet toward the bay on the west side of the pier. The bearing piles are approximately 20 square inches and are spaced at a distance of approximately 10 feet on center.

The B Street Pier is entirely paved with no landscaping or pervious surfaces. Structures on the pier include the CST Building, a metal passenger loading bridge, and three metal frame and canvas structures. The CST Building is a masonry building with an area of approximately 108,000 square feet (870 feet long by 132 feet wide) and an arched metal joist and beam framed roof. The roof varies from 20 feet high at the north and south perimeter walls to a maximum height of 25 feet at the top of the arch. Parapet walls on the east and west end of the building and between the three primary sections of the building extend a few feet above the built-up metal frame and timber roof. The CST Building accommodates not only the CST but also the local U.S. Customs office, cruise service related offices and general storage for the Port in the unfinished area of the warehouse. The general location of the cruise ship facility is adjacent to North Harbor Drive with access to the downtown area via Ash Street and Broadway Street. Figure 4 provides an illustration of the present structures as well as the proposed on-deck shore power equipment discussed in Section 7. Figure 5 shows a similar shore power system.

Figure 4: General Schematic of Proposed Project Equipment Installation

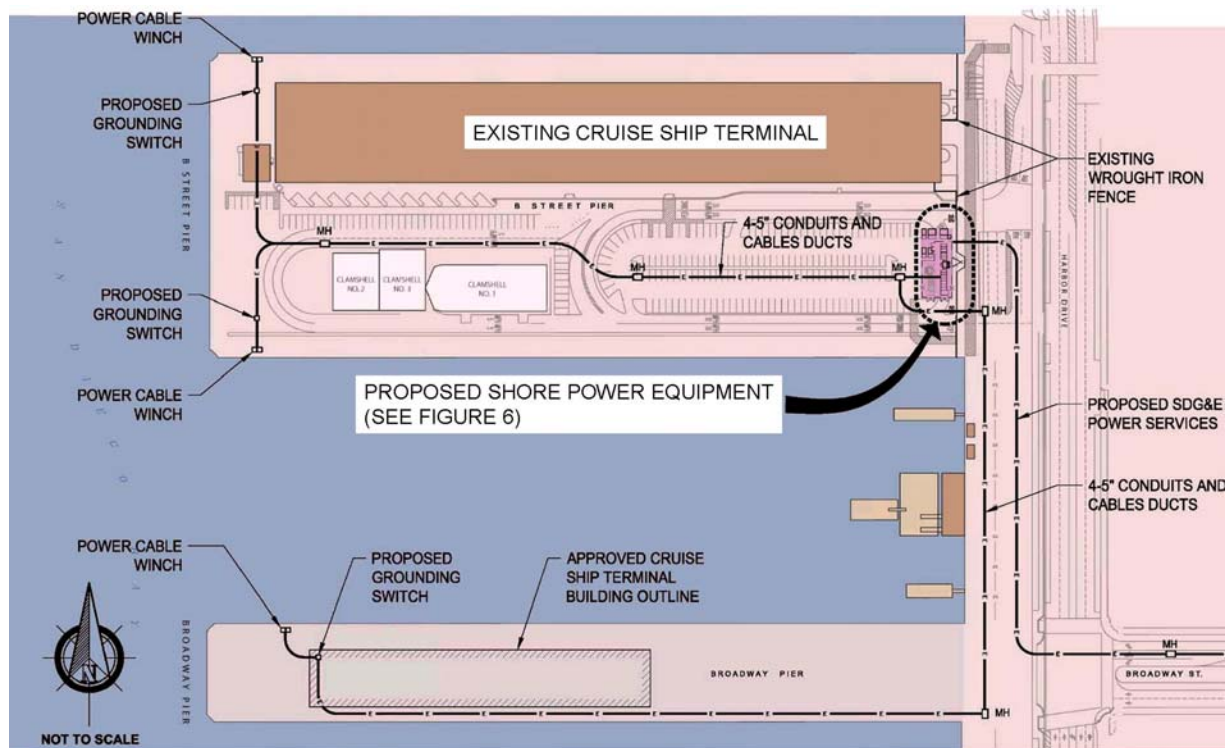
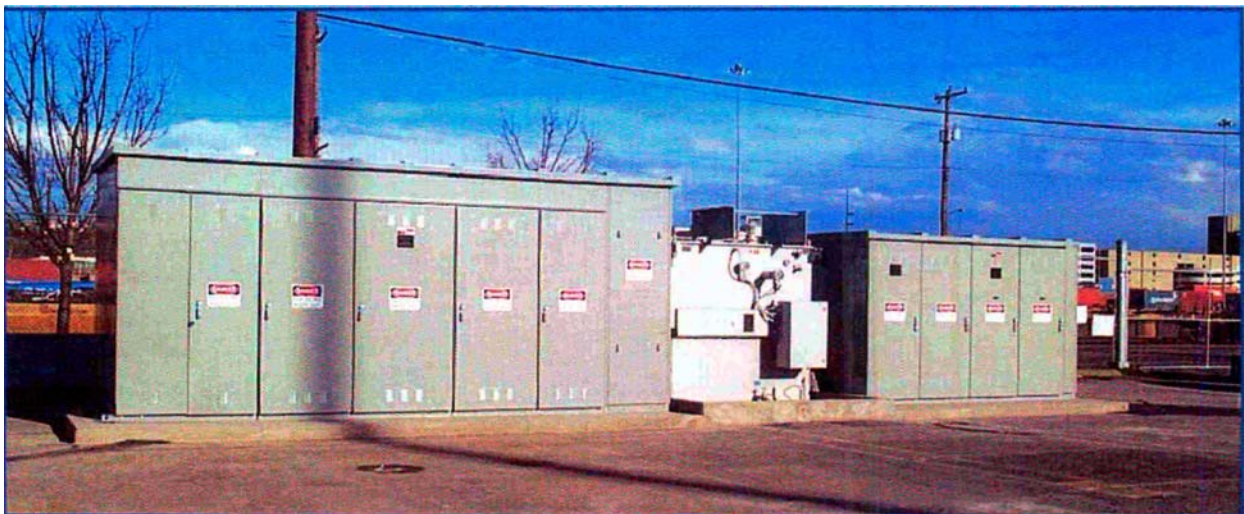


Figure 5: Example of main metering, transformer, and secondary equipment for a similar shore power system in Washington.



On B Street Pier there are two canvas and metal frame structures (sprung structures) and a tent on the south side of the pier. One of the sprung structures is approximately 60 feet by 150 feet (9,042 square feet) and the other sprung structure is approximately 60 feet by 75 feet (4,500 square feet). The smaller tent in the middle is approximately 60 feet by 80 feet (4,800 square feet). The tent and sprung structures are all about 30 feet high. These structures are used for cruise ship passenger baggage lay down only.

The B Street CST facility offers cruise operators one berth adjacent to the terminal building on the north side and another berth on the south side of the pier. The north berth of the B Street Pier is currently preferred due to its placement adjacent to the CST building and the absence of a pier on the other side of the berth.

The B Street and Broadway piers are separated by an area that is approximately 400 feet wide. The Broadway Pier is approximately 3.0 acres of impervious paved deck and is constructed entirely on piles. A new Broadway CST building, which is not part of the proposed Project, is currently under construction on Broadway Pier, to replace prior cruise ship facilities on the pier. The under construction two-story CST Building and a metal passenger loading bridge will be approximately 52,000 square feet (451 feet long by 75 feet wide). The building will have a sawtooth shaped roof with height varying from 32 feet to 45 feet. An approximately 62-foot high pylon structure will be constructed at the east end of the building. The new CST Building will accommodate cruise ship passengers and baggage facilities, the local U.S. Customs office, cruise service related offices and general storage for the Port. The general location of the cruise ship facility is 400 feet west of North Harbor Drive with access to the downtown area via Harbor Drive and West Broadway Street. The under-construction Broadway Pier CST facility offers cruise operators only one berth adjacent to the north side of the pier.

7 Project Description

Current operations at the CST consist of cruise ship berthing to load and unload passengers and their luggage, as well as supplies for the voyages. In 2008, 255 ships called at the B Street and Broadway piers. In general, cruise ships spend between 3 to 14 hours at berth. While at berth, a ship's hotelling needs (e.g., on-board electricity) are provided by a ship's engine, usually an auxiliary engine burning marine diesel oil (MDO) or other on-board fuel; thus, hotelling can result in appreciable criteria, toxic and greenhouse gas (GHG) emissions as illustrated in Table I-1 below.³ The proposed Project allows for shore power to provide hotelling needs while cruise ships are at berth rather than the on-board combustion of fuel that is currently used.

Table I-1 2007 Emissions Inventory for the Port of San Diego Cruise Ships³

Ocean Going Vessel Type	Emissions (ton/yr)						
	NO _x	SO _x	CO	PM ₁₀	PM _{2.5}	VOC	CO ₂ eq.
Cruise Ships	197.03	29.06	15.59	5.95	3.26	5.67	28,458.9
3 Shore-Power Capable Ships*	41.71	6.15	3.30	1.26	0.69	1.20	NA

* See discussion below related to the three shore power capable ships.

Through shore power (also known as "cold ironing"), the electrical needs of the cruise ships that berth at the B Street and Broadway piers would be met by connecting with on-pier electrical infrastructure to the ships, enabling the on-board engines to be turned off for most of the time at

³ All emission estimates except for CO₂ equivalents are from Yorke Engineering, LLC. *Port of San Diego: Cold Ironing Study*, May 2007. CO₂ equivalent estimates are from Starcrest Consulting Group, LLC. *The Port of San Diego 2006 Emissions Inventory*, August, 2007. These estimates are based on older emission factors and different cruise ship activity than those used for Project-specific analyses in this document. CO₂ emissions data per individual cruise ship was not provided in the referenced documents.

berth. Although these on-board engines would need to be used while the ships connect to and disconnect from shore power, the use of shore power would achieve a substantial reduction of overall emissions (see Chapter 2).

By May 31, 2010, the Port District plans to have three berths equipped to provide shore power to cruise ships capable of using the proposed shore-power equipment, over 3 years in advance of the CARB requirements. Although three berths will be equipped with shore power equipment, power will be provided in two phases. Phase 1 of the proposed Project would provide shore power to one hotelling ship at a time, regardless of which berth it is at. Phase 2 operations are scheduled to begin in 2017 and would be able to provide shore power to two berths simultaneously, regardless of which of the three berths they docked at. Presently, there are three cruise ships that typically dock at the Port which are currently shore-power capable – Dawn Princess, Oosterdam and Westerdam. (A shore power capable ship has the on-board systems and connections that can be connected to dock-side power systems.) Based on the number of visits by these three ships, the proposed Project would initially facilitate the use of shore power for approximately 51 vessel visits per year by these shore power capable ships (based on the annual average projected for the time period of June 2010 through 2013) compared to a total of approximately 257 vessel visits per year by 33 cruise ships. As additional ships become shore-power capable, the proposed Project would allow them to use shore power and would further reduce emissions. By 2014, at least 50% of an operator's fleet (passenger vessels that visit more than five times per year) ship calls to the Port will be shore powered, in compliance with CARB's Shore Side Power Rule, increasing to 70% in 2017 and to 80% in 2020. Any shore power capable cruise ship in a fleet that visits the Port fewer than five times per year (and is therefore exempt from the Shore Side Power Rule) or those ships in a fleet that are upgraded to shore power capable in excess of the 2014, 2017 and 2020 requirements would provide even greater reductions beyond those required under the CARB Rule if they utilize the shore power available at the berth.

7.1 Equipment Installation

The proposed Project requires installation of on-pier infrastructure on the B Street Pier (connected to two berths) and Broadway Pier (connected at one berth) to allow shore-power capable cruise ships to obtain power pier-side through flexible electrical cables. The system components include primary electrical infrastructure (i.e., provided by SDG&E), primary equipment, two transformers, a 12 kV main circuit breaker, a capacitor bank, secondary equipment, ground switch, and cable management controls. The transformers are needed to provide electricity at a specified voltage (i.e., 6.6kV or 11kV) to each ship. The power cables will be used to connect power lines from the transformers to the on-dock shore-side connection locations, and from those locations to the ships; communication cables will be used to synchronize the power to the ship's on-board electrical equipment. In general, the B Street CST Shore Power System includes shore power electrical equipment, automation and operational software infrastructure at B Street Pier including meters, breakers, relays, ground switches, capacitors, transformers, control panels, cables, cable conduits, approximately 12-foot tall jib cranes for cable management and support, concrete mounting pads, fencing and other ancillary improvements. The cable necessary for connecting Broadway Pier to the transformers on B Street Pier, as well as the SDG&E cable running from the Station B Substation to the B Street Pier, is addressed in this document. The cable from B Street Pier to Broadway Pier will be

installed beneath the promenade and right of way adjacent to North Harbor Drive, which may include portions extending under the existing wharf. No in-water alignment is proposed. The Project also includes providing a 12-foot tall jib crane for cable management on Broadway Pier for shore power. Before operations begin, there will be commissioning and testing of the system, in coordination with SDG&E. In addition, vessel modifications are not included in the Project description because the vessels for this application are already shore-power capable or future shore power capable ships would be retrofitted off-site.

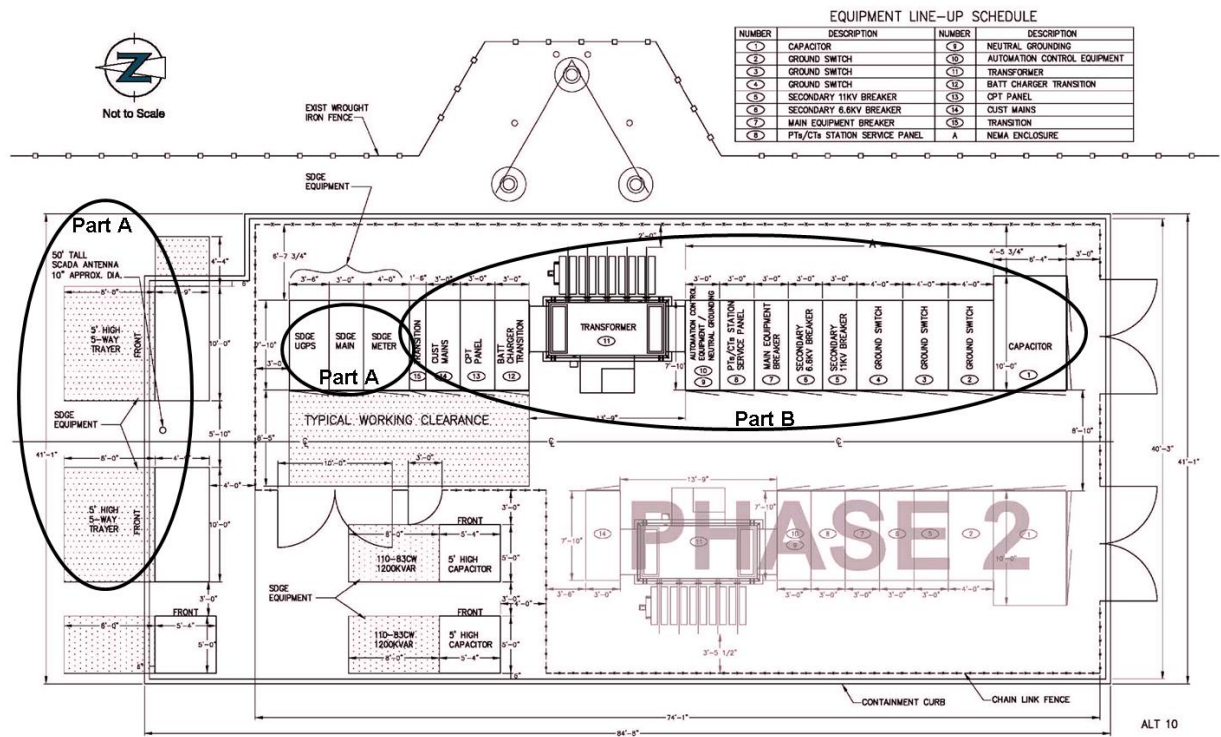
Specifically, the shore power infrastructure required for the proposed Project includes the following (Figure 4):

- **Electrical Primary Infrastructure:** SDG&E will install a new subsurface three-way switch on Broadway, as well as one Supervisory Control and Data Acquisition (SCADA) Trayer 5-way switch and two capacitors on a pad as designated by the Port District, and a 12 kV primary meter in the Cold Ironing Switchgear component. SDG&E will connect all of the above installed equipment to C110 to serve a maximum load of 12 MVA for Phase 1 of the proposed Project. The equipment pad designated by the Port District will be located at the CST and will be granted to SDG&E in the form of an easement for its electrical equipment. SDG&E will reconfigure and extend existing circuit 110 (C110) of Station B Substation, which is located west of Kettner Boulevard and southeast of E Street. The C110 will be extended with new 750 kcmil copper cables in existing and new underground conduits and manholes. The extension will start at the breaker at Station B Substation and will continue west on Broadway to Harbor Drive. It will then head north on Harbor Drive to the CST on B Street Pier. The primary electrical infrastructure consists of the following equipment (see Part A on Figure 6 for equipment locations):
 - One 5-way Trayer switch, 2 capacitors, cables, and connectors – The Trayer switch and capacitors will be installed at the eastern edge of B Street Pier. The cables and connectors are associated with the equipment and will be part of the overall cable system required for the proposed Project.
 - Three 3-way Trayer switch, capacitor, cables, and connectors – The Trayer switch and capacitors will be installed at the eastern edge of B Street Pier. The cables and connectors are associated with the equipment and will be part of the overall cable system required for the proposed Project.
 - Four 5-inch conduits, one handhold on Broadway and intercept – The conduits will run between the B Street Pier and Broadway Pier.
 - Four 4-inch conduits – These conduits will run to the B Street Pier CST.
 - SDG&E Underground pull section (UGPS) (i.e., 42-inch × 96-inch × 96-inch) – The UGPS will be installed on the eastern end of B Street Pier (i.e., land side).
 - SDG&E Main (36-inch × 96-inch × 96-inch) – The Main will be installed on the eastern end of B Street Pier.
 - SDG&E Primary meter, 12 kV primary meter, cable, and connector – This equipment will be installed on the eastern end of B Street Pier.

- Four 5-inch conduits, one handhold on Broadway and intercept – The conduits will run from the Station B Substation to the B Street Pier CST.
 - One run of new 750 kcmil copper cable – This cable will run from Station B Substation to the B Street Pier CST.
 - One 50-foot SCDA antenna for signal – The antenna will be installed at the eastern end of B Street Pier, in between the two proposed Trayer switches.
- **Main Distribution Equipment:** The main distribution equipment includes the Primary and Secondary shore power system equipment located at the base of B Street Pier. The equipment is adjacent to the waterfront promenade and in between the B Street Pier parking entrance and exit driveways. It is located behind the existing security fence. The equipment ranges in height from 5 feet to 12 feet, and is approximately 68 feet in cumulative length. A safety perimeter barrier and fence will be constructed around the equipment line up. The equipment line up includes the 12 kV main circuit breaker, the two step-down transformers, the secondary circuit breaker, capacitors, and ground switches. All equipment, including the transformers, will be placed inside a 6-inch curb spill containment basin. The main distribution equipment consists of the following equipment (see Part B on Figure 6).
 - One capacitor (76-inch × 120-inch × 107-inch) – The capacitor will be installed at the eastern end of B Street Pier.
 - Three ground switches (48-inch × 96-inch × 96-inch) – The switches will be installed at the eastern end of B Street Pier, next to the capacitor.
 - Secondary 11 kV breaker (36-inch × 98-inch × 96-inch) – The secondary breaker will be installed at the eastern end of B Street Pier, next to the ground switches.
 - Secondary 6.6 kV breaker (36-inch × 98-inch × 96-inch) – The secondary breaker will be installed at the eastern end of B Street Pier, next to the 11 kV breaker.
 - Main equipment breaker (36-inch × 98-inch × 96-inch) – The main breaker will be installed at the eastern end of B Street Pier, next to the 6.6 kV breaker.
 - PTs/CTs station service panel cubicle (48-inch × 96-inch × 96-inch) – The cubicle will be located at the eastern end of B Street Pier next to the main equipment breaker.
 - Neutral grounding, automation control equipment (36-inch × 96-inch × 96-inch) – This equipment will be located at the eastern end of B Street Pier next to the PTs/CTs station service panel cubicle.
 - Two 20 mV, 12.47 kV sub-station transformers (165-inch × 145-inch, × 129-inch) – The sub-station transformers will be installed at the eastern end of B Street Pier. One transformer will be installed in Phase I and one in Phase II.
 - One battery charge transition cabinet (36-inch × 98-inch × 96-inch) – The battery charge transition cabinet will be located at the eastern end of B Street Pier next to one of the sub-station transformers.
 - One CPT panel (36-inch × 98-inch × 96-inch) – This panel will be located next to the battery charge transition cabinet at the eastern end of B Street Pier.

- One CUST main breaker (36-inch × 98-inch × 96-inch) – The main breaker will be installed next to the CPT panel at the eastern end of B Street Pier.
- One transition section (18-inch × 98-inch × 96-inch) – The transition section will be located in between the main breaker and the SDG&E meters on the land side of the B Street Pier.
- One outdoor National Electrical Manufacturer’s Association (NEMA) enclosure – The enclosure will contain the automation control equipment and neutral grounding, the service panel, the main and two secondary breakers, the three ground switches, and the capacitor on the eastern end of B Street Pier.

Figure 6: General Schematic of Part A of Proposed Project Equipment Installation



- **Conduit/Cable Infrastructure:** The conduit/cable infrastructure consists of the following:
 - Manhole to Ground Switch and Substation Transformer to Broadway Pier
 - Six 5-inch PVC conduits (concrete-encased)
 - Three 2-inch PVC conduits (concrete-encased)
 - One 3-inch neutral conduit (concrete-encased)
 - Two 16 conductor #16 control cable
 - One 4-pair multimode fiber cable
 - Two Ethernet cables
 - Nine 1c 750 MCM CU 15 kV EPR
 - Ground Switch to Jib Crane Power Cable Winch (typical of the three connections)
 - Two 16 conductor #16 control cable

-
- One 4-pair multimode fiber cable
 - Two Ethernet cables
 - Ship Connection (typical of the three connections)
 - Two 16 conductor #16 control cable
 - One 4-pair multimode fiber cable
 - Two Ethernet cables
 - Station B Substation to Manhole on B Street Pier
 - Twelve 5-inch PVC conduits (concrete-encased)
 - Six 2-inch PVC conduits (concrete-encased)
 - Two 3-inch PVC neural conduits (concrete-encased)
 - Four-16 conductor #16 control cables
 - One 4-pair multimode fiber cable
 - Two Ethernet cables
 - **Cable Management and Required Controls:** The cable management system includes the following at the west ends of Broadway and B Street Piers (see Figure 7):
 - One grounding switch (48-inch × 96-inch × 96-inch) and jib crane with power cable winch (20-feet high) at B Street North.
 - One grounding switch (48-inch × 96-inch × 96-inch) and jib crane with power winch cable (20-feet high) at B Street South.
 - One grounding switch (48-inch × 96-inch × 96-inch) and jib crane with power winch cable (20-feet high) at Broadway North.
 - **Ship Connect Equipment:** The connection equipment, located at each berth on the west ends of Broadway and B Street Piers, is expected to consist of four power connectors and one neutral connection. The vessel modification is not included because the vessels for this application would be retrofitted off-site.

Figure 7: General Schematic of Part A of Proposed Project Equipment Installation

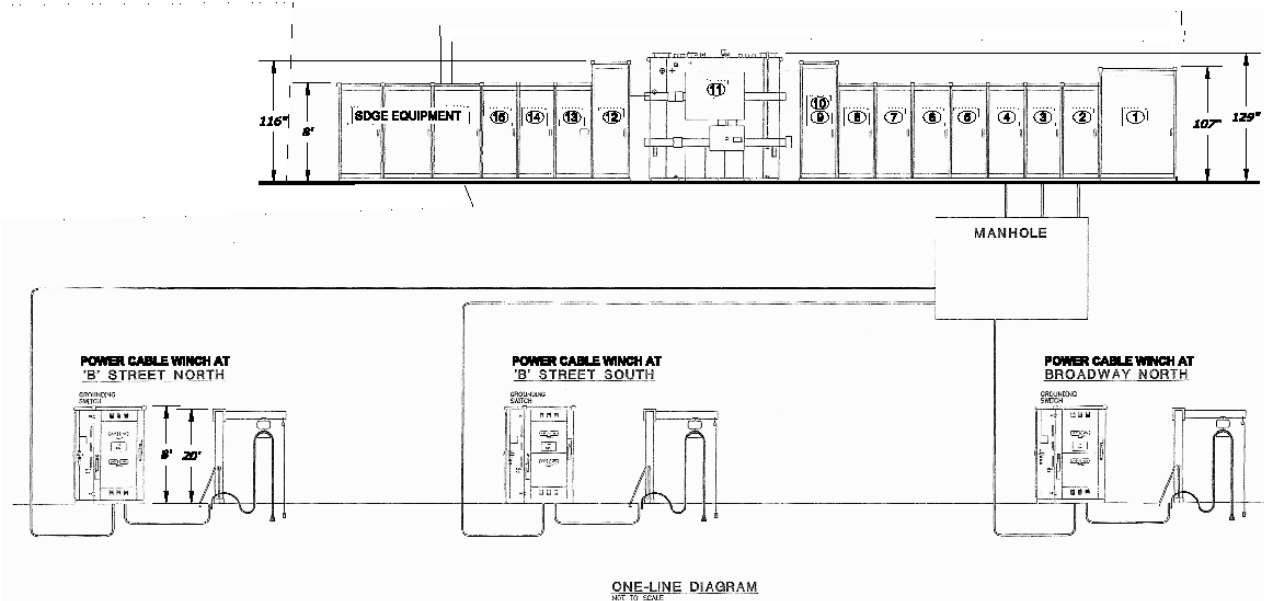


Figure 4 provides a general overview of the location of each piece of equipment to be installed on B Street and Broadway piers. Figures 6 and 7 show detailed schematics of the proposed equipment.

The electrical equipment must be located in close proximity to the B Street and Broadway piers, while at the same time minimizing impacts on cruise terminal operations. Thus, the equipment would be located at the east, or landward, end of the B Street Pier adjacent to the waterfront promenade. The primary electrical equipment necessary to connect a cruise ship to shore power, including the transformers and related equipment, requires approximately 2,100 square feet to serve one ship at a time at any of the three berths (Phase 1), and up to 3,600 square feet to serve two ships at a time at any of the three berths (Phase 2). The transformers would be up to 12 feet in height above the existing pier deck. A safety perimeter barrier would be constructed around the equipment at relevant electric code and SDG&E distances (SDG&E clearance requirements are from three feet on the sides to five feet on the back and eight feet to the front of standing power equipment). Implementation of the Project would affect and be affected by the Port District's North Embarcadero Visionary Plan (NEVP) Phase 1 Public Access Features Project, and SDG&E efforts to increase service capacity to the project sites, requiring coordination.

Minimal excavation is anticipated because only a few, small foundations are necessary to provide support for the proposed equipment. Soil excavation will occur along the western and southern edges of B Street Pier for cable and conduit installation between the piers, and at the end of both B Street Pier and Broadway Pier at the seawall. Additional soil excavation will occur along Broadway Street, and north along Harbor Drive to B Street Pier for cable and conduit installation from Station B Substation to the B Street Pier. Construction will generally take place in three places: at the property line by the existing utility metering equipment; in a path from the

property line to the main distribution equipment; and at the base of the B Street Terminal. Power cables to the three berth locations at B Street Pier and Broadway Pier will be routed from the shore power main equipment pad (behind fence on the Harbor Drive walkway at the B Street Pier) to two locations near the west end of B Street Pier and one location near the west end of Broadway Pier. The cables will be installed in two different configurations: 1) direct buried cables in which a portion of the cables will be installed in conduits that are buried directly from the equipment pad to the north and south sides of the B Street Pier; and 2) suspended cables in which the remaining portion of cables will be installed in conduit that is suspended to the underside of both piers from the head of the piers to the west end of the piers and the underside of the wharf between the B Street and Broadway Piers.

7.2 Construction Schedule

Implementation of the proposed project requires construction including (1) pavement demolition and removal; (2) construction of equipment foundations and pads; (3) installation of the electric primary infrastructure from the utility metering equipment to the main distribution equipment; (4) installation of the main distribution equipment including a main circuit breaker, step-down transformers, secondary circuit breaker, capacitor bank, and cable management systems; (5) installation of additional switching, power conditioning, and power control equipment; (6) installation of cables and cable connectors to transfer information and power between the ship and shore-side equipment; and (7) excavation to install buried conduits containing cables for transmission of electricity to the Project site. Table I-2 outlines the proposed construction schedule for installation of the Project equipment. The schedule for each construction activity listed below is not expected to overlap except for SDG&E trench excavation as indicated in the note for Table I-2. The construction activities will be conducted during distinct time periods and will disturb substantially less than one acre of land within the facility, which covers approximately 0.08 acres.

Although some of the construction activities will be occurring on the piers, the activities will not disrupt current operations at the CST. All construction will be conducted to minimize interference with operations at the Port. For example, if two ships dock at B Street Pier at the same time, then construction on that pier will be halted so operations are not affected.

Table I-2 Construction Schedule

Construction Activity	Estimated Number of Days for Completion
Construction 1a: Demolition and excavation for equipment compound	20
1b: Demolition and excavation for conduit trenching	20
1c: Demolition and excavation for ground switch/jib	8
Construction 2a: Backfill/compacting/paving for equipment compound (pads)	15
2b: Backfill/compacting/paving for conduit (trench backfill and restoration)	15
2c: Backfill/compacting/paving for ground switch	10
Construction 3: Equipment delivery and installation	20
Construction 4a: Excavation for SDG&E conduit trenching*	40*
4b: Backfill/compacting/paving for conduit (trench backfill and restoration)	20
Total Construction Days Required	128

* Construction 4a will be concurrent with Construction 3 (20 of 40 days) and Construction 4b (20 of 40 days)

Chapter 2 Environmental Checklist

1 Potentially Significant Impact Areas

The following environmental impact areas have been assessed to determine their potential to be affected by the project. As indicated by the checklist on the following pages, environmental topics marked with an "✓" may be significantly adversely affected by the project, even with mitigation. An explanation relative to the determination of impacts can be found following the checklist for each area.

- | | | |
|---|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture and Forest Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology/Soils |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology/
Water Quality |
| <input type="checkbox"/> Land Use/Planning | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise |
| <input type="checkbox"/> Population/Housing | <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Transportation/
Traffic | <input type="checkbox"/> Utilities/Service Systems | <input type="checkbox"/> Mandatory Findings of Significance |

2 Determination

On the basis of this initial evaluation:

- I find the project COULD NOT have a significant effect on the environment, and that a NEGATIVE DECLARATION will be prepared.
- I find that although the project could have a significant effect on the environment, there will not be significant effects in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the project MAY have a significant effect(s) on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the project MAY have a "potentially significant impact" on the environment, but at least one effect: (1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the project could have a significant effect on the environment, because all potentially significant effects: (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the project, nothing further is required.

Date: _____

Signature: _____

3 Environmental Checklist & Discussion

I. AESTHETICS. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant	No Impact
			Impact	
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

1.1 Environmental Setting and Impacts

Existing Visual Quality and Character

The proposed Project site is located at 1140 and 1000 North Harbor Drive adjacent to the waterfront promenade at the northern end of the San Diego Bay in the City of San Diego. Although the entire San Diego bayfront is regarded as a regionally significant scenic resource, the most significant public views to San Diego Bay are the street-level views from North Harbor Drive, Broadway, and the Broadway Pier. The end of Broadway Pier is identified as a PMP designated vista area. No other vistas have been identified by the PMP in the area surrounding the proposed Project site. The NEVP proposed to redevelop existing areas within North Embarcadero with a variety of uses to re-establish the North Embarcadero area as an active, vibrant area with uses and amenities that celebrate and attract people to the San Diego waterfront. The NEVP encompasses a set of public infrastructure improvements for the area bordered by Market Street on the south, Laurel Street to the north, the railroad right-of-way to the east, and the San Diego Bulkhead line (the bayward edge of land) to the west, in downtown San Diego. The NEVP is designed to shape the future of San Diego by joining downtown and the bay. The NEVP only identifies one view corridor along Pacific Coast Highway south of Broadway and proposes the extension of B Street to establish a new east-west view corridor to connect between downtown and the waterfront.

The B Street Pier currently supports a large one-story building utilized as the CST. Development in the area immediately adjacent to the B Street Pier is characterized by a variety of low- and mid-rise uses. Directly north of the B Street Pier is open water, Anthony's Fish Grotto, the Star of India, and the San Diego Maritime Museum. These are all small-scale commercial recreational uses that extend out in to the San Diego Bay. The Broadway Pier and the USS

Midway are located to the south. Lane Field, U.S. Navy buildings and the Holiday Inn are located to the east and create a series of high- and low-rise structures that have been constructed over several decades, resulting in a seemingly disjointed collection of buildings that are not visually linked or designed to create a cohesive identity within the area.

The character of the existing view on and adjacent to B Street Pier is commercial marine operations. The view from the B Street Pier provides an extremely limited view of San Diego Bay. As can be seen in Figures 8 through 12, the buildings mentioned above, together with associated structural elements such as fences and signage, result in narrow, interrupted view corridors with minimal views of the bay. The dominant components of the view from the promenade are the sprung tent structures on the south side of B Street Pier and the main CST structure on the north side. Boats anchored along the bayshore, with the extreme example of the USS Midway, also restrict views. Disparate vertical elements, such as boat masts, flagpoles, and lighting standards, are common elements in any view. Views are currently experienced by pedestrians and motorists passing by the B Street Pier. No views of the Bay or open waters of the Bay are currently available adjacent to or across from the east end of B Street Pier. There are no scenic vistas designated in the PMP on or adjacent to the B Street Pier.

The Broadway Pier has a designated scenic vista per the PMP. The facilities proposed on Broadway Pier consist of equipment items only and would be consistent with equipment types and sizes used for current cruise ship operations historically.

Project Viewer Groups

The proposed Project is anticipated to affect two specific groups of viewers: pedestrian and vehicular. The pedestrian viewer group is composed of visitors to the waterfront promenade, including people who live and work in the downtown area, and patrons of the cruise ships, ferries, tour cruises, maritime museum, and waterfront restaurants. The vehicular viewer group is primarily composed of bicyclists, motorists, and passengers on public transit, tour buses and taxis traveling north and south along North Harbor Drive.

Pedestrian viewers are considered to have a high degree of viewer sensitivity to change in existing visual character or quality due to the typical distance, angle of observation, and duration of their views. Vehicular viewers are considered to have a low to moderate sensitivity to change due primarily to the greater distance and shorter duration of their views.

Pedestrians would experience longer duration foreground views of the proposed Project. Vehicular viewers traveling along North Harbor Drive would experience short-duration, foreground views of the proposed Project. Both viewer groups would be exposed to the visual change, but the proposed Project improvements are consistent with the surrounding visual environment of a working waterfront. Representative views associated with these viewer groups are illustrated in Figures 8 through 11.

Project Impacts

Although the proposed Project would introduce new equipment and associated enclosures, it will not impede pedestrian linkages or the access along the waterfront because it would be located on B Street Pier behind the existing security fence. The implementation of the proposed Project would not impact the views from the designated vista area at the Broadway Pier or the

associated public access to the waterfront, though the proposed jib crane (with a maximum extended height of 20 feet) would be a noticeable addition to the Broadway Pier. Cable connectors and related electric jib cranes located at each berth would be among other ship service equipment and is consistent with the expected appearance of terminal operations. The SCADA antenna (between 25 and 50 feet in height) would also introduce a new visual element. Mechanical equipment would not constitute an undue or detrimental change to existing visual quality.

The existing B Street Pier is located north of the proposed east-west view corridor at B Street, as identified in the NEVP; therefore, the proposed Project site would not obstruct the potential views or public access to the waterfront associated with the proposed B Street view corridor. As detailed below, the proposed Project would not significantly change the existing skyline, alter the scale of the development along the waterfront, or obstruct views of the bay, as no unobstructed view currently exists in this location.

The proposed perimeter fence that would enclose the shore power transformers would be a maximum of 12 feet in height and 80 feet in length. The structures to house the shore power equipment on B Street Pier will combine to be approximately 70 feet in length, 40 feet in width, 10 feet in height, and would occupy between 2,100 and 3,600 square feet (See Figures 4 and 6). Currently, the metal security fence that runs adjacent to the pedestrian walkway parallel to North Harbor Drive physically divides B Street Pier from the public. The existing security fence consists of iron bars with a spacing of 8 inches, to which a wire meshing system is attached to further reduce spacing between fence components. A new security fence is proposed, the concept for which is for a metal grid fence with approximately two-inch squares within which hanging and spinning metal circles will be provided to create a feature of interest. The spinning metal circles will be sporadic; when screening is necessary they will be densely used (such as in front of the shore power utility) and more sparsely used where no screening is necessary (such as at the margins of the pier).

The proposed transformer structure would be located on the B Street Pier behind replacement security fencing. The replacement fencing is being designed with a public artist to create a pleasing and interesting feature that also screens the bland utility of the shore power housing structure as described above. The existing CST building, located north of the proposed Project site on B Street Pier, is significantly larger in mass and taller than the proposed equipment and associated enclosure. Additionally, a semi-permanent structure is located west of the proposed Project, at the end of the B Street Pier, and obstructs views to the bay (see Figure 12). Currently, an electronic marquee is located on B Street Pier between the security fence and the location of the proposed Project. Future plans include removing this electronic marquee and relocating it to an undetermined location. The proposed structure is smaller than the existing operational structures on the B Street Pier, though it will be closer to the promenade where viewers pass. As shown in Figure 13, the shore power housing structure will appear to be a similar height and mass as other operational components on B Street Pier. No views of open water will be obstructed as a result of the structure and no scenic vistas will be affected. The character of the view will remain commercial marine operations. A fence that provides necessary security and safety protection is under design that will also provide a feature of interest to passing pedestrians. Pedestrians will be able to see through the proposed fence, as

they see through the existing fence, except where the shore power housing structure is situated. Therefore, construction of the proposed Project would not significantly impact the aesthetic views of the Pier.

New vertical elements introduced at the B Street Pier would include several 20-foot tall jib cranes and the SCADA antenna. The latter would be between 25 and 50 feet in height. Given the backdrop of existing vertical elements, which include boat masts, flagpoles, and light standards, as well as the vertical elements of the CST structure, these new vertical features will not result in an appreciable change in views along the pier.

In addition as discussed above, the Broadway Pier has a designated scenic vista per the PMP. However, the facilities proposed on Broadway Pier consist of equipment items only and would be consistent with equipment types and sizes used for current cruise ship operations historically. The proposed items of equipment would not have a significant adverse impact on that vista.

The proposed Project would not result in a significant change in the scale of development or visual quality of the proposed Project site and surroundings. The proposed shore power transformer structure will not have a substantial adverse effect on views of San Diego Bay or other scenic vista and will not substantially degrade the visual character or quality of the Project site or its surroundings. No substantial changes to the natural landform would occur. No existing buildings would be removed or demolished. Some pavement demolition and removal will be required on B Street Pier to construct electrical equipment foundations and along North Harbor Drive to install SDG&E cables. Excavation within the equipment pad footprint to relocate existing underground utilities, and install conduit cables, pull boxes, cable jigs and other ancillary system equipment, would also occur. However, the impacts from the proposed Project would be less than significant as it relates to scenic vistas and existing visual character. The proposed Project would not damage existing scenic resources and thus, would not have a significant impact on the environment under this criterion.

1.2 Mitigation Measures

The proposed Project would not result in significant impacts associated with aesthetics and thus, mitigations measures are not required.

Figure 8: View of Eastern End of B Street Pier and Sign for CST (Facing Southwest)

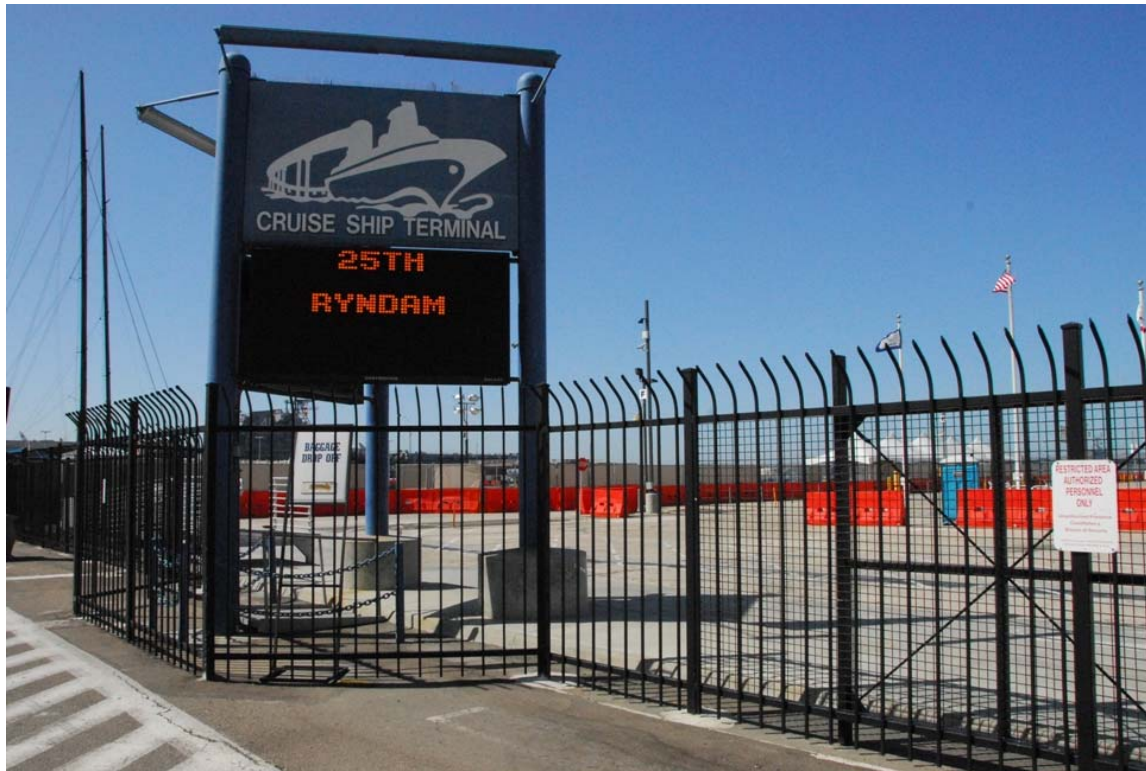


Figure 9: View of Eastern End of B Street Pier and Sign for CST (Facing Northwest)



Figure 10: View of Eastern End of B Street Pier and Sign for CST from Harbor Drive (Facing Due West)



Figure 11: View of Eastern End of B Street Pier and Sign for CST from Harbor Drive (Facing Due West)



Figure 12: Existing View From Harbor Drive Facing West

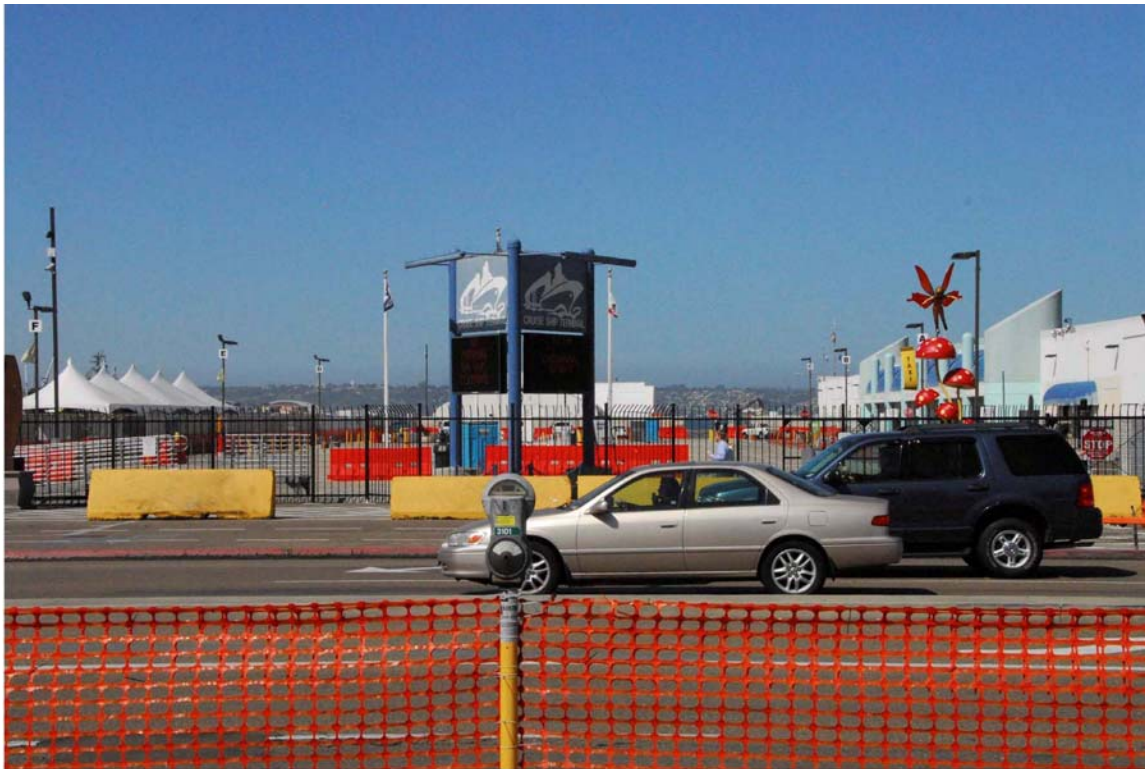
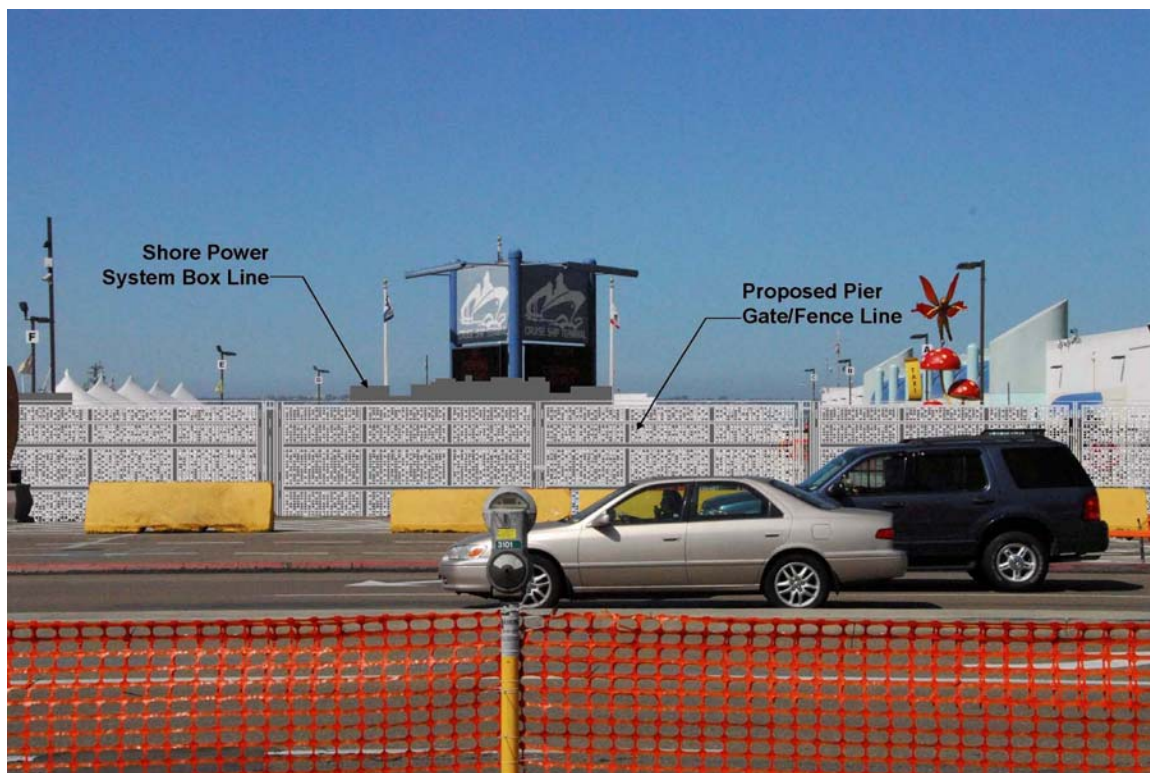


Figure 13: View From Harbor Drive Facing West with Simulation of Proposed Fence



	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
II. AGRICULTURE AND FOREST RESOURCES. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)) or timberland (as defined in Public Resources Code section 4526)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.1 Environmental Setting and Impacts

Farmland and Forest Use

The proposed Project will be located in a highly urbanized area of downtown San Diego. There are no agricultural resources (i.e., food crops grown for commercial purposes), forests or timberlands located in or near the vicinity of the B Street and Broadway piers. In addition, the proposed Project will not involve construction outside of the existing boundaries of the Port. The zoning of the Port will remain Marine Terminal, Commercial Recreation, Park/Plaza and Promenade. Therefore, the proposed Project will have no significant adverse impacts on agricultural resources or forest use, or conflict with zoning for agriculture, forest land or timberland, or Williamson Act contracts. The proposed Project will not result in the loss or conversion of farmland or forest land to non-agricultural or non-forest land uses, respectively. In addition, the proposed Project will not involve other changes to the existing environment which could result in conversion of farmland or forest land to non-agricultural or non-forest use, respectively.

2.2 Mitigation Measures

There are no impacts of the proposed Project on agricultural, forest land or timberland resources and therefore, no mitigation measures are required.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
III. AIR QUALITY. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment status under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Diminish an existing air quality rule or future compliance requirement resulting in a significant increase in air pollutant(s)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

3.1 Environmental Setting and Impacts

Environmental Setting

The SDAPCD is directly responsible for reducing emissions from stationary (area and point) sources in San Diego County. As part of this responsibility, the SDAPCD has prepared the San Diego Regional Air Quality Strategy (RAQS) that outlines plans and control measures designed to attain the California Ambient Air Quality Standards (CAAQS) for ozone (O₃). In addition, the SDAPCD's federally-enforceable control measures for ozone-precursors are included in the State Implementation Plan (SIP), which was adopted by CARB to ensure attainment of the National Ambient Air Quality Standards (NAAQS) for O₃. The CAAQS and NAAQS are summarized in Table III-1. The proposed Project area is located within the San Diego Air Basin (Basin), which is contiguous with San Diego County. The Basin currently exceeds and is in violation of the NAAQS listed in Table III-1 for O₃ and the CAAQS for O₃, particulate matter less than 10 microns (PM₁₀), and particulate matter less than 2.5 microns (PM_{2.5}).

Table III-1 Most Stringent Ambient Air Quality Standards for Criteria Pollutants

Pollutant/Averaging Time	Most Stringent Standard	San Diego Air Basin Attainment Status
O ₃		
1-hour	0.09 ppm (state)	Non-attainment
8-hour	0.070 ppm (state)	Non-attainment
NO ₂		
1-hour average	0.18 ppm (state)	Attainment
Annual average	0.030 ppm (state)	Attainment
PM ₁₀		
24-hour average	50 µg/m ³ (state)	Non-attainment
Annual average	20 µg/m ³ (state)	Non-attainment
PM _{2.5}		
24-hour average	35 µg/m ³ (federal)	Non-attainment
Annual average	12 µg/m ³ (state)	Non-attainment
SO ₂		
1-hour average	0.25 ppm (state)	Attainment
24-hour average	0.04 ppm (state)	Attainment
Annual average	0.030 ppm (federal)	Attainment
CO		
1-hour average	20 ppm (state)	Attainment
8-hour average	9.0 ppm (state/federal)	Attainment

The proposed Project consists of both construction and operation activities. Construction activities will include construction/installation of the electrical equipment necessary to supply shore power to the cruise ships, as well as installation of cables in buried conduits for electricity transmission to the project site. Operational activities will involve the cruise ships using shore power versus on-board engines while at berth. Because these activities do not occur at the same time, the emissions will be evaluated separately. The SDAPCD does not provide quantitative thresholds for determining the significance of construction or mobile source-related impacts. However, the SDAPCD does specify Air Quality Impact Analysis (AQIA) trigger levels or screening level thresholds (SLTs) for new or modified stationary sources in Rules 20.2 (New Source Review: Non-Major Stationary Source) and 20.3 (New Source Review: Major Stationary Source). For comparative purposes, the County of San Diego Guidelines (Significance Guidelines) recommends using these SLTs to evaluate the potential emissions increase from a proposed land development project (County of San Diego, 2007). The SDAPCD does not include an SLT for volatile organic compounds (VOCs) or PM_{2.5}. As recommended in the Significance Guidelines, VOC and PM_{2.5} SLTs were based on levels suggested by the South Coast Air Quality Management District (SCAQMD) and Environmental Protection Agency (EPA). These thresholds are summarized in Table III-2. To assess the impacts of project-related construction and operational emissions, the construction emissions will be compared to the daily SLT and the operational emissions will be compared to the annual and daily significance criteria. Additionally, emissions of toxic air contaminants (TACs) will be analyzed for potential significance. Construction and operational emissions from the proposed Project that are below these thresholds will be considered less than significant.

Table III-2 Air Quality Significance Thresholds

Screening Level Thresholds		
Pollutant	Daily (lb/day)	Annual (ton/year)
NO _x	250	40
VOC	75	13.7
PM ₁₀	100	15
PM _{2.5}	55	10
SO _x	250	40
CO	550	100
Lead	3.2	0.6
TAC and Odor Thresholds		
Toxic Air Contaminants (TACs)	Maximum Incremental Cancer Risk ≥ 10 in 1 million Hazard Index ≥ 1.0 (project increment)	
Odor	Project creates a minimal odor nuisance pursuant to SDAPCD Rule 51	

PM₁₀ = particulate matter less than 10 microns in size, $\mu\text{g}/\text{m}^3$ = microgram per cubic meter; ppm = parts per million; TAC = toxic air contaminant; AHM = Acutely Hazardous Material. NO₂ = Nitrogen Oxide, CO = Carbon Monoxide, VOC = Volatile Organic Compounds, SO_x = Sulfur Oxide.

Impacts Analysis

Construction Emissions Calculations

Construction typically occurs in phases, consisting of demolition, site preparation, construction of structures, and final site work. Construction activities required to implement the proposed Project include the following: (1) pavement demolition and removal; (2) construction of equipment foundations and pads; (3) installation of the electric primary infrastructure from the utility metering equipment to the main distribution equipment; (4) installation of the main distribution equipment including a main circuit breaker, step-down transformers, secondary circuit breaker, capacitor bank, and cable management systems; (5) installation of additional switching, power conditioning, and power control equipment; (6) installation of cables and cable connectors to transfer information and power between the ship and shore-side equipment, and (7) excavation to install buried conduits containing cables for transmission of electricity to the Project site.

Some offsite fabrication of equipment will be necessary, but the very small emissions associated with those activities are not included in this analysis because they may occur outside of California or because insufficient information is available to characterize emissions for this specific equipment. Minimal excavation is anticipated because only a few, small foundations are necessary to provide support for the new proposed equipment. Soil excavation will occur along the western and southern edges of B Street Pier for cable and conduit installation, and at the end of both B Street Pier and Broadway Pier at the seawall. Additional exaction will occur along the western section of Harbor Drive for transmission of electricity to the proposed Project site. The construction activities will be conducted during distinct time periods and will disturb substantially less than one acre of land within the facility, which covers approximately 0.08 acres.

Table III-3 Construction Emissions Summary Table

Construction Activity	Number of Days	Emissions (lb/day)					
		NO _x	CO	VOC	PM ₁₀ ¹	PM _{2.5} ¹	SO ₂
Construction 1: Demo/excavation²							
1a: Equipment compound	20	38.98	17.88	4.91	2.74	2.74	0.04
1b: Conduit trenching	20	38.98	17.88	4.91	2.53	2.53	0.04
1c: Ground switch/jib	8	38.98	17.88	4.91	2.61	2.61	0.04
Construction 2: Backfill/compacting/ paving³							
2a: Equipment compound	15	21.27	10.62	3.10	1.86	1.86	0.02
2b: Conduit trenching	15	39.63	19.11	5.29	2.60	2.60	0.05
2c: Ground switch	10	50.19	22.55	6.43	3.09	3.09	0.06
Construction 3: Equipment delivery and Installation⁴	20	5.63	2.64	0.94	0.29	0.29	0.01
Construction 4: SDG&E Cables/Trench Installation⁵							
4a: Conduit excavation	40	38.98	17.88	4.91	3.39	3.39	0.04
4b: Conduit trenching	20	39.63	19.11	5.29	3.47	3.47	0.05
Concurrent Phases⁶							
Concurrent 3 and 4a ⁶	20	44.61	20.52	5.85	2.68	2.68	0.05
Concurrent 4a and 4b ⁶	20	78.61	36.99	10.20	5.03	5.03	0.09
Significance Threshold		250	550	75	100	55	250
Significant?		No	No	No	No	No	No

¹ The PM emissions shown include emissions resulting from both combustion as well as fugitive dust. See Appendix A and B for details.

² Anticipated equipment includes a skid steer loader, backhoe, saw cutter, dump truck, air compressor, and wheel loader.

³ Anticipated equipment includes a skid steer loader, backhoe, saw cutter, dump truck, wheel loader, air compressor, concrete and A.C. trucks, vibratory compactor, and welding generator.

⁴ Anticipated equipment includes a tractor trailer, crane, and welding generator. Because the tractor trailer results in on-road emissions generated off-site, the emissions are not included in this analysis.

⁵ Anticipated equipment includes a skid steer loader, backhoe, saw cutter, dump truck, air compressor, wheel loader, concrete and A.C. trucks, vibratory compactor, and welding generator.

⁶ Phase 4a occurs while Phase 3 and 4b are occurring. Half of Phase 4a (i.e., 20 days) will overlap with the 20 days of Phase 3, while the remaining period (i.e., 20 days) will overlap with the 20 days of Phase 4b. Construction Phases 3, 4a, and 4b will thus occur over a total of 40 days. The emissions are assumed to be the sum of emissions from each individual phase.

Construction emissions are generated from the combustion of fuel (primarily diesel) in off-road vehicles and other equipment required for the construction activities and from fugitive dust due to activities disturbing soil. The emissions resulting from construction activities (Table III-3) represent a minor, temporary increase in criteria pollutants. Emissions were calculated using the model Offroad 2007 (CARB, 2007b), an emissions inventory model published by CARB that calculates emissions from off-road vehicles. Construction will occur over a period of approximately 6 months. Not all days will require the use of construction equipment, and work is not programmed to be undertaken on weekends. A total of 128 days of actual construction equipment use is projected. The greatest emissions from construction (concurrent construction

activities 4a and 4b) occur for a total of 20 days. As shown in Table III-3, the maximum daily emissions for each phase are less than the daily significance thresholds in Table III-2 and thus emissions resulting from construction activities are less than significant. Details of the emission calculations are included in Appendix A.

Operational Emissions Calculations

Operational emissions result from direct emissions from combustion of MDO while ships are running on auxiliary engines during connection and disconnection from the shore power, and indirect emissions from electricity usage while ships are connected to shore power. Combustion emissions were calculated using emission factors obtained from, and the emissions methodology outlined in, “Emissions Estimation Methodology for Ocean Going Vessels” (CARB, 2008). Emission factors for indirect emissions were obtained from the above-referenced CARB document as well as the “Emissions and Generation Resource Integrated Database” (eGRID, EPA).

To obtain the incremental impact of the proposed Project, annual (Table III-4) and daily (Table III-5) operational emissions from each phase of the proposed Project were compared to baseline emissions. The only shore-power capable ships that are presently scheduled to visit the Port in 2009 to 2010 are the Dawn Princess, the Oosterdam, and the Westerdam. The analysis focused on these three ships because the proposed Project will not impact the ships that are not capable of using shore power. This conservative analysis only accounts for the emissions for the ships that are currently capable of shore power.

The number of ships that will visit the Port in 2009, as well as during the anticipated Phases 1 and 2 completion dates of 2010 and 2017, is not known. An analysis of available cruise ship schedule information on anticipated ship calls for 2008 through 2010 indicates that there will be fewer calls by the shore-power capable ships, as well as all ships, in 2009 and 2010 as compared to 2008. This is consistent with the current downturn in economic conditions but may not be representative of future conditions after completion of the proposed Project phases. As a result, this analysis uses 2008 data (the last year that complete information was available) to determine CEQA base year emissions from the three shore power capable ships. For the proposed Project, emissions from the three ships are calculated assuming one ship at berth can utilize shore power in Phase 1 (i.e., year 2010) and assuming two ships at berth can utilize shore power in Phase 2 (i.e., year 2017). Because none of the three ships visited, or are scheduled to visit, the Port on the same day from 2008 to 2010, Phase 1 and Phase 2 emissions are the same. If the ships did dock on the same day, Phase 2 reductions would be greater than Phase 1 reductions.

For all calculations, it is assumed that each cruise ship will spend one hour hooking up to and one hour disconnecting from shore power, during which the ships will use on-board engines; this is a conservative assumption because connections/disconnections are generally made in a shorter time period and maximum connect/disconnect times minimize potential emission reductions. Details of the emission calculations are included in Appendix B.

The proposed Project results in a decrease in both annual and daily emissions of all criteria pollutants (Tables III-4 and III-5). The reductions range from 56% (PM_{2.5}) to 82% (NO_x)

compared to the baseline. All emissions are below the annual and daily SLTs. As noted above, Phase 1 and Phase 2 emissions are the same based on the 2008 Port Calendar and thus, the incremental emissions reduction are the same.

Table III-4 Annual Emissions Summary Table for the Three Ships Currently Capable of Using Shore Power

Emissions	Emissions (tons/yr)					
	NO _x	CO	VOC	PM ₁₀	PM _{2.5}	SO ₂
Baseline ¹	64.20	5.08	2.40	1.76	1.62	9.70
Project - Phase 1 ²	11.75	1.22	0.63	0.73	0.71	2.72
<i>Incremental difference (Phase 1 - Baseline)</i>	-52.45	-3.87	-1.78	-1.02	-0.91	-6.98
Project - Phase 2 ³	11.75	1.22	0.63	0.73	0.71	2.72
<i>Incremental difference (Phase 2 - Baseline)</i>	-52.45	-3.87	-1.78	-1.02	-0.91	-6.98
Significance Threshold	40	100	13.7	15	10	40
Significant?	No	No	No	No	No	No

¹ Baseline emissions are based on 2008 ship calls for the three ships currently capable of using shore power (the Dawn Princess, the Oosterdam, and the Westerdam). Baseline emissions reflect that the ships did not (and could not) use shore power in 2008.

² Phase 1 will occur in 2010 and will allow 1 out of a maximum potential of 3 ships at berth simultaneously to operate on shore power. Phase 1 emissions are based on 2008 ship call information with shore power available at one berth at any given time.

³ Phase 2 will occur in 2017 and will allow 2 out of a maximum potential of 3 ships in berth simultaneously to operate on shore power. Since the ships are not at berth at the same time on a single day in 2008 (and are not project to be in 2009 or 2010), Phase 1 and Phase 2 emissions are the same. Phase 2 emissions would be smaller if two ships capable of using shore power called on the same day(s).

Table III-5 Daily Emissions from One Ship of the Three Ships Currently Capable of Using Shore Power

Emissions	Daily Emissions (lbs/day)					
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	SO ₂
Baseline (1 ship) ¹	2517.6	199.2	94.2	68.8	63.4	380.4
Project -Phase 1 ²	460.7	47.7	24.5	28.8	27.8	106.7
<i>Incremental difference (Phase - Baseline)</i>	-2056.9	-151.6	-69.7	-40.0	-35.6	-273.6
Project - Phase 2 ³	460.7	47.6	24.5	28.8	27.8	106.7
<i>Incremental difference (Phase 2 - Baseline)</i>	-2056.9	-151.6	-69.7	-40.0	-35.6	-273.6
Significance Threshold	250	550	75	100	55	250
Significant?	No	No	No	No	No	No

¹ Baseline emissions are based on 2008 ship calls for the three ships currently capable of using shore power (the Dawn Princess, the Oosterdam, and the Westerdam). Baseline emissions reflect that the ships did not (and could not) use shore power in 2008.

² Phase 1 will occur in 2010 and will allow 1 out of a maximum potential of 3 ships at berth simultaneously to operate on shore power. Phases 1 emission are based on 2008 ship call information with shore power available at one berth at any given time.

³ Phase 2 will occur in 2017 and will allow 2 out of a maximum potential of 3 ships in berth simultaneously to operate on shore power. Since the ships are not at berth at the same time on a single day in 2008 (and are not project to be in 2009 or 2010), Phase 1 and Phase 2 emissions are the same. Phase 2 emissions would be smaller if two ships capable of using shore power called on the same day(s).

Based on the current ship calendar, the three shore power capable ships are not at berth on the same day. Although this does not presently occur, for completeness, the below analysis considered the scenario in which all three shore-power capable ships were at berth at the same time. Under this scenario, one of the three ships would be on shore power during Phase 1 and two of the three ships would be on shore power during Phase 2. As shown in Table III-6, the three ships at berth scenario results in an emissions reduction ranging from 19% (PM_{2.5}) to 27% (NO_x) for Phase 1 and from 37% (PM_{2.5}) to 54% (NO_x) for Phase 2 relative to the baseline. Note that these emissions are still well below the daily SLTs.

Table III-6 Daily Emissions for the Three Ships Currently Capable of Using Shore Power

Emissions	Worst-case Daily Emissions (lbs/day)					
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	SO ₂
Baseline (three ships) ¹	7,553	598	283	206	190	1,141
Phase 1 ²	5,496	446	213	166	155	867
<i>Incremental difference (Phase - Baseline)</i>	<i>-2,057</i>	<i>-152</i>	<i>-70</i>	<i>-40</i>	<i>-36</i>	<i>-274</i>
Phase 2 ³	3,439	295	143	126	119	594
<i>Incremental difference (Phase 2 - Baseline)</i>	<i>-4,114</i>	<i>-303</i>	<i>-139</i>	<i>-80</i>	<i>-71</i>	<i>-547</i>
Significance Threshold	250	550	75	100	55	250
Significant?	No	No	No	No	No	No

¹ Baseline emissions are based on 2008 ship calls for the three ships currently capable of using shore power (the Dawn Princess, the Oosterdam, and the Westerdam). Baseline emissions reflect that the ships did not (and could not) use shore power in 2008.

² Phase 1 occurs in 2010 and will allow one out of a maximum potential of three ships in berth to operate on shore power. Phase 1 assumes three ships in berth with one ship operating on shore power.

³ Phase 2 occurs in 2017 and will allow two out of a maximum potential of three ships in berth to operate on shore power. Phase 2 assumes three ships in berth with two ships operating on shore power.

There are several assumptions incorporated into the above analysis of the proposed Project's operational emissions:

- It assumes that the three shore-power capable ships call at port as many times in future years as in 2008 (e.g., reductions due to reduced ship calls because of economic conditions are not included);
- It assumes that even two of these three ships never call on the same day (based on 2008 actual ship call data and projected 2009 and 2010 ship call information) so that additional Phase 2 reductions (beyond Phase 1) could occur if two of them called on the same day; and

- It assumes that only the three ships that are currently capable of using shore power will be able to use shore power (greater reductions would occur if additional ships that call can use shore power in the future).

The last assumption is particularly important because other cruise ships currently calling at the Port may be made capable of using shore power in the future. In addition, the three ships that are capable of shore power may call at port more frequently. Both of these are likely scenarios, and additional emissions reductions could be achieved. Details of all analyses are available in Appendix B.

A CO hotspot analysis was not conducted because the proposed Project will not generate any additional traffic during operation and therefore, such an analysis was not warranted. The proposed Project does not place sensitive receptors near CO “hotspots” or create CO “hotspots” near sensitive receptors.

The proposed Project results in a reduction of all of the criteria air pollutant emissions because MDO or other on-board fuels are not used while the ship is connected to shore power. Although a small increase in indirect criteria pollutant emissions at the electricity-generating facilities would occur, these would be very small (ENVIRON, 2004) and are incorporated into the operational emission calculations discussed above. This analysis is conservative as it assumes that only three ships will be capable of using shore power and that two of the three will never be berthed at the same time. If more ships become shore power-capable or the call schedule of the shore-power capable ships changes such that two are at berth at the same time in 2017 or later, the reduction of emissions below current levels will be even greater. In addition, shore power capable ships would not have to maneuver to a new or different terminal to use shore power but rather berth at the same terminal as they have in the past to utilize this infrastructure. Thus, there would be no environmental impacts caused by ships choosing to use other terminals because of the proposed Project. In conclusion, the proposed Project results in an overall reduction of operational emissions of all criteria pollutants as compared to the CEQA baseline and short-term emission increases due to construction activities that are less than the daily significance thresholds. Thus, the potential impact of the proposed Project’s criteria pollutant emissions is less than significant.

Summary of Criteria Pollutant Health Impacts

The primary health effects associated with exposure to typical combustion pollutants (i.e., NO_x, CO, PM₁₀, and PM_{2.5}) are respiratory-related impacts, including decreased lung function, aggravation of chronic respiratory condition, and aggravation of heart disease conditions. There will be a minor increase in emissions during construction of the shore-power equipment, but the level of air emissions is well below applicable significance criteria and no significant adverse health impacts are expected. The proposed Project is expected to result in a net reduction in the operational emissions of these pollutants. As a result, the proposed Project is not expected to cause or contribute to an exceedance of any ambient air quality standards and instead is expected to contribute to an improvement in local air quality by decreasing cruise ship hotelling emissions. No significant adverse health impacts associated with operational emissions are expected. Therefore, the proposed project would not violate any air quality standard or contribute to an existing or projected air quality violation.

In addition, the proposed Project is consistent with applicable RAQS and applicable measures in the SIP, and is not expected to diminish an existing air quality rule or a future compliance requirement. Therefore, the proposed Project would not conflict with or obstruct implementation of the applicable air quality plan.

Cumulatively Considerable Impact of Criteria Pollutants

Because the San Diego Air Basin is currently non-attainment for O₃, PM₁₀, and PM_{2.5} (Table III-1), related projects could exceed the applicable air quality standard or contribute to an existing or projected air quality exceedance. With regard to determining the significance of the contribution from the proposed Project, the SDAPCD recommends that any given project's potential contribution to cumulative impacts should be assessed utilizing the same significance criteria as for project-specific impacts. This analysis assumes that individual projects that generate construction or operational emissions that exceed the SDAPCD's recommended thresholds for project-specific impacts would also cause or contribute to a cumulatively considerable increase in emissions for those pollutants for which the San Diego Air Basin is in non-attainment and therefore, would be considered to have significant adverse air quality impact.

The construction emissions associated with the proposed Project are less than the significance thresholds found in Table III-2 and hence are less than significant. As illustrated in Table III-4, the operational emissions associated with the proposed Project are less than the operational emissions in the baseline and thus are not greater than the recommended significance thresholds. Pursuant to the County of San Diego's Significance Guidelines (County of San Diego, 2007), the proposed Project will not result in a cumulatively considerable net increase of any criteria pollutant.

Impacts to Sensitive Receptors

The SDAPCD identifies the following as sensitive receptors: long-term health care facilities, rehabilitation centers, convalescent centers, retirement homes, residences, schools (preschool-12th grade), playgrounds, child care centers, and athletic facilities (County of San Diego, 2007). Under the SDAPCD definition, the nearest sensitive receptors to the site are the residents of the Grande at Santa Fe condominium towers (1199 Pacific Highway) on the east side of Pacific Highway; in addition, there are pedestrians that use the promenade along the Embarcadero.

Hotelling ships and construction equipment using diesel fuels emit diesel particulate matter (DPM) and other TACs. Based on information from California's Office of Environmental Health Hazard Assessment (OEHHA) and CARB, DPM is the primary risk driver for these types of sources and San Diego County in general. Construction during the proposed Project generates various, but minimal, DPM and TACs over a relatively short duration time. Once construction is completed and ships begin to operate on shore power while at berth, there will be a reduction of DPM and other TACs compared to ships operating using on-board engines. If it is conservatively assumed that all PM₁₀ and PM_{2.5} emissions in Tables III-3 and III-4 are DPM emissions, it can be seen that the proposed Project results in an overall net reduction of DPM emissions compared to the baseline; other combustion-related TAC emissions would also decrease compared to the baseline. Therefore, the proposed Project would result in a less than

significant adverse impact associated with exposure of sensitive receptors to substantial air toxic pollutant concentrations.

Odor Impacts

SDAPCD Rule 51 (Public Nuisance) and California Health & Safety Code, Division 26, Part 4, Chapter 3, Section §41700 prohibit the emission of any material which causes nuisance to a considerable number of persons or endangers the comfort, health, or safety of the public. The area surrounding the site is currently developed for retail and commercial uses. The proposed Project replaces energy generated from on-board fuel combustion with energy generated by off-site electricity. During operation, there will be no adverse odor impacts from the use of shore power and a potential decrease in odors associated with on-board power generation. During construction, there may be a minimal, temporary increase in odor due to operation of the construction equipment. However, each activity lasts for 6 days or less, with total construction occurring over a 128-day span. Any potential increase in odors thus would be temporary and is not expected to have a significant adverse impact on the public. In addition, these activities would be subject to and comply with SDAPCD Rule 51. Therefore, the proposed Project would not create objectionable odors affecting a substantial number of people.

Impact on Existing Air Quality Rule or Future Compliance

As discussed above, the proposed Project is designed to meet all criteria and toxic pollutant air quality rules. As such, it is not expected to diminish an existing air quality rule or future compliance requirement resulting in a significant increase in criteria or toxic air pollutants. In fact, the proposed Project will reduce emissions of criteria and toxic air pollutants and is consistent with the CARB's Shore Side Power Rule, the Port's CAP, and the Port's Green Port Policy. Therefore, the proposed Project would not diminish an existing air quality rule or future compliance requirement resulting in a significant increase in air pollutants.

3.2 Mitigation Measures

With regard to air quality, no mitigation measures are required for the proposed Project because no significant impacts to air quality are expected. As noted above, the proposed Project itself will reduce existing air quality impacts by decreasing criteria and air toxic emissions that would occur in the absence of the proposed Project.

IV. BIOLOGICAL RESOURCES. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands, as defined by §404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.), through direct removal, filling, hydrological interruption or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident, migratory fish, or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4.1 Environmental Setting and Impacts

Biological and Habitat Impacts

As described in Chapter 1, the proposed Project is located on a small section of the B Street and Broadway piers and along the adjacent North Harbor Drive. The Piers are fully developed pier structures which do not contain any biological resources and do not provide any habitat for sensitive or protected species. There are no significant areas of natural open space, federally protected wetlands or areas of significant biological resource value within the boundaries of the facility. Because all excavation and construction would occur within the existing confines of the Piers, no disturbance of, or substantial adverse effect on, wetlands would result from project implementation.

Current and future operations at the Port will comply with all local, regional, and state conservation plans. The proposed Project will not conflict with any local policies or ordinances protecting biological resources.

There are several sensitive wildlife species which have been identified in the general vicinity of the site. The U.S. Fish and Wildlife Service (USFWS) designated South San Diego Bay, which is south of the project site, as a Western Hemisphere Shorebird Reserve Site. The Sweetwater Marsh National Wildlife Refuge (SMNWR) is located approximately 5 miles southeast of the project site which provides sanctuary for various protected fauna and flora species. The sensitive species within the SMNWR include the Light-footed clapper rail (*Rallus longirostris levipes*), California least tern (*Sternula antillarum*), Westy snowy plover (*Charadrius alexandrius nivosus*), Coastal California gnatcatcher (*Polioptila californica californica*), and the California brown pelican (*Pelecanus occidentalis californicus*). There are no species designated by the California Department of Fish and Game (CDFG) or any riparian habitats or other sensitive natural communities identified by either the USFWS or CDFG at the Project site. There are no local, regional, or state habitat conservation plans which apply to the proposed Project site. Accordingly, no conflicts with local, regional, or state habitat conservation plans will occur.

The proposed Project consists primarily of on-site modifications, with some off-site land disturbance. Total excavation will be approximately 300 cubic yards on-site, with approximately 1,425 cubic yards excavated off-site along North Harbor Drive for cable laying. All disturbed land will be repaved or backfilled and restored to its original condition. Because all disturbed land will be restored to its original condition, construction and operation of the proposed Project is not expected to have a significant impact on biological resources or habitats in the surrounding area. No candidate, sensitive or special species, nor riparian habitat or other sensitive natural community will be adversely affected. Construction and operation of the proposed Project will not interfere substantially with the movement of any native resident, migratory fish, or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

Construction activities will not occur in the water, so no marine habitats will be directly affected. However, construction will occur over the water to install the cables that will run the length of and in between the two piers. As a result, a permit from the Army Corps of Engineers is required and will be obtained by the Port District. In addition, mechanisms will be in place to catch any debris that results from construction activities over water.

4.2 Mitigation Measures

No mitigation measures are required because no significant adverse impacts to biological resources are expected.

V. CULTURAL RESOURCES. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource, as defined in §15064.5?	☐	☐	☐	☑
b) Cause a substantial adverse change in the significance of an archaeological resource, as defined in §15064.5?	☐	☐	☐	☑
c) Directly or indirectly destroy a unique paleontological resource, or site or unique geologic feature?	☐	☐	☐	☑
d) Disturb any human remains, including those interred outside formal cemeteries?	☐	☐	☐	☑

5.1 Environmental Setting and Impacts

Historical, Archaeological and Paleontological Resources

B Street Pier and Broadway Pier were constructed approximately 100 years ago. B Street Pier is a hydraulic fill mole structure on filled tidelands with a bearing pile supported reinforced concrete dock and girder marginal wharf. Broadway Pier is entirely constructed with a bearing pile supported reinforced concrete deck and girder marginal wharf. The development of the piers eliminated any paleontological resources or unique geological features that may have existed on the site previously. The proposed Project will require demolition of pavement for the construction of equipment pads and excavation of soil for the installation of a utility box on B Street and SDG&E electrical cables. No existing structures or historical resources will be affected during construction or operation. No archaeological or paleontological resources have previously been identified at this site. As a result, construction of the proposed Project will have no impact on historic, archaeological or paleontological resources as defined in §15064.5. There will be no excavation occurring on Broadway Pier.

Human Remains

There are no known human remains or burial sites on the project site. Accordingly, construction activities related to the proposed Project are not expected to cause or contribute to the disturbance of any human remains. In the unlikely event that human remains were encountered unexpectedly during ground disturbance associated with construction of the proposed Project, the Port District will implement the proper procedures for addressing the discovery of human remains recommended in §15064.5 (i.e. temporarily halting disturbance work in the expected vicinity of the remains, contacting the San Diego County medical examiner). Therefore, no human remains, including those interred outside of formal cemeteries, will be impacted as a result of the proposed Project.

5.2 Mitigation Measures

The proposed Project is expected to have no impacts on cultural resources and thus, no mitigation measures are required.

VI. GEOLOGY AND SOILS. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area, or based on other substantial evidence of a known fault?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit, or soil that is unstable or that would become unstable as a result of the project, and potentially result in on-site or off-site landslides, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

6.1 Environmental Setting and Impacts

Geological Impacts

The B Street and Broadway Piers are located in a seismically active region of southern California. San Diego is approximately 100 miles west of the San Andreas Fault and are close to several large active faults including Elsinore, San Jacinto, Coronado, San Diego, San Clemente, La Nación, Silver Strand, and Spanish Bight. The San Diego, Coronado, and Spanish Bight faults are in close proximity to the Piers. Construction and operation of the shore power equipment is not expected to result in substantial increased risk of loss, injury or death due to rupture of one of these earthquake faults.

As with all properties in the seismically active southern California region, the proposed Project area is susceptible to ground shaking, ground failure, and landslides produced by local faults during seismic events. The proposed Project involves the installation of shore power facilities to serve cruise ships that have been, and will continue to, berth at the B Street and Broadway piers and will not cause or contribute to an increase in the exposure of people or structures to adverse effects involving earthquakes or other potential seismic hazards. While it is likely that the proposed Project area will experience seismic events by future earthquakes produced in southern California, construction occurring at the site as part of the proposed Project will be conducted in accordance with all applicable requirements for seismic safety in the Uniform Building Code (UBC); thus, the increased risks to employees and nearby residents and workers due to the proposed Project are minimal in the case of a seismic event. Overall, impacts due to on-site rupture of a known earthquake fault, risks from seismic ground shaking, ground failure including potential liquefaction impacts, and landslides impacts would be less than significant.

Soil Erosion and Unstable Soils

The existing Project site, which will be affected by the proposed Project, is located on a paved surface approximately 3,600 square feet in area. As discussed in Chapter 1, this represents a subsection of the B Street and Broadway piers. The construction required to complete the proposed project will involve excavation of approximately 300 cubic yards on-site. The disturbed land will be replaced with new pavement or concrete slabs supporting installed equipment such as the transformers, as applicable. The excavated soil will either be used on-site in the mole section of the B Street Pier (i.e. hydraulic fill mole structure) or disposed of off-site. If it disposed of off-site, the excavated volume will only require one truck and will be disposed of in an appropriate manner.

An additional 1,425 cubic yards of soil will be excavated for the digging of electrical cable trenches in order to install SDG&E cables in buried trenches. However, the soil will be replaced after the cables have been laid, with the land restored to its condition previous to excavation.

The proposed Project is not located on expansive soil as defined by the UBC. In addition, the amount of soil disturbed during construction is expected to be minimal. The B Street Pier mole area consists of fill material considered to be potentially liquefiable during a strong seismic event. The design of the foundations for the proposed Project includes a large concrete mat to avoid effects of liquefaction in the mole. All construction will be in accordance with the UBC for seismically active areas.

Because the proposed Project involves minimal disturbance, with repaving and restoration of any disturbed land, no significant impacts on topography and soils, and hence, soil erosion, are expected. Because the proposed Project is not located on expansive or unstable soils, no significant impacts related to disturbance of these soils are expected.

Septic Systems

The proposed Project is located in a developed area of the Port, which is served by an existing wastewater collection, conveyance and treatment system operated by the City of San Diego. Even though the piers and underlying soils are capable of adequately supporting the use of any required septic tank or alternative waste water disposal system, no septic tanks or alternative disposal systems are necessary, nor are they proposed. If required, portable toilets owned, operated, and serviced by a licensed sanitary vendor will be used to accommodate workers involved in construction operations. Therefore, no significant impacts on soils from alternative wastewater disposal systems are expected.

6.2 Mitigation Measures

The proposed Project is not expected to have a potential significant adverse impact on geology or soils in the project area. Accordingly, no mitigation measures are required for the construction or operation of the proposed Project.

VII. GLOBAL CLIMATE CHANGE.	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in increased exposure to one or more of the potential adverse effects of global warming identified in the California Global Warming Solutions Act of 2006.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

7.1 Environmental Setting and Impacts

No provision of CEQA or the CEQA Guidelines presently requires a lead agency to perform environmental review of a project's greenhouse (GHG) emissions. The above checklist items a) and b) are from the draft amendments to Appendix G of the CEQA Guidelines proposed by the Governor's Office of Planning and Research (OPR) pursuant to SB 97, which directed OPR to develop amendments to the CEQA Guidelines addressing the effects and mitigation of GHG emissions (CEQA Guidelines § 21083.05). Although OPR released its proposed amendments to the CEQA Guidelines on April 13, 2009, the new and amended CEQA Guidelines have not yet been finalized or adopted and will not go into effect until January 1, 2010. CEQA does not require a lead agency to consider proposed or draft regulations when evaluating a project [*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal. App. 4th 1134, 1145] and expressly prohibits its provisions from being interpreted in a manner which imposes procedural or substantive requirements beyond those explicitly stated in CEQA or the CEQA Guidelines (CEQA Guidelines § 21083.1).

At the present time, no other federal, state, or local law or regulation requires a lead agency to perform environmental review of a project's GHG emissions. The California's Global Warming Solutions Act of 2006 (AB32), the primary legislative enactment which addresses GHG emissions, neither mentions CEQA nor requires a local agency to conduct environmental review of GHG emissions. Instead, it charges CARB with the responsibility for regulating GHG emissions and requires CARB to adopt GHG emission limits and reduction measures on or before January 1, 2011 (Health and Safety Code §§ 38510, 38562).

In addition, no reported appellate judicial decision requires a lead agency to perform environmental review of a project's GHG emissions. The majority of trial court decisions which have considered the issue have ruled that CEQA does not require a lead agency to analyze the

potential impacts of a project's GHG emissions. See, e.g.: *Unite-Here Local 30 v. San Diego Unified Port District*, San Diego County Superior Court No. 37-2008-00077646-CU-MC-CTL [addendum to master EIR found adequate because evidence of the effect of GHG emissions on global climate change does not constitute new information requiring additional environmental review, there is no legislative or judicial requirement for CEQA review of GHG emissions, and project design incorporated features to reduce GHG emissions]; *American Canyon Community United for Responsible Growth v. City of American Canyon*, Napa County Superior Court No. 26-27462 [addendum found adequate because AB32 does not constitute new information requiring further environmental review]; *National Resources Defense Council v. Reclamation Board*, Sacramento County Superior Court No. 06 CS 01228 [addendum found adequate because climate change information does not constitute new information requiring further environmental review]; *Highland Springs Conference and Training Center v. City of Banning*, Riverside County Superior Court No. RIC 460950 [EIR found adequate because no law required city to consider global warming at the time it approved the project]; *Westfield, LLC v. City of Arcadia*, Los Angeles County Superior Court No. BS 108923 [EIR not required to analyze GHG emissions because S.B.97 does not require it, there is no accepted methodology for doing so, and no single project can have a significant climate change impact]; *Center for Biological Diversity v. City of Perris*, Riverside County Superior Court No. RIC 477632 [EIR not required to analyze GHG emissions because there is no established standard for doing so].

Despite the absence of any legislative or judicial mandate, the Port District recognizes the existence of widespread concern regarding the effects of GHG emissions on global climate change and has undertaken a proactive approach with respect to GHG emissions which is evidenced, in part, by the proposed Project itself. Therefore, in the interest of promoting public disclosure and informed decision-making, the Port District provides the following examination of the potential impacts of the proposed Project's GHG emissions on the environment. In addition, the Port District has also analyzed the impacts of item c) in the above checklist.

GHG Emissions and Applicable Regulations

Global climate change refers to changes in average climatic conditions on earth as a whole, including temperature, wind patterns, precipitation, and storms. Global warming, a related concept, is the observed increase in the average temperature of the earth's surface and atmosphere. One identified cause of global warming is an increase of GHGs in the atmosphere. The six GHGs included in AB32's definition of "greenhouse gases" and identified by the Kyoto Protocol in order of abundance in the atmosphere, are carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), perfluorocarbons (PFCs), hydrofluorocarbons (HFCs), and sulfur hexafluoride (SF₆). GHGs absorb longwave radiant energy reflected by the earth, which warms the atmosphere. GHGs also radiate longwave energy both upward to space and back down toward the surface of the earth. The downward part of this longwave radiation that is absorbed in the atmosphere is known as the "greenhouse effect." Some studies indicate that the potential effects of global climate change may include rising surface temperatures, loss in snow pack, rise of sea levels, more extreme heat days per year, and more drought years.

Events and activities, such as the industrial revolution and natural emissions, have contributed to the increase in atmospheric levels of GHGs. As reported by the CEC, California contributes 1.4 percent of the global and 6.2 percent of the national manmade GHG emissions (CEC,

2004). Approximately 80 percent of manmade GHGs in California are from fossil fuel combustion and over 70 percent of GHG emissions are composed of CO₂ emissions (CARB, 2007a).

In response to growing scientific and political concern regarding global climate change, California has recently adopted a series of laws to reduce both the level of GHGs in the atmosphere and to reduce emissions of GHGs from commercial and private activities within the state.

- In September 2002, Governor Gray Davis signed Assembly Bill (AB) 1493, which requires the development and adoption of regulations to achieve “the maximum feasible reduction of greenhouse gases” emitted by noncommercial passenger vehicles, light-duty trucks, and other vehicles used primarily for personal transportation in the State.
- In June 2005, Governor Schwarzenegger signed Executive Order S-3-05, which established GHG emissions reduction targets for the state, as well as a process to ensure that the targets are met. As a result of this executive order, the California Climate Action Team (CAT), led by the Secretary of the California State Environmental Protection Agency (CalEPA), was formed. The CAT published its first report in March 2006, in which it laid out several recommendations and strategies for reducing GHG emissions and reaching the targets established in the executive order.
- In September 2006, Governor Schwarzenegger signed California’s Global Warming Solutions Act of 2006 (AB32). AB32 requires CARB to establish a statewide GHG emissions cap for 2020; adopt mandatory reporting rules and an emission reduction plan for significant sources of GHG emissions; and adopt regulations to achieve the maximum technologically feasible and cost effective reductions of GHGs.
- SB1368, a companion bill to AB32, requires the California Public Utilities Commission (CPUC) and the CEC to establish GHG emission performance standards for the generation of electricity, whether generated inside the State or generated outside and then imported into California. SB1368 provides a mechanism for reducing the emissions of electricity providers, thereby assisting CARB to meet its mandate under AB32. On January 25, 2007, the CPUC adopted an interim GHG Emissions Performance Standard (EPS), which is a facility-based emissions standard requiring that all new long-term commitments for baseload generation to serve California consumers be with power plants that have GHG emissions no greater than a combined cycle gas turbine plant. That level is established at 1,100 pounds of CO₂ per megawatt-hour (MW-hr).
- California Senate Bill 97 (SB97), passed in August 2007, is designed to work in conjunction with CEQA and AB32. SB97 requires the California Office of Planning and Research (OPR) to prepare and develop CEQA Guidelines for the mitigation of GHG emissions or the effects thereof, including, but not limited to, effects associated with transportation and energy consumption. The proposed new and amended CEQA Guidelines must be transmitted to the California Resources Agency by July 1, 2009 to be certified and adopted by January 1, 2010.

According to the GHG inventory for California (CARB, 2007a), the total statewide manmade (or industrial) net GHG emissions in 2004 were approximately 480 million metric tons per year of

CO₂eq emissions. Global emissions of GHGs in 1990 were estimated by the Intergovernmental Panel on Climate Change (IPCC) to be 32,100 million metric tons of CO₂eq emissions.

GHG Analysis and Conclusion

The analysis of GHGs is far different from the analysis of criteria pollutants for the following reasons. For criteria pollutants, many of the significance thresholds are based on daily emissions because the attainment or non-attainment status is based on daily exceedances of applicable ambient air quality standards based on the relatively short-term exposure effects on human health (e.g., one-hour, eight-hour, and 24-hour). In contrast, the half-life of CO₂ is approximately 100 years, resulting in longer-term effects of GHGs and thus, affect global climate over a relatively long time frame.

In its *CEQA & Climate Change* document (January 2008), the California Air Pollution Control Officers Association (CAPCOA) identified several different options for determining the significance of GHG emissions. The CAPCOA document indicates that establishing quantitative thresholds is a balance between setting the level low enough to capture a substantial portion of future residential and non-residential development, while at the same time setting a threshold high enough to exclude small development projects that will contribute a relatively small fraction of the cumulative statewide GHG emissions. For example, CAPCOA identifies one potential significance threshold as 10,000 metric tons CO₂ equivalents (CO₂eq) per year, which was considered by the Market Advisory Committee for inclusion in a Greenhouse Gas Cap and Trade System in California. Another potential threshold identified by CAPCOA is 25,000 metric tons CO₂eq per year, which is CARB's mandatory reporting threshold under AB 32. On September 22, 2009, the US EPA also finalized the GHG reporting rule which requires reporting by direct emitters of GHG who exceed a 25,000 metric tons CO₂eq per year threshold. In addition, another potential threshold is to quantify the percentage of the total statewide inventory of GHG emissions represented by emissions from a single project. If emissions are a relatively small percentage of the total inventory, it is probable that the project will have little or no effect on global climate change.

CARB released a preliminary draft staff proposal "Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act" on October 24, 2008 (CARB, 2008). Under this draft staff proposal, a non-transportation-related industrial project would be determined to have a less than significant impact if incremental GHG emissions after mitigation are less than 7,000 metric tons CO₂eq/yr. Currently, this draft proposal is in a public review comment period; the last workshop was conducted on December 9, 2008. Numerical significance thresholds have not been proposed for any other type of project (e.g., commercial, residential, transportation, etc.).

In the absence of any legislative or judicial mandate for the review of GHG emissions and in anticipation of upcoming changes to the CEQA Guidelines and the establishment of CARB thresholds, the Port District has not yet formally adopted a numerical threshold for determining the significance of GHG emissions. Instead, it is the Port District's practice to quantify, where feasible, a proposed project's potential GHG emissions and to identify design features or other measures which can be incorporated into the project to reduce GHG emissions in a manner consistent with the goals and objectives of AB32.

The proposed Project has been evaluated for all direct (i.e., combustion emissions) and indirect (i.e., electricity usage) emissions of GHGs, specifically CO₂, CH₄, and N₂O. Shore power reduces combustion emissions by replacing on-board engine use with electricity use. As a result, the proposed Project is expected to result in minimal amounts of combustion GHG emissions (emissions during the connection and disconnection process) and indirect GHG emissions from electricity production when the ship is hotelling at berth and to result in fewer overall GHG emissions than those from the existing hotelling practice.

As can be seen in Table VII-1, total GHG emissions from operation and construction of the proposed Project are expected to be less than the baseline emissions. Operations from the proposed Project is expected to result in 1,824 metric tons CO₂eq/yr compared to baseline emissions of 3,197 metric tons CO₂eq/yr, a decrease of approximately 1,374 metric tons CO₂eq/yr after Phase 1. Full implementation of the proposed Project (Phase 2) is expected to result in at least the same decrease of 1,374 metric tons CO₂eq/year (see Table VII-1) and a greater decrease if shore-power capable ships happen to be at berth on the same day. In addition, if more ships become shore-power capable, there would be greater reductions from existing conditions. Details of all analyses are available in Appendix B.

Short term GHG emissions generated during construction are expected to total 1,953 metric tons over 128 days. Based on the SCAQMD interim guidance document and related discussions in the SCAQMD CEQA GHG Working Group, the current practice is to average the short-term construction emissions over the project life (generally 30 years) to determine the average annual GHG emissions from construction (i.e., 1,953 metric tons averaged over 30 years is 65 metric tons per year). The total project GHG emissions (operation and 30-year average construction) are 1,889 metric tons CO₂eq/year, a reduction of 1,309 metric tons CO₂eq/year as compared to the baseline. The proposed Project is expected to result in a decrease in emissions, which is well below potential numerical thresholds discussed above. In addition, the proposed Project would not conflict with or obstruct implementation of the California Global Warming Solutions Act or its governing regulations. Indeed, the proposed Project will promote implementation of the goals and objectives of AB 32 because shore power is listed as a CARB AB 32 early action item as well as achieving earlier benefits than the proposed implementation date of 2014. In addition, the proposed Project will comply with the Green Port Policy. Based on the above information, the potential impacts of the proposed Project's GHG emissions are expected to be less than significant. (Cumulative impacts are addressed in Section 17.)

Table VII-1 GHG Emissions Summary Table

Emissions	CO ₂ eq Emissions (tons/yr)		
	Construction (Ave. over 30-years)	Operation	Total Project
Baseline ¹	0	3,197	3,197
Full Project - Phase 2 ²	65	1,824	1,889
<i>Incremental difference (Phase 2 - Baseline)</i>	65	-1374	-1,309

¹ Baseline emissions are based on 2008 ship calls for the three ships currently capable of using shore power (the Dawn Princess, the Oosterdam, and the Westerdam). Baseline emissions reflect that the ships did not (and could not) use shore power in 2008.

² Phase 2 will occur in 2017 and will allow 2 out of a maximum potential of 3 ships in berth simultaneously to operate on shore power. Since the ships are not at berth at the same time on a single day in 2008 (and are not projected to be in 2009 or 2010), the analysis assumes only one ship uses shore power on any given day. Phase 2 emissions would be smaller (and Project reductions greater) if two ships capable of using shore power called on the same day(s).

Effects of Potential Sea Level Changes

In AB 32, the Legislature found that global climate change may have a number of adverse effects on the environment in California, including causing or contributing to rising sea levels. The IPCC stated that rising sea levels are consistent with the observed warming of the atmosphere (IPCC, 2007). According to the California Climate Change Center's White Paper entitled Projected Future Sea Level (March 2006), a historical rate of sea level rise approaching 0.08 inches per year was recorded for California tide gages, similar to the rate estimated for global mean sea level. The Center's White Paper concluded that ". . . sea level rise was likely to exceed that which has been observed during the last 100 years or so at tide gages along the California coast, so that historical coastal structure design criteria would more often be exceeded, the duration of events would increase, and these events would become increasingly frequent as sea level rise continues."

Since that white paper, numerous reports have been published with regards to projected sea level rise in San Diego Bay. The San Diego Foundation Focus 2050 report, prepared by the San Diego Foundation in collaboration with Scripps Institute of Oceanography in 2008, provides a summary of the research models and conclusions for sea level rise.⁴ The mean sea level rise for the year 2050 reported in the Focus 2050 report is between 12 and 18 inches by 2050. For the purposes of this analysis, a selected value of 16 inches above sea level rise by 2050 is used. The value of 16 inches exceeds the midpoint of the range identified in the 2050 Focus report.

The highest high tide recorded was 7.79 feet above Mean Lower Low Water (MLLW). Assuming a potential storm surge of 1.00 foot and a potential sea level rise of 16 inches, the maximum water line is estimated to be 10.12 feet above MLLW. The elevation of the B Street Pier is approximately 10.99 feet above MLLW. Given the sea level rise assumptions for the area in the vicinity of the project site, the proposed Project is not expected to result in a substantial increased exposure of people or property to adverse impacts of potential future mean sea level

⁴ Available at: <http://www.sdfoundation.org/news/pdf/Focus2050glossySDF-ClimateReport.pdf>

rise. Accordingly, the potential impacts from this adverse effect of global climate change would be less than significant.

7.2 Mitigation Measures

The GHG emissions of the proposed Project are expected to have a less than significant adverse impact on the environment. Accordingly, no mitigation measures are required. As noted above, the proposed Project is expected to have a beneficial impact on the environment because it will reduce GHG emissions by enabling cruise ships that berth at the B Street and Broadway piers to use shore power rather than on-board engines to meet their electrical needs.

VIII. HAZARDS AND HAZARDOUS MATERIALS. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Create a significant hazard to the public or the environment through the routine transportation, use or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions, or handle hazardous or acutely hazardous materials, substances or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code §65962.5, and, as a result, create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Be located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, or result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be located within the vicinity of a private airstrip, or result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including areas where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Significantly increased fire hazard in areas with flammable materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

8.1 Environmental Setting and Impacts

Transportation, Use, and Disposal of Hazardous Materials and Risk of Upset

The proposed Project includes installation of shore power electrical equipment, automation and operational software infrastructure, concrete mounting pads, fencing, and other ancillary improvements. The risk of an explosion, fire, or other hazards is low because this equipment has been or will be designed and manufactured for this specific application. Polychlorinated biphenyls (PCBs) will be used in the transformers that will be installed as part of the proposed Project. However, the additional use will be minimal and the transformers will be contained within secondary spill contaminant areas (6-inch curb spill containment basin). No significant impact associated with PCBs is expected. No additional hazardous materials will be transported, used or stored on-site during typical operations of the proposed Project.

The construction equipment used by contractors will utilize a variety of typical hazardous materials including lube oils, gasoline and/or diesel fuels, sealants, welding gases, and paints. The temporary use of these materials during construction activities will be subject to all federal, state, and local laws. Other than the temporary use of these materials during construction activities, no new hazardous materials are expected to be introduced to the project site. Thus, the proposed Project is not expected to result in any new risk of upset involving hazardous materials or the accidental release of hazardous materials into the environment.

The Port implements best management practices, such as straw swales and perimeter practices (e.g., filter inserts) to prevent pollutants from entering storm water discharge. In addition, the Port currently operates in compliance with regulations for the transportation, use, and disposal of hazardous materials. Construction and operation of the proposed Project would not result in a substantial increase in runoff volumes or velocities, and the design capacity of the existing storm water conveyance system would not be exceeded. Overall, the project would have a less than significant impact on the public and environment due to hazardous materials.

Potential Hazards Near School

No existing or proposed schools are located within one-quarter mile of the project location. Any potential impacts related to hazards associated with the proposed Project are expected to remain within the Port's facility, so no significant adverse impacts to a school within one quarter mile are expected.

Hazardous Materials Sites

The proposed Project site is not included on a list of hazardous sites (Government Code §65962.5). As a result, no significant adverse impact is expected to the public or the environment.

Potential Hazards to Airports or People Living or Working in the Project Area

The proposed Project is located less than two miles from San Diego International Airport (SDIA). An airport land use compatibility plan (ALUCP) was developed jointly by an advisory committee to SDIA, the Port District, and the City of San Diego (San Diego ALUC, 2004). The

proposed Project is consistent with the current operations at the Port and the ALUCP, and no safety hazards are expected from the proposed Project on any airports in the region. Because no safety hazards are expected, there is no additional risk to people residing or working in the project area, SDIA or other private airstrips.

Potential Impacts on Emergency Response or Evacuation Plan

The proposed Project is subject to the Harbor Safety Plan as is required by the California Oil Spill Prevention and Response Act of 1990. This plan is intended to enhance vessel safety, to prevent pollution, and to protect the resources in the area. The Port also has an emergency preparedness plan related to on-site operations which it will follow in the event of an emergency.

Emergency vehicles have access to the proposed Project, thereby providing adequate emergency access. The proposed Project is not expected to interfere with any adopted emergency response plan or emergency evacuation plan, and the proposed Project will have no impact on these emergency services.

Potential Fire Hazards

No substantial or native vegetation exists within the area of the proposed Project. The proposed Project will not increase the existing risk of fire hazards in areas with flammable brush, grass, or trees. In addition, no additional flammable materials will be added to the site for the operation of the proposed Project. Therefore, no significant increase in fire hazards is expected to be associated with the proposed Project.

8.2 Mitigation Measures

The proposed Project is not expected to have a significant impact with respect to hazardous material. Accordingly, no mitigation is required.

IX. HYDROLOGY AND WATER QUALITY. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g. the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map, or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area any structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IX. HYDROLOGY AND WATER QUALITY. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
dam?				
j) Result in inundation by seiche, tsunami or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

9.1 Environmental Setting and Impacts

Water Quality and Wastewater

The project site is located on the San Diego Bay. The project site and surrounding land area are relatively flat. The project site is required to utilize storm water pollution control measures under the National Pollutant Discharge Elimination System (NPDES) Permit, Order No. 2001-01, and NPDES No. CA0108758 which were issued to the Port. The project site implements best management practices to prevent pollutants from entering storm water discharge. Runoff from the project site flows into the existing storm drain conveyance system or sheet flows directly into the Bay. Curb inlet filters are located in both the main parking area and bus parking area on the pier; runoff from these areas is filtered through a basket before entering the Bay. Runoff from the remainder of the site is not treated and flows directly into the Bay. In addition, perimeter BMPs with filter inserts are located around the fence, and the Port adheres to a Stormwater Pollution Prevention Plan (SWPPP) per the municipal permit. A project specific Urban Stormwater Mitigation Plan (USMP) will be developed to identify additional post-construction BMPs. Continued compliance with the applicable federal, state, and local laws and regulations, as well as applicable permit provisions, are expected to ensure that no significant impacts related to potential discharge into surface water or changes in water quality occur as a result of the proposed Project. The proposed Project is not expected to significantly impact the capacity of the existing storm water drainage system.

The proposed Project is not expected to increase the amount of water used on site compared to the current usage. As a result, the proposed Project is not expected to deplete groundwater supplies.

The proposed Project will require excavation of existing pavement for the construction of equipment pads and of land to install cables in buried conduits. After excavation, the disturbed land will be returned to its original state prior to the proposed Project (i.e., repavement or backfilling and restoration). No additional runoff is expected under the proposed Project, nor are drainage patterns expected to change. There are neither streams nor rivers in the vicinity surrounding the site and, therefore, the proposed Project is not expected to alter existing drainage patterns or alter the existing course of a stream or river. Because all land will be restored to its original state, no significant impact on erosion is expected due to the proposed Project. Also, as discussed above per the municipal permit, the Port District will adhere to SWPPP (e.g., straw swales) during construction.

The deposition of certain chemicals by cars and construction vehicles in the parking areas and internal roadway surfaces could have the potential to contribute metals, oil and grease, solvents, phosphates, hydrocarbons, and suspended solids to the storm drain system. No additional significant impacts to water quality would arise from operation of the proposed Project because it does not increase the number of cars, parking areas, or internal roadway surfaces. During construction of the proposed Project, approximately 20 workers per phase will be required. This small number of additional workers or the associated construction equipment will not significantly increase the amount of chemical deposition. Compliance with existing regulations would reduce the potential for water quality impacts to a less than significant level. In addition, the Port District will obtain and comply with an Army Corp permit for work over water which will require measures to be taken to collect and prevent debris from entering the Bay (such as the use of netting). Therefore, any drainage, runoff, or water quality impacts would be less than significant. The impact on water quality and wastewater is expected to be less than significant.

Flood Zone

The project site is located adjacent to the San Diego Bay, which is classified as a 100-year flood region. The proposed Project site, however, is outside of the 500-year flood plain. There will be no houses or structures placed within a 100-year flood region as a result of the proposed Project. Because they are being built on the present B Street Pier, the new structures will not impede or redirect flood flows, and the proposed Project will have no impact on flood flows in the 100-year flood region. As a result, the proposed Project is not expected to significantly increase the risk of loss, injury, or death involving flooding, as well as flooding due to the failure of a levee or dam.

The shelter offered by nearby Coronado Island and Silver Strand results in a low risk of inundation by tsunamis. No risks of seiche or mudflows are associated with this location. The proposed Project will not increase the risk of inundation by seiche, tsunami, or mudflow.

9.2 Mitigation Measures

No significant adverse impacts to water quality and supply are expected as a result of the activities associated with the proposed project. Therefore, no mitigation measures are required.

X.	LAND USE AND PLANNING.	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
	Would the project:				
a)	Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b)	Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c)	Conflict with any applicable habitat conservation or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

10.1 Environmental Setting and Impacts

Established Community and Land Use

The proposed Project does not involve a change in the existing land or water use of the project site. The primary modifications at the site will occur entirely within the Port's property boundaries. No established community will be physically divided as a result of the construction or operations of the proposed Project. Accordingly, the proposed Project will have no impact on established communities or existing land and water use of the project site.

Conflict with Applicable Plans

The proposed Project is consistent with the PMP, specifically with Goals VIII, X, and XI. In addition, it is consistent with the Port's Green Port Policy. The project site is not subject to any applicable habitat conservation plan. Accordingly, the proposed Project will not conflict with any applicable land use plan or policy or with any applicable habitat conservation or natural community conservation plan.

10.2 Mitigation Measures

No significant adverse impacts to land or water use are expected to occur as a result of construction or operation of the proposed Project. Therefore, no mitigation is necessary or proposed.

XI.	MINERAL RESOURCES. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b)	Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

11.1 Environmental Setting and Impacts

Mineral Resources

According to the State of California Department of Conservation, Division of Mines and Geology/U.S. Geological Survey (2000), construction sand and gravel deposits are located in the general vicinity of the Project. The Project area is not identified as a mineral resource recovery site on any land use plan. The proposed Project is located on the piers, and no minerals are known to exist within the site. In addition, the proposed Project does not involve the extraction, or subsequent loss, of any known mineral resource. As a result, the proposed Project will not have any impact on mineral resources.

11.2 Mitigation Measures

No impact to mineral resources is expected to occur as a result of construction or operation of the proposed Project. Accordingly, no mitigation is required.

XII.	NOISE. Would the project result in:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b)	Exposure of persons to or generation of excessive ground-borne vibration or ground-borne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c)	A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d)	A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e)	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, exposure of people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f)	For a project within the vicinity of a private airstrip, exposure of people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

12.1 Environmental Setting and Impacts

Background

Noise is defined as unwanted or objectionable sound. The most common method of describing noise involves measuring the pressure level or energy content of a given sound in decibels (dB). The minimum change in sound level that the human ear can detect outside of a laboratory setting is approximately 3 dB. A change in sound level of 10 dB is usually perceived by the average person as a doubling (or halving) of the loudness of the sound. Sound levels expressed in decibels are often further quantified using "A weighting," which reflects the decreased sensitivity of human hearing at low frequencies and at extremely high frequencies relative to the mid-range frequencies. Sound levels using this scale are usually labeled "dBA," and this is the most frequently used weighting applied in describing community noise levels.

The noise descriptor used as the basis of the City of San Diego noise limits and guidelines discussed in this noise section is the equivalent sound level or Leq. The Leq is a noise metric

representing the level of a constant sound that contains the same sound energy as the actual fluctuating sound over the same time period. As such, the Leq can be considered an energy-average sound level. The Leq noise metric can be applied to any time interval, and is typically considered for 1-hour or 24-hour periods.

Because community receptors are more sensitive to unwanted noise intrusion during evening and night hours, state law requires that, for planning purposes, a noise metric called the community noise equivalent level (CNEL) be used. A CNEL is a 24-hour Leq that includes the addition of 5 dBA to sound levels from 7 p.m. to 10 p.m. and the addition of 10 dBA to night levels from 10 p.m. to 7 a.m.

The proposed Project area is located on Port property near the City of San Diego, and there are potential noise sensitive receptors in the City as well as in the Port District. Also, because the Port District does not have its own specifically adopted noise/land use standards, it uses the City of San Diego noise regulations and guidelines for its projects in or near the City boundaries.

The City of San Diego noise limits are codified in Chapter 5, Article 9.5, Divisions 1 through 8 of the Municipal Code (Noise Abatement and Control Ordinance). Table XII-1 depicts the City of San Diego noise limits for various land use types. The noise limits apply at the property boundary where the noise is produced. If the zoning of the source and receiving properties differs, the applicable noise limit is the arithmetic average of the noise limits of the two applicable land use categories. In addition, the noise limits for public utility distribution or transmission facilities apply at or beyond six feet from the boundary of the easement upon which the equipment is located.

Table XII-1 City of San Diego Noise Limits

Land Use	Time of Day	One-Hour Average Sound Level (Leq, dBA)
1. Single Family Residential	7 a.m. to 7 p.m.	50
	7 p.m. to 10 p.m.	45
	10 p.m. to 7 a.m.	40
2. Multi-Family Residential (Up to a maximum density of 1/2000)	7 a.m. to 7 p.m.	55
	7 p.m. to 10 p.m.	50
	10 p.m. to 7 a.m.	45
3. All other Residential	7 a.m. to 7 p.m.	60
	7 p.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	50
4. Commercial	7 a.m. to 7 p.m.	65
	7 p.m. to 10 p.m.	60
	10 p.m. to 7 a.m.	60
5. Industrial or Agricultural	Any time	75

Source: SMC 59.5.0401

Ambient (outdoor) and indoor noise levels are also typically regulated by noise compatibility guidelines set forth in local government General Plans and ordinances. In addition to the noise limits identified in the City of San Diego noise ordinance, the Noise Element of the City of San Diego General Plan identifies various land use categories and the average CNELs considered

compatible for various uses. Table XII-2 depicts the land use-noise compatibility matrix of the City of San Diego General Plan (City of San Diego, 2008).

Table XII-2 Land Use Noise Compatibility Guidelines¹

Land Use Category		Exterior Noise Exposure (dBA CNEL)			
		60	65	70	75
Open Space and Parks and Recreation					
Community & Neighborhood Parks, Passive Recreation					
Regional Parks, Golf Courses, Athletic Fields, Water Recreational Facilities, Horse Stables, Park Maintenance Facilities					
Residential					
Single Units, Mobile Homes, Senior Housing		45			
Multiple Units, Mixed-Use Commercial/Residential, Live Work, Group Living Accommodations		45	45		
Institutional					
Hospitals, Nursing Facilities, Intermediate Care Facilities, K-12 Educational Facilities, Libraries, Museums, Places of Worship, Child Care Facilities		45			
Vocational or Professional Educational Facilities, Higher Education Institutional Facilities		45	45		
Cemeteries					
Sales, Commercial Services, Offices					
Building Supplies/Equipment; Food, Beverages, & Groceries; Pets & Pet Supplies; Sundries, Pharmaceutical, & Convenience Sales; Wearing Apparel & Accessories; Building Services; Business Support; Eating & Drinking; Financial Institutions; Assembly & Entertainment; Radio & Television Studios; Golf Course Support; Business & Professional; Government; Medical, Dental, & Health Practitioner; Regional & Corporate Headquarters;			50	50	
Visitor Accommodations		45	45	45	
Vehicle and Equipment Sales and Services, Wholesale, Distribution, Storage Use, Industrial					
Commercial or Personal Vehicle Repair & Maintenance; Commercial or Personal Vehicle Sales & Rentals; Vehicle Equipment & Supplies Sales & Rentals; Vehicle Parking; Equipment & Materials Storage Yards; Moving & Storage Facilities; Warehouse; Wholesale Distribution; Heavy Manufacturing; Light Manufacturing; Marine Industry; Trucking & Transportation Terminals; Mining & Extractive Industries					
Research & Development				50	
Agricultural					
Crop Raising & Farming; Aquaculture; Dairies; Horticulture Nurseries & Greenhouses; Animal Raising; Maintain & Keeping; Commercial Stables					
	Compatible	Indoor Uses	Standard construction methods should attenuate exterior noise to an acceptable indoor noise level.		
		Outdoor Uses	Activities associated with the land use may be carried out.		
	Conditionally Compatible	Indoor Uses	Building structure must attenuate exterior noise to the indoor noise level indicated by the number for occupied areas.		
		Outdoor Uses	Feasible noise mitigation techniques should be analyzed and incorporated to make the outdoor activities acceptable.		
	Incompatible	Indoor Uses	New construction should not be undertaken.		
		Outdoor Uses	Severe noise interference makes outdoor activities unacceptable.		

¹ City of San Diego (2008).

Another set of applicable guidelines are the City of San Diego CEQA Significance Determination Thresholds established in January 2007. These thresholds suggest that significant noise impacts may occur if a project causes any of the conditions listed below. The applicability of these thresholds to the proposed project is also considered in this list.

1. Creates a significant increase in the existing ambient traffic noise levels. *Because the proposed Project would not increase traffic volumes or resulting traffic noise levels, no impact would be expected due to an increase in traffic noise.*
2. Exposes people to noise levels which exceed the noise limits outlined in the City's adopted noise ordinance (shown in Table XII-1) or are considered incompatible for the applicable land use (shown in Table XII-2). *The proposed Project would introduce equipment that could expose people to additional noise. Therefore, these potential impacts need to be considered.*
3. Exposes people to current or future transportation noise levels which exceed standards established in the Traffic Noise Significance Thresholds outlined in the CEQA Significance Determination Thresholds document. *Because the proposed Project would not result in the introduction of new people/sensitive uses to the project area, no impact would be expected due to the introduction of people to high levels of transportation noise.*
4. Results in land uses which are not compatible with aircraft noise levels as defined by an adopted airport Comprehensive Land Use Plan (CLUP). *Because the proposed Project would not result in the introduction of new land uses with the potential to be affected by airport-related noise, no impact would be expected.*

As indicated above, the only potential for significant noise impacts would be due to the proposed Project resulting in the exposure of people to noise levels either exceeding the applicable noise limits or considered incompatible for the specific land use category. Therefore, the potential for this type of impact is considered further below.

Noise and Groundborne Vibration Levels – Operation

The project site is located at the northern end of the San Diego Bay. The only components of the Project that generate substantial noise levels during operation are the transformers to be located on B Street Pier. The B Street Pier is west of North Harbor Drive in between West Ash Street and Broadway Street. The pier is approximately 1,200 feet west of the end of West B Street. The project site is approximately one mile west of I-5. To the north and east is downtown San Diego, and to the south and west is San Diego Bay. The ambient noise environment in the proposed Project area is attributable to contributions from equipment and operations within the commercial areas and from traffic on roads near the site.

The proposed Project includes the installation of several pieces of equipment. The only new pieces of equipment that would produce substantial levels of noise are two transformers slated for installation at the east end of the B Street Pier. Based on the proposed capacity of the transformers, the NEMA-rated sound level of each transformer is estimated to be 72 dBA. Both

transformers would be expected to operate for 11 hours a day or less, between 7 a.m. and 7 p.m., when cruise ships are present.

Using the above information, compliance with San Diego's noise limits was assessed based on the estimated hourly Leq at the nearest potentially affected off-site location to the on-site transformers. Because the Project Site and surrounding Port properties are zoned for commercial uses, the applicable noise limit between 7 a.m. and 7 p.m. is 65 dBA.

Although the Port property boundary extends to Pacific Highway, the Port regularly applies the limits at its internal property divisions or parcels, which would be at the facility fence line. Because the equipment would be part of an electrical transmission facility, the noise limits apply at a location six feet beyond the eastern easement boundary, approximately 17 and 38 feet from the Phase 1 and Phase 2 transformers, respectively. The estimated extended easement boundary sound level with both transformers operating concurrently is approximately 72 dBA due to the fact that the location is within the near-field of the Phase 1 transformer. In order to be consistent with the San Diego noise limit of 65 dBA at this extended easement boundary location, a noise barrier would need to be constructed along the eastern property division/parcel boundary adjacent to the transformer or the transformers modified to decrease the amount of noise generated. Because the project boundary is not representative of any noise-sensitive outdoor use areas, a compatibility assessment is not applicable for this location.

In addition to the property line sound levels, the transformer-generated CNEL at the nearest sensitive receivers (residences) were estimated and added to the existing CNEL to assess compatibility of the overall sound level with residential uses. The residences nearest the proposed Project site are the Grande at Santa Fe condominium towers at 1199 Pacific Highway, approximately 850 feet from the proposed new equipment. The current ambient noise level at these receivers is estimated to be approximately 66 dBA CNEL (North Embarcadero Alliance Visionary Plan Draft MEIR and PMC Noise Measurements October 2009). The estimated hourly Leq at the nearest residences due to operation of the two transformers is less than 35 dBA. The calculated CNEL assuming both transformers operate for 11 hours between 7 a.m. and 7 p.m. is less than 32 dBA. This is much lower than the existing ambient level and would result in no increase in the overall ambient level. Therefore, no noise impact would be expected at these nearest residences from operation of the transformers.

In addition, the new equipment to be installed as part of the proposed Project is not a substantial source of ground-borne vibration. Therefore, the operations from the proposed Project are not expected to increase the exposure to ground-borne vibration nor create an adverse impact.

Noise and Groundborne Vibration Levels – Construction

Construction noise sources do not always correspond to 24-hour community noise standards because they occur only during selected times and the source strength varies with the type of equipment in use. Construction activities are also treated separately in municipal noise ordinances because they do not represent a chronic, permanent noise source. To abate the potential nuisance from construction noise, especially in proximity to any adjacent noise-sensitive development, the City of San Diego Noise Ordinance (Municipal Code

Ordinance No. 59.5.01-8) limits the hours of allowable construction activities and establishes performance standards for construction noise at any residentially zoned property. Construction is prohibited from 7:00 p.m. to 7:00 a.m. and on Sundays and selected holidays, unless a permit has been granted by the City. In addition, construction noise is limited to a maximum of 75 dBA 12-hour Leq in residential areas between the hours of 7:00 a.m. and 7:00 p.m. However, emergency construction is exempted from these criteria provided that adequate notice is given after the beginning of such activities.

The construction equipment associated with the proposed Project will primarily include backhoes, welding machines, trucks, cranes, and compactors. Examples of noise levels at a distance of 50 feet resulting from construction equipment are presented in Table XII-4. Appendix A discusses the number of each piece of equipment required for construction, which will occur on 128 days. The truck generates the highest noise level (i.e., 88 dBA). The nearest sensitive receivers (i.e., residences in the Grande at Santa Fe condominium towers) are at a distance of approximately 850 feet or more from the eastern edge of the Project Site. Using an estimated 6 dBA reduction in noise for doubling the distance to the source, truck noise will be reduced to 63 dBA, and thus, complies with the maximum noise restriction near a sensitive receiver. Because the truck generates the maximum noise levels of all construction equipment, all other construction noise levels are expected to be less than 63 dBA at the nearest residential receivers.

In addition, the compliance determination for temporary construction noises is based on average noise levels over 12 hours. All construction activities would be conducted in accordance with the City of San Diego Noise Ordinance (San Diego Municipal Code, Section 59.5.01), which limits loud construction noises to the hours of 7 a.m. to 7 p.m., Monday through Saturday. The majority of the construction activities will occur between approximately 7 a.m. to 7 p.m., Monday through Friday. Because most construction equipment does not operate consistently over a 12-hour period, the 12-hour average noise level is expected to be less than 75 dBA, even during truck activities. In the case that operational and schedule considerations necessitate construction activities on the weekends or after hours (i.e., after 7 p.m.), the facility will follow the appropriate process to obtain a waiver from the City's noise ordinance.

The truck component of construction is expected to occur over the majority of the construction, which is short term and will occur on 128 days over approximately six months. Because the truck component of construction, the largest contributor to noise levels during construction, would be short-term and below the City's construction noise limit, the proposed Project is anticipated to result in a less than significant impact associated with exposure of persons to excessive construction noise levels. During the construction, the Port would continue to comply with the requirements of the City of San Diego Noise Ordinance (San Diego Municipal Code, Section 59.5.01).

Table XII-4. Construction Noise Sources and Noise Levels at 50-Foot

Equipment	Typical Noise Levels ^{(1),(2)}
Pickup	70
Welding Machines	72
Tractor Trailer	75
Pumps	76
Air compressor	81
Backhoe	82
Cranes	83
Flatbed truck	84
Truck	88

⁽¹⁾ Data is modified from the City of Los Angeles, 1998. Levels are in dBA at a 50-foot reference distance. These values are based on a range of equipment and operating conditions.

⁽²⁾ Values are intended to reflect noise levels from equipment in good condition, with appropriate mufflers, air intake silencers, etc. In addition, these values assume averaging the sound level over all directions from the listed piece of equipment.

12.2 Mitigation Measures

In order to be consistent with the City of San Diego noise limits six feet from the transformer yard easement boundary, either a noise barrier would need to be constructed along the eastern property boundary or the transformer would be internally insulated in order to reduce the noise to below the City threshold. If the noise barrier is constructed, it will be located between the proposed replacement security fence and the main distribution equipment area. As a result, any potential impacts on aesthetics have already been analyzed and no effects would occur beyond those analyzed.

No significant noise impacts are expected to occur as a result of construction of the proposed Project. Therefore, no further construction noise mitigation is necessary.

XIII. POPULATION AND HOUSING.	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Induce substantial growth in an area either directly (for example, by proposing new homes and businesses) or indirectly (e.g. through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

13.1 Environmental Setting and Impacts

Population and Housing

The proposed Project proposes modifications to the B Street and Broadway piers needed to install shore power facilities. Project-related activities will not involve an increase, decrease or relocation of population. Construction of the proposed Project will require a maximum of 20 employees for approximately 128 days. These construction employees are expected to come from the existing labor pool in the San Diego area. Operation of the proposed Project is not expected to require any new permanent employees. Therefore, construction and operation of the proposed Project are not expected have significant impacts on population or housing, induce substantial population growth, or exceed the growth projections contained in any adopted plans.

13.2 Mitigation Measures

The proposed Project is not expected to have a significant impact on population and housing. Accordingly, no mitigation measures are required.

XIV. PUBLIC SERVICES. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:				
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

14.1 Environmental Setting and Impacts

Fire Protection

Fire protection services are provided to the B Street and Broadway piers by the City of San Diego Fire Department station (2nd Avenue Station) located less than one mile east of the proposed Project area. The proposed Project will not cause or contribute to an increase in cruise ship activities at the B Street and Broadway piers and thus is not expected to result in an increase or other change in the need for fire protection services. No new fire hazards are anticipated, and thus no significant impacts are expected.

Police Protection

Police protection services are provided to the B Street and Broadway piers by the San Diego Harbor Police and the San Diego Police Department. The proposed Project will not cause or contribute to an increase in cruise ship activities at the B Street and Broadway piers and thus is not expected to result in an increase or other change in the need for police protection services.

Schools, Parks and Other Facilities

The proposed Project involves the installation of shore power facilities at the B Street and Broadway piers. Employees from the local workforce are expected to fill the short-term construction positions and the few, if any because none are expected, additional permanent workers that will be required for operation of the proposed Project. Therefore, the proposed Project is not expected to have a potential impact on schools, parks, or other public facilities.

14.2 Mitigation Measures

Because no significant impacts to public services are expected as a result of the proposed Project, no mitigation is necessary.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XV. RECREATION. Would the project:				
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

15.1 Environmental Setting and Impacts

Recreation

The proposed Project involves only the installation of shore power facilities and does not involve any change in the nature or extent of existing cruise ship activities at the B Street and Broadway piers. Accordingly, the proposed Project is not expected to cause or contribute to an increase in the use of recreation facilities or to require the construction of new or expanded recreation facilities in the project area. No significant impact to recreational facilities is expected to occur as a result of the proposed Project.

15.2 Mitigation Measures

No significant adverse impacts to recreational resources are expected to occur as a result of construction or operation of the proposed Project. Therefore, no mitigation is necessary.

XVI. TRANSPORTATION/TRAFFIC.	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness (as designated in a general plan policy, ordinance, etc.), taking into account all relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable congestion management programs, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted policies, plans, or programs supplying alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

16.1 Environmental Setting and Impacts

Transportation and Traffic

The B Street and Broadway piers are located in downtown San Diego on North Harbor Drive in between West Ash Street and G Street. The Project site is approximately one mile from I-5. Vehicles traveling to the project site access the premises through the gated road adjacent to the parking lot south of the pedestrian exit located immediately south of the CST building. Service vehicles can also access the site at the gated entrance on the north side of the building.

The construction of the proposed Project will require up to 20 workers for a period of approximately 128 days. Sufficient parking for the construction workers is available in the current parking area (i.e., not on Harbor Drive). In the case that the parking capacity is

exceeded by the temporary workers required for construction of the proposed Project, the additional workers will park off-site and will be shuttled to the Project site. The two closest major intersections are the intersection of Harbor Drive and West Ash Street, and the intersection of Harbor Drive and West Broadway. The most likely affected intersection for workers commuting from the south (i.e., traveling north on I-5) is Harbor Drive and West Hawthorne Street.; the most likely affected intersection for workers commuting from the north (i.e., traveling south on I-5) is Harbor Drive and West Ash Street. Because a maximum of 20 workers are expected to be required during construction, a maximum of 20 additional vehicles will travel through one of these four intersections. Even if all 20 trips went through the same intersection, this represents only a minimal increase in traffic. In addition, the minimal increase will last for a short time period and does not constitute a significant impact to the capacity of the existing circulation system. It is therefore not expected to conflict with applicable congestion management programs.

Excavation of trenches, with subsequent backfilling and restoration, to install SDG&E cables in buried conduits will occur along Broadway Street from the Station B Substation, and on both the eastern and western sides of Harbor Drive. This installation will require trenching activities on or across Harbor Drive in order to reach the proposed Project site. These trenching activities will create short-term impacts to traffic and are expected to last for fewer than 40 days. SDG&E and any subcontractors will complete the trenching following a schedule designed to reduce all traffic impacts, including minimizing any road closures, to the greatest extent feasible. Due to the short duration and anticipated mitigation measures, the SDG&E off-site construction activities are expected to have a less than significant effect on traffic congestion. SDG&E will develop a traffic control plan in consultation with the City of San Diego for all works involving roadways to avoid impacts to traffic circulation and public safety.

The operation of the proposed Project is not expected to require an increase in the number of permanent employees at the project site. Because the increased number of vehicles traveling to the project location on a daily basis will not change during operations, the level of service is not expected to change at any nearby intersections. In addition, the proposed Project will not cause or contribute to an increase in the existing number of passengers embarking or disembarking from cruise ships that berth at the B Street and Broadway piers. Therefore, no significant adverse impacts on parking are expected.

Emergency Access

The proposed Project is not expected to cause or contribute to any change in the existing emergency access to the project site. Emergency vehicles will continue to access the site through the gates described above. The location and installation of the shore power equipment will not require the construction of new roadways and will not require or result in a change in existing internal circulation patterns. Therefore, the impact to emergency access is expected to be less than significant.

Air Traffic Patterns

The proposed Project is less than two miles from San Diego International Airport. The proposed Project includes modifications to existing facilities and will not involve the delivery of materials via air. In addition, the proposed Project would not involve the construction of any structures that

would result in a safety risk associated with air traffic patterns. Therefore, no increase in air traffic or impact on air traffic patterns is expected

Design Use Hazards

The proposed Project does not involve construction of roads or use of incompatible equipment on roads (e.g., farm equipment). Therefore, no increased hazards due to a design feature or incompatible use are expected.

Alternative Transportation

As discussed above, the construction phase of the proposed Project is expected to require approximately 20 additional employees for a period of approximately 128 days. The operations phase of the proposed Project is not expected to result in an increase in the number of employees or cruise ship passengers traveling to or from the B Street and Broadway piers. As a result, the proposed Project is not expected to conflict with adopted policies, plans or programs supporting alternative transportation modes (e.g., bus turnouts, bicycle racks).

16.2 Mitigation Measures

The proposed Project is not expected to cause or contribute to a significant impact on transportation or traffic. Accordingly, no mitigation measures are required.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XVII. UTILITIES AND SERVICE SYSTEMS. Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

17.1 Environmental Setting and Impacts

Wastewater and Storm water

The proposed Project involves the installation and operation of shore power equipment and is not expected to cause or contribute to a change in the quality or quantity of wastewater associated with the project site. The Port implements best management practices to prevent pollutants from entering the storm water discharge system (e.g., curb inlet filters at the main and bus parking areas, perimeter BMPs, adherence to Stormwater Pollution Prevention Plan, straw swales). Construction and operation of the proposed Project would not result in a substantial

increase in runoff volumes or velocities, and would not exceed the design capacity of the existing storm water conveyance system. No additional wastewater will be generated due to the operation or construction of the proposed Project and thus, the construction and operation of the proposed Project is not expected to result in an exceedance of the wastewater treatment requirements of the RWQCB. Because the proposed Project would not result in a substantial increase in wastewater demand, the existing waste water system will be adequate to accommodate the proposed Project.

The existing pavement that is to be excavated will be backfilled and restored to its original condition. There will be containment curbs around the proposed structures to capture runoff. Storm water runoff patterns would continue to be consistent with existing conditions. The B Street and Broadway piers operate under an industrial storm water permit, and the Port monitors runoff during the wet season. No significant impact is expected from the proposed Project.

Water Demand

The City of San Diego supplies water to the project site. The proposed Project is not expected to increase the water demand at the project site. Construction and operation of the proposed Project would continue to use the existing connections. Therefore, the potential impacts to groundwater levels or freshwater aquifer supplies would not be significant.

Waste Disposal and Regulations

Waste generated by construction of the proposed Project will be recycled and disposed of in accordance with the City of San Diego's regulations and would not include hazardous waste. The operation of the proposed Project is not expected to generate any additional waste. No significant impact is expected as a result of the proposed Project.

17.2 Mitigation Measures

The proposed Project is not expected to cause or contribute to a significant impact on utilities and services systems. Accordingly, no mitigation measures are required.

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, other current projects, and probable future projects)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

18. Mandatory Findings of Significance

Quality of the Environment

The proposed Project will be located on the B Street and Broadway piers, which are existing port facilities in a highly developed and urbanized area of downtown San Diego. The construction and operation of the proposed Project will occur entirely within the confines of the existing facility and will not affect the San Diego Bay, Western Hemisphere Shorebird Reserve Site, or SMNWR. The proposed Project is not expected to have a significant impact on the quality or quantity of any fish or wildlife species or their habitat, cause fish or wildlife populations to drop below self-sustaining levels, threaten to eliminate a plant or animal community or reduce the number or restrict the range of a rare or endangered plant or animal. The proposed Project will not eliminate or otherwise affect important examples of the major periods of California history or prehistory.

Cumulative Impacts

Cumulative impacts are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts” (§15355). By this definition, individual effects can result from a single project or multiple individual projects. The cumulative impact is also considered the incremental impact from a proposed Project that is then added to the impact of past, present, and reasonably foreseeable future projects. In other words, a proposed Project may have less than significant direct impacts but may have significant cumulatively considerable impacts.

The proposed Project involves installing shore power electrical equipment, automation and operational software infrastructure, concrete mounting pads, fencing, and other ancillary improvements. With respect to the categories listed in the environmental checklist discussed in Sections I through XVII above, the proposed Project results in either less than significant impacts or no impacts. The proposed Project does not result in any significant impacts.

The following categories were found to result in no impact due to the proposed Project: agriculture, cultural resources, mineral resources, population and housing, public services, recreation, and utilities and service systems.

The following categories were found to result in less than significant impacts due to the proposed Project: aesthetics, air quality, biological resources, geology and soils, global climate change, hazards and hazardous materials, hydrology and water quality, land use and planning, noise (with mitigation), and transportation/traffic.

With respect to aesthetics, no cumulative impacts are expected because the Project will have a less than significant impact on all potential areas. There will be a less than significant impact on scenic vistas, scenic resources, visual character of the surrounding area, or increase in light or glare. No cumulatively considerable impact is expected on other known projects in the local area (e.g., NEAVP projects).

The proposed Project’s air emissions and ambient air quality impacts are below the SDAPCD’s thresholds for all criteria air pollutants and in fact, result in a reduction of air pollutants. Based on the SDAPCD thresholds and City of San Diego guidance related to cumulative impacts, no significant adverse air quality impacts are expected, either individually or cumulatively.

With respect to biological resources, no cumulative impacts are expected because the proposed Project does not conflict with any local policies or ordinances, or with local, state, or federal conservation plans. No significant adverse impacts to biological resources are expected, either individually or cumulatively.

With respect to geology, no cumulative geology impacts are expected because all of the structures associated with the proposed Project will be built in conformance with the UBC. In addition, the site is not located on unstable or expansive soils. Therefore, no significant change in impacts to geology is expected at the site, and no cumulative geology impacts are expected.

The state and local air agencies have not adopted CEQA GHG guidance concerning significance determinations. However, based on the fact that this Project results in an overall

reduction of GHGs and consistent with City of San Diego guidance for other environmental impact areas, it is determined that the Project's cumulative GHG impacts are less than significant.

With respect to hazards, PCBs will be used in the transformers to be installed as part of the proposed Project. However, the additional use will be minimal and no cumulative hazard impacts are expected. Therefore, no significant change in hazards is expected at the Port, and no cumulative hazard or hazardous materials impacts are expected.

The proposed Project will have a less than significant impact on water quality and waste discharge. It will not significantly impact either drainage patterns or runoff quantity or quality. Additionally, groundwater recharge and supplies will not be impacted. Therefore, no cumulative impacts to hydrology or water quality are expected.

With respect to land use and planning, the proposed Project does not impact the existing land use or physically divide an existing community. It is consistent with the PMP, the Green Port Policy, and all applicable land use plans or policies. There is no applicable habitat conservation plan. As a result, the proposed Project does not result in cumulatively significant impacts to land use or planning.

With respect to noise, no cumulative impacts are expected due to less than significant noise levels during operation of the mitigated Project. Although the new equipment being installed may generate potentially significant impacts to noise compared to existing equipment, mitigation measures have been incorporated into the Project to avoid or reduce to below the level of significance the potential noise impacts. Also, groundborne vibration is not projected to increase during the proposed Project. As described above, the construction of the proposed Project will result in a slight increase in noise levels and groundborne vibration levels. However, these impacts are not substantial and are temporary. Therefore, with the incorporation of mitigation, no significant adverse noise impacts would result from the Project, and no cumulative impacts on noise levels are expected.

The proposed Project is not expected to significantly impact the capacity of the existing traffic circulation system or conflict with applicable congestion management programs. It does not conflict with alternative transportation programs or policies, or increase hazards through the addition of design hazards or incompatible uses. Additionally, it does not result in inadequate emergency access or change air traffic patterns. As a result, no significant change is expected for land use or planning at the Port, and no cumulative impacts are expected.

The existing Master EIR (MEIR) for the North Embarcadero Alliance Visionary Plan (NEAVP) indicated that the following categories would have significant impacts: aesthetics, air quality, biological resources, cultural resources, geology/soils, hazards and hazardous materials, hydrology/water quality, land use/planning, noise, public services, transportation/traffic, and utilities/service systems. However, mitigation measures were provided in the Final EIR and all potential significant impacts were mitigated below significance for all of these categories. Because the proposed Project is not expected to result in a significant increase in impacts to these areas, the proposed Project will not have cumulatively considerable impacts related to the NEAVP.

The proposed Project is consistent with and meets several goals outlined as part of the Green Port Program. Namely, the proposed Project seeks to implement shore power to reduce operational emissions of criteria pollutants and GHGs.

Where a lead agency is examining a project with an incremental effect that is not cumulatively considerable, a lead agency need not consider the effect significant, but must briefly describe the basis for concluding that the incremental effect is not cumulatively considerable. Based on the analysis above, the proposed Project's contribution to air quality, aesthetics, biological resources, geology and soils, global climate change, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, and transportation/traffic are not cumulatively considerable and thus not significant. This conclusion is consistent with CEQA Guidelines §15064 (h)(4), which states, "The mere existence of cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed Project's incremental effects are cumulatively considerable". Therefore, the proposed Project is not expected to result in significant adverse cumulative impacts.

Direct or Indirect Adverse Effects

The proposed Project will install equipment to allow ships to use shore power while in berth at the CST. The proposed Project is expected to result in a decrease in criteria and TAC pollutants and no adverse related health effects are expected. The proposed Project also is expected to result in a decrease in GHG emissions compared to the CEQA baseline. The proposed Project is not expected to increase the potential hazard impacts and the hazard impacts were determined to be less than significant. Therefore, no significant health impacts or other adverse impacts to humans are expected, either directly or indirectly, due to the construction or operation of the proposed Project.

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Acronyms

Abbreviation	Description
AB	Assembly bill
AB 32	Assembly bill 32: California's Global Warming Solutions Act of 2006
AHM	acutely hazardous material
ALUCP	airport land use compatibility plan
AQIA	Air Quality Impact Analysis
Basin	San Diego Air Basin
CAAQS	California Ambient Air Quality Standards
CalEPA	California State Environmental Protection Agency
CAP	Clean Air Program
CAPCOA	California Air Pollution Control Officers Association
CARB	California Air Resources Board
CAT	Climate Action Team
CEQA	California Environmental Quality Act
CH ₄	methane
CLUP	Comprehensive Land Use Plan
CO	Carbon monoxide
CO ₂	Carbon dioxide
CO ₂ eq	CO ₂ equivalent
CPUC	California Public Utilities Commission
CST	Cruise Ship Terminal
dBA	A-weighted noise level measurement in decibels
DPM	diesel particulate matter
EIR	Environmental Impact Report
EPA	Environmental Protection Agency
EPS	Emissions Performance Standard
ERPG	Emergency Response Planning Guideline
GHG	greenhouse gas
HC	hydrocarbon
HFC	hydrofluorocarbon
I-5	Interstate 5
IPCC	Intergovernmental Panel on Climate Change
IS	Initial study
kV	kilovolt
lbs	pounds
lbs/hr	pounds per hour
LOS	Level of Service
MDO	marine diesel oil
MGO	marine gas oil
MEIR	Maximum exposed individual resident
MEIW	Maximum exposed individual worker
MLLW	mean lower low water
MND	Mitigated negative declaration
N ₂	nitrogen

N ₂ O	nitrous oxide
NAAQS	National Ambient Air Quality Standards
NEVP	North Embarcadero Visionary Plan
NOP	Notice of Preparation
NO _x	nitrogen oxide
NPDES	National Pollutant Discharge Elimination System
O ₃	ozone
OEHHA	Office of Environmental Health Hazard Assessment
OPR	Office of Planning and Research
PCBs	polychlorinated biphenyls
PFC	perfluorocarbon
PM	particulate matter
PM _{2.5}	particulate matter less than 2.5 microns in diameter
PM ₁₀	particulate matter less than 10 microns in diameter
PMP	Port Master Plan
Port	San Diego Unified Port District
Port District	San Diego Unified Port District
ppm	parts per million
ppmv	parts per million by volume
RAQS	Regional Air Quality Strategy
SB	Senate bill
SCAQMD	South Coast Air Quality Management District
SDAPCD	San Diego Air Pollution Control District
SDG&E	San Diego Gas & Electric
SDIA	San Diego International Airport
SF ₆	sulfur hexafluoride
SIP	State Implementation Plan
SLT	Screening-level threshold
SMNWR	Sweetwater Marsh National Wildlife Refuge
SO _x	sulfur oxide
TACs	toxic air contaminants
UBC	Uniform Building Code
µg/l	micrograms per liter
µg/m ³	micrograms per cubic meter
US EPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
VOC	volatile organic compounds

Glossary

Term	Definition
Ambient Noise	The background sound of an environment in relation to which all additional sounds are heard
Cold Ironing	Supplying power from the shore to ships at berth to eliminate the need for vessels to use their own engines. See also “shore power.”
dBA	The decibel (dDB) is one tenth of a <i>bel</i> where one bel represents a difference in noise level between two intensities I_1 , I_0 where one is ten times greater than the other. (A) indicates the measurement is weighted to the human ear.
Hotelling	Operations on a marine vessel at berth that require electric energy to power operations, including, but not limited to, lights, ventilation, heating, cooling, and loading and unloading operations
Seiches	A vibration of the surface of a lake or landlocked sea that varies in period from a few minutes to several hours and which many change in intensity.
Shore Power	Supplying power from the shore to ships at berth to eliminate the need for vessels to use their own engines. See also “cold ironing.”

APPENDIX A

CONSTRUCTION EMISSIONS FROM PROPOSED PROJECT

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APPENDIX A

CONSTRUCTION EMISSIONS FROM PROPOSED PROJECT

Introduction

This Appendix details the emission factors and methods used to calculate the construction emissions from the proposed Project. The construction activities that will be required include excavation, backfilling, welding, pile driving, and other similar activities. Emissions will be generated from the combustion of fuel (primarily diesel) in the construction equipment as well as from the diesel mobile source vehicles used on-site. Offroad 2007 (CARB, 2007b) was used to calculate emissions from off-road and construction vehicles. The following assumptions were used in the five phases of construction activity as well as for calculation of fugitive dust emissions:

- Construction 1: Demolition and excavation for (a) equipment compound, (b) conduit trenching, and (c) ground switch and jib
 - One skid steer loader (75 hp), one backhoe (110 hp), one saw cutter (55 hp), two dump trucks (350 hp), one air compressor (60 hp), and one wheel loader (150 hp) over a period of twenty days for Construction 1a, 1b, and 1c.
- Construction 2: Backfill, compacting, and paving for (a) equipment compound, (b) conduit, and (c) ground switch
 - Construction 2a: One skid steer loader (75 hp), one backhoe (110 hp), one saw cutter (55 hp), one dump truck (350 hp), and one welding generator (50 hp) over a period of twenty days
 - Construction 2b: one skid steer loader (75 hp), one backhoe (110 hp), one dump truck (350 hp), one air compressor (60 hp), one wheel loader (150 hp), one concrete truck (350 hp), one vibratory compactor (83 hp), and one welding generator (50 hp) over a period of twenty days
 - Construction 2c: one skid steer loader (75 hp), one backhoe (110 hp), two dump trucks (350 hp), one air compressor (60 hp), one wheel loader (150 hp), one concrete truck (350 hp), one vibratory compactor (83 hp), and one welding generator (50 hp) over a period of twenty days
- Construction 3: Equipment delivery and installation
 - One tractor trailer (350 hp), one crane (216 hp), and one welding generator (50 hp) over a period of twenty day
- Construction 4: SDG&E Cables/Trench Installation
 - Construction 4a: One skid steer loader (75 hp), one backhoe (110 hp), one saw cutter (55 hp), two dump trucks (350 hp), one air compressor (60 hp), and one wheel loader (150 hp) over a period of twenty days
 - Construction 4b: One skid steer loader (75 hp), one backhoe (110 hp), one saw cutter (55 hp), two dump trucks (350 hp), one air compressor (60 hp), and one wheel loader (150 hp) over a period of twenty days
- Fugitive Dust (Construction 1a, 1b, 1c, 2a, 2b, 2c, 4a, and 4b)
 - Emission factor of 20 lbs/acre/day consistent with the URBEMIS methodology (URBEMIS Manual Appendix, page A-6)
- All construction phases
- One work day = 8 hours

Tables A.1 and A.2 summarize the emissions associated with construction activities, divided by equipment type, on an hourly and on a daily basis. Table A.3 summarizes the fugitive dust emissions associated with construction activities. Table A.4 summarizes the total daily emissions from each phase of construction.

Appendix A: Construction Emissions from Proposed Project

TABLE A.1

CONSTRUCTION ACTIVITIES AND EMISSION FACTORS

Phase	Days	Equipment	Quantity	HP	Days	Total hours	Load factor	Emission factors (lb/hr)							
								ROG	CO	NO _x	CO ₂	SO _x	PM	N ₂ O	CH ₄
Construction 1: Demo/ Excavation															
<i>1a: Equipment compound</i>	1 to 20	Skid steer loader (1) ²	1	75	20	160	0.55	6.06E-02	2.82E-01	4.13E-01	4.27E+01	5.01E-04	3.55E-02	0.00E+00	5.47E-03
		Backhoe (1) ³	1	110	20	160	0.55	9.09E-02	3.62E-01	5.66E-01	5.17E+01	6.06E-04	5.15E-02	0.00E+00	8.20E-03
		Saw cutter (1) ⁴	1	55	20	160	0.73	1.34E-01	4.97E-01	8.59E-01	7.41E+01	8.69E-04	7.19E-02	0.00E+00	1.21E-02
		Dump truck (2) ⁵	2	350	20	320	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Air compressor (1) ⁶	1	60	20	160	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Wheel loader (1) ⁷	1	150	20	160	0.55	1.22E-01	5.88E-01	9.64E-01	1.01E+02	1.14E-03	5.62E-02	0.00E+00	1.10E-02
<i>1b: Conduit trenching</i>	21 to 40	Skid steer loader (1) ²	1	75	20	160	0.55	6.06E-02	2.82E-01	4.13E-01	4.27E+01	5.01E-04	3.55E-02	0.00E+00	5.47E-03
		Backhoe (1) ³	1	110	20	160	0.55	9.09E-02	3.62E-01	5.66E-01	5.17E+01	6.06E-04	5.15E-02	0.00E+00	8.20E-03
		Saw cutter (1) ⁴	1	55	20	160	0.73	1.34E-01	4.97E-01	8.59E-01	7.41E+01	8.69E-04	7.19E-02	0.00E+00	1.21E-02
		Dump truck (2) ⁵	2	350	20	320	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Air compressor (1) ⁶	1	60	20	160	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Wheel loader (1) ⁷	1	150	20	160	0.55	1.22E-01	5.88E-01	9.64E-01	1.01E+02	1.14E-03	5.62E-02	0.00E+00	1.10E-02
<i>1c: Ground switch/jib</i>	41 to 48	Skid steer loader (1) ²	1	75	8	64	0.55	6.06E-02	2.82E-01	4.13E-01	4.27E+01	5.01E-04	3.55E-02	0.00E+00	5.47E-03
		Backhoe (1) ³	1	110	8	64	0.55	9.09E-02	3.62E-01	5.66E-01	5.17E+01	6.06E-04	5.15E-02	0.00E+00	8.20E-03
		Saw cutter (1) ⁴	1	55	8	64	0.73	1.34E-01	4.97E-01	8.59E-01	7.41E+01	8.69E-04	7.19E-02	0.00E+00	1.21E-02
		Dump truck (2) ⁵	2	350	8	128	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Air compressor (1) ⁶	1	60	8	64	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Wheel loader (1) ⁷	1	150	8	64	0.55	1.22E-01	5.88E-01	9.64E-01	1.01E+02	1.14E-03	5.62E-02	0.00E+00	1.10E-02

Appendix A: Construction Emissions from Proposed Project

TABLE A.1

CONSTRUCTION ACTIVITIES AND EMISSION FACTORS

Phase	Days	Equipment	Quantity	HP	Days	Total hours	Load factor	Emission factors (lb/hr)							
								ROG	CO	NO _x	CO ₂	SO _x	PM	N ₂ O	CH ₄
Construction 2: Backfill/Compacting/Paving															
<i>2a: Equipment compound (pads)</i>	49 to 63	Skid steer loader (1) ²	1	75	15	120	0.55	6.06E-02	2.82E-01	4.13E-01	4.27E+01	5.01E-04	3.55E-02	0.00E+00	5.47E-03
		Backhoe (1) ³	1	110	15	120	0.55	9.09E-02	3.62E-01	5.66E-01	5.17E+01	6.06E-04	5.15E-02	0.00E+00	8.20E-03
		Saw cutter (1) ⁴	1	55	15	120	0.73	1.34E-01	4.97E-01	8.59E-01	7.41E+01	8.69E-04	7.19E-02	0.00E+00	1.21E-02
		Dump truck (1) ⁵	1	350	15	120	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Welding generator (1) ⁹	1	50	15	120	0.62	1.03E-01	2.93E-01	2.78E-01	2.80E+01	3.62E-04	2.63E-02	0.00E+00	9.32E-03
<i>2b: Conduit (trench backfill/restore)</i>	64 to 78	Skid steer loader (1) ²	1	75	15	120	0.55	6.06E-02	2.82E-01	4.13E-01	4.27E+01	5.01E-04	3.55E-02	0.00E+00	5.47E-03
		Backhoe (1) ³	1	110	15	120	0.55	9.09E-02	3.62E-01	5.66E-01	5.17E+01	6.06E-04	5.15E-02	0.00E+00	8.20E-03
		Dump truck (1) ⁵	1	350	15	120	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Air compressor (1) ⁶	1	60	15	120	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Wheel loader (1) ⁷	1	150	15	120	0.55	1.22E-01	5.88E-01	9.64E-01	1.01E+02	1.14E-03	5.62E-02	0.00E+00	1.10E-02
		Concrete and A.C. trucks(1) ⁵	1	350	15	120	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Vibratory compactor (1) ⁶	1	83	15	120	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Welding generator (1) ⁹	1	50	15	120	0.62	1.03E-01	2.93E-01	2.78E-01	2.80E+01	3.62E-04	2.63E-02	0.00E+00	9.32E-03
<i>2c: Ground switch</i>	79 to 88	Skid steer loader (1) ²	1	75	10	80	0.55	6.06E-02	2.82E-01	4.13E-01	4.27E+01	5.01E-04	3.55E-02	0.00E+00	5.47E-03
		Backhoe (1) ³	1	110	10	160	0.55	9.09E-02	3.62E-01	5.66E-01	5.17E+01	6.06E-04	5.15E-02	0.00E+00	8.20E-03
		Dump truck (2) ⁵	2	350	10	80	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Air compressor (1) ⁶	1	60	10	80	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Wheel loader (1) ⁷	1	150	10	80	0.55	1.22E-01	5.88E-01	9.64E-01	1.01E+02	1.14E-03	5.62E-02	0.00E+00	1.10E-02
		Concrete and A.C. trucks(1) ⁵	1	350	10	80	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Vibratory compactor (1) ⁶	1	83	10	80	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Welding generator (1) ⁹	1	50	10	80	0.62	1.03E-01	2.93E-01	2.78E-01	2.80E+01	3.62E-04	2.63E-02	0.00E+00	9.32E-03

Appendix A: Construction Emissions from Proposed Project

TABLE A.1

CONSTRUCTION ACTIVITIES AND EMISSION FACTORS

Phase	Days	Equipment	Quantity	HP	Days	Total hours	Load factor	Emission factors (lb/hr)							
								ROG	CO	NO _x	CO ₂	SO _x	PM	N ₂ O	CH ₄
Construction 3: Equipment Delivery and Installation (SDG&E Primary and Cochran Secondary)	89 to 108	Tractor trailer (1) ¹	1	350	20	160									
		Crane (1) ¹⁰	1	216	20	160	0.43	1.24E-01	3.46E-01	1.24E+00	1.12E+02	1.26E-03	4.69E-02	0.00E+00	1.12E-02
		Welding generator (1) ⁹	1	50	20	160	0.62	1.03E-01	2.93E-01	2.78E-01	2.80E+01	3.62E-04	2.63E-02	0.00E+00	9.32E-03
Construction 4: SDG&E Cables/trench construction															
<i>4a: Conduit trenching</i>	89 to 128	Skid steer loader (1) ²	1	75	40	320	0.55	6.06E-02	2.82E-01	4.13E-01	4.27E+01	5.01E-04	3.55E-02	0.00E+00	5.47E-03
		Backhoe (1) ³	1	110	40	320	0.55	9.09E-02	3.62E-01	5.66E-01	5.17E+01	6.06E-04	5.15E-02	0.00E+00	8.20E-03
		Saw cutter (1) ⁴	1	55	40	320	0.73	1.34E-01	4.97E-01	8.59E-01	7.41E+01	8.69E-04	7.19E-02	0.00E+00	1.21E-02
		Dump truck (2) ⁵	2	350	40	640	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Air compressor (1) ⁶	1	60	40	320	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Wheel loader (1) ⁷	1	150	40	320	0.55	1.22E-01	5.88E-01	9.64E-01	1.01E+02	1.14E-03	5.62E-02	0.00E+00	1.10E-02
<i>4b: Conduit (trench backfill/restore)</i>	109 to 128	Skid steer loader (1) ²	1	75	20	160	0.55	6.06E-02	2.82E-01	4.13E-01	4.27E+01	5.01E-04	3.55E-02	0.00E+00	5.47E-03
		Backhoe (1) ³	1	110	20	160	0.55	9.09E-02	3.62E-01	5.66E-01	5.17E+01	6.06E-04	5.15E-02	0.00E+00	8.20E-03
		Dump truck (2) ⁵	2	350	20	320	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Air compressor (1) ⁶	1	60	20	160	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Wheel loader (1) ⁷	1	150	20	160	0.55	1.22E-01	5.88E-01	9.64E-01	1.01E+02	1.14E-03	5.62E-02	0.00E+00	1.10E-02
		Concrete and A.C. trucks(1) ⁵	1	350	20	160	0.57	2.49E-01	7.53E-01	2.32E+00	2.72E+02	2.67E-03	8.71E-02	0.00E+00	2.25E-02
		Vibratory compactor (1) ⁸	1	83	20	160	0.62	1.32E-01	5.41E-01	8.64E-01	8.08E+01	9.48E-04	7.40E-02	0.00E+00	1.19E-02
		Welding generator (1) ⁹	1	50	20	160	0.62	1.03E-01	2.93E-01	2.78E-01	2.80E+01	3.62E-04	2.63E-02	0.00E+00	9.32E-03

1 Tractor trailer, diesel, 350 hp.

2 Skid Steer Loaders, diesel, 50-120 hp.

3 Tractors/loaders/backhoes, diesel, 50-120 hp.

4 Concrete/Industrial Saws, diesel, 50-120 hp.

5 Off-Highway Trucks, 250-500 hp.

6 Other Construction Equipment, diesel, 50-120 hp.

7 Tractors/Loaders/Backhoes, diesel, 120-175 hp.

8 Other Construction Equipment, diesel, 175-500 hp.

9 Other Construction Equipment, diesel, 25-50 hp.

10 Crane, diesel, 175-250 hp.

Appendix A: Construction Emissions from Proposed Project

TABLE A.2

CONSTRUCTION ACTIVITIES AND DAILY EMISSIONS

Phase	Days	Equipment	Quantity	HP	Days	Total hours	Load factor	Emissions (lb/day)							
								ROG	CO	NO _x	CO ₂	SO _x	PM	N ₂ O	CH ₄
Construction 1: Demo/ Excavation															
1a: Equipment compound	1 to 20	Skid steer loader (1)2	1	75	20	160	0.55	0.27	1.24	1.82	187.98	0.00	0.16	0.00	0.02
		Backhoe (1)3	1	110	20	160	0.55	0.40	1.59	2.49	227.40	0.00	0.23	0.00	0.04
		Saw cutter (1)4	1	55	20	160	0.73	0.78	2.90	5.02	432.65	0.01	0.42	0.00	0.07
		Dump truck (2)5	2	350	20	320	0.57	2.27	6.87	21.13	2481.46	0.02	0.79	0.00	0.20
		Air compressor (1)6	1	60	20	160	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Wheel loader (1)7	1	150	20	160	0.55	0.53	2.59	4.24	445.70	0.01	0.25	0.00	0.05
		TOTALS							4.91	17.88	38.98	4175.88	0.04	2.21	0.00
1b: Conduit trenching	21 to 40	Skid steer loader (1)2	1	75	20	160	0.55	0.27	1.24	1.82	187.98	0.00	0.16	0.00	0.02
		Backhoe (1)3	1	110	20	160	0.55	0.40	1.59	2.49	227.40	0.00	0.23	0.00	0.04
		Saw cutter (1)4	1	55	20	160	0.73	0.78	2.90	5.02	432.65	0.01	0.42	0.00	0.07
		Dump truck (2)5	2	350	20	320	0.57	2.27	6.87	21.13	2481.46	0.02	0.79	0.00	0.20
		Air compressor (1)6	1	60	20	160	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Wheel loader (1)7	1	150	20	160	0.55	0.53	2.59	4.24	445.70	0.01	0.25	0.00	0.05
		TOTALS							4.91	17.88	38.98	4175.88	0.04	2.21	0.00
1c: Ground switch/jib	41 to 48	Skid steer loader (1)2	1	75	8	64	0.55	0.27	1.24	1.82	187.98	0.00	0.16	0.00	0.02
		Backhoe (1)3	1	110	8	64	0.55	0.40	1.59	2.49	227.40	0.00	0.23	0.00	0.04
		Saw cutter (1)4	1	55	8	64	0.73	0.78	2.90	5.02	432.65	0.01	0.42	0.00	0.07
		Dump truck (2)5	2	350	8	128	0.57	2.27	6.87	21.13	2481.46	0.02	0.79	0.00	0.20
		Air compressor (1)6	1	60	8	64	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Wheel loader (1)7	1	150	8	64	0.55	0.53	2.59	4.24	445.70	0.01	0.25	0.00	0.05
		TOTALS							4.91	17.88	38.98	4175.88	0.04	2.21	0.00

Appendix A: Construction Emissions from Proposed Project

TABLE A.2

CONSTRUCTION ACTIVITIES AND DAILY EMISSIONS

Phase	Days	Equipment	Quantity	HP	Days	Total hours	Load factor	Emissions (lb/day)							
								ROG	CO	NO _x	CO ₂	SO _x	PM	N ₂ O	CH ₄
Construction 2: Backfill/ Compacting/ Paving															
2a: Equipment compound (pads)	49 to 63	Skid steer loader (1)2	1	75	15	120	0.55	0.27	1.24	1.82	187.98	0.00	0.16	0.00	0.02
		Backhoe (1)3	1	110	15	120	0.55	0.40	1.59	2.49	227.40	0.00	0.23	0.00	0.04
		Saw cutter (1)4	1	55	15	120	0.73	0.78	2.90	5.02	432.65	0.01	0.42	0.00	0.07
		Dump truck (1)5	1	350	15	120	0.57	1.14	3.44	10.56	1240.73	0.01	0.40	0.00	0.10
		Welding generator (1)9	1	50	15	120	0.62	0.51	1.45	1.38	138.70	0.00	0.13	0.00	0.05
		TOTALS							3.10	10.62	21.27	2227.46	0.02	1.33	0.00
2b: Conduit (trench backfill/restore)	64 to 78	Skid steer loader (1)2	1	75	15	120	0.55	0.27	1.24	1.82	187.98	0.00	0.16	0.00	0.02
		Backhoe (1)3	1	110	15	120	0.55	0.40	1.59	2.49	227.40	0.00	0.23	0.00	0.04
		Dump truck (1)5	1	350	15	120	0.57	1.14	3.44	10.56	1240.73	0.01	0.40	0.00	0.10
		Air compressor (1)6	1	60	15	120	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Wheel loader (1)7	1	150	15	120	0.55	0.53	2.59	4.24	445.70	0.01	0.25	0.00	0.05
		Concrete and A.C. trucks(1)5	1	350	15	120	0.57	1.14	3.44	10.56	1240.73	0.01	0.40	0.00	0.10
		Vibratory compactor (1)6	1	83	15	120	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Welding generator (1)9	1	50	15	120	0.62	0.51	1.45	1.38	138.70	0.00	0.13	0.00	0.05
TOTALS							5.29	19.11	39.63	4282.64	0.05	2.29	0.00	0.48	
2c: Ground switch	79 to 88	Skid steer loader (1)2	1	75	10	80	0.55	0.27	1.24	1.82	187.98	0.00	0.16	0.00	0.02
		Backhoe (1)3	1	110	10	160	0.55	0.40	1.59	2.49	227.40	0.00	0.23	0.00	0.04
		Dump truck (2)5	2	350	10	80	0.57	2.27	6.87	21.13	2481.46	0.02	0.79	0.00	0.20
		Air compressor (1)6	1	60	10	80	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Wheel loader (1)7	1	150	10	80	0.55	0.53	2.59	4.24	445.70	0.01	0.25	0.00	0.05
		Concrete and A.C. trucks(1)5	1	350	10	80	0.57	1.14	3.44	10.56	1240.73	0.01	0.40	0.00	0.10
		Vibratory compactor (1)6	1	83	10	80	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Welding generator (1)9	1	50	10	80	0.62	0.51	1.45	1.38	138.70	0.00	0.13	0.00	0.05
TOTALS							6.43	22.55	50.19	5523.37	0.06	2.69	0.00	0.58	

Appendix A: Construction Emissions from Proposed Project

TABLE A.2

CONSTRUCTION ACTIVITIES AND DAILY EMISSIONS

Phase	Days	Equipment	Quantity	HP	Days	Total hours	Load factor	Emissions (lb/day)							
								ROG	CO	NO _x	CO ₂	SO _x	PM	N ₂ O	CH ₄
Construction 3: Equipment Delivery and Installation (SDG&E Primary and Cochran Secondary)	89 to 108	Tractor trailer (1) ¹	1	350	20	160									
		Crane (1) ¹⁰	1	216	20	160	0.43	0.43	1.19	4.25	385.48	0.00	0.16	0.00	0.04
		Welding generator (1) ⁹	1	50	20	160	0.62	0.51	1.45	1.38	138.70	0.00	0.13	0.00	0.05
		TOTALS							0.94	2.64	5.63	524.18	0.01	0.29	0.00
Construction 4: SDG&E Cables/trench construction															
4a: Conduit trenching	89 to 128	Skid steer loader (1) ²	1	75	40	320	0.55	0.27	1.24	1.82	187.98	0.00	0.16	0.00	0.02
		Backhoe (1) ³	1	110	40	320	0.55	0.40	1.59	2.49	227.40	0.00	0.23	0.00	0.04
		Saw cutter (1) ⁴	1	55	40	320	0.73	0.78	2.90	5.02	432.65	0.01	0.42	0.00	0.07
		Dump truck (2) ⁵	2	350	40	640	0.57	2.27	6.87	21.13	2481.46	0.02	0.79	0.00	0.20
		Air compressor (1) ⁶	1	60	40	320	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Wheel loader (1) ⁷	1	150	40	320	0.55	0.53	2.59	4.24	445.70	0.01	0.25	0.00	0.05
		TOTALS							4.91	17.88	38.98	4175.88	0.04	2.21	0.00
4b: Conduit (trench backfill/restore)	109 to 128	Skid steer loader (1) ²	1	75	20	160	0.55	0.27	1.24	1.82	187.98	0.00	0.16	0.00	0.02
		Backhoe (1) ³	1	110	20	160	0.55	0.40	1.59	2.49	227.40	0.00	0.23	0.00	0.04
		Dump truck (2) ⁵	2	350	20	320	0.57	1.14	3.44	10.56	1240.73	0.01	0.40	0.00	0.10
		Air compressor (1) ⁶	1	60	20	160	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Wheel loader (1) ⁷	1	150	20	160	0.55	0.53	2.59	4.24	445.70	0.01	0.25	0.00	0.05
		Concrete and A.C. trucks(1) ⁵	1	350	20	160	0.57	1.14	3.44	10.56	1240.73	0.01	0.40	0.00	0.10
		Vibratory compactor (1) ⁸	1	83	20	160	0.62	0.65	2.69	4.29	400.70	0.00	0.37	0.00	0.06
		Welding generator (1) ⁹	1	50	20	160	0.62	0.51	1.45	1.38	138.70	0.00	0.13	0.00	0.05
TOTALS							5.29	19.11	39.63	4282.64	0.05	2.29	0.00	0.48	

¹ Tractor trailer, diesel, 350 hp.² Skid Steer Loaders, diesel, 50-120 hp.³ Tractors/loaders/backhoes, diesel, 50-120 hp.⁴ Concrete/Industrial Saws, diesel, 50-120 hp.⁵ Off-Highway Trucks, 250-500 hp.⁶ Other Construction Equipment, diesel, 50-120 hp.⁷ Tractors/Loaders/Backhoes, diesel, 120-175 hp.⁸ Other Construction Equipment, diesel, 175-500 hp.⁹ Other Construction Equipment, diesel, 25-50 hp.¹⁰ Crane, diesel, 175-250 hp.

Appendix A: Construction Emissions from Proposed Project

TABLE A.3

FUGITIVE DUST EMISSION CALCULATIONS

Phase	Days	Soil volume (yd ³)	Soil volume (m ³)	Trench depth ¹ (m)	Disturbed area (m ²)	Fugitive EF ² (lb/acre)	Fugitive EF (lb/m ²)	Total fugitive PM (lb)	Fugitive PM (lb/day)
1a: Equipment compound ³	20	--	--	--	323.75	20	0.0049	1.60	0.08
1b: Conduit trenching ⁴	20	300	229	0.6	381.87	20	0.0049	1.89	0.09
1c: Ground switch/jib	8	--	--	--	323.75	20	0.0049	1.60	0.20
2a: Equipment compound (pads)	15	300	229	--	323.75	20	0.0049	1.60	0.11
2b: Conduit (trench backfill/restore) ⁴	15	300	229	0.6	381.87	20	0.0049	1.89	0.13
2c: Ground switch	10	--	--	--	323.75	20	0.0049	1.60	0.16
3: Equipment Delivery and Installation (SDG&E Primary and Cochran Secondary)	20	--	--	--	--	--	0.0000	0.00	0.00
4a: Conduit trenching ^{5,6}	40	1125	859	0.6	1432.02	20	0.0049	7.08	0.18
4b: Conduit (trench backfill/restore) ^{5,6}	20	1125	859	0.6	1432.02	20	0.0049	7.08	0.35

1 The trench depth is assumed to be approximately 0.6 meter, or 2 feet.

2. The emission factor is obtained from the URBEMIS Manual Appendix, page A-6 (ARB value of 20 lbs/acre-day). To calculate the fugitive dust emissions associated with grading during the phases, the URBEMIS results were ratioed by the actual area being disturbed. Each construction phase generating fugitive dust will result in emissions of spread evenly over the total number of days for each phase. The total emissions are calculated assuming the entire area is disturbed on a given day, and the proposed Project emissions are calculated by dividing the total emissions by the number of days.

3 Soil disturbance activities for equipment pads. The POSD stated that the disturbed area is assumed to be 0.08 acre, or 323.75 m².

4 Trenching for conduits running from B Street to Broadway.

5 Trenching for conduits running from Station B Substation to proposed Project site.

6 The soil volume for Construction 5a and 5b was calculated by assuming the same ratio of volume to distance as that known for Construction 1b and 3b. Construction 1b and 3b disturb 300 cubic yards of soil over a distance of 0.12 miles. The trenching for 5a and 5b occurs over approximately 0.45 miles. Applying the same ratio, the disturbed soil is $[0.45 \times (300/0.12)]$.

Appendix A: Construction Emissions from Proposed Project

TABLE A.4

SUMMARY CONSTRUCTION EMISSIONS

Activity	Days	Number of days	Emissions (lb/day)							
			ROG	CO	NO _x	CO ₂	SO _x	PM	N ₂ O	CH ₄
Construction 1: Demo/Excavation										
<i>1a: Equipment compound</i>	1 to 20	20	4.91	17.88	38.98	4175.88	0.04	2.74	0.00	0.44
<i>1b: Conduit trenching</i>	21 to 40	20	4.91	17.88	38.98	4175.88	0.04	2.53	0.00	0.44
<i>1c: Ground switch/jib</i>	41 to 48	8	4.91	17.88	38.98	4175.88	0.04	2.61	0.00	0.44
Construction 2: Backfill/Compacting/Paving										
<i>2a: Equipment compound (pads)</i>	49 to 63	15	3.10	10.62	21.27	2227.46	0.02	1.86	0.00	0.28
<i>2b: Conduit (trench backfill/restore)</i>	64 to 78	15	5.29	19.11	39.63	4282.64	0.05	2.60	0.00	0.48
<i>2c: Ground switch</i>	79 to 88	10	6.43	22.55	50.19	5523.37	0.06	3.09	0.00	0.58
Construction 3: Equipment Delivery and Installation (SDG&E Primary and Cochran Secondary) ¹	89 to 108	20	0.94	2.64	5.63	524.18	0.01	0.29	0.00	0.08
Construction 4: SDG&E Cables/trench construction										
<i>4a: Conduit trenching¹</i>	89 to 128	40	4.91	17.88	38.98	4175.88	0.04	3.39	0.00	0.44
<i>4b: : Conduit (trench backfill/restore)¹</i>	109 to 128	20	5.29	19.11	39.63	4282.64	0.05	3.47	0.00	0.48
Concurrent Phases ¹										
<i>Concurrent Phases 3 and 4a¹</i>	89 to 108	20	5.85	20.52	44.61	4700.07	0.05	2.68	0.00	0.53
<i>Concurrent Phases 4a and 4b¹</i>	109 to 128	20	10.20	36.99	78.61	8458.51	0.09	5.03	0.00	0.92

¹ Phases 3 and 4a overlap for twenty days (Days 89 to 108) and Phases 4a and 4b overlap for twenty days (Days 109 to 128). Maximum daily emissions are these days are assumed to be the sum of each individual phase.

APPENDIX B

OPERATIONAL EMISSIONS FROM PROPOSED PROJECT

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APPENDIX B

OPERATIONAL EMISSIONS FROM PROPOSED PROJECT

Introduction

This Appendix details the emission factors and calculation methods used to calculate the operational emissions from the proposed Project. The operational emissions for the Baseline year are due to the combustion of Marine Diesel Oil (MDO) in the auxiliary engines during berthing. For the two phases of the Project, the operational emissions are due to combustion of MDO in the auxiliary engines as the ships connects and disconnects from shore power while at berth and due to the indirect emissions from electricity usage by using shore power during the remainder of time at berth. First, combustion emissions from the auxiliary engines are discussed. Second, indirect emissions from electricity usage are discussed. Finally, emissions from each phase during the proposed project implementation are defined.

Table B.1 below summarizes information for each ship, such as the duration of time each ship spends at berth, the total amount of power required while at berth whether from the auxiliary engines or from shore power, and the potential amount of shore power that could be utilized while at berth.

TABLE B.1

SUMMARY OF SHIP INFORMATION

Vessel Name	Berthing Duration¹ (hrs)	Time for Shore Power² (hrs)	Avg Auxiliary Total Power³ (kW)	Total Required Power per Visit⁴ (kW-hr)	Potential Shore Power per Visit (kW-hr)	Potential Required Auxiliary Power per visit, with Shore Power (kW-hr)
Dawn Princess	11	9.0	46,670	82,139	67,205	14,934
Oosterdam ^{5,6}	11	9.0	46,670	82,139	67,205	14,934
Westerdam ⁶	11	9.0	46,670	82,139	67,205	14,934

¹ Berthing duration was provided by POSD for the Dawn Princess and Oosterdam. A duration of 11 hours was assumed for the Westerdam.

² Vessels were assumed to require one hour for connecting and one hour for disconnecting to shore power while at berth. The time available for shore power is thus two hours less than the total berthing duration.

³ The total auxiliary power for cruise ships is assumed to be 46,670 kW (CARB, 2005).

⁴ The total required power per visit is based on the average auxiliary power, the load factor for hotelling cruise ships, and the berthing duration. The load factor for hotelling cruise ships (0.16) is obtained from CARB (2005).

⁵ Vehicle information obtained from Yorke (2007) - "Port of San Diego: Cold Ironing Study May 2007."

⁶ Vehicle information obtained from the Carl Moyer Application (April 2008).

Appendix B: Operational Emissions from Proposed Project

Table B.2 below summarizes the emission factors used to calculate the emissions from the combustion of MDO and indirect emissions from electricity usage.

TABLE B.2

SUMMARY OF EMISSION FACTORS

Engine	Emission Factors (g/kW-h)								
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	DPM	SO ₂	CO ₂	CH ₄
Marine Distillate (0.5% S) ¹	13.9	1.1	0.52	0.38	0.35	0.38	2.10	690	0.09
Grid ²	0.02	0.08	0.05	0.11	0.11	0	0.25	328.45	0.01

¹ Emission factors obtained from *Emissions Estimation Methodology for Ocean Going Vessels*, California Air Resources Board, May 2008, <http://www.arb.ca.gov/regact/2008/fuelogv08/appdfuel.pdf>. The diesel particulate matter (DPM) emission factor was assumed to equal the PM₁₀ emission factor.

² PM and NO_x emission factors obtained from *Emissions Estimation Methodology for Ocean Going Vessels*, California Air Resources Board, May 2008, <http://www.arb.ca.gov/regact/2008/fuelogv08/appdfuel.pdf>. HC and CO emission factors from Table 6 of CARB, *Air Pollution Emission Impacts Associated with Economic Market Potential of Distributed Generation in California*, June 2000. SO₂, CH₄ and CO₂ emission factors obtained from EPA, Emissions & Generation Resource Integrated Database (eGRID) CAMX section: www.epa.gov/cleanenergy/energy-resources/egrid/index.html.

Combustion Emissions

Emissions of NO_x, VOC, CO, SO_x, PM₁₀, PM_{2.5}, CO₂, CH₄, and diesel particulate matter (DPM) were calculated for each ship that is capable of using shore power (i.e., Dawn Princess, Oosterdam, and Westerdam). Combustion emissions were calculated using the emissions methodology outlined in “Emissions Estimation Methodology for Ocean Going Vessels” (CARB, 2008).

Operational combustion emissions were based on the total amount of energy the ships would obtain from their auxiliary engines. The total amount of energy was based on the average auxiliary power for a cruise ship, the load factor for a hotelling ship, and the amount of time spent in berth.

$$E_{combustion} = En_{required} \cdot EF \cdot \frac{1 \text{ ton}}{907000 \text{ g}}$$

Where $E_{combustion}$ is the emissions of a given pollutant per visit [tons/visit];
 $En_{required}$ is the energy the ship requires per visit [kW-hr/visit]; and
 EF is the emission factor for a given pollutant [g/kW-hr].

$$En_{required} = T_{berthing} \cdot P_{auxiliary} \cdot F_{load}$$

Where $T_{berthing}$ is the time the ship is in berth [hr];
 $P_{auxiliary}$ is the average auxiliary total power [kW]; and
 F_{load} is the load factor [unitless].

Appendix B: Operational Emissions from Proposed Project

For the baseline year emissions, ENVIRON has assumed that none of the ships use shore power while at berth; therefore, the vessels use their auxiliary engines the entire time the ship is in berth, and emissions are only due to the auxiliary engine emissions. In calculating the Project Phase 1 and Phase 2 combustion emissions, ENVIRON assumed that each ship would require one hour for connecting and one hour for disconnecting from shore power while at berth, during which time the ship would need to use its auxiliary engine. Please note that connections and disconnections are generally made in a shorter time period. Thus, the time frame is a conservative approach, as assuming the maximum connection and disconnection time periods minimizes the potential emission reductions.

Indirect Emissions from Electricity Usage

During the two phases of the proposed Project, emissions from a vessel result from (1) direct emissions from combustion of MDO burned in the auxiliary engines as the ship enters and leaves the berth and (2) indirect emissions from the electricity used to generate the shore power previously received from the auxiliary engines. As stated in the Combustion Emissions section above, each ship is assumed to require one hour to connect and one hour to disconnect from shore power; therefore, the time available to use shore power is two hours less than the total time the ship is in berth. The time available to use shore power was used to calculate the amount of energy needed from shore power, based on the average auxiliary power and load factor for hotelling cruise ships. The same equations used to calculate emissions from combustion are used to calculate indirect emissions from electricity.

The emission factors used to calculate indirect emissions from electricity were obtained from CARB (2008) and EPA's eGRID, as described above in Table B.2. The eGRID database allows the user to choose emission factors based on state, eGRID subregion, and specific power plant, among other options. The selection determines the emission factor based on the assumptions inherent to the model of the generation resource mix. The generation resource mix represents which resources (e.g., coal, natural gas, etc.) are used to generate electricity in a given area. For this analysis, the eGRID subregion CAMX (i.e., California-Mexico) was chosen. The generation resource mix for CAMX is approximately 42% gas, 18% hydroelectric, 16% nuclear, 12% coal, 5% geothermal, 3% biomass, and 1% oil, with the remaining 3% coming from solar, other fossil fuel, and unknown or purchased fuel.

Proposed Project Phase Emissions

Implementation of the proposed Project is separated into two phases, each of which has combustion emissions and indirect emissions from electricity usage. For each phase, emissions were analyzed based on the number of ships that could use shore power at any one time. During Phase 1, which will occur in 2010, one ship out of a maximum of three potential ships in berth will be able to operate on shore power. During Phase 2, which will occur in 2017, two ships out of a maximum of three potential ships in berth will be able to operate on shore power. A calendar detailing the visits made by each cruise ship is available from 2008 through 2010. However, the schedule in and beyond

Appendix B: Operational Emissions from Proposed Project

2009 is tentative, and, therefore, the exact number of ships that will visit in 2010 and 2017 is not known. As a result, this analysis uses 2008 data (i.e., the last year that complete information was available) to determine CEQA base year emissions from the three shore-power capable ships. Based on the Port calendar, none of the ships berth at the Port at the same time on any single day. Therefore, the annual and daily emissions for Phases 1 and 2 are the same; each ship will be able to utilize shore power while at berth. Below is a summary of the assumptions made for each phase as it relates to calculation of the operational emissions.

- **Baseline:**
 - Number of Port calls during 2008 (representative year of ship calls)
 - None of the ships used shore power.
 - One visit per day per ship (daily emissions only)
- **Phase 1:**
 - Number of Port calls during 2008
 - One ship out of a maximum potential of three ships at berth uses shore power if multiple shore power capable ships are expected to be at berth at the same time. However, none of the ships in the proposed Project were at berth at the same time during any single day during 2008.
 - One visit per day per ship (daily emissions only)
- **Phase 2:**
 - Number of Port calls during 2008
 - Two ships out of a maximum potential of three ships at berth uses shore power if multiple shore power capable ships are expected to be at berth at the same time. However, none of the ships in the proposed Project were at berth at the same time on any single day during 2008.
 - One visit per day per ship (daily emissions only)

Tables B.3 through B.7 provide a summary of the emissions associated with each of these operating scenarios on an annual and a daily basis, respectively.

Appendix B: Operational Emissions from Proposed Project

TABLE B.3

EMISSIONS PER VISIT BY VESSEL – NO SHORE POWER

Vessel Name	Total emissions per visit, no shore power (tons/visit)									Total emissions per year, no shore power (tons/yr)								
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	DPM	SO ₂	CH ₄	CO ₂	NO _x	CO	HC	PM ₁₀	PM _{2.5}	DPM	SO ₂	CH ₄	CO ₂
Dawn Princess	1.26	0.10	0.05	0.03	0.03	0.03	0.19	0.01	62.49	23.92	1.89	0.89	0.65	0.60	0.65	3.61	0.15	1,187.26
Oosterdam	1.26	0.10	0.05	0.03	0.03	0.03	0.19	0.01	62.49	37.76	2.99	1.41	1.03	0.95	1.03	5.71	0.24	1,874.62
Westerdam	1.26	0.10	0.05	0.03	0.03	0.03	0.19	0.01	62.49	2.52	0.20	0.09	0.07	0.06	0.07	0.38	0.02	124.97
Three ships total	3.78	0.30	0.14	0.10	0.10	0.10	0.57	0.02	187.46	64.20	5.08	2.40	1.76	1.62	1.76	9.70	0.42	3,186.86

TABLE B.4

EMISSIONS PER VISIT BY VESSEL – SHORE POWER

Vessel Name	Total auxiliary emissions per visit, with shore power (tons/visit)								
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	DPM	SO ₂	CH ₄	CO ₂
Dawn Princess	0.23	0.02	0.01	0.01	0.01	0.01	0.03	0.00	11.36
Oosterdam	0.23	0.02	0.01	0.01	0.01	0.01	0.03	0.00	11.36
Westerdam	0.23	0.02	0.01	0.01	0.01	0.01	0.03	0.00	11.36
Three ships total	0.69	0.05	0.03	0.02	0.02	0.02	0.10	0.00	34.08
Vessel Name	Indirect emissions due to electricity usage (tons/visit)								
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	DPM	SO ₂	CH ₄	CO ₂
Dawn Princess	1.9E-03	5.7E-03	3.7E-03	8.2E-03	8.2E-03	0.0E+00	1.9E-02	1.0E-03	2.4E+01
Oosterdam	1.9E-03	5.7E-03	3.7E-03	8.2E-03	8.2E-03	0.0E+00	1.9E-02	1.0E-03	2.4E+01
Westerdam	1.9E-03	5.7E-03	3.7E-03	8.2E-03	8.2E-03	0.0E+00	1.9E-02	1.0E-03	2.4E+01
Three ships total	0.00	0.02	0.01	0.02	0.02	0.00	0.06	0.00	72.99

Appendix B: Operational Emissions from Proposed Project

TABLE B.5

ANNUAL EMISSIONS BY VESSEL – SHORE POWER

Vessel Name	Total emissions per year, with shore power (tons/yr)								
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	DPM	SO ₂	CH ₄	CO ₂
Dawn Princess	4.38	0.45	0.23	0.27	0.26	0.12	1.01	0.05	678.17
Oosterdam	6.91	0.71	0.37	0.43	0.42	0.19	1.60	0.07	1,070.79
Westerdam	0.46	0.05	0.02	0.03	0.03	0.01	0.11	0.00	71.39
Three ships total	11.75	1.22	0.63	0.73	0.71	0.32	2.72	0.13	1,820.34

TABLE B.6

ANNUAL EMISSIONS SUMMARY TABLE

Emissions	Criteria Pollutant Emissions (tons/yr)						GHG Emissions (tons/yr)		
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	SO ₂	CO ₂	CH ₄	CO _{2eq}
Baseline ¹	64.20	5.08	2.40	1.76	1.62	9.70	3,186.86	0.42	3,197.25
Project - Phase 1 ²	11.75	1.22	0.63	0.73	0.71	2.72	1,820.34	0.13	1,823.53
Incremental difference (Phase 1 - Baseline)	-52.45	-3.87	-1.78	-1.02	-0.91	-6.98	-1,366.51	-0.29	-1,373.72
Project - Phase 2 ³	11.75	1.22	0.63	0.73	0.71	2.72	1,820.34	0.13	1,823.53
Incremental difference (Phase 2 - Baseline)	-52.45	-3.87	-1.78	-1.02	-0.91	-6.98	-1,366.51	-0.29	-1,373.72
Significance Threshold	40	100	14	15	10	40	--	--	--
Significant?	No	No	No	No	No	No	--	--	--

¹ Baseline emissions are based on 2008 ship calls for the three ships currently capable of using shore power (the Dawn Princess, the Oosterdam, and the Westerdam). Baseline emissions reflect that the ships did not (and could not) use shore power in 2008.

² Phase 1 will occur in 2010 and will allow 1 out of a maximum potential of 3 ships at berth simultaneously to operate on shore power. Phases 1 emissions are based on 2008 ship call information with shore power available at one berth at any given time.

³ Phase 2 will occur in 2017 and will allow 2 out of a maximum potential of 3 ships in berth simultaneously to operate on shore power. Since the ships are not at berth at the same time on a single day in 2008 (and are not project to be in 2009 or 2010), Phase 1 and Phase 2 emissions are the same. Phase 2 emissions would be smaller if two ships capable of using shore power called on the same day(s).

Appendix B: Operational Emissions from Proposed Project

TABLE B.7

DAILY EMISSIONS SUMMARY TABLE

Emissions	Criteria Pollutant Emissions (lbs/day)						GHG Emissions (lbs/day)		
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	SO ₂	CO ₂	CH ₄	CO ₂ eq
Baseline ¹	2,517.61	199.24	94.18	68.83	63.39	380.36	124,974.75	16.30	125,382.27
Project - Phase 1 ²	460.71	47.65	24.52	28.81	27.82	106.72	71,385.95	5.00	71,510.85
Incremental difference (Phase 1 - Baseline)	-2,056.90	-151.59	-69.67	-40.02	-35.57	-273.64	-53,588.80	-11.30	-53,871.42
Project - Phase 2 ³	460.71	47.65	24.52	28.81	27.82	106.72	71,385.95	0.01	71,386.28
Incremental difference (Phase 2 - Baseline)	-2,056.90	-151.59	-69.67	-40.02	-35.57	-273.64	-53,588.80	-16.29	-53,996.00
Significance Threshold	250	550	75	100	55	250	--	--	--
Significant?	No	No	No	No	No	No	--	--	--

¹ Baseline emissions are based on 2008 ship calls for the three ships currently capable of using shore power (the Dawn Princess, the Oosterdam, and the Westerdam). Baseline emissions reflect that the ships did not (and could not) use shore power in 2008.

² Phase 1 will occur in 2010 and will allow 1 out of a maximum potential of 3 ships at berth simultaneously to operate on shore power. Phases 1 emissions are based on 2008 ship call information with shore power available at one berth at any given time.

³ Phase 2 will occur in 2017 and will allow 2 out of a maximum potential of 3 ships in berth simultaneously to operate on shore power. Since the ships are not at berth at the same time on a single day in 2008 (and are not project to be in 2009 or 2010), Phase 1 and Phase 2 emissions are the same. Phase 2 emissions would be smaller if two ships capable of using shore power called on the same day(s).

Appendix B: Operational Emissions from Proposed Project

Analysis of Potential Daily Emissions

In addition to the calculated annual and daily emissions, emissions were calculated assuming that all three shore-power capable ships are in berth on the same day. The assumptions used to calculate this scenario are summarized below.

- Baseline:
 - None of the ships used shore power
 - All three ships are at berth at the same time.
 - One visit per ship
- Phase 1:
 - One ship out of a maximum potential of three ships at berth uses shore power.
 - All three ships are at berth at the same time.
 - One visit per ship
- Phase 2:
 - Two ships out of a maximum potential of three ships at berth uses shore power.
 - All three ships are at berth at the same time.
 - One visit per ship

Table B.5 provides a summary of the emissions associated with the scenario above. Please note that this is a potential scenario, and does not reflect the projected schedule of ship calls.

Appendix B: Operational Emissions from Proposed Project

TABLE B.8

DAILY EMISSIONS FOR THREE SHIPS SUMMARY TABLE

Emissions	Worst-case Criteria Pollutant Emissions (lbs/day)						Worst-case GHG Emissions (lbs/day)		
	NO _x	CO	HC	PM ₁₀	PM _{2.5}	SO ₂	CO ₂	CH ₄	CO _{2eq}
Baseline (three ships) ¹	7,553	598	283	206	190	1,141	374,924	49	376,147
Phase 1 ²	5,496	446	213	166	155	867	321,335	38	322,275
Incremental difference (Phase - Baseline)	-2,057	-152	-70	-40	-36	-274	-53,589	-11	-53,871
Phase 2 ³	3,439	295	143	126	119	594	267,747	26	268,404
Incremental difference (Phase 2 - Baseline)	-4,114	-303	-139	-80	-71	-547	-107,178	-23	-107,743
Significance Threshold	250	550	75	100	55	250	--	--	--
Significant?	No	No	No	No	No	No	--	--	--

¹ Baseline emissions are based on 2008 ship calls for the three ships currently capable of using shore power (the Dawn Princess, the Oosterdam, and the Westerdam). Baseline emissions reflect that the ships did not (and could not) use shore power in 2008.

² Phase 1 occurs in 2010 and will allow one out of a maximum potential of three ships in berth to operate on shore power. Phase 1 assumes three ships in berth with one ship operating on shore power.

³ Phase 2 occurs in 2017 and will allow two out of a maximum potential of three ships in berth to operate on shore power. Phase 2 assumes three ships in berth with two ships operating on shore power.

Appendix B: Operational Emissions from Proposed Project

Conservative Analysis

In addition to the assumptions made for the purposes of the calculations, as described above, there were additional assumptions made for the overall analysis. The assumptions incorporated into the analysis of the proposed Project's operational emissions are as follows:

- The three shore-power capable ships call at port as many times in future years as in 2008 (e.g., reductions due to reduced ship calls because of economic conditions are not included);
- The three shore-power capable ships never call on the same day (based on 2008 actual ship call data and projected 2009 and 2010 ship call information); and
- Only the three ships that are currently capable of using shore power will be able to use shore power.

The first assumption is important because, in the case that the current economic downturn continues and fewer ships call in the future, there will be greater reductions. The current analysis does not account for the potential reduction in emissions due to the potential reduction in ship visits. Furthermore, the three shore-power capable ships are assumed to visit the port for a total of 51 visits based on the current schedule. In the future, the total number of visits may increase. Calculations show that emission reductions will still be achieved if the number of total vessel calls in future years increases to 89 vessel calls per year. Note that, because all of the ship parameters are identical (i.e., Tables B.1 and B.2), the increase in visits can occur with any of the three shore-power capable ships. If two shore-power capable ships do visit on the same day contrary to the second assumption, additional Phase 2 reductions (beyond Phase 1) would occur. Finally, if more ships become shore-power capable contrary to the final assumption, greater reductions would occur as ships reduce the use of auxiliary engine and associated emissions.

Attachment C to Agenda File No. 2024-290

**SAN DIEGO UNIFIED PORT DISTRICT
DEVELOPMENT SERVICES DEPARTMENT**P.O. BOX 120488
SAN DIEGO, CA 92112-0488
(619) 686-6419**COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1****Date:** September 10, 2024**Applicant:** Jesus Puebla
Capital Project Manager, Engineering-Construction
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101**Project:** CDP 2010-001 B Street Shore Power Project**Location:** B Street Pier, 1140 North Harbor Drive, San Diego, CA 92101
Broadway Pier, 1000 North Harbor Drive, San Diego, CA 92101

You are hereby granted an amendment to Coastal Development Permit (CDP) CDP-2010-001. The original CDP, Clerk Document No. 55970, was issued on January 15, 2010 by Resolution No. 2010-08, in conformance with the California Coastal Act of 1976 and the CDP Regulations of the San Diego Unified Port District.

The District has determined that this amendment to the original CDP 2010-001 is a material change to the permit and, as conditioned, is fully consistent with the public access and public recreation policies of Chapter 3 and Chapter 8 of the Coastal Act and the District's certified Port Master Plan. On **DATE** by Resolution No. **2024-XXX**, the Board of Port Commissioners approved Amendment No. 1 to CDP-2010-001.

Amendment No. 1 is granted to implement the Additional South Berth Shore Power Connection Point at B Street Cruise Ship Terminal Project, which would enhance the original shore power infrastructure authorized and constructed as part of the original CDP-2010-001.

The original CDP, pertaining to the above referenced project, is amended as follows:

1. Replace Applicant with the following:

"Applicant: Jesus Puebla
Capital Project Manager, Engineering-Construction
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101"

2. At the end of **BACKGROUND**, insert:

“In 2020, shore power regulations became more stringent. The California Air Resources Board revised the Shore Side Power Rule, also referred to as the At-Berth Regulation, mandating that all cruise ships calling into San Diego would need to connect to shore power by January 1, 2023, with several exceptions. The 2020 At-Berth Regulation superseded the 2007 Shore Side Power Rule which remained relevant until December 31, 2022. The shore power infrastructure installed at B Street Pier and Broadway Pier from Phase 1 and Phase 2 of the Project only allows for vessels with a portside connection to utilize shore power while docked at the south berth at B Street Pier. Since completion of Phase 2 of the previous Project, it was noted that additional flexibility was needed to accommodate two cruise ships with starboard connectivity simultaneously.”

3. Under **DEVELOPMENT** and after the last bullet point under “B Street Pier”, insert:

“To enhance the existing shore power infrastructure constructed in Phase 1 and Phase 2 and allow vessels with starboard connections to access shore power at the southern berth at B Street Pier CST, the Project would consist of the following improvements:

- Installation of one (1) shore power ground switch.
- Installation of approximately 80 linear feet of under-deck conduit.
- Installation of saw-tooth shore power outlet assembly.
- Construction activities include procurement of materials, wire pulling and terminating conductors, securing equipment to the pier deck, testing, programming, and commissioning new equipment with the existing shore power system.
- Use of reels and mechanized pulling for conductor placement within the existing conduit duct bank and new under-deck conduit channel.
- Pull conductors through the previously constructed duct bank along the south berth (approximately 750 linear feet).
- Implementation of Best Management Practices (BMPs) for below deck work to ensure materials and equipment do not enter the San Diego Bay.
- Designate an approximately 50 feet by 50 feet laydown area.
- Implementation of BMPs for perimeter controls.

Construction of the alternative starboard connection is anticipated to begin in approximately Fall 2024 and occur over the course of four months.”

4. Under STANDARD PROVISIONS No. 1, replace entire provision with “Permittee shall adhere to the plans for the Project as approved by the District and the Project features, described above, for the Project.”
5. Under STANDARD PROVISIONS No. 2, replace entire provision with “Permittee shall notify the District of any changes in the Project as herein described. Notification shall be in writing and be delivered promptly to the District. The District shall determine whether or not District approval of the Project change is required prior to implementation of any changes, and if the Project change will require an amendment to this Permit.”
6. Under STANDARD PROVISIONS No. 3, replace entire provision with “Permittee and the Project shall meet all applicable codes, statutes, ordinances and regulations, and Permittee shall obtain all necessary permits from local, regional, state, and federal agencies.”
7. Under STANDARD PROVISIONS No. 4, replace entire provision with “Permittee shall conform to, and this permit is subject to, the permit rules and regulations of the District, including, but not limited to, the District’s Coastal Development Permit Regulations.”
8. Under STANDARD PROVISION No. 8, replace “Land Use Planning Department” with “Development Services Department”.
9. Under STANDARD PROVISION No. 9, replace entire provision with “The Permittee and contractor shall implement all best management practices (BMPs) during construction and maintenance operations. No non-stormwater (irrigation, wash water, etc.) may discharge to the District’s storm drains. Storm water discharges to storm drains or to Pacific Ocean are allowable, if they do not contain pollutants.”
10. Under STANDARD PROVISIONS, insert the following provisions:
 - “10. Any questions of intent or interpretation of any condition will be resolved by the District Executive Director or the Board of Port Commissioners.
11. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2013-0001, as amended by Order Nos. R9-2015-001 and R9-2015-0100, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0109226, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer

Systems (MS4s) Draining the Watersheds Within the San Diego Region (Municipal Permit). The Municipal Permit prohibits any activities that could degrade stormwater quality.

The Permittee shall ensure that post-construction/operational use of this Project site complies with the Municipal Permit and District direction related to permitted activities including the requirements found in the District's Jurisdictional Runoff Management Program (JRMP). The JRMP is available on the District website: <https://www.portofsandiego.org/environment/environmental-protection/stormwater> or by contacting the Environmental Protection Department at (619) 686-6254.

12. This Project may be subject to the District's post-construction BMP requirements. If so, approval of the Project by the District is necessarily conditioned upon submission by the Permittee of a specific Stormwater Quality Management Plan (SWQMP) for the Project that meets District requirements and is compliant with the District BMP Design Manual (JRMP Appendix D). If required, the Permittee shall implement all post-construction structural and non-structural BMPs in perpetuity.

The implementation and maintenance of the post-construction BMPs constitute regulatory obligations for the Permittee, and failure to comply with the Municipal Permit, the JRMP, or the District-approved SWQMP, including the specific BMPs contained therein, may be considered a violation of the permit and a violation of District Code."

11. Under SHORT TERM CONSTRUCTION MEASURES No. 3, replace "contractor" with "Permittee" and after "will" add "require the construction contractor".
12. Under SHORT TERM CONSTRUCTION MEASURES No. 12, replace entire provision with "The Permittee shall require the construction contractor to provide construction employees with transit and ride share information."
13. Under SHORT TERM CONSTRUCTION MEASURES No. 15, replace entire provision with "Permittee and/or contractor shall comply with State Water Resources Control Board Order No. 2022-0577-DWQ (NPDES General Permit No. CAS000002), and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "Construction General Permit"), as adopted, amended, and/or modified. Construction activity subject to the Construction General Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor are responsible for submitting to the District a SWPPP that is compliant with the Construction General Permit and

District required minimum BMPs. The District requires the use of District SWPPP templates. Once approved, the SWPPP document shall be maintained on the construction site at all times and made available for review by the District or other regulatory agencies.

The Permittee and/or contractor is responsible for ensuring that the SWPPP document is maintained on the site, implemented, and amended as required throughout construction. No discharges of any material or waste, including potable water, wash water, dust, soil, trash, and debris, may contaminate stormwater or enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations shall be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean shall be reported immediately to the District Stormwater Department, in order to address any regulatory permit requirements regarding spill notifications.

A project's total disturbed soil area (DSA) shall not exceed 5 acres during the rainy season (October 1 - April 30) and 17 acres during the non-rainy season (May 1 - September 30). The District may temporarily increase these limits if the individual site is in compliance with applicable stormwater regulations and the site has adequate control practices implemented to prevent stormwater pollution."

14. Under SPECIAL PROVISIONS and before SPECIAL PROVISIONS No. 1, insert:
"The following special provision is not applicable to Amendment No. 1 for CDP-2010-001."
15. Replace "Attachments" with the following:

"Exhibits:

1. Location Map
2. Overall Site Plan
3. B Street Pier Component Housing Site Plan"

If you have any questions on this permit, please contact the Development Services Department of the San Diego Unified Port District at (619) 686-6419.

RANDA CONIGLIO
Acting President/Chief Executive Officer

By: _____
Wileen Manaois
Director, Development Services

I have read and understand the reasonable terms, conditions, limitations, and provisions of this permit and agree to abide by them. I further understand that the reasonable terms, conditions, limitations, and provisions of the permit are material to its issuance by the District, and that such terms, conditions, limitations, and provisions are included to ensure consistency with applicable laws and regulations, including the Coastal Act. Any failure to abide by the reasonable terms, conditions, limitations, and provisions may result in enforcement by the District and/or the California Coastal Commission, including revocation, as may be warranted.

Signature of Permittee
Jesus Puebla
Capital Project Manager, Engineering-Construction

Date

DRAFT

DRAFT**RESOLUTION 2020-xxx****RESOLUTION ADOPTING A FIRST ADDENDUM TO
THE FINAL MITIGATED NEGATIVE DECLARATION
FOR THE B STREET SHORE POWER PROJECT
AND AUTHORIZING STAFF TO FILE A NOTICE OF
DETERMINATION**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, in response to the varied power connection needs of cruise ships, such as port and starboard connections, the District proposes the addition of a new shore power connection point at the B Street Cruise Ship Terminal's southern berth (Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal (CST) Project (proposed Project)); and

WHEREAS, the proposed Project advances electrification efforts to meet the California Air Resources Board's (CARB) At-Berth Regulation by implementing Oceangoing Vessel Objective 2A of the District's Maritime Clean Air Strategy (MCAS) which improves air quality by significantly reducing Diesel Particulate Matter emissions from ships-at-berth; and

WHEREAS, the proposed Project includes the following components: the installation of one (1) shore power ground switch; approximately 80 linear feet of under-deck conduit; and, shore power outlet equipment as well as pulling conductors through approximately 750 linear feet of previously constructed duct bank along the south berth and the newly built under-deck conduit; and

WHEREAS, Best Management Practices (BMPs) would be implemented for the below deck work to ensure materials and equipment do not enter San Diego Bay; and

WHEREAS, upon Board of Port Commissioners (BPC) authorization, construction is expected to begin in October 2024 and be completed by January 2025; and

WHEREAS, a Final Mitigated Negative Declaration (Final MND) for the B Street Shore Power Project (SCH #2009111064; Resolution No. 2010-07; Clerk Document No. 69487) was adopted by the BPC on January 5, 2010; and

WHEREAS, the proposed Project will not result in an increase in capacity and would not enable more than two ships to be connected to shore power, as originally analyzed by the adopted Final MND; and

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WHEREAS, the Final MND addressed the proposed modifications necessary to install shore power equipment at B Street Pier and Broadway Pier CSTs so that cruise ships berthing at B Street Pier or Broadway Pier can use electrical power from the shore rather than their engines while at berth; and

WHEREAS, the District has determined that the adopted Final MND has continuing informational value with respect to the proposed Project and that none of the conditions in CEQA Guidelines Section 15162, requiring preparation of a subsequent or supplemental MND or Environmental Impact Report, have occurred; and

WHEREAS, in accordance with Section 15164, a First Addendum to the Final MND has been prepared as: 1) no substantial changes are proposed to the Project; 2) no substantial changes have occurred with respect to the circumstances under which the Project is undertaken that require major revisions to the MND due to the involvement of new significant environmental effects or a substantial increase in severity of previously identified significant effects; and 3) no new information of substantial importance has come to light that (a) shows the Project will have one or more significant effects not discussed in the MND, (b) identifies significant impacts would be substantially more severe than those analyzed in the MND, (c) shows that mitigation measures or alternatives previously found not to be feasible are now feasible and would reduce significant impacts, or (d) shows that mitigation measures or alternatives which are considerably different from those analyzed in the adopted MND would substantially reduce one or more significant effects on the environment; and

WHEREAS, if the BPC approves any discretionary action to carry out the proposed Project, staff will file a Notice of Determination pursuant to CEQA Guidelines Section 15094; and

WHEREAS, the Final MND for the B Street Shore Power Project and the First Addendum to the Final MND for the Additional South Berth Shore Power Connection Point at B Street Cruise Ship Terminal Project were provided to the Board via a Board Memorandum dated September 5, 2024; and

WHEREAS, the Final MND and First Addendum to the Final MND can be accessed on the District's website at: <<https://www.portofsandiego.org/public-records/port-updates/notices-disclosures/ceqa-documents>>; and

WHEREAS, the Final MND and First Addendum to the Final MND are, by this reference, incorporated into this Resolution as if fully set forth herein; and

WHEREAS, having reviewed and considered all the materials made available to the BPC, including, but not limited to, the Final MND and First

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Addendum to the Final MND, the staff reports and all the evidence in the record of the proceedings with respect to the proposed project, the BPC took the actions hereinafter set forth below; and

WHEREAS, the BPC considered the actions at a duly noticed meeting held on September 10, 2024, at which the BPC reviewed and considered all materials made available to the BPC regarding the proposed Project.

NOW THEREFORE, BE IT RESOLVED by the BPC of the San Diego Unified Port District, as follows:

1. The BPC finds the facts recited above are true and further finds that this BPC has jurisdiction to consider, approve and adopt the subject of this Resolution.

2. The BPC finds and determines that the applicable provisions of CEQA, the CEQA Guidelines and the District Guidelines have been duly observed in conjunction with said hearing and the considerations of this matter and all of the previous proceedings related thereto.

3. The BPC has independently reviewed, analyzed, and considered the Final MND and First Addendum to the Final MND and the whole record before it, and finds and determines, on the basis of the whole record before the BPC, that:

- a. The Final MND is complete and adequate in scope and is of continuing informational value with respect to the proposed Project;
- b. Some changes or additions to the Final MND are necessary and the preparation of an addendum to the Final MND documents that none of the conditions in CEQA Section 21166 and CEQA Guidelines Section 15162, triggering preparation of a Subsequent MND, has occurred;
- c. The proposed Project is within the scope of the Final MND and there will not be any new or more significant impacts not previously identified in the Final MND, and the analysis for the proposed Project is adequate and appropriate;
- d. First Addendum to the Final MND has been prepared in accordance and compliance with CEQA Guidelines Section 15164;
- e. The BPC has fully reviewed and considered the information in First Addendum to the Final MND prior to making a decision to approve the proposed Project;

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- f. First Addendum to the Final MND reflects the District's independent judgment and analysis;
- g. The Project is consistent with the Public Trust Doctrine, as the Project complies with Section 87 of the Port Act which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed action is consistent with the Public Trust Doctrine,

4. The First Addendum to the Final MND is hereby adopted in relation to the subject of this Resolution.

5. Pursuant to Public Resources Code Section 21152 and CEQA Guidelines Section 15075, the Clerk of the BPC shall cause a Notice of Determination to be filed with the Clerk of the County of San Diego and the State Office of Planning and Research.

6. Pursuant to Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15074(c), the location and custodian of the documents and other materials which constitute the record of proceedings on which this Resolution is based is the District Clerk, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California 92101.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING ISSUANCE TO THE DISTRICT OF AMENDMENT NO. 1 TO THE NON-APPEALABLE COASTAL DEVELOPMENT PERMIT NO. 2010-001 FOR THE B STREET SHORE POWER PROJECT**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, on January 5, 2010, the BPC authorized the issuance of a non-appealable Coastal Development Permit (CDP) CDP-2010-001 to the District for the B Street Shore Power Project (Resolution No. 2010-08; Clerk Document No. 55970); and

WHEREAS, the B Street Shore Power Project allowed for three berths to be equipped with shore power equipment (north and south of B Street Pier and north of Broadway Pier); however, only two berths can provide shore power concurrently, because the south berth at B Street Cruise Ship Terminal (CST) and north berth at Broadway CST are connected to the same electrical substation; and

WHEREAS, in 2020, the California Air Resources Board (CARB) updated the At-Berth Regulation which requires all shore power capable cruise ships calling into San Diego to connect to shore power by January 1, 2023; and

WHEREAS, to continue to align with CARB's stringent At-Berth Regulation and create flexibility for both starboard and port-side shore power connections on vessels, the District proposes the installation of an alternate shore power receptacle at the southern berth of B Street CST (proposed Project); and

WHEREAS, more specifically, the proposed Project includes the installation of one (1) shore power ground switch; approximately 80 linear feet of under-deck conduit; and, shore power outlet equipment as well as pulling conductors through approximately 750 linear feet of previously constructed duct bank along the south berth and the newly built under-deck conduit; and

WHEREAS, the proposed material Amendment No. 1 to non-appealable CDP-2010-001 is necessary to implement the proposed Project, which would enhance the original shore power infrastructure authorized and constructed as part of CDP-2010-001; and

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WHEREAS, the proposed amendment to CDP-2010-001 would also update the “Standard Provisions” and “Special Provisions” to reflect current permit language and regulations; and

WHEREAS, in accordance with Section 14.d. of the District CDP Regulations, the Development Services Director determined that an amendment to CDP-2010-001 is necessary and that the proposed amendment would be a material change due to the nature and extent of the proposed changes; and

WHEREAS, the District CDP Regulations require material amendments to be considered by the BPC, along with the consideration of consistency with the Port Master Plan (PMP); and

WHEREAS, the proposed material Amendment No. 1 to CDP-2010-001 includes: (i) the installation of one (1) shore power ground switch; approximately 80 linear feet of under-deck conduit; and, shore power outlet equipment as well as pulling conductors through approximately 750 linear feet of previously constructed duct bank along the south berth and the newly built under-deck conduit; and (ii) updating the “Standard Provisions” and “Special Provisions” to reflect current permit language and regulations; and

WHEREAS, the proposed Project is located in the Civic Zone Subarea of Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified PMP; and

WHEREAS, the existing shore power system is consistent with the land use designations of Marine Terminal, Commercial Recreation, Park/Plaza, and Promenade; and

WHEREAS, no other uses are proposed, and existing uses such as the promenade will continue; and

WHEREAS, the proposed Project is consistent with the certified land use designations and the certified PMP; and

WHEREAS, the District recommends the addition of a new shore power connection point at the B Street Cruise Ship Terminal's southern berth (Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal (CST) Project (proposed Project)); and

WHEREAS, staff recommends the BPC authorize issuance to the District of Amendment No. 1 to the non-appealable CDP No. 2010-001 for the B Street Shore Power Project; and

WHEREAS, a copy of the draft amendment to CDP-2010-001 is provided

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as Attachment C to the corresponding agenda sheet.

NOW, THEREFORE, BE IT RESOLVED by the BPC of the San Diego Unified Port District, as follows:

1. The BPC finds the facts recited above are true and further finds that this BPC has jurisdiction to consider, approve and adopt the subject of this Resolution.

2. The proposed material Amendment No. 1 to CDP-2010-001 includes: (i) the installation of one (1) shore power ground switch; approximately 80 linear feet of under-deck conduit; and, shore power outlet equipment as well as pulling conductors through approximately 750 linear feet of previously constructed duct bank along the south berth and the newly built under-deck conduit; and (ii) updating the "Standard Provisions" and "Special Provisions" to reflect current permit language.

3. The current BPC action, including without limitation authorizing the issuance of Amendment No. 1 to a previously approved non-appealable Coastal Development Permit (CDP-2010-001) for the B Street Shore Power Project, is fully consistent with California Coastal Act Chapter 8 and Sections 30604(c), 30210-30224, and the public access and recreation policies referenced therein. The proposed Project is located in the Civic Zone Subarea of Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified PMP. The land use designations are Marine Terminal, Commercial Recreation, Park/Plaza, and Promenade. The proposed Project will improve the existing shore power system by allowing vessels with starboard connections to access shore power at the southern berth at B Street Pier CST. The existing shore power system is consistent with the land use designation, no other uses are proposed, and existing uses such as the promenade will continue. Therefore, the proposed Project is consistent with the certified land use designations and the certified PMP.

4. The BPC finds that Amendment No. 1 to non-appealable CDP and associated proposed Project complies with Section 87 of the Port Act which allows for all visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed BPC action is consistent with the Public Trust Doctrine.

5. Based on the entire record available to the BPC and the findings set forth in this Resolution, the Executive Director or their designated representative is hereby authorized to amend non-appealable CDP-2010-001 to allow for the installation of an alternate shore power receptacle at the southern berth of B Street Cruise Ship Terminal.

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APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

RESOLUTION 20xx-xxx**RESOLUTION APPROVING THE TRANSFER OF FUNDS
WITHIN THE DISTRICT FY 2025 EQUIPMENT OUTLAY
AND OTHER CAPITAL PROJECTS APPROPRIATION,
TRANSFERRING \$512,610 FROM CONTINGENCY TO
BRING THE TOTAL PROJECT BUDGET TO \$1,232,273
FOR THE ADDITIONAL SOUTH BERTH SHORE POWER
CONNECTION POINT PROJECT PURSUANT TO BPC
POLICY NO. 90**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, Board of Port Commissioners (BPC) Policy 090 establishes a policy for the transfer of amounts between appropriated items in the budget in accordance with Section 86 of the Act, as well as within appropriated items; and

WHEREAS, the District is advancing its commitment to environmental sustainability and operational efficiency through a strategic expansion of its shore power infrastructure; and

WHEREAS, in response to the varied power connection needs of cruise ships, the District recommends the addition of a new shore power connection point at the B Street Cruise Ship Terminal's southern berth (Additional South Berth Shore Power connection Point at the B Street Cruise Ship Terminal Project (proposed Project)); and

WHEREAS, the proposed Project advances electrification efforts to meet the California Air Resources Board (CARB) At-Berth Regulation; and

WHEREAS, it implements Oceangoing Vessel Objective 2A of the District's Maritime Clean Air Strategy (MCAS), improving air quality by significantly reducing Diesel Particulate Matter emissions from ships-at-berth; and

WHEREAS, funds for the proposed Project are budgeted in the FY 2025 Equipment Outlay and Other Capital Projects (OCP) for \$400,000; and

WHEREAS, funds from the FY 2025 Equipment Outlay and OCP

WHEREAS, to fund this proposed Project, additional funds are needed from FY 2025 Contingency appropriation in the amount of \$512,610; and

WHEREAS, approval of this agenda item will also authorize the expenditure of the construction bid and allow a 20% construction contingency pursuant to Board Policy No. 110 for a revised recommended budget of \$912,610; and

WHEREAS, approval of this agenda item will authorize the expenditure of \$463,500 pursuant to the construction contract; and

WHEREAS, staff recommends the transfer of funds within the District FY 2025 Equipment Outlay and OCP appropriation, transferring \$512,610 from Contingency to bring the total project budget to \$1,232,273 for the Additional South Berth Shore Power Connection Point Project pursuant to BPC Policy No. 90.

NOW, THEREFORE, BE IT RESOLVED by the BPC of the San Diego Unified Port District, that the transfer of funds within the District FY 2025 Equipment Outlay and OCP appropriation, transferring \$512,610 from Contingency to bring the total project budget to \$1,232,273 for the Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal Project pursuant to BPC Policy No. 90, is hereby approved.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AWARDING CONTRACT NO. 2023-24 TO UNIVERSAL WIRING CORP, IN THE AMOUNT OF \$463,500 FOR THE CONSTRUCTION OF ADDITIONAL SOUTH BERTH SHORE POWER CONNECTION POINT AT THE B STREET CRUISE SHIP TERMINAL, AS BUDGETED IN THE FY 2025 EQUIPMENT OUTLAY AND OTHER CAPITAL PROJECTS APPROPRIATION**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Section 37 of the Port Act requires that the California Public Contract Code (PCC) apply to public projects of the District; and

WHEREAS, the Board of Port Commissioners (BPC) adopted the Uniform Public Construction Cost Accounting Act (Accounting Act) procedures of the PCC to apply to public projects of the District via BPC Resolution 98-249; and

WHEREAS, the BPC adopted BPC Policy 110 incorporating the provisions of the Accounting Act to govern the processing and administration of public projects; and

WHEREAS, in a pivotal step to curb emissions from ships while docked, the California Air Resources Board (CARB) implemented the At-Berth Regulation in December 2007 mandating the installation of shore power infrastructure or other emission reduction technologies, enabling vessels to power down their diesel engines during berthing; and

WHEREAS, to comply with the CARB At-Berth Regulation, shore power infrastructure at District facilities were required to be operational and accommodate 50% of all cruise ship calls in 2014 and increasing to 80% of all cruise ship calls by 2020; and

WHEREAS, in 2020, CARB updated the At-Berth Regulation which requires all cruise ships calling into San Diego to connect to shore power by January 1, 2023, with several exceptions; and

WHEREAS, to continue to align with CARB's At-Berth Regulation and create flexibility for both starboard and port-side vessels, the District proposes the installation of an alternate shore power receptacle at the southern berth of the B

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Street Cruise Ship Terminal (CST); and

WHEREAS, the construction contract for Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal Project was advertised on July 15, 2024 with four (4) bidders responding with bids ranging from \$463,500 to \$1,305,801.18; and

WHEREAS, based on the review of bids, the lowest responsive and responsible bid was submitted by Universal Wiring Corp. in the amount of \$463,500.00; and

WHEREAS, the Engineer's construction cost estimate was \$500,000.00.

NOW, THEREFORE, BE IT RESOLVED by the BPC of the San Diego Unified Port District, as follows:

That the Plans and Specifications for Contract No. 2023-24, are hereby approved for the B Street Shore Power Project in the amount of \$463,500.00 for construction of the Additional South Berth Shore Power Connection Point at the B Street Cruise Ship Terminal, and that Contract No. 2023-24 is awarded to Universal Wiring Corp. as authorized by the BPC in the FY 2025 Equipment Outlay and Other Capital Projects (OCP) appropriation.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

FILE NUMBER: 2024-347

DATE: Tuesday, September 10, 2024

SUBJECT: 457(b) and 401(a) Plan Record Keeping and Administrative Services

DESCRIPTION: Resolution Selecting and Authorizing a Service Agreement with Empower Retirement for 457(b) and 401(a) Plan Record Keeping and Administrative Services for the Period of January 1, 2025, Through December 31, 2029 for an Amount of 0.12% of Plan Assets. Funds for the Current Fiscal Year are Budgeted; All Funds Required for Future Fiscal Years Will be Budgeted in the Appropriate Fiscal Year, Subject to Board Approval Upon Adoption of Each Fiscal Year's Budget.

The Board will consider staff's request to continue this item to a future Board meeting.

FILE NUMBER: 2024-324

DATE: Tuesday, September 10, 2024

SUBJECT: Ordinance Establishing a Schedule of Compensation for all Officers and Employees of the San Diego Unified Port District for Salary Year 2024/2025

DESCRIPTION: Ordinance Establishing a Schedule of Compensation for all Officers and Employees of the San Diego Unified Port District for Salary Year 2024/2025

EXECUTIVE SUMMARY:

This agenda item requests that the Board of Port Commissioners (Board) adopt an ordinance to establish a schedule of compensation for all officers and employees of the San Diego Unified Port District (District) for Salary Year 2024/2025. The item includes updates to the salary tables for employees represented by Teamsters Local 911 and the Harbor Police Officers' Association, reflecting the terms outlined in their existing Memoranda of Understanding (MOU). There are no current salary table adjustments for unrepresented employees. Please note that this item does not incorporate any changes related to the ongoing classification and compensation study.

RECOMMENDATION:

Adopt an Ordinance Establishing a Schedule of Compensation for all Officers and Employees of the San Diego Unified Port District for Salary Year 2024/2025

FISCAL IMPACT:

There is no fiscal impact caused by approval of this action.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port with an innovative and motivated workforce.

DISCUSSION:

This agenda item requests that the Board of Port Commissioners (Board) adopt an ordinance to establish a schedule of compensation for all officers and employees of the San Diego Unified Port District (District) for Salary Year 2024/2025. This is a standard, annual ordinance requiring approval by the Board to authorize salaries and related provisions for the salary year, which runs October 1 through September 30. The item includes updates to the salary tables for employees represented by Teamsters Local 911 and the Harbor Police Officers' Association, reflecting the terms outlined in their existing memoranda of understanding (MOU). There are no current salary table adjustments for unrepresented employees. Please note that this item does not incorporate any changes related to the ongoing classification and compensation study.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda as presented to it and approves the same as to form and legality.

Environmental Review:

The proposed Board action, including without limitation establishing a schedule of compensation for all officers and employees of the San Diego Unified Port District for Salary Year 2024/2025, does not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because there is not a potential to result in a direct or indirect physical change in the environment. Therefore, the proposed Board action is not subject to CEQA and no further action under CEQA is required.

The proposed Board action complies with Sections 21 and 35 of the Port Act which allow for the Board to pass ordinances and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or an exclusion finding is not required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Scott Laing
Senior People Services Analyst

Attachment(s):

Attachment A: Salary Ordinance XXXXX 2024-2025 and Directory of Classification Specifications 2024-2025

San Diego Unified Port District

Salary Ordinance ~~3122~~XXXX

~~2023~~4-~~202~~5~~4~~

October 1, ~~2023~~4

~~Amended October 10, 2023~~

~~Amended December 5, 2023~~

~~Amended February, 13, 2024~~

SALARY ORDINANCE 3122xxxx
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**SAN DIEGO UNIFIED PORT DISTRICT
ORDINANCE 3122xxxx
AN ORDINANCE ESTABLISHING A SCHEDULE OF COMPENSATION
FOR OFFICERS AND EMPLOYEES OF THE
SAN DIEGO UNIFIED PORT DISTRICT**

The Board of Port Commissioners (“Board”) of the San Diego Unified Port District (“District”) does ordain as follows:

Section 1. SCHEDULES OF COMPENSATION RANGES:

A) The Annual Salary Ranges for Principal Administrators and Assistants, Professional, Technical and Clerical, attached hereto as Exhibit B, is hereby approved and adopted. The Salary Schedule by Range and Step for all Step Employees, except Step Peace Officers, attached hereto as Exhibit C, is hereby approved and adopted. The Salary Schedule by Range and Step for all Step Peace Officers, attached hereto as Exhibit D, is hereby approved and adopted.

B) Salary Ranges and Steps identified in Exhibits A, C, and D, for applicable represented classifications, reflect compensation set forth in the Memoranda of Understanding between the District and the San Diego Harbor Police Officers Association (SDHPOA) and between the District and California Teamsters Local 911.

C) The Annual Salary Ranges for Temporary Employees, attached here to as Exhibit E, is hereby approved and adopted.

Section 2. CLASSES OF EMPLOYMENT:

The List of Classifications, attached hereto as Exhibit A, is hereby adopted. Upon the effective date of this Salary Ordinance, any District policies, rules, regulations or procedures as well as signatory authority, agreements or other District documents shall reflect any title changes, additions or removals as set forth in Exhibit A.

Section 3. BOARD APPOINTEES:

Board appointees are those individuals who are appointed by the Board of Port Commissioners by resolution. Notwithstanding contrary in Personnel Rules or any corresponding Administrative Procedure, each Board Appointee shall for Board Appointee's reports and divisions: a) have the authority to waive any and all provisions of Rule 5 of the Personnel Rules for unclassified services with the exception of Section 13 of Rule 5; b) set pay for each class of positions in the classified service; and c) prepare a proposed pay plan for each class of positions in the classified service, showing the rates of pay, which shall be combined and submitted to the to the Board of Port Commissioners. The Board shall adopt, or amend and adopt, the proposed pay plan. Thereafter, no position shall be assigned a salary higher than the maximum or lower than the minimum salary provided for that class of position, except for cost-of-living adjustments and longevity pay, unless the salary schedule for the class is amended in the same manner as provided herein for adoption.

Section 4. HOLIDAY PAY:

A) Holiday Pay – Calculation. For purposes of this section, Holiday Pay is calculated based on the number of hours the employee is regularly scheduled to work on such holiday.

B) Holiday Pay – Day Off. Any full-time non-exempt employee whose regularly scheduled day off falls on a District holiday, may elect to receive Holiday Pay in cash or may elect to accrue the equivalent number of hours of annual leave, subject to sub-paragraph E) below. Any full-time non-exempt employee on a 9/80 alternate work week schedule may elect to either take another day off, accrue the equivalent number of hours of annual leave, or receive Holiday Pay in cash subject to subparagraph E) below. Any full-time exempt employee whose regularly scheduled day off falls on a District holiday will receive eight (8) hours of Floating

Holiday Pay Leave that may be used as paid time off at a later date. Floating Holiday Pay expires one (1) year from the date it is accrued, and does not pay out if it remains unused.

C) Holiday work. Any full-time non-exempt employee who is required by their supervisor to work on a District holiday, and who does work at least their full scheduled shift on such holiday, shall be entitled to the following: (1) cash of no more than the number of hours actually worked in accordance with the provisions of this section; and (2) may elect to receive Holiday Pay in cash or may elect to accrue the equivalent number of hours of annual leave, subject to sub-paragraph E) below.

D) Illness on a holiday. Any full-time non-exempt employee who is required by their supervisor to work on a District holiday, but because of illness, does not work or works any hours less than their full scheduled shift, shall not be entitled to sick leave or other paid leave for the holiday, but shall be granted compensation only for the Holiday Pay and any hours actually worked on the holiday.

E) Holiday Premium Pay. Any full-time non-exempt employee shall, in addition to the employee's regular compensation for hours actually worked on a holiday, be entitled to compensation in cash at one and one-half (1½) times their regular rate of pay for the number of hours actually worked.

F) Annual Leave Restriction. For full-time employees who have reached the annual leave accrual maximum, the choice of cash or time off for holidays as defined in this Section is restricted to cash only, until the employee's accrual drops below the maximum.

Section 5. DEDUCTIONS:

The Director, Financial Services shall make deductions from salaries of officers and employees, which deductions are required by law and including without limitation various insurance plans of the District, retirement deductions, employee contributions to community-

wide charitable organizations, employee organization dues, and others based upon the compensation paid such officers and employees pursuant to this Salary Ordinance, as may be amended from time to time.

Section 6. HEALTH AND WELFARE BENEFITS:

Classified and Unclassified full-time and limited employees of the District shall be entitled to the following benefits, or shall be entitled as specified in any applicable Memorandum of Understanding between the District and any recognized bargaining unit:

A) Health Insurance. The District shall pay the entire monthly premium cost for any employee enrolled in the Health Maintenance Organization (HMO) insurance plan. All employees enrolled in the Preferred Provider Organization (PPO) Plan will be required to pay an additional \$100 monthly contribution to subsidize the cost of the employee-only coverage. The District shall also pay approximately fifty-five percent (55%) of the premium for dependent coverage in either the HMO or PPO insurance plan. Effective January 1, 2024, the District shall pay the entire monthly premium cost for eligible employees, their spouses, domestic partners, and dependents, where applicable enrolled in any of the Medical, Dental, and Vision Plans offered by the District. For non-represented employees, the District's payment of the entire monthly premium cost will cease on December 31, 2024, unless otherwise extended through an amendment to this Salary Ordinance. For represented employees, the District's payment of the entire monthly premium cost will be for the period set forth in the applicable Memorandum of Understanding or Side Letter of Agreement.

B) Dental Insurance. The District shall pay the entire employee premium cost for any District authorized dental plan. The District shall also pay approximately fifty-five percent (55%) of the premium for dependent coverage for any District authorized dental plan. Effective January 1, 2024, and ending December 31, 2024, unless otherwise extended through an

amendment to this Salary Ordinance or as set forth in a valid Memorandum of Understanding, the District shall pay the entire monthly premium cost for eligible employees, their spouses, domestic partners, and dependents, where applicable enrolled in any of Dental Plans offered by the District.

C) Life Insurance. For all classified employees, the District shall pay the entire premium cost of the District sponsored fifty thousand dollar (\$50,000.00) term-life insurance program, or as specified in any applicable Memorandum of Understanding between the District and any recognized bargaining unit. For unclassified employees, the District shall pay the entire premium cost of any District sponsored unclassified employees life insurance program for coverage of approximately one (1) times annual base wages, not to exceed maximum coverage of seventy-five thousand dollars (\$75,000.00) or a minimum of fifty thousand dollars (\$50,000.00). The District shall also pay for a life insurance policy for Vice Presidents, Assistant General Counsels and Assistant Auditors and their equivalent for coverage equal to two (2) times their annual salary, and Board Appointees at two and one-half (2.5) times their annual salary. Life Insurance provided pursuant to this section is limited to coverage of \$500,000 with any amounts in excess of this limit subject to Evidence of Insurability approval by the insurance carrier.

D) The District shall pay the entire premium cost for any District authorized Employee Assistance Program (EAP).

E) The District shall pay the entire premium cost for all full-time employees for any District authorized short-term disability plan.

F) Other Benefits: Other benefits may be designated, budgeted, and outlined in Administrative Procedures by a Board Appointee for the Board Appointees reports and divisions.

G) Part-Time Employees. Part-time employees may be eligible for “core benefits” as defined in District Administrative Procedure No. 128-270.

Section 7. SAFETY EQUIPMENT:

Any employee designated by the Executive Director shall be reimbursed an amount, per year, not to exceed one hundred seventy-five (\$175.00), to be spent in accordance with any Safety Equipment Reimbursement Program established by the Executive Director.

Section 8. AUTOMOBILE ALLOWANCE:

Any employee holding the position of Vice President, Assistant Vice President, Assistant General Counsel, Assistant Auditor, Director (department head), Senior Deputy General Counsel and Deputy General Counsel V are eligible to receive a monthly allowance for the use of a non-District-owned vehicle in the performance of their duties in accordance with the Automobile Allowance Program established by the Executive Director. Vice Presidents, Assistant General Counsels, and Assistant Auditors will receive an amount, per month, not to exceed eight hundred dollars (\$800.00). Assistant Vice Presidents, Directors (department heads), Senior Deputy General Counsel and Deputy General Counsel V will receive an amount, per month, not to exceed six hundred dollars (\$600.00).

Section 9. OUT-OF-CLASS COMPENSATION AND ACTING PAY:

Any willing full-time employee, not on light or modified duty, who is temporarily assigned to a classification in a higher salary range, and who meets all requirements of Rule 9, Section 10 of the Personnel Rules and Regulations of the District, or all such requirements in any applicable Memorandum of Understanding between the District and any recognized bargaining unit, shall receive out-of-class or acting assignment compensation. For acting assignments of less than thirty (30) days, such compensation shall be five percent (5%) higher than the base rate of pay for which the employee is regularly assigned commencing from the date of such

acting assignment. For out-of-class assignments of thirty (30) days or more in duration, compensation shall be the higher of either the rate of compensation of such out-of-class assignment, or at least five percent (5%) higher than the base rate of pay for which the employee is regularly assigned, commencing from the date of such out-of-class assignment. No such scheduled out-of-class or acting assignments shall be made without written consent of the affected employee and prior approval of a Board Appointee, or designee.

The provisions of this Section shall not be applicable to employees in Maintenance Worker classes F650 (Maintenance Worker I) and F645 (Maintenance Worker II) when assigned to higher Maintenance Worker classes for exclusively the purpose of receiving promotional training, nor shall this Section be construed to abrogate any provisions of the Personnel System Rules and Regulations of the District.

Section 10. SALARY OR LEAD FOR DIVING:

A) Except for Group E – Peace Officer, any employee in the Classified Service shall be paid eleven dollars (\$11.00) per hour, in addition to the salary prescribed for their class by Exhibits A and C, during such time the employee is engaged in diving operations for the purpose of performing engineering and maintenance operations, surveys and/or inspections. “Diving Operations” begins one (1) hour before the boat leaves the dock until one (1) hour after the boat returns to the dock and includes: time spent in the water; time rigging diving equipment before, during, and after dives; time spent decompressing following and between dives; and time spent by any trained and fully qualified diver, who is a current member of the dive team, performing as the “safety diver” or as the communications/911 person for the dive team during a dive.

B) Any willing employee in the Classified Service shall be entitled to a five percent (5%) differential paid in addition to the employee’s combined salary prescribed for their class

and any differential or Salary for Diving, during such time as the employee is performing as the lead person in charge of the diving operations, provided said employee is fully trained and qualified as a diver.

Section 11. SALARY FOR BOAT OPERATION:

Upon request of the Director of General Services and approval of the Executive Director, an employee, when assigned as the designated Maintenance Boat Operator, shall be paid fifty cents (\$0.50) per hour above their assigned rate of pay during such time such employee is engaged in boat operations for the purpose of performing maintenance on other than the boat itself. The total number of employees qualifying for this extra pay shall not exceed one (1) at any one time.

Section 12. TRAINEE COMPENSATION:

The Executive Director shall have the right to designate any classification as trainee. A trainee's pay rate will be established on a case-by-case basis by considering the following criteria: 1.) where the employee falls in their current Salary Range; 2.) salaries of other employees in the department, including those within the same classification and that of subordinate employees; 3.) current or possible compaction issues; and 4.) timing of any other applicable pay increases.

Section 13. DIFFERENTIAL FOR BILINGUAL ABILITY:

Any full-time employee, subject to the limitations and prerequisites for eligibility as set forth in a District Administrative Procedure, shall receive compensation at the rate of two and one-half percent (2 ½%) higher than the base rate of pay while assigned to perform bilingual services in any language where need has been demonstrated and such additional language is recommended and approved by the Board Appointees.

Section 14. ELIGIBILITY FOR OVERTIME COMPENSATION:

Eligibility for extra overtime compensation is established and shall be allowed only in accordance with the Fair Labor Standards Act (FLSA) status unless otherwise required by law.

A) For full-time employees in Group E – Peace Officer, hours worked in excess of eighty hours (80) in a designated (14) day work period will be considered overtime. Paid time off shall count as hours worked for the purpose of calculating overtime.

B) When an employee is eligible for Callback pay such employee shall be granted a minimum of three (3) hours of overtime.

Section 15. EVENING AND NIGHT PREMIUM ELIGIBILITY:

A) Any full-time, non-sworn employee who is subject to a regularly recurring fixed shift, and where at least fifty percent (50%) of said regularly recurring scheduled hours are between the hours of 1800 hours and 0800 hours (6:00 p.m. – 8:00 a.m.), shall receive an hourly shift differential in the amount of \$1.75. Regular recurring fixed shift shall be defined as a shift where the employee is required to work the same scheduled hours.

B) Any full-time, non-sworn employee assigned to work on a shift where at least 50% of scheduled hours are between the hours of 1800 hours and 0800 hours, and who are not regularly assigned to such shift, shall be paid an intermittent shift differential (“Shift Premium-Intermittent”) of \$1.75 per hour worked on such shift.

C) Any full-time, non-exempt employee of the Engineering-Construction department who is assigned or required to work between the hours of 1800 hours and 0600 hours, with the approval of the Chief Engineer, shall be paid a Night Special Project differential of \$1.50 per hour worked in such time frame.

Section 16. STANDBY PREMIUM:

Any full-time employees in the following classifications: B225 (Business Systems Supervisor), B861 (Lead Support Services), B211 (Systems Support Analyst II), B219 (Network Systems Analyst), subject to the limitations and prerequisites for eligibility as will be set forth in a District Administrative Procedure, shall receive one (1) hour's compensation at the regular rate for standby assignments, wherein the employee must remain available on call to return to work to perform an essential service, not to exceed two (2) hours in any twenty-four (24) hour period.

Section 17. CALLBACK:

Any full-time non-exempt employee who, following the completion of their regular work shift and departure from their place of employment, is ordered by the District to report back to duty in person at a District worksite to perform necessary work, at least three (3) hours prior to their next scheduled work shift, shall receive a minimum of three (3) hours at time and one-half their regular rate of pay. In the event an employee is called in to work within less than three (3) hours prior to the commencement of their next work shift, the employee shall be compensated at their rate at time and one-half for each hour or portion of hour thereof worked prior to their regular work shift. Reasonable transportation time to and from the employee's work location shall be considered as time worked in recording call back time as defined above.

Section 18. RETIREMENT AND RETIREE HEALTH BENEFITS

A) For General employees hired before January 1, 2009, and Safety Members hired before January 1, 2013:

1) The District will make an employer and administrative contribution to the Retirement plan in an amount determined by the retirement system Actuary necessary to provide benefits for all eligible employees.

2) In addition to the District's employer and administrative contributions, the District will make an employee contribution into the Retirement plan for all eligible employees. This amount is to be known as the employee offset or pick-up. These amounts so paid and contributed shall be credited to the District's account in the Retirement System and not to the account of any individual employee.

a) For general member employees hired before October 1, 2006, the District offset shall be seven percent (7%) of a full-time employee's compensation subject to retirement contribution, as defined in paragraph d) below.

b) For employees hired on or after October 1, 2006, the District offset for general member employees shall be five percent (5%) of a full-time employee's compensation subject to retirement contribution, as defined in paragraph d) below.

c) Effective the second pay period in 2009 (January 2, 2009) the District offset for general member employees hired on or after October 1, 2006 (but prior to January 1, 2009) (referenced in subparagraph 2, above) shall be six percent (6%) of a full-time employee's compensation subject to retirement contribution, as defined in paragraph d) below. This percentage increase is not retroactive.

d) For safety members, those employees in Group E – Peace Officer, and Class A2011 (Harbor Police Captain) and Class A2013 (Assistant Chief of Harbor Police/Public Safety), the District offset shall be eight and eight-tenths percent (8.8%) of a full-time employee's compensation subject to retirement contribution, as defined in paragraph d) below.

e) For those employees in Group A-1 Principal Administrators, Unclassified, the District shall pay an additional one and one half percent (1½ %). Furthermore, the District will continue to pay the additional one and one half percent (1½ %) for those employees who are moved from Group A-1 Principal Administrators, Unclassified to other classifications as directed by a Board Appointee.

f) Non-sworn employees rehired after January 1, 2009 shall not be eligible for a District offset after the date of rehire.

3) In addition to the District's contributions, the District will collect biweekly retirement contributions from the employees' salaries. The amount of the contributions will be the amount the Retirement System Actuary determines is the employee contribution necessary to provide the benefits, less the District offset as described in paragraph b) above. The District will forward the employee contributions to the Retirement System to be credited to each employee's account.

4) Retirement benefits will be based upon compensation subject to retirement contribution, otherwise known as "pensionable".

a) Compensation subject to retirement contribution includes pay, plus the following premium pay items and differentials: education incentive pay; bilingual pay; Narcotics Task Force Officer pay; dive team pay; Field Officer Training pay; canine pay; court witness pay; floating holiday; paycheck correction adjustments; Watch Commander differential; stipends; standby pay; car allowance; holiday pay; acting out of class pay; temporary assignment differential; fuel truck driver; back flow repair; oversight of county work fair crew; pesticide applicator; railroad repair worker; Lead Plumber, Lead Electrician; Lead

Maintenance Mechanic; Lead Equipment Mechanic; Lead Equipment Operator; Lead Equipment Operator I; Lead Equipment Operator II; Lead Maintenance Worker II; Lead Maintenance Worker III; Lead Gardener II¹; Lead Diver; Lead Boat Operator; Boat Operator; night shift; Lead night shift; Lead regular shift; Lead Traffic Enforcement Officer². (These “compensations subject to retirement contribution” are documented as a result of the “Andrecht Settlement”.)

b) In addition, any new or additional premium pay items or differentials will be subject to retirement contributions, unless expressly excluded in the MOU or salary ordinance establishing the additional items.

c) Eligible employees participating in the Deferred Retirement Option Plan (DROP) will be subject to the same definitions of pensionable salary as other General and Safety Member employees for the purposes of determining employer and employee DROP Account contributions.

5) The District shall not contribute to the Retirement System for part-time employees.

6) Any employee hired on or after October 1, 2005 will not be eligible for the following retirement plan provisions: Deferred Retirement Option Plan (DROP), Purchase of Service, except those purchases guaranteed by state or federal law; or the supplemental benefit (“Thirteenth Check”).

7) General member employees hired on or after October 1, 2006 will have their retirement benefits based on an average of the three highest years' salary.

¹ Currently retitled Lead Landscape Technician

² Currently retitled Lead Community Service Officer

8) Employees who service or disability retire from the District are offered the opportunity to participate in certain benefits which currently include retiree medical, dental and life insurance, collectively known as “retiree health insurance”.

9) Effective for employees hired on or after October 1, 2006, the service years required for eligibility for retiree health insurance will be ten (10) years of District service.

B) For General Member employees hired on or after January 1, 2009:

1) All non-sworn employees are provided with a hybrid-type retirement plan consisting of a defined contribution component and a defined benefit component. The defined benefit component will include the following standard provisions: cost of living adjustments (COLA), death benefits, disability benefits (industrial and non-industrial), reciprocity, survivor benefits and vesting (5 years). The defined contribution component shall include matching funds from the District and employee and shall fully vest in two (2) years.

2) The schedule of benefits for the hybrid plan is as follows:

Years of Service	Defined Contribution*	Defined Benefit
0 – 5	4% employer match	n/a
6 – 10	4% employer match	0.75%
11 – 15	4% employer match	1.00%
16 - 20	6% employer match	1.25%
21 +	6% employer match	1.50%

* The Executive Director has the discretion to increase, but not decrease, the defined contribution percentage of the employer match.

3) All General Members will be part of the “Next Generation Retirement Healthcare Plan.”

4) General Member employees hired on or after January 1, 2013 and are considered “New Members” under the Public Employees’ Pension Reform Act of 2013 (PEPRA) are subject to the provisions of PEPRA, which includes a requirement for employees to pay 50% of the normal cost of the defined benefit plan.

C) For Safety Members between January 1, 2010 and December 31, 2012, and Safety Members hired on or after January 1, 2013 and who qualify as “Classic Members” under PEPRA:

1) The Safety Member retirement formula will change to “3% at 55”, with an Employee Option to Retire and Begin Collecting Benefits upon completion of 30-years of District service, whether or not having reached age 55.

2) All Safety Member “New Hire Final Compensation” will be based on an average of the “Last Three Years of Salary” instead of the “Highest One-Year of Service”.

3) All Safety Members will be part of the “Next Generation Retirement Healthcare Plan”.

D) For Safety Members hired on or after January 1, 2013 who are considered “New Members” under PEPRA:

1) The Safety Member retirement formula will be 2.7% at age 57.

2) Those Safety members hired on or after January 1, 2013 who are also “New Members” will not be eligible for the provisions of Section 27(A)(b). Under PEPRA, the District is precluded from paying any employee contribution (also called “pick-up” or “offset”) for New Members.

3) Safety Members who are considered New Members under PEPRA will be required to pay 50% of the normal cost of the defined benefit.

4) Pensionable compensation is defined as the normal monthly rate of pay or base pay of the employee paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. Specifically excluded from the definition are the following:

- a) Any compensation determined to have been paid to increase an employee's retirement benefit.
- b) Compensation previously provided in kind by the employer or paid to a third party for the benefit of an employee and was converted to cash.
- c) Any one time or ad hoc payments.
- d) Severance.
- e) Payments for unused annual leave.
- f) Payments for additional services rendered outside of normal working hours.
- g) Any employer-provided allowance, reimbursement or payment including but not limited to housing, vehicle or uniforms.
- h) Payments for overtime.
- i) Employer contributions to deferred compensation or defined contribution plans.
- j) Bonuses.
- k) Any other compensation a retirement board determines is inconsistent with the law.

I) Any other compensation a retirement board determines should not be pensionable.

E) Table of Pensionable and Non-Pensionable Compensation

Pay Type	Classic Members as defined by PEPRA	New Members as defined by PEPRA
Accident Reconstructionist	Yes	No
Annual Leave	Yes	Yes
Annual Leave Payout	No	No
Backflow Repair	Yes	No
Bereavement Leave	Yes	Yes
Bilingual	Yes	Yes
Boat Operator	Yes	No
Callback	No	No
Canine Team	Yes	Yes
Automobile Allowance	Yes	No
Catastrophic Leave	Yes	Yes
Commuter Pass Reimbursement	No	No
Compensatory Time (Harbor Police)	Yes	Yes
Compensatory Time Payout	No	No
Court Time – Off Duty	Yes	No
Dispatch Educational Achievement	No	No
Dispatch Training	No	No
Dive Team or Operations	Yes	No
Educational Incentive (Harbor Police)	Yes	Yes
Emergency Paid Sick Leave (Families First Coronavirus Response Act)	Yes	Yes
Evening Premium Pay (Harbor Police)	Yes	Yes
Exempt Supervisor Leave	Yes	Yes
Exempt Supervisor Leave Payout	No	No
Field Training Officer (Harbor Police)	Yes	No
Fire Extinguisher	Yes	Yes
Floating Holiday Pay	Yes	Yes
Harbor Police Administrative Assignment	Yes	Yes
Harbor Police Teaching Assignment	Yes	No
Holiday Pay	Yes	Yes*
Holiday Pay (Harbor Police)	Yes	No
Holiday Pay – Day Off	Yes	No
Holiday Premium	Yes	No

Pay Type	Classic Members as defined by PEPRA	New Members as defined by PEPRA
Jury Duty	Yes	Yes
Lead Differential	Yes	No
Lead Diver (General Services)	Yes	No
Longevity Pay (Harbor Police)	Yes	Yes
Class B Driver Differential	No	No
Maritime Tactical Team	Yes	No
Mileage Reimbursement	No	No
Military Leave Pay	Yes	Yes
Night Premium Pay (Harbor Police)	Yes	Yes
Night Special Project	Yes	No
Out-of-Class/Acting Assignment	Yes	No
Overtime	No	No
Paid Sick Leave	Yes	Yes
Pest Control Applicator	Yes	Yes
Public Health Emergency Leave (Families First Coronavirus Response Act)	Yes	Yes
Railroad Repair	Yes	Yes
Regular Time	Yes	Yes
Relocation Expenses	No	No
Retention Stipends (Harbor Police Officers)	No	No
Retention Stipends (Harbor Police Dispatchers)	No	No
Safety Shoe Reimbursement	No	No
Severance Pay	No	No
Shift Premium (Intermittent)	Yes	No
Special Training Pay (GS or Maritime)	No	No
Standby	Yes	No
Stipend-Lump Sum	Yes	No
Tuition Reimbursement	No	No
Unclassified Leave	Yes	Yes
Unclassified Leave Payout	No	No
Uniform Allowance	No	No
Vessel Accident Reconstructionist	Yes	No
Watch Commander	Yes	No
Wellness Reimbursement	No	No
Workers' Compensation Appointment – Off Duty	No	No
Workers' Compensation Injury Pay	Yes	Yes

**Holiday Pay for New Members as defined by PEPRA is not considered pensionable when an employee works on the holiday and receives both paid worked time and Holiday Pay.*

F) Health Reimbursement Arrangement (HRA) for employees hired on or after January 1, 2010:

1) Employees who service or disability retire from the District with at least ten (10) years of District service are offered the opportunity to participate in a HRA. The District will fund a HRA to pay for health care related expenses incurred by a retired employee and/or qualified dependent. The amount funded by the District will be a cumulative sum based each year of service as outlined in the following tables.

a) For General Member employees hired on or after January 1, 2010:

Years of Service	General Members: Credit Amount (per year)
0 – 5	\$0
6 – 10	\$3,000
11 – 15	\$3,600
16 – 20	\$4,320
21 +	\$5,184

b) For Safety Member employees hired on or after January 1, 2010:

Years of Service	Sworn Members: Credit Amount (per year)
0 – 5	\$3,000
6 – 10	\$3,600
11 – 15	\$4,500
16 – 20	\$5,850
21 – 25	\$7,897
25+	\$11,056

2) In the event of retiree or active employee death, the HRA for that employee or retiree will terminate with any remaining balance reverting to the District.

Section 19. PAY PERIODS:

Pay periods shall be each fourteen (14) consecutive calendar days commencing with the beginning of the shift on Friday and ending at the conclusion of the shift on each second Thursday.

Section 20. DURATION:

The compensation plan established by this Salary Ordinance shall continue in full force and effect until amended or superseded.

Section 21. SALARY PROVISIONS:

Any positions filled on the effective date of this Ordinance must be defined by a class and salary established in this Ordinance.

Section 22. LUMP SUM PAYMENTS FOR MERITORIOUS PERFORMANCE:

The standard salary ranges shall limit the maximum base rate of pay for each classification for which such ranges are shown, unless exception is granted pursuant to an applicable administrative procedure. For meritorious performance, a Board Appointee may grant lump sum payments in lieu of an increase in base rate of pay for the Board Appointee's reports and divisions. Such lump sum shall be paid as a single payment, shall not exceed ten percent (10%) of an employee's base rate of pay, and may be granted no more than two (2) times per fiscal year. The lump sum payment shall be added to the base rate of pay when determining any overtime earnings for the biweekly pay period in which the lump sum payment is paid.

Section 23. EMPLOYEE INCENTIVE, RECOGNITION, AND REWARD PROGRAMS:

Payment of compensation is hereby authorized in amounts established by a Board Appointee for the Board Appointee's reports and divisions in accordance with any employee incentive, recognition, and reward program established by the Board Appointee. Part-time employees are eligible to participate on a pro-rata basis.

Section 24. LIMITED:

Any class title that is categorized as classified as per the Port Act will be categorized as unclassified when the class title is limited. Any class title may be designated as limited.

Section 25. LONGEVITY PAY:

Unrepresented employees will be eligible to receive Longevity Pay noted in Exhibit B as follows:

A) Employees who have completed at least ten (10) years of active service as a District employee shall receive two and one-half percent (2.5%) Longevity Pay, calculated on their base rate of pay.

B) Employees who have completed at least fifteen (15) years of active service as a District employee shall receive five percent (5.0%) Longevity Pay, calculated on their base rate of pay. This represents the amount from paragraph A) plus an additional two and one-half (2.5%) at fifteen (15) years of active service.

C) Employees who have completed at least twenty (20) years of active service as a District employee shall receive seven and one-half percent (7.5%) Longevity Pay, calculated on their base rate of pay. This represents the amount from paragraphs A) and B) plus an additional two and one-half (2.5%) at twenty (20) years of active service.

D) Employees who have completed at least twenty five (25) years of active service as a District employee shall receive ten percent (10%) Longevity Pay, calculated on their base rate of pay. This represents the amount from paragraphs A), B) and C) plus an additional two and one-half (2.5%) at twenty five (25) years of active service.

E) Per this section, "active service" shall mean full-time service as a District employee, uninterrupted by separation and includes actual time worked, leaves of absence with pay, military leave without pay, FMLA leave, CFRA leave, and periods of Special Leave Without Pay in which the employee is approved to return to their current position. Time

employed as an intern, student worker, or part-time employee, and reciprocity and/or blended benefits under the District's retirement plans are not included for calculating Longevity Pay under this section.

Section 26. EFFECTIVE DATE:

This Ordinance shall take effect the 31st day from its passage by the Board of Port Commissioners.

SAN DIEGO UNIFIED PORT DISTRICT

DIRECTORY OF CLASSIFICATION SPECIFICATIONS 2023-2024 (Exhibit A)

Class Title	Class Number	Unclassified/ Classified	FLSA Exempt/ Non-Exempt	Range
Accountant	B243-CN21	Classified	Non-Exempt	10
Accounting Assistant	D416-CN03	Classified	Non-Exempt	4
Accounting Supervisor	B254-UE03	Unclassified	Exempt	18
Administrative Assistant I (Classified)	D417-CN15	Classified	Non-Exempt	3
Administrative Assistant I (Unclassified)	D418-UN15	Unclassified	Non-Exempt	3
Administrative Assistant II (Classified)	D410-CN22	Classified	Non-Exempt	4
Administrative Assistant II (Unclassified)	D411-UN22	Unclassified	Non-Exempt	4
Applications Developer	B210-UE03	Unclassified	Exempt	12
Architect	B300-CE03	Classified	Exempt	14
Area Real Estate Manager	B821-UE03	Unclassified	Exempt	19
Asset Manager	B279-UE03	Unclassified	Exempt	14
Assistant Asset Manager	B230-CN03	Classified	Non-Exempt	12
Assistant Chief of Harbor Police/Public Safety	A2013-UE11	Unclassified	Exempt	28
Assistant Director of Development Services	A2075-UE24	Unclassified	Exempt	24
Assistant Director, Engineering-Construction	A2075-UE22	Unclassified	Exempt	24
Assistant Director, General Services	A2030-UE15	Unclassified	Exempt	22
Assistant Director of People Services	A2076-UE24	Unclassified	Exempt	24
Assistant Director, Real Estate	A2001-UE20	Unclassified	Exempt	24
Assistant Engineer	B206-CN03	Classified	Non-Exempt	13
Assistant Environmental Specialist	B315-CN15	Classified	Non-Exempt	10
Assistant General Counsel	A1010-UE14	Unclassified	Exempt	29
Assistant Land Surveyor	C321-CN03	Classified	Non-Exempt	13
Assistant Parking Manager	B917-UE16	Unclassified	Exempt	12
Assistant Planner	B320-CN16	Classified	Non-Exempt	11
Assistant Port Auditor	B221-UE16	Unclassified	Exempt	22
Assistant Procurement Analyst	B263-CN16	Classified	Non-Exempt	6
Assistant to Port Auditor	D433-UN13	Unclassified	Non-Exempt	6
Assistant to Vice President	D430-UN22	Unclassified	Non-Exempt	12
Assistant Vice President	A2058-UE16	Unclassified	Exempt	28
Assistant Vice President, Administrative Services	A1381-UE03	Unclassified	Exempt	28
Assistant Vice President, General Services	A2076-UE23	Unclassified	Exempt	28
Assistant Vice President, Government Relations & Communication	A1035-UE08	Unclassified	Exempt	28
Assistant Vice President, Operations	A1220-UE03	Unclassified	Exempt	28
Associate Engineer	B205-CE21	Classified	Exempt	15
Associate Environmental Specialist	B310-CE17	Classified	Exempt	15
Associate Planner	B306-CE17	Classified	Exempt	14
Business Intelligence Analyst	B248-UE11	Unclassified	Exempt	14
Business Intelligence Supervisor	B843-UE08	Unclassified	Exempt	18
Business Systems Analyst	B232-UE15	Unclassified	Exempt	14
Business Systems Supervisor	B225-UE14	Unclassified	Exempt	16
Business Systems Technician	B233-UN09	Unclassified	Non-Exempt	8
CADD/BIM Coordinator	B947-UE21	Unclassified	Exempt	18
Capital Project Manager	B214-UE21	Unclassified	Exempt	22
Carpenter	F630-CNR03	Classified	Non-Exempt	78.37-7
CFO/Treasurer	A1150-UE03	Unclassified	Exempt	29
Chief Engineer	A1201-UE03	Unclassified	Exempt	29
Chief Information Security Officer	A2067-UE17	Unclassified	Exempt	26
Chief Technology Officer	A2057-UE16	Unclassified	Exempt	28

Civil Designer	C313-CN03	Classified	Non-Exempt	11
Civilian Manager	B958-CE24	Classified	Exempt	19
Commissioner Services Assistant	B177-UN21	Unclassified	Non-Exempt	8
Community Service Officer	D465-CNR03	Classified	Non-Exempt	73.82
Community Service Officer Supervisor	B170-CNR03	Classified	Non-Exempt	81.0
Construction Inspector	C314-CN15	Classified	Non-Exempt	11
Construction Inspector Supervisor	C312-CN05	Classified	Non-Exempt	12
Crime Intelligence Analyst	B860-UE22	Unclassified	Exempt	12
Customer Relations Assistant	C328-CN03	Classified	Non-Exempt	2
Database Administrator	B619-UE07	Unclassified	Exempt	14
Department Administrative Manager	B809-UE03	Unclassified	Exempt	15
Department Business Manager	B810-UE08	Unclassified	Exempt	18
Department Manager, Development Services	B907-UE18	Unclassified	Exempt	21
Department Manager, Financial Services	B877-UE15	Unclassified	Exempt	21
Department Manager, Real Estate	B874-UE17	Unclassified	Exempt	21
Deputy District Clerk/Docket Coordinator	B660-UE21	Unclassified	Exempt	12
Deputy District Clerk/Records Manager	B655-UE21	Unclassified	Exempt	13
Deputy General Counsel I	A2043-UE14	Unclassified	Exempt	25
Deputy General Counsel II	A2044-UE14	Unclassified	Exempt	25
Deputy General Counsel III	A2045-UE14	Unclassified	Exempt	25
Deputy General Counsel IV	A2046-UE14	Unclassified	Exempt	27
Deputy General Counsel V	A2060-UE16	Unclassified	Exempt	27
Deputy Port Auditor I	B240-UE16	Unclassified	Exempt	14
Deputy Port Auditor II	B208-UE17	Unclassified	Exempt	18
Deputy Treasurer	A1155-UE15	Unclassified	Exempt	21
Development Manager	B951-UE22	Unclassified	Exempt	22
Director, Development Services	A2064-UE17	Unclassified	Exempt	25
Director, Environmental Conservation	A2068-UE18	Unclassified	Exempt	25
Director, Environmental Protection	A2063-UE17	Unclassified	Exempt	25
Director, Financial Services	A1350-UE15	Unclassified	Exempt	26
Director, General Services	A1396-UE15	Unclassified	Exempt	25
Director, Guest Experiences	A2056-UE21	Unclassified	Exempt	24
Director, Information Technology	A1900-UE19	Unclassified	Exempt	25
Director, Maritime	A1700-UE15	Unclassified	Exempt	25
Director, Marketing & Communications	A1395-UE16	Unclassified	Exempt	24
Director, Parks & Recreation	A2066-UE21	Unclassified	Exempt	24
Director, People Services	A1400-UE23	Unclassified	Exempt	26
Director, Planning	A2065-UE17	Unclassified	Exempt	26
Director, Procurement Services/Chief Procurement Officer	A2047-UE15	Unclassified	Exempt	24
Director, Real Estate	A1225-UE17	Unclassified	Exempt	26
Director, Safety	A2074-UE22	Unclassified	Exempt	24
Distribution & Storage Technician I	D421-CNR22	Classified	Non-Exempt	64.43-8
Distribution & Storage Technician II	D441-CNR22	Classified	Non-Exempt	67.46-8
District Clerk	A1365-UE03	Unclassified	Exempt	24
Diversity, Equity, & Inclusion Analyst	B234-UE21	Unclassified	Exempt	12
Diversity, Equity, & Inclusion Business & Community Partner	B945-UE21	Unclassified	Exempt	14
Diversity, Equity, & Inclusion Technician	B872-UN21	Unclassified	Non-Exempt	8
Document Management Assistant	D440-CN21	Classified	Non-Exempt	2
Document Management Associate	B151-UN21	Unclassified	Non-Exempt	6
Electrician	F621-CNR03	Classified	Non-Exempt	80.579-9
Enterprise Architect	B942-UE18	Unclassified	Exempt	21
Enterprise Operations Manager	B927-UE17	Unclassified	Exempt	21
Environmental Compliance Inspector	C329-CN14	Classified	Non-Exempt	8

Equipment Operator	F628-CNR03	Classified	Non-Exempt	78.82
Executive Assistant I (Classified)	D425-CN15	Classified	Non-Exempt	8
Executive Assistant I (Unclassified)	D426-UN03	Unclassified	Non-Exempt	8
Executive Assistant II (Classified)	D438-CN06	Classified	Non-Exempt	10
Executive Assistant II (Unclassified)	D429-UN03	Unclassified	Non-Exempt	10
Executive Assistant to President/CEO	D431-UN23	Unclassified	Exempt	14
Executive Director (President/CEO)–Board Appointee	A1000-UE03	Unclassified	Exempt	*
Executive Vice President/Chief of Staff	A1165-UE21	Unclassified	Exempt	29
External Community Relations Partner	B949-UE21	Unclassified	Exempt	14
Facilities Maintenance Technician	F698-CNR22	Classified	Non-Exempt	73.82
Facility Security Officer	B623-UE22	Unclassified	Exempt	14
Financial Analyst	B135-UN15	Unclassified	Non-Exempt	12
Financial Technician	B115-CN03	Classified	Non-Exempt	4
Fleet Maintenance Technician	F625-CNR03	Classified	Non-Exempt	79.38.7
General Counsel–Board Appointee	A1005-UE14	Unclassified	Exempt	*
Geographic Information Systems Analyst I	B935-UN17	Unclassified	Non-Exempt	8
Geographic Information Systems Analyst II	B936-UE20	Unclassified	Exempt	12
Geographic Information Systems Analyst III	B937-UE17	Unclassified	Exempt	14
Geographic Information Systems Supervisor	B894-UE17	Unclassified	Exempt	18
Grants Coordinator	B802-UE03	Unclassified	Exempt	10
Grants Technician	B804-UN09	Unclassified	Non-Exempt	8
Graphic Designer	C318-CN03	Classified	Non-Exempt	4
Harbor Police Captain	A2011-UE17	Unclassified	Exempt	26
Harbor Police Corporal	E505-CNR19	Classified	Non-Exempt	3 (PO)
Harbor Police Lieutenant	E520-CNR17	Classified	Non-Exempt	10 (PO)
Harbor Police Officer	E515-CNR21	Classified	Non-Exempt	1 (PO)
Harbor Police Officer (Trainee)	E515-CNR21	Classified	Non-Exempt	0 (PO)
Harbor Police Sergeant	E510-CNR17	Classified	Non-Exempt	6 (PO)
Homeland Security Program Manager	B285-UE22	Unclassified	Exempt	19
HVAC Technician	F636-CNR03	Classified	Non-Exempt	79.18.5
Information Technology Security Analyst	B200-UE15	Unclassified	Exempt	13
Infrastructure Supervisor	B226-UE14	Unclassified	Exempt	20
Intern	G800-UN11	Unclassified	Non-Exempt	63.9
IT Business Partner	B929-UE17	Unclassified	Exempt	14
IT Infrastructure Engineer I	B896-UE16	Unclassified	Exempt	4
IT Infrastructure Engineer II	B897-UE16	Unclassified	Exempt	6
IT Infrastructure Engineer III	B898-UE16	Unclassified	Exempt	10
IT Infrastructure Engineer IV	B899-UE16	Unclassified	Exempt	14
IT Project Manager	B908-UE16	Unclassified	Exempt	18
IT Systems Engineer I	B930-UN17	Unclassified	Non-Exempt	11
IT Systems Engineer II	B931-UE17	Unclassified	Exempt	13
IT Systems Engineer III	B932-UE17	Unclassified	Exempt	14
IT Systems Engineer IV	B933-UE17	Unclassified	Exempt	19
Land Surveyor	B272-CN21	Classified	Non-Exempt	15
Landscape Supervisor	F697-CER21	Classified	Exempt	81.30.7
Landscape Technician I	F696-CNR21	Classified	Non-Exempt	69.93
Landscape Technician II	F666-CNR21	Classified	Non-Exempt	71.93
Lead Accounting Technician	C327-CN03	Classified	Non-Exempt	10
Lead Carpenter	F638-CNR03	Classified	Non-Exempt	81.20.6
Lead Community Service Officer	D466-CNR22	Classified	Non-Exempt	76.74
Lead Distribution & Storage Technician	B262-CNR23	Classified	Non-Exempt	70.369.7
Lead Electrician	F690-CNR03	Classified	Non-Exempt	83.42.8
Lead Equipment Operator	F626-CNR03	Classified	Non-Exempt	81.74

Lead Fleet Maintenance Technician	F629-CNR03	Classified	Non-Exempt	82.82
Lead Landscape Technician	F654-CNR21	Classified	Non-Exempt	74.82
Lead Maintenance Mechanic	F619-CNR03	Classified	Non-Exempt	83.02.4
Lead Maintenance Worker	F640-CNR03	Classified	Non-Exempt	76.74
Lead Mapping and Outreach	B925-CN17	Classified	Non-Exempt	11
Lead Painter	F634-CNR03	Classified	Non-Exempt	80.74
Lead Plumber	F618-CNR03	Classified	Non-Exempt	83.42.8
Lead Public Safety Dispatcher	B264-CNR06	Classified	Non-Exempt	81.50.9
Lead Vessel Equipment Mechanic	F608-CNR21	Classified	Non-Exempt	83.42.8
Legal Assistant	D350-UN14	Unclassified	Non-Exempt	11
Legislative Policy Administrator	B850-UE16	Unclassified	Exempt	18
Legislative Policy Analyst	B954-UE22	Unclassified	Exempt	11
Locksmith	F647-CNR05	Classified	Non-Exempt	75.54.9
Maintenance Mechanic	F620-CNR03	Classified	Non-Exempt	80.079.4
Maintenance Planner/Inspector	C315-CNR03	Classified	Non-Exempt	80.179.5
Maintenance Supervisor	F605-CER03	Classified	Exempt	88.37.7
Maintenance Support Supervisor	C310-CER19	Classified	Exempt	88.37.7
Maintenance Worker I	F650-CNR03	Classified	Non-Exempt	71.82
Maintenance Worker II	F645-CNR03	Classified	Non-Exempt	73.82
Management Analyst	B303-UE21	Unclassified	Exempt	12
Manager, Business Development & Recreation Services	B833-UE13	Unclassified	Exempt	16
Manager, Commissioner & Executive Services	B865-UE21	Unclassified	Exempt	18
Manager, Distribution & Storage	B155-UE17	Unclassified	Exempt	16
Manager, Diversity, Equity, & Inclusion	B831-UE21	Unclassified	Exempt	19
Manager, Engineering-Construction	B827-UE15	Unclassified	Exempt	23
Manager, Financial Services	B805-UE03	Unclassified	Exempt	21
Manager, Grants and Policy	B881-UE15	Unclassified	Exempt	21
Manager, IT Business Partner	B928-UE17	Unclassified	Exempt	19
Manager, Maintenance Systems	B808-UE12	Unclassified	Exempt	16
Manager, Maritime Commercial Trade and Properties	B878-UE15	Unclassified	Exempt	19
Manager, Maritime Operations	B815-UE15	Unclassified	Exempt	21
Manager, Maritime Trade Development	B816-UE06	Unclassified	Exempt	19
Manager, Marketing & Communications	B862-UE12	Unclassified	Exempt	18
Manager, Office of General Counsel Administration	B400-UE22	Unclassified	Exempt	19
Manager, Operations & Maintenance	B807-UE03	Unclassified	Exempt	16
Manager, People Services	B811-UE23	Unclassified	Exempt	21
Manager, Procurement Services	B820-UE06	Unclassified	Exempt	19
Mapping Technician I	C319-CN03	Classified	Non-Exempt	4
Mapping Technician II	C316-CN03	Classified	Non-Exempt	8
Marine Terminal Supervisor	B227-CNR03	Classified	Non-Exempt	88.37.7
Marine Terminal Supervisor (Exempt)	B920-CER03	Classified	Exempt	88.37.7
Marketing/Public Relations Representative	B236-CE03	Classified	Exempt	12
Multi-Media Specialist	B873-CN15	Classified	Non-Exempt	10
Multi-Media Support Associate	G999-UN24	Unclassified	Non-Exempt	1 (TP)
Network Systems Analyst	B219-UE15	Unclassified	Exempt	13
Office Assistant (Classified)	D422-CN22	Classified	Non-Exempt	2
Office Assistant (Unclassified)	D423-UN22	Unclassified	Non-Exempt	2
Office Manager	D300-UN03	Unclassified	Non-Exempt	10
Painter	F633-CNR03	Classified	Non-Exempt	77.82
Paralegal	B405-UN14	Unclassified	Non-Exempt	16
Paralegal/Assistant Manager, Office of General Counsel Administration	B952-UE22	Unclassified	Exempt	17

Park Permit Coordinator	B260-CN03	Classified	Non-Exempt	6
Parking Customer Service Agent	B910-CN16	Classified	Non-Exempt	2
Parking Manager	B901-UE16	Unclassified	Exempt	16
Parking Meter Repair/Collector	F656-CNR21	Classified	Non-Exempt	74.74
Payroll Specialist	B256-UE15	Unclassified	Exempt	8
Payroll Supervisor	B256-UE23	Unclassified	Exempt	15
Payroll Technician	D415-UN16	Unclassified	Non-Exempt	4
People Services Analyst	B239-UE23	Unclassified	Exempt	12
People Services Technician	B648-UN23	Unclassified	Non-Exempt	8
Plumber	F622-CNR03	Classified	Non-Exempt	80.579.9
Police Background Investigator	C330-CN22	Unclassified	Non-Exempt	1 (PO)
Police Instructor	B955-UN23	Unclassified	Non-Exempt	1 (PO)
Police Records Assistant	D400-CN21	Classified	Non-Exempt	2
Police Records Supervisor	D402-CER03	Classified	Exempt	77.60
Port Auditor–Board Appointee	A1009-UE19	Unclassified	Exempt	*
Port Security Manager	B626-UE22	Unclassified	Exempt	18
Principal Biologist	B960-CE24	Classified	Exempt	19
Principal Marketing/Public Relations Representative	B238-UE03	Unclassified	Exempt	15
Principal Outreach Specialist	B956-UE23	Classified	Exempt	15
Principal, Economics & Policy	B938-UE18	Unclassified	Exempt	21
Principal, Maritime Business Development	B880-UE16	Unclassified	Exempt	21
Principal, Maritime Business Retention	B902-UE16	Unclassified	Exempt	21
Principal, Social Media	B957-UE23	Classified	Exempt	15
Principal, Special Projects	B867-UE14	Unclassified	Exempt	19
Principal, Strategic Planning	B948-UE21	Unclassified	Exempt	19
Procurement Analyst I	B266-CN15	Classified	Non-Exempt	10
Procurement Analyst II	B265-CE15	Classified	Exempt	12
Procurement Supervisor	B269-UE15	Unclassified	Exempt	13
Program Director	B886-UE20	Unclassified	Exempt	20
Project Labor and Compliance Administrator	B959-UE24	Unclassified	Exempt	18
Program Manager	B282-UE21	Unclassified	Exempt	17
Program Manager, Aquaculture & Blue Tech	B885-UE16	Unclassified	Exempt	19
Program Manager, Energy and Sustainability	B891-UE16	Unclassified	Exempt	18
Program Manager, Engineering-Construction	B883-UE16	Unclassified	Exempt	19
Program Manager, Planning & Environment	B887-UE21	Unclassified	Exempt	19
Program Manager, Real Estate	B875-UE15	Unclassified	Exempt	19
Project Manager	B209-UE21	Unclassified	Exempt	11
Project Review Associate	B903-UE16	Unclassified	Exempt	11
Project Scheduler	B321-CN03	Classified	Non-Exempt	12
Public Information Officer	B856-UE18	Unclassified	Exempt	18
Public Safety Dispatch Supervisor	B171-CNR03	Classified	Non-Exempt	86.45.8
Public Safety Dispatcher	D460-CNR22	Classified	Non-Exempt	78.57.9
Public Safety Dispatcher (Part-Time Experienced)	D467-CNR22	Classified	Non-Exempt	78.57.9
Risk and Safety Manager	B650-UE14	Unclassified	Exempt	18
Risk Management Administrator	B617-UE03	Unclassified	Exempt	12
Risk Management Analyst	B615-UE03	Unclassified	Exempt	11
Safety Specialist I	B606-CN14	Classified	Non-Exempt	10
Safety Specialist II	B607-CN14	Classified	Non-Exempt	11
SAP Functional Analyst I	B923-UE17	Unclassified	Exempt	12

SAP Functional Analyst II	B924-UE17	Unclassified	Exempt	18
Senior Accountant	B245-CE21	Classified	Exempt	15
Senior Administrative Assistant (Classified)	D427-CN03	Classified	Non-Exempt	6
Senior Administrative Assistant (Unclassified)	D424-UN15	Unclassified	Non-Exempt	6
Senior Applications Developer	B281-UE03	Unclassified	Exempt	12
Senior Asset Manager	B229-UE03	Unclassified	Exempt	16
Senior Business Intelligence Analyst	B844-UE15	Unclassified	Exempt	15
Senior Business Systems Analyst	B231-UE15	Unclassified	Exempt	15
Senior Construction Inspector	C311-CN15	Classified	Non-Exempt	11
Senior Deputy General Counsel	A2061-UE17	Unclassified	Exempt	28
Senior Diversity, Equity, & Inclusion Analyst	B286-UE21	Unclassified	Exempt	14
Senior Engineer	B204-CE03	Classified	Exempt	20
Senior Environmental Specialist	B309-UE17	Unclassified	Exempt	16
Senior Financial Analyst	B276-UE15	Unclassified	Exempt	15
Senior IT Auditor	B616-UE03	Unclassified	Exempt	12
Senior Land Surveyor	B946-CE21	Classified	Exempt	20
Senior Management Analyst	B201-UE15	Unclassified	Exempt	14
Senior Multi-Media Specialist	B941-CN18	Classified	Non-Exempt	12
Senior People Services Analyst	B9444-UE23	Unclassified	Exempt	17
Senior Planner	B259-UE17	Unclassified	Exempt	16
Senior Police Records Assistant	D401-CN03	Classified	Non-Exempt	3
Senior Policy Administrator	B819-UE21	Unclassified	Exempt	17
Senior Project Architect	B646-UE03	Unclassified	Exempt	20
Senior Project Manager	B100-UE21	Unclassified	Exempt	13
Senior Project Office Administrator	B817-UE03	Unclassified	Exempt	18
Senior Systems Administrator	B871-UE15	Unclassified	Exempt	15
Senior Tool Room Technician	F694-CNR16	Classified	Non-Exempt	76.74
Senior Trade Account Representative	B622-UE03	Unclassified	Exempt	12
Senior Web Developer	B220-CN03	Classified	Non-Exempt	11
Small Engine Repair Technician	F681-CNR03	Classified	Non-Exempt	73.82
Special Events Associate	B237-CE03	Classified	Exempt	8
Special Projects Manager	B953-UE22	Classified	Exempt	22
Staff Assistant I (Classified)	B267-CN15	Classified	Non-Exempt	3
Staff Assistant I (Unclassified)	B273-UN03	Unclassified	Non-Exempt	3
Staff Assistant II (Classified)	B268-CN15	Classified	Non-Exempt	4
Staff Assistant II (Unclassified)	B287-UN09	Unclassified	Non-Exempt	4
Student Worker	G998-UN16	Unclassified	Non-Exempt	63.42-8
Survey Technician I	C320-CN03	Classified	Non-Exempt	4
Survey Technician II	C317-CN03	Classified	Non-Exempt	10
Systems Administration Supervisor	B879-UE15	Unclassified	Exempt	17
Systems Administrator	B870-UE15	Unclassified	Exempt	15
Systems Support Analyst I	B837-UN15	Unclassified	Non-Exempt	10
Systems Support Analyst II	B211-UE15	Unclassified	Exempt	12
Systems Support Supervisor	B700-UE03	Unclassified	Exempt	17
Tool Room Technician	F695-CNR16	Classified	Non-Exempt	73.82
Travel Services Coordinator	B179-CN03	Classified	Non-Exempt	6
Vessel Equipment Mechanic	F607-CNR20	Classified	Non-Exempt	79.38-7
Vice President	A1037-UE16	Unclassified	Exempt	29
Vice President, Administration/CAO	A1025-UE03	Unclassified	Exempt	29
Vice President, Business Operations	A1015-UE21	Unclassified	Exempt	29
Vice President, Facilities & Engineering	A2072-UE21	Unclassified	Exempt	29
Vice President, Maritime	A2069-UE19	Unclassified	Exempt	29
Vice President, Marketing & Communications	A2070-UE19	Unclassified	Exempt	29

Vice President, Planning & Environment	A2071-UE21	Unclassified	Exempt	29
Vice President, Public Safety/Chief of Harbor Police	A1500-UE03	Unclassified	Exempt	29
Vice President, Strategy & Policy	A1026-UE21	Unclassified	Exempt	29
Web Developer	B228-CN03	Classified	Non-Exempt	10
Wharfinger	B250-CNR03	Classified	Non-Exempt	83.42.8

*Salary as approved by the Board of Port Commissioners

SAN DIEGO UNIFIED PORT DISTRICT

ANNUAL SALARY RANGES FOR UNREPRESENTED

EMPLOYEES

(Exhibit B)

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE FOR UNREPRESENTED EMPLOYEES - ANNUAL**

Ranges	Minimum	Midpoint	Maximum
1	\$34,287	\$41,830	\$51,033
2	\$36,687	\$44,758	\$54,605
3	\$39,255	\$47,891	\$58,427
4	\$42,003	\$51,244	\$62,517
5	\$44,943	\$54,831	\$66,894
6	\$48,089	\$58,669	\$71,576
7	\$51,456	\$62,776	\$76,586
8	\$55,057	\$67,170	\$81,947
9	\$58,911	\$71,872	\$87,684
10	\$63,035	\$76,903	\$93,822
11	\$67,448	\$82,286	\$100,389
12	\$72,169	\$88,046	\$107,416
13	\$77,221	\$94,209	\$114,936
14	\$82,626	\$100,804	\$122,981
15	\$88,410	\$107,860	\$131,590
16	\$94,599	\$115,411	\$140,801
17	\$101,221	\$123,489	\$150,657
18	\$108,306	\$132,134	\$161,203
19	\$115,888	\$141,383	\$172,487
20	\$124,000	\$151,280	\$184,561
21	\$132,680	\$161,869	\$197,481
22	\$141,967	\$173,200	\$211,304
23	\$151,905	\$185,324	\$226,096
24	\$162,539	\$198,297	\$241,922
25	\$173,916	\$212,178	\$258,857
26	\$186,090	\$227,030	\$276,977
27	\$199,117	\$242,922	\$296,365
28	\$213,055	\$259,927	\$317,111
29	\$227,969	\$278,122	\$339,309

Longevity Pay

10 Years	2.5%
15 Years	2.5%
20 Years	2.5%
25 Years	2.5%
Max Longevity	10.0%

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE FOR UNREPRESENTED EMPLOYEES - BIWEEKLY**

Ranges	Minimum	Midpoint	Maximum
1	\$1,318.73	\$1,608.85	\$1,962.80
2	\$1,411.04	\$1,721.47	\$2,100.19
3	\$1,509.81	\$1,841.97	\$2,247.21
4	\$1,615.50	\$1,970.91	\$2,404.51
5	\$1,728.59	\$2,108.88	\$2,572.83
6	\$1,849.59	\$2,256.50	\$2,752.93
7	\$1,979.06	\$2,414.45	\$2,945.63
8	\$2,117.59	\$2,583.46	\$3,151.83
9	\$2,265.82	\$2,764.31	\$3,372.45
10	\$2,424.43	\$2,957.81	\$3,608.53
11	\$2,594.14	\$3,164.85	\$3,861.12
12	\$2,775.73	\$3,386.39	\$4,131.40
13	\$2,970.03	\$3,623.44	\$4,420.60
14	\$3,177.94	\$3,877.08	\$4,730.04
15	\$3,400.39	\$4,148.48	\$5,061.14
16	\$3,638.42	\$4,438.87	\$5,415.42
17	\$3,893.11	\$4,749.59	\$5,794.50
18	\$4,165.63	\$5,082.06	\$6,200.12
19	\$4,457.22	\$5,437.81	\$6,634.13
20	\$4,769.23	\$5,818.46	\$7,098.52
21	\$5,103.07	\$6,225.75	\$7,595.41
22	\$5,460.29	\$6,661.55	\$8,127.09
23	\$5,842.51	\$7,127.86	\$8,695.99
24	\$6,251.48	\$7,626.81	\$9,304.71
25	\$6,689.09	\$8,160.69	\$9,956.04
26	\$7,157.32	\$8,731.93	\$10,652.96
27	\$7,658.33	\$9,343.17	\$11,398.67
28	\$8,194.42	\$9,997.19	\$12,196.57
29	\$8,768.03	\$10,696.99	\$13,050.33

Longevity Pay

10 Years	2.5%
15 Years	2.5%
20 Years	2.5%
25 Years	2.5%
Max Longevity	10.0%

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE FOR UNREPRESENTED EMPLOYEES - HOURLY**

Ranges	Minimum	Midpoint	Maximum
1	\$16.48	\$20.11	\$24.53
2	\$17.64	\$21.52	\$26.25
3	\$18.87	\$23.02	\$28.09
4	\$20.19	\$24.64	\$30.06
5	\$21.61	\$26.36	\$32.16
6	\$23.12	\$28.21	\$34.41
7	\$24.74	\$30.18	\$36.82
8	\$26.47	\$32.29	\$39.40
9	\$28.32	\$34.55	\$42.16
10	\$30.31	\$36.97	\$45.11
11	\$32.43	\$39.56	\$48.26
12	\$34.70	\$42.33	\$51.64
13	\$37.13	\$45.29	\$55.26
14	\$39.72	\$48.46	\$59.13
15	\$42.50	\$51.86	\$63.26
16	\$45.48	\$55.49	\$67.69
17	\$48.66	\$59.37	\$72.43
18	\$52.07	\$63.53	\$77.50
19	\$55.72	\$67.97	\$82.93
20	\$59.62	\$72.73	\$88.73
21	\$63.79	\$77.82	\$94.94
22	\$68.25	\$83.27	\$101.59
23	\$73.03	\$89.10	\$108.70
24	\$78.14	\$95.34	\$116.31
25	\$83.61	\$102.01	\$124.45
26	\$89.47	\$109.15	\$133.16
27	\$95.73	\$116.79	\$142.48
28	\$102.43	\$124.96	\$152.46
29	\$109.60	\$133.71	\$163.13

Longevity Pay

10 Years	2.5%
15 Years	2.5%
20 Years	2.5%
25 Years	2.5%
Max Longevity	10.0%

SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP
FOR ALL STEP EMPLOYEES
EXCEPT STEP PEACE OFFICERS
(Exhibit C)

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
61.4	H	14.95	15.70	16.48	17.30	18.17	19.08	20.03
	B	1,196.00	1,256.00	1,318.40	1,384.00	1,453.60	1,526.40	1,602.40
	Y	31,096.00	32,656.00	34,278.40	35,984.00	37,793.60	39,686.40	41,662.40
61.5	H	15.02	15.77	16.56	17.39	18.26	19.17	20.13
	B	1,201.60	1,261.60	1,324.80	1,391.20	1,460.80	1,533.60	1,610.40
	Y	31,241.60	32,801.60	34,444.80	36,171.20	37,980.80	39,873.60	41,870.40
61.6	H	15.09	15.85	16.64	17.47	18.35	19.27	20.23
	B	1,207.20	1,268.00	1,331.20	1,397.60	1,468.00	1,541.60	1,618.40
	Y	31,387.20	32,968.00	34,611.20	36,337.60	38,168.00	40,081.60	42,078.40
61.7	H	15.17	15.93	16.72	17.56	18.44	19.36	20.33
	B	1,213.60	1,274.40	1,337.60	1,404.80	1,475.20	1,548.80	1,626.40
	Y	31,553.60	33,134.40	34,777.60	36,524.80	38,355.20	40,268.80	42,286.40
61.8	H	15.24	16.00	16.80	17.64	18.53	19.45	20.42
	B	1,219.20	1,280.00	1,344.00	1,411.20	1,482.40	1,556.00	1,633.60
	Y	31,699.20	33,280.00	34,944.00	36,691.20	38,542.40	40,456.00	42,473.60
61.9	H	15.31	16.08	16.88	17.73	18.61	19.55	20.52
	B	1,224.80	1,286.40	1,350.40	1,418.40	1,488.80	1,564.00	1,641.60
	Y	31,844.80	33,446.40	35,110.40	36,878.40	38,708.80	40,664.00	42,681.60

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
62.0	H	15.39	16.16	16.97	17.81	18.70	19.64	20.62
	B	1,231.20	1,292.80	1,357.60	1,424.80	1,496.00	1,571.20	1,649.60
	Y	32,011.20	33,612.80	35,297.60	37,044.80	38,896.00	40,851.20	42,889.60
62.1	H	15.46	16.24	17.05	17.90	18.80	19.74	20.72
	B	1,236.80	1,299.20	1,364.00	1,432.00	1,504.00	1,579.20	1,657.60
	Y	32,156.80	33,779.20	35,464.00	37,232.00	39,104.00	41,059.20	43,097.60
62.2	H	15.54	16.32	17.13	17.99	18.89	19.84	20.83
	B	1,243.20	1,305.60	1,370.40	1,439.20	1,511.20	1,587.20	1,666.40
	Y	32,323.20	33,945.60	35,630.40	37,419.20	39,291.20	41,267.20	43,326.40
62.3	H	15.62	16.40	17.22	18.08	18.98	19.93	20.93
	B	1,249.60	1,312.00	1,377.60	1,446.40	1,518.40	1,594.40	1,674.40
	Y	32,489.60	34,112.00	35,817.60	37,606.40	39,478.40	41,454.40	43,534.40
62.4	H	15.70	16.48	17.30	18.17	19.08	20.03	21.03
	B	1,256.00	1,318.40	1,384.00	1,453.60	1,526.40	1,602.40	1,682.40
	Y	32,656.00	34,278.40	35,984.00	37,793.60	39,686.40	41,662.40	43,742.40
62.5	H	15.77	16.56	17.39	18.26	19.17	20.13	21.14
	B	1,261.60	1,324.80	1,391.20	1,460.80	1,533.60	1,610.40	1,691.20
	Y	32,801.60	34,444.80	36,171.20	37,980.80	39,873.60	41,870.40	43,971.20
62.6	H	15.85	16.64	17.47	18.35	19.27	20.23	21.24
	B	1,268.00	1,331.20	1,397.60	1,468.00	1,541.60	1,618.40	1,699.20
	Y	32,968.00	34,611.20	36,337.60	38,168.00	40,081.60	42,078.40	44,179.20
62.7	H	15.93	16.72	17.56	18.44	19.36	20.33	21.34
	B	1,274.40	1,337.60	1,404.80	1,475.20	1,548.80	1,626.40	1,707.20
	Y	33,134.40	34,777.60	36,524.80	38,355.20	40,268.80	42,286.40	44,387.20
62.8	H	16.00	16.80	17.64	18.53	19.45	20.42	21.45
	B	1,280.00	1,344.00	1,411.20	1,482.40	1,556.00	1,633.60	1,716.00
	Y	33,280.00	34,944.00	36,691.20	38,542.40	40,456.00	42,473.60	44,616.00
62.9	H	16.08	16.88	17.73	18.61	19.55	20.52	21.55
	B	1,286.40	1,350.40	1,418.40	1,488.80	1,564.00	1,641.60	1,724.00
	Y	33,446.40	35,110.40	36,878.40	38,708.80	40,664.00	42,681.60	44,824.00

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
63.0	H	16.16	16.97	17.81	18.70	19.64	20.62	21.65
	B	1,292.80	1,357.60	1,424.80	1,496.00	1,571.20	1,649.60	1,732.00
	Y	33,612.80	35,297.60	37,044.80	38,896.00	40,851.20	42,889.60	45,032.00
63.1	H	16.24	17.05	17.90	18.80	19.74	20.72	21.76
	B	1,299.20	1,364.00	1,432.00	1,504.00	1,579.20	1,657.60	1,740.80
	Y	33,779.20	35,464.00	37,232.00	39,104.00	41,059.20	43,097.60	45,260.80
63.2	H	16.32	17.13	17.99	18.89	19.84	20.83	21.87
	B	1,305.60	1,370.40	1,439.20	1,511.20	1,587.20	1,666.40	1,749.60
	Y	33,945.60	35,630.40	37,419.20	39,291.20	41,267.20	43,326.40	45,489.60
63.3	H	16.40	17.22	18.08	18.98	19.93	20.93	21.98
	B	1,312.00	1,377.60	1,446.40	1,518.40	1,594.40	1,674.40	1,758.40
	Y	34,112.00	35,817.60	37,606.40	39,478.40	41,454.40	43,534.40	45,718.40
63.4	H	16.48	17.30	18.17	19.08	20.03	21.03	22.09
	B	1,318.40	1,384.00	1,453.60	1,526.40	1,602.40	1,682.40	1,767.20
	Y	34,278.40	35,984.00	37,793.60	39,686.40	41,662.40	43,742.40	45,947.20
63.5	H	16.56	17.39	18.26	19.17	20.13	21.14	22.19
	B	1,324.80	1,391.20	1,460.80	1,533.60	1,610.40	1,691.20	1,775.20
	Y	34,444.80	36,171.20	37,980.80	39,873.60	41,870.40	43,971.20	46,155.20
63.6	H	16.64	17.47	18.35	19.27	20.23	21.24	22.30
	B	1,331.20	1,397.60	1,468.00	1,541.60	1,618.40	1,699.20	1,784.00
	Y	34,611.20	36,337.60	38,168.00	40,081.60	42,078.40	44,179.20	46,384.00
63.7	H	16.72	17.56	18.44	19.36	20.33	21.34	22.41
	B	1,337.60	1,404.80	1,475.20	1,548.80	1,626.40	1,707.20	1,792.80
	Y	34,777.60	36,524.80	38,355.20	40,268.80	42,286.40	44,387.20	46,612.80
63.8	H	16.80	17.64	18.53	19.45	20.42	21.45	22.52
	B	1,344.00	1,411.20	1,482.40	1,556.00	1,633.60	1,716.00	1,801.60
	Y	34,944.00	36,691.20	38,542.40	40,456.00	42,473.60	44,616.00	46,841.60
63.9	H	16.88	17.73	18.61	19.55	20.52	21.55	22.63
	B	1,350.40	1,418.40	1,488.80	1,564.00	1,641.60	1,724.00	1,810.40
	Y	35,110.40	36,878.40	38,708.80	40,664.00	42,681.60	44,824.00	47,070.40

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
64.0	H	16.97	17.81	18.70	19.64	20.62	21.65	22.74
	B	1,357.60	1,424.80	1,496.00	1,571.20	1,649.60	1,732.00	1,819.20
	Y	35,297.60	37,044.80	38,896.00	40,851.20	42,889.60	45,032.00	47,299.20
64.1	H	17.05	17.90	18.80	19.74	20.72	21.76	22.85
	B	1,364.00	1,432.00	1,504.00	1,579.20	1,657.60	1,740.80	1,828.00
	Y	35,464.00	37,232.00	39,104.00	41,059.20	43,097.60	45,260.80	47,528.00
64.2	H	17.13	17.99	18.89	19.84	20.83	21.87	22.96
	B	1,370.40	1,439.20	1,511.20	1,587.20	1,666.40	1,749.60	1,836.80
	Y	35,630.40	37,419.20	39,291.20	41,267.20	43,326.40	45,489.60	47,756.80
64.3	H	17.22	18.08	18.98	19.93	20.93	21.98	23.08
	B	1,377.60	1,446.40	1,518.40	1,594.40	1,674.40	1,758.40	1,846.40
	Y	35,817.60	37,606.40	39,478.40	41,454.40	43,534.40	45,718.40	48,006.40
64.4	H	17.30	18.17	19.08	20.03	21.03	22.09	23.19
	B	1,384.00	1,453.60	1,526.40	1,602.40	1,682.40	1,767.20	1,855.20
	Y	35,984.00	37,793.60	39,686.40	41,662.40	43,742.40	45,947.20	48,235.20
64.5	H	17.39	18.26	19.17	20.13	21.14	22.19	23.30
	B	1,391.20	1,460.80	1,533.60	1,610.40	1,691.20	1,775.20	1,864.00
	Y	36,171.20	37,980.80	39,873.60	41,870.40	43,971.20	46,155.20	48,464.00
64.6	H	17.47	18.35	19.27	20.23	21.24	22.30	23.42
	B	1,397.60	1,468.00	1,541.60	1,618.40	1,699.20	1,784.00	1,873.60
	Y	36,337.60	38,168.00	40,081.60	42,078.40	44,179.20	46,384.00	48,713.60
64.7	H	17.56	18.44	19.36	20.33	21.34	22.41	23.53
	B	1,404.80	1,475.20	1,548.80	1,626.40	1,707.20	1,792.80	1,882.40
	Y	36,524.80	38,355.20	40,268.80	42,286.40	44,387.20	46,612.80	48,942.40
64.8	H	17.64	18.53	19.45	20.42	21.45	22.52	23.64
	B	1,411.20	1,482.40	1,556.00	1,633.60	1,716.00	1,801.60	1,891.20
	Y	36,691.20	38,542.40	40,456.00	42,473.60	44,616.00	46,841.60	49,171.20
64.9	H	17.73	18.61	19.55	20.52	21.55	22.63	23.76
	B	1,418.40	1,488.80	1,564.00	1,641.60	1,724.00	1,810.40	1,900.80
	Y	36,878.40	38,708.80	40,664.00	42,681.60	44,824.00	47,070.40	49,420.80

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
65.0	H	17.81	18.70	19.64	20.62	21.65	22.74	23.87
	B	1,424.80	1,496.00	1,571.20	1,649.60	1,732.00	1,819.20	1,909.60
	Y	37,044.80	38,896.00	40,851.20	42,889.60	45,032.00	47,299.20	49,649.60
65.1	H	17.90	18.80	19.74	20.72	21.76	22.85	23.99
	B	1,432.00	1,504.00	1,579.20	1,657.60	1,740.80	1,828.00	1,919.20
	Y	37,232.00	39,104.00	41,059.20	43,097.60	45,260.80	47,528.00	49,899.20
65.2	H	17.99	18.89	19.84	20.83	21.87	22.96	24.11
	B	1,439.20	1,511.20	1,587.20	1,666.40	1,749.60	1,836.80	1,928.80
	Y	37,419.20	39,291.20	41,267.20	43,326.40	45,489.60	47,756.80	50,148.80
65.3	H	18.08	18.98	19.93	20.93	21.98	23.08	24.23
	B	1,446.40	1,518.40	1,594.40	1,674.40	1,758.40	1,846.40	1,938.40
	Y	37,606.40	39,478.40	41,454.40	43,534.40	45,718.40	48,006.40	50,398.40
65.4	H	18.17	19.08	20.03	21.03	22.09	23.19	24.35
	B	1,453.60	1,526.40	1,602.40	1,682.40	1,767.20	1,855.20	1,948.00
	Y	37,793.60	39,686.40	41,662.40	43,742.40	45,947.20	48,235.20	50,648.00
65.5	H	18.26	19.17	20.13	21.14	22.19	23.30	24.47
	B	1,460.80	1,533.60	1,610.40	1,691.20	1,775.20	1,864.00	1,957.60
	Y	37,980.80	39,873.60	41,870.40	43,971.20	46,155.20	48,464.00	50,897.60
65.6	H	18.35	19.27	20.23	21.24	22.30	23.42	24.59
	B	1,468.00	1,541.60	1,618.40	1,699.20	1,784.00	1,873.60	1,967.20
	Y	38,168.00	40,081.60	42,078.40	44,179.20	46,384.00	48,713.60	51,147.20
65.7	H	18.44	19.36	20.33	21.34	22.41	23.53	24.71
	B	1,475.20	1,548.80	1,626.40	1,707.20	1,792.80	1,882.40	1,976.80
	Y	38,355.20	40,268.80	42,286.40	44,387.20	46,612.80	48,942.40	51,396.80
65.8	H	18.53	19.45	20.42	21.45	22.52	23.64	24.83
	B	1,482.40	1,556.00	1,633.60	1,716.00	1,801.60	1,891.20	1,986.40
	Y	38,542.40	40,456.00	42,473.60	44,616.00	46,841.60	49,171.20	51,646.40
65.9	H	18.61	19.55	20.52	21.55	22.63	23.76	24.95
	B	1,488.80	1,564.00	1,641.60	1,724.00	1,810.40	1,900.80	1,996.00
	Y	38,708.80	40,664.00	42,681.60	44,824.00	47,070.40	49,420.80	51,896.00

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
66.0	H	18.70	19.64	20.62	21.65	22.74	23.87	25.07
	B	1,496.00	1,571.20	1,649.60	1,732.00	1,819.20	1,909.60	2,005.60
	Y	38,896.00	40,851.20	42,889.60	45,032.00	47,299.20	49,649.60	52,145.60
66.1	H	18.80	19.74	20.72	21.76	22.85	23.99	25.19
	B	1,504.00	1,579.20	1,657.60	1,740.80	1,828.00	1,919.20	2,015.20
	Y	39,104.00	41,059.20	43,097.60	45,260.80	47,528.00	49,899.20	52,395.20
66.2	H	18.89	19.84	20.83	21.87	22.96	24.11	25.32
	B	1,511.20	1,587.20	1,666.40	1,749.60	1,836.80	1,928.80	2,025.60
	Y	39,291.20	41,267.20	43,326.40	45,489.60	47,756.80	50,148.80	52,665.60
66.3	H	18.98	19.93	20.93	21.98	23.08	24.23	25.44
	B	1,518.40	1,594.40	1,674.40	1,758.40	1,846.40	1,938.40	2,035.20
	Y	39,478.40	41,454.40	43,534.40	45,718.40	48,006.40	50,398.40	52,915.20
66.4	H	19.08	20.03	21.03	22.09	23.19	24.35	25.57
	B	1,526.40	1,602.40	1,682.40	1,767.20	1,855.20	1,948.00	2,045.60
	Y	39,686.40	41,662.40	43,742.40	45,947.20	48,235.20	50,648.00	53,185.60
66.5	H	19.17	20.13	21.14	22.19	23.30	24.47	25.69
	B	1,533.60	1,610.40	1,691.20	1,775.20	1,864.00	1,957.60	2,055.20
	Y	39,873.60	41,870.40	43,971.20	46,155.20	48,464.00	50,897.60	53,435.20
66.6	H	19.27	20.23	21.24	22.30	23.42	24.59	25.82
	B	1,541.60	1,618.40	1,699.20	1,784.00	1,873.60	1,967.20	2,065.60
	Y	40,081.60	42,078.40	44,179.20	46,384.00	48,713.60	51,147.20	53,705.60
66.7	H	19.36	20.33	21.34	22.41	23.53	24.71	25.94
	B	1,548.80	1,626.40	1,707.20	1,792.80	1,882.40	1,976.80	2,075.20
	Y	40,268.80	42,286.40	44,387.20	46,612.80	48,942.40	51,396.80	53,955.20
66.8	H	19.45	20.42	21.45	22.52	23.64	24.83	26.07
	B	1,556.00	1,633.60	1,716.00	1,801.60	1,891.20	1,986.40	2,085.60
	Y	40,456.00	42,473.60	44,616.00	46,841.60	49,171.20	51,646.40	54,225.60
66.9	H	19.55	20.52	21.55	22.63	23.76	24.95	26.19
	B	1,564.00	1,641.60	1,724.00	1,810.40	1,900.80	1,996.00	2,095.20
	Y	40,664.00	42,681.60	44,824.00	47,070.40	49,420.80	51,896.00	54,475.20

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
67.0	H	19.64	20.62	21.65	22.74	23.87	25.07	26.32
	B	1,571.20	1,649.60	1,732.00	1,819.20	1,909.60	2,005.60	2,105.60
	Y	40,851.20	42,889.60	45,032.00	47,299.20	49,649.60	52,145.60	54,745.60
67.1	H	19.74	20.72	21.76	22.85	23.99	25.19	26.45
	B	1,579.20	1,657.60	1,740.80	1,828.00	1,919.20	2,015.20	2,116.00
	Y	41,059.20	43,097.60	45,260.80	47,528.00	49,899.20	52,395.20	55,016.00
67.2	H	19.84	20.83	21.87	22.96	24.11	25.32	26.58
	B	1,587.20	1,666.40	1,749.60	1,836.80	1,928.80	2,025.60	2,126.40
	Y	41,267.20	43,326.40	45,489.60	47,756.80	50,148.80	52,665.60	55,286.40
67.3	H	19.93	20.93	21.98	23.08	24.23	25.44	26.71
	B	1,594.40	1,674.40	1,758.40	1,846.40	1,938.40	2,035.20	2,136.80
	Y	41,454.40	43,534.40	45,718.40	48,006.40	50,398.40	52,915.20	55,556.80
67.4	H	20.03	21.03	22.09	23.19	24.35	25.57	26.84
	B	1,602.40	1,682.40	1,767.20	1,855.20	1,948.00	2,045.60	2,147.20
	Y	41,662.40	43,742.40	45,947.20	48,235.20	50,648.00	53,185.60	55,827.20
67.5	H	20.13	21.14	22.19	23.30	24.47	25.69	26.98
	B	1,610.40	1,691.20	1,775.20	1,864.00	1,957.60	2,055.20	2,158.40
	Y	41,870.40	43,971.20	46,155.20	48,464.00	50,897.60	53,435.20	56,118.40
67.6	H	20.23	21.24	22.30	23.42	24.59	25.82	27.11
	B	1,618.40	1,699.20	1,784.00	1,873.60	1,967.20	2,065.60	2,168.80
	Y	42,078.40	44,179.20	46,384.00	48,713.60	51,147.20	53,705.60	56,388.80
67.7	H	20.33	21.34	22.41	23.53	24.71	25.94	27.24
	B	1,626.40	1,707.20	1,792.80	1,882.40	1,976.80	2,075.20	2,179.20
	Y	42,286.40	44,387.20	46,612.80	48,942.40	51,396.80	53,955.20	56,659.20
67.8	H	20.42	21.45	22.52	23.64	24.83	26.07	27.37
	B	1,633.60	1,716.00	1,801.60	1,891.20	1,986.40	2,085.60	2,189.60
	Y	42,473.60	44,616.00	46,841.60	49,171.20	51,646.40	54,225.60	56,929.60
67.9	H	20.52	21.55	22.63	23.76	24.95	26.19	27.50
	B	1,641.60	1,724.00	1,810.40	1,900.80	1,996.00	2,095.20	2,200.00
	Y	42,681.60	44,824.00	47,070.40	49,420.80	51,896.00	54,475.20	57,200.00

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
68.0	H	20.62	21.65	22.74	23.87	25.07	26.32	27.63
	B	1,649.60	1,732.00	1,819.20	1,909.60	2,005.60	2,105.60	2,210.40
	Y	42,889.60	45,032.00	47,299.20	49,649.60	52,145.60	54,745.60	57,470.40
68.1	H	20.72	21.76	22.85	23.99	25.19	26.45	27.77
	B	1,657.60	1,740.80	1,828.00	1,919.20	2,015.20	2,116.00	2,221.60
	Y	43,097.60	45,260.80	47,528.00	49,899.20	52,395.20	55,016.00	57,761.60
68.2	H	20.83	21.87	22.96	24.11	25.32	26.58	27.91
	B	1,666.40	1,749.60	1,836.80	1,928.80	2,025.60	2,126.40	2,232.80
	Y	43,326.40	45,489.60	47,756.80	50,148.80	52,665.60	55,286.40	58,052.80
68.3	H	20.93	21.98	23.08	24.23	25.44	26.71	28.05
	B	1,674.40	1,758.40	1,846.40	1,938.40	2,035.20	2,136.80	2,244.00
	Y	43,534.40	45,718.40	48,006.40	50,398.40	52,915.20	55,556.80	58,344.00
68.4	H	21.03	22.09	23.19	24.35	25.57	26.84	28.19
	B	1,682.40	1,767.20	1,855.20	1,948.00	2,045.60	2,147.20	2,255.20
	Y	43,742.40	45,947.20	48,235.20	50,648.00	53,185.60	55,827.20	58,635.20
68.5	H	21.14	22.19	23.30	24.47	25.69	26.98	28.33
	B	1,691.20	1,775.20	1,864.00	1,957.60	2,055.20	2,158.40	2,266.40
	Y	43,971.20	46,155.20	48,464.00	50,897.60	53,435.20	56,118.40	58,926.40
68.6	H	21.24	22.30	23.42	24.59	25.82	27.11	28.46
	B	1,699.20	1,784.00	1,873.60	1,967.20	2,065.60	2,168.80	2,276.80
	Y	44,179.20	46,384.00	48,713.60	51,147.20	53,705.60	56,388.80	59,196.80
68.7	H	21.34	22.41	23.53	24.71	25.94	27.24	28.60
	B	1,707.20	1,792.80	1,882.40	1,976.80	2,075.20	2,179.20	2,288.00
	Y	44,387.20	46,612.80	48,942.40	51,396.80	53,955.20	56,659.20	59,488.00
68.8	H	21.45	22.52	23.64	24.83	26.07	27.37	28.74
	B	1,716.00	1,801.60	1,891.20	1,986.40	2,085.60	2,189.60	2,299.20
	Y	44,616.00	46,841.60	49,171.20	51,646.40	54,225.60	56,929.60	59,779.20
68.9	H	21.55	22.63	23.76	24.95	26.19	27.50	28.88
	B	1,724.00	1,810.40	1,900.80	1,996.00	2,095.20	2,200.00	2,310.40
	Y	44,824.00	47,070.40	49,420.80	51,896.00	54,475.20	57,200.00	60,070.40

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
69.0	H	21.65	22.74	23.87	25.07	26.32	27.63	29.02
	B	1,732.00	1,819.20	1,909.60	2,005.60	2,105.60	2,210.40	2,321.60
	Y	45,032.00	47,299.20	49,649.60	52,145.60	54,745.60	57,470.40	60,361.60
69.1	H	21.76	22.85	23.99	25.19	26.45	27.77	29.16
	B	1,740.80	1,828.00	1,919.20	2,015.20	2,116.00	2,221.60	2,332.80
	Y	45,260.80	47,528.00	49,899.20	52,395.20	55,016.00	57,761.60	60,652.80
69.2	H	21.87	22.96	24.11	25.32	26.58	27.91	29.31
	B	1,749.60	1,836.80	1,928.80	2,025.60	2,126.40	2,232.80	2,344.80
	Y	45,489.60	47,756.80	50,148.80	52,665.60	55,286.40	58,052.80	60,964.80
69.3	H	21.98	23.08	24.23	25.44	26.71	28.05	29.45
	B	1,758.40	1,846.40	1,938.40	2,035.20	2,136.80	2,244.00	2,356.00
	Y	45,718.40	48,006.40	50,398.40	52,915.20	55,556.80	58,344.00	61,256.00
69.4	H	22.09	23.19	24.35	25.57	26.84	28.19	29.60
	B	1,767.20	1,855.20	1,948.00	2,045.60	2,147.20	2,255.20	2,368.00
	Y	45,947.20	48,235.20	50,648.00	53,185.60	55,827.20	58,635.20	61,568.00
69.5	H	22.19	23.30	24.47	25.69	26.98	28.33	29.74
	B	1,775.20	1,864.00	1,957.60	2,055.20	2,158.40	2,266.40	2,379.20
	Y	46,155.20	48,464.00	50,897.60	53,435.20	56,118.40	58,926.40	61,859.20
69.6	H	22.30	23.42	24.59	25.82	27.11	28.46	29.89
	B	1,784.00	1,873.60	1,967.20	2,065.60	2,168.80	2,276.80	2,391.20
	Y	46,384.00	48,713.60	51,147.20	53,705.60	56,388.80	59,196.80	62,171.20
69.7	H	22.41	23.53	24.71	25.94	27.24	28.60	30.03
	B	1,792.80	1,882.40	1,976.80	2,075.20	2,179.20	2,288.00	2,402.40
	Y	46,612.80	48,942.40	51,396.80	53,955.20	56,659.20	59,488.00	62,462.40
69.8	H	22.52	23.64	24.83	26.07	27.37	28.74	30.18
	B	1,801.60	1,891.20	1,986.40	2,085.60	2,189.60	2,299.20	2,414.40
	Y	46,841.60	49,171.20	51,646.40	54,225.60	56,929.60	59,779.20	62,774.40
69.9	H	22.63	23.76	24.95	26.19	27.50	28.88	30.32
	B	1,810.40	1,900.80	1,996.00	2,095.20	2,200.00	2,310.40	2,425.60
	Y	47,070.40	49,420.80	51,896.00	54,475.20	57,200.00	60,070.40	63,065.60

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
70.0	H	22.74	23.87	25.07	26.32	27.63	29.02	30.47
	B	1,819.20	1,909.60	2,005.60	2,105.60	2,210.40	2,321.60	2,437.60
	Y	47,299.20	49,649.60	52,145.60	54,745.60	57,470.40	60,361.60	63,377.60
70.1	H	22.85	23.99	25.19	26.45	27.77	29.16	30.62
	B	1,828.00	1,919.20	2,015.20	2,116.00	2,221.60	2,332.80	2,449.60
	Y	47,528.00	49,899.20	52,395.20	55,016.00	57,761.60	60,652.80	63,689.60
70.2	H	22.96	24.11	25.32	26.58	27.91	29.31	30.77
	B	1,836.80	1,928.80	2,025.60	2,126.40	2,232.80	2,344.80	2,461.60
	Y	47,756.80	50,148.80	52,665.60	55,286.40	58,052.80	60,964.80	64,001.60
70.3	H	23.08	24.23	25.44	26.71	28.05	29.45	30.92
	B	1,846.40	1,938.40	2,035.20	2,136.80	2,244.00	2,356.00	2,473.60
	Y	48,006.40	50,398.40	52,915.20	55,556.80	58,344.00	61,256.00	64,313.60
70.4	H	23.19	24.35	25.57	26.84	28.19	29.60	31.08
	B	1,855.20	1,948.00	2,045.60	2,147.20	2,255.20	2,368.00	2,486.40
	Y	48,235.20	50,648.00	53,185.60	55,827.20	58,635.20	61,568.00	64,646.40
70.5	H	23.30	24.47	25.69	26.98	28.33	29.74	31.23
	B	1,864.00	1,957.60	2,055.20	2,158.40	2,266.40	2,379.20	2,498.40
	Y	48,464.00	50,897.60	53,435.20	56,118.40	58,926.40	61,859.20	64,958.40
70.6	H	23.42	24.59	25.82	27.11	28.46	29.89	31.38
	B	1,873.60	1,967.20	2,065.60	2,168.80	2,276.80	2,391.20	2,510.40
	Y	48,713.60	51,147.20	53,705.60	56,388.80	59,196.80	62,171.20	65,270.40
70.7	H	23.53	24.71	25.94	27.24	28.60	30.03	31.53
	B	1,882.40	1,976.80	2,075.20	2,179.20	2,288.00	2,402.40	2,522.40
	Y	48,942.40	51,396.80	53,955.20	56,659.20	59,488.00	62,462.40	65,582.40
70.8	H	23.64	24.83	26.07	27.37	28.74	30.18	31.69
	B	1,891.20	1,986.40	2,085.60	2,189.60	2,299.20	2,414.40	2,535.20
	Y	49,171.20	51,646.40	54,225.60	56,929.60	59,779.20	62,774.40	65,915.20
70.9	H	23.76	24.95	26.19	27.50	28.88	30.32	31.84
	B	1,900.80	1,996.00	2,095.20	2,200.00	2,310.40	2,425.60	2,547.20
	Y	49,420.80	51,896.00	54,475.20	57,200.00	60,070.40	63,065.60	66,227.20

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
71.0	H	23.87	25.07	26.32	27.63	29.02	30.47	31.99
	B	1,909.60	2,005.60	2,105.60	2,210.40	2,321.60	2,437.60	2,559.20
	Y	49,649.60	52,145.60	54,745.60	57,470.40	60,361.60	63,377.60	66,539.20
71.1	H	23.99	25.19	26.45	27.77	29.16	30.62	32.15
	B	1,919.20	2,015.20	2,116.00	2,221.60	2,332.80	2,449.60	2,572.00
	Y	49,899.20	52,395.20	55,016.00	57,761.60	60,652.80	63,689.60	66,872.00
71.2	H	24.11	25.32	26.58	27.91	29.31	30.77	32.31
	B	1,928.80	2,025.60	2,126.40	2,232.80	2,344.80	2,461.60	2,584.80
	Y	50,148.80	52,665.60	55,286.40	58,052.80	60,964.80	64,001.60	67,204.80
71.3	H	24.23	25.44	26.71	28.05	29.45	30.92	32.47
	B	1,938.40	2,035.20	2,136.80	2,244.00	2,356.00	2,473.60	2,597.60
	Y	50,398.40	52,915.20	55,556.80	58,344.00	61,256.00	64,313.60	67,537.60
71.4	H	24.35	25.57	26.84	28.19	29.60	31.08	32.63
	B	1,948.00	2,045.60	2,147.20	2,255.20	2,368.00	2,486.40	2,610.40
	Y	50,648.00	53,185.60	55,827.20	58,635.20	61,568.00	64,646.40	67,870.40
71.5	H	24.47	25.69	26.98	28.33	29.74	31.23	32.79
	B	1,957.60	2,055.20	2,158.40	2,266.40	2,379.20	2,498.40	2,623.20
	Y	50,897.60	53,435.20	56,118.40	58,926.40	61,859.20	64,958.40	68,203.20
71.6	H	24.59	25.82	27.11	28.46	29.89	31.38	32.95
	B	1,967.20	2,065.60	2,168.80	2,276.80	2,391.20	2,510.40	2,636.00
	Y	51,147.20	53,705.60	56,388.80	59,196.80	62,171.20	65,270.40	68,536.00
71.7	H	24.71	25.94	27.24	28.60	30.03	31.53	33.11
	B	1,976.80	2,075.20	2,179.20	2,288.00	2,402.40	2,522.40	2,648.80
	Y	51,396.80	53,955.20	56,659.20	59,488.00	62,462.40	65,582.40	68,868.80
71.8	H	24.83	26.07	27.37	28.74	30.18	31.69	33.27
	B	1,986.40	2,085.60	2,189.60	2,299.20	2,414.40	2,535.20	2,661.60
	Y	51,646.40	54,225.60	56,929.60	59,779.20	62,774.40	65,915.20	69,201.60
71.9	H	24.95	26.19	27.50	28.88	30.32	31.84	33.43
	B	1,996.00	2,095.20	2,200.00	2,310.40	2,425.60	2,547.20	2,674.40
	Y	51,896.00	54,475.20	57,200.00	60,070.40	63,065.60	66,227.20	69,534.40

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
72.0	H	25.07	26.32	27.63	29.02	30.47	31.99	33.59
	B	2,005.60	2,105.60	2,210.40	2,321.60	2,437.60	2,559.20	2,687.20
	Y	52,145.60	54,745.60	57,470.40	60,361.60	63,377.60	66,539.20	69,867.20
72.1	H	25.19	26.45	27.77	29.16	30.62	32.15	33.76
	B	2,015.20	2,116.00	2,221.60	2,332.80	2,449.60	2,572.00	2,700.80
	Y	52,395.20	55,016.00	57,761.60	60,652.80	63,689.60	66,872.00	70,220.80
72.2	H	25.32	26.58	27.91	29.31	30.77	32.31	33.93
	B	2,025.60	2,126.40	2,232.80	2,344.80	2,461.60	2,584.80	2,714.40
	Y	52,665.60	55,286.40	58,052.80	60,964.80	64,001.60	67,204.80	70,574.40
72.3	H	25.44	26.71	28.05	29.45	30.92	32.47	34.09
	B	2,035.20	2,136.80	2,244.00	2,356.00	2,473.60	2,597.60	2,727.20
	Y	52,915.20	55,556.80	58,344.00	61,256.00	64,313.60	67,537.60	70,907.20
72.4	H	25.57	26.84	28.19	29.60	31.08	32.63	34.26
	B	2,045.60	2,147.20	2,255.20	2,368.00	2,486.40	2,610.40	2,740.80
	Y	53,185.60	55,827.20	58,635.20	61,568.00	64,646.40	67,870.40	71,260.80
72.5	H	25.69	26.98	28.33	29.74	31.23	32.79	34.43
	B	2,055.20	2,158.40	2,266.40	2,379.20	2,498.40	2,623.20	2,754.40
	Y	53,435.20	56,118.40	58,926.40	61,859.20	64,958.40	68,203.20	71,614.40
72.6	H	25.82	27.11	28.46	29.89	31.38	32.95	34.60
	B	2,065.60	2,168.80	2,276.80	2,391.20	2,510.40	2,636.00	2,768.00
	Y	53,705.60	56,388.80	59,196.80	62,171.20	65,270.40	68,536.00	71,968.00
72.7	H	25.94	27.24	28.60	30.03	31.53	33.11	34.77
	B	2,075.20	2,179.20	2,288.00	2,402.40	2,522.40	2,648.80	2,781.60
	Y	53,955.20	56,659.20	59,488.00	62,462.40	65,582.40	68,868.80	72,321.60
72.8	H	26.07	27.37	28.74	30.18	31.69	33.27	34.93
	B	2,085.60	2,189.60	2,299.20	2,414.40	2,535.20	2,661.60	2,794.40
	Y	54,225.60	56,929.60	59,779.20	62,774.40	65,915.20	69,201.60	72,654.40
72.9	H	26.19	27.50	28.88	30.32	31.84	33.43	35.10
	B	2,095.20	2,200.00	2,310.40	2,425.60	2,547.20	2,674.40	2,808.00
	Y	54,475.20	57,200.00	60,070.40	63,065.60	66,227.20	69,534.40	73,008.00

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
73.0	H	26.32	27.63	29.02	30.47	31.99	33.59	35.27
	B	2,105.60	2,210.40	2,321.60	2,437.60	2,559.20	2,687.20	2,821.60
	Y	54,745.60	57,470.40	60,361.60	63,377.60	66,539.20	69,867.20	73,361.60
73.1	H	26.45	27.77	29.16	30.62	32.15	33.76	35.45
	B	2,116.00	2,221.60	2,332.80	2,449.60	2,572.00	2,700.80	2,836.00
	Y	55,016.00	57,761.60	60,652.80	63,689.60	66,872.00	70,220.80	73,736.00
73.2	H	26.58	27.91	29.31	30.77	32.31	33.93	35.62
	B	2,126.40	2,232.80	2,344.80	2,461.60	2,584.80	2,714.40	2,849.60
	Y	55,286.40	58,052.80	60,964.80	64,001.60	67,204.80	70,574.40	74,089.60
73.3	H	26.71	28.05	29.45	30.92	32.47	34.09	35.80
	B	2,136.80	2,244.00	2,356.00	2,473.60	2,597.60	2,727.20	2,864.00
	Y	55,556.80	58,344.00	61,256.00	64,313.60	67,537.60	70,907.20	74,464.00
73.4	H	26.84	28.19	29.60	31.08	32.63	34.26	35.97
	B	2,147.20	2,255.20	2,368.00	2,486.40	2,610.40	2,740.80	2,877.60
	Y	55,827.20	58,635.20	61,568.00	64,646.40	67,870.40	71,260.80	74,817.60
73.5	H	26.98	28.33	29.74	31.23	32.79	34.43	36.15
	B	2,158.40	2,266.40	2,379.20	2,498.40	2,623.20	2,754.40	2,892.00
	Y	56,118.40	58,926.40	61,859.20	64,958.40	68,203.20	71,614.40	75,192.00
73.6	H	27.11	28.46	29.89	31.38	32.95	34.60	36.33
	B	2,168.80	2,276.80	2,391.20	2,510.40	2,636.00	2,768.00	2,906.40
	Y	56,388.80	59,196.80	62,171.20	65,270.40	68,536.00	71,968.00	75,566.40
73.7	H	27.24	28.60	30.03	31.53	33.11	34.77	36.50
	B	2,179.20	2,288.00	2,402.40	2,522.40	2,648.80	2,781.60	2,920.00
	Y	56,659.20	59,488.00	62,462.40	65,582.40	68,868.80	72,321.60	75,920.00
73.8	H	27.37	28.74	30.18	31.69	33.27	34.93	36.68
	B	2,189.60	2,299.20	2,414.40	2,535.20	2,661.60	2,794.40	2,934.40
	Y	56,929.60	59,779.20	62,774.40	65,915.20	69,201.60	72,654.40	76,294.40
73.9	H	27.50	28.88	30.32	31.84	33.43	35.10	36.86
	B	2,200.00	2,310.40	2,425.60	2,547.20	2,674.40	2,808.00	2,948.80
	Y	57,200.00	60,070.40	63,065.60	66,227.20	69,534.40	73,008.00	76,668.80

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
74.0	H	27.63	29.02	30.47	31.99	33.59	35.27	37.03
	B	2,210.40	2,321.60	2,437.60	2,559.20	2,687.20	2,821.60	2,962.40
	Y	57,470.40	60,361.60	63,377.60	66,539.20	69,867.20	73,361.60	77,022.40
74.1	H	27.77	29.16	30.62	32.15	33.76	35.45	37.22
	B	2,221.60	2,332.80	2,449.60	2,572.00	2,700.80	2,836.00	2,977.60
	Y	57,761.60	60,652.80	63,689.60	66,872.00	70,220.80	73,736.00	77,417.60
74.2	H	27.91	29.31	30.77	32.31	33.93	35.62	37.40
	B	2,232.80	2,344.80	2,461.60	2,584.80	2,714.40	2,849.60	2,992.00
	Y	58,052.80	60,964.80	64,001.60	67,204.80	70,574.40	74,089.60	77,792.00
74.3	H	28.05	29.45	30.92	32.47	34.09	35.80	37.59
	B	2,244.00	2,356.00	2,473.60	2,597.60	2,727.20	2,864.00	3,007.20
	Y	58,344.00	61,256.00	64,313.60	67,537.60	70,907.20	74,464.00	78,187.20
74.4	H	28.19	29.60	31.08	32.63	34.26	35.97	37.77
	B	2,255.20	2,368.00	2,486.40	2,610.40	2,740.80	2,877.60	3,021.60
	Y	58,635.20	61,568.00	64,646.40	67,870.40	71,260.80	74,817.60	78,561.60
74.5	H	28.33	29.74	31.23	32.79	34.43	36.15	37.96
	B	2,266.40	2,379.20	2,498.40	2,623.20	2,754.40	2,892.00	3,036.80
	Y	58,926.40	61,859.20	64,958.40	68,203.20	71,614.40	75,192.00	78,956.80
74.6	H	28.46	29.89	31.38	32.95	34.60	36.33	38.14
	B	2,276.80	2,391.20	2,510.40	2,636.00	2,768.00	2,906.40	3,051.20
	Y	59,196.80	62,171.20	65,270.40	68,536.00	71,968.00	75,566.40	79,331.20
74.7	H	28.60	30.03	31.53	33.11	34.77	36.50	38.33
	B	2,288.00	2,402.40	2,522.40	2,648.80	2,781.60	2,920.00	3,066.40
	Y	59,488.00	62,462.40	65,582.40	68,868.80	72,321.60	75,920.00	79,726.40
74.8	H	28.74	30.18	31.69	33.27	34.93	36.68	38.51
	B	2,299.20	2,414.40	2,535.20	2,661.60	2,794.40	2,934.40	3,080.80
	Y	59,779.20	62,774.40	65,915.20	69,201.60	72,654.40	76,294.40	80,100.80
74.9	H	28.88	30.32	31.84	33.43	35.10	36.86	38.70
	B	2,310.40	2,425.60	2,547.20	2,674.40	2,808.00	2,948.80	3,096.00
	Y	60,070.40	63,065.60	66,227.20	69,534.40	73,008.00	76,668.80	80,496.00

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
75.0	H	29.02	30.47	31.99	33.59	35.27	37.03	38.88
	B	2,321.60	2,437.60	2,559.20	2,687.20	2,821.60	2,962.40	3,110.40
	Y	60,361.60	63,377.60	66,539.20	69,867.20	73,361.60	77,022.40	80,870.40
75.1	H	29.16	30.62	32.15	33.76	35.45	37.22	39.08
	B	2,332.80	2,449.60	2,572.00	2,700.80	2,836.00	2,977.60	3,126.40
	Y	60,652.80	63,689.60	66,872.00	70,220.80	73,736.00	77,417.60	81,286.40
75.2	H	29.31	30.77	32.31	33.93	35.62	37.40	39.27
	B	2,344.80	2,461.60	2,584.80	2,714.40	2,849.60	2,992.00	3,141.60
	Y	60,964.80	64,001.60	67,204.80	70,574.40	74,089.60	77,792.00	81,681.60
75.3	H	29.45	30.92	32.47	34.09	35.80	37.59	39.47
	B	2,356.00	2,473.60	2,597.60	2,727.20	2,864.00	3,007.20	3,157.60
	Y	61,256.00	64,313.60	67,537.60	70,907.20	74,464.00	78,187.20	82,097.60
75.4	H	29.60	31.08	32.63	34.26	35.97	37.77	39.66
	B	2,368.00	2,486.40	2,610.40	2,740.80	2,877.60	3,021.60	3,172.80
	Y	61,568.00	64,646.40	67,870.40	71,260.80	74,817.60	78,561.60	82,492.80
75.5	H	29.74	31.23	32.79	34.43	36.15	37.96	39.86
	B	2,379.20	2,498.40	2,623.20	2,754.40	2,892.00	3,036.80	3,188.80
	Y	61,859.20	64,958.40	68,203.20	71,614.40	75,192.00	78,956.80	82,908.80
75.6	H	29.89	31.38	32.95	34.60	36.33	38.14	40.05
	B	2,391.20	2,510.40	2,636.00	2,768.00	2,906.40	3,051.20	3,204.00
	Y	62,171.20	65,270.40	68,536.00	71,968.00	75,566.40	79,331.20	83,304.00
75.7	H	30.03	31.53	33.11	34.77	36.50	38.33	40.25
	B	2,402.40	2,522.40	2,648.80	2,781.60	2,920.00	3,066.40	3,220.00
	Y	62,462.40	65,582.40	68,868.80	72,321.60	75,920.00	79,726.40	83,720.00
75.8	H	30.18	31.69	33.27	34.93	36.68	38.51	40.44
	B	2,414.40	2,535.20	2,661.60	2,794.40	2,934.40	3,080.80	3,235.20
	Y	62,774.40	65,915.20	69,201.60	72,654.40	76,294.40	80,100.80	84,115.20
75.9	H	30.32	31.84	33.43	35.10	36.86	38.70	40.63
	B	2,425.60	2,547.20	2,674.40	2,808.00	2,948.80	3,096.00	3,250.40
	Y	63,065.60	66,227.20	69,534.40	73,008.00	76,668.80	80,496.00	84,510.40

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
76.0	H	30.47	31.99	33.59	35.27	37.03	38.88	40.83
	B	2,437.60	2,559.20	2,687.20	2,821.60	2,962.40	3,110.40	3,266.40
	Y	63,377.60	66,539.20	69,867.20	73,361.60	77,022.40	80,870.40	84,926.40
76.1	H	30.62	32.15	33.76	35.45	37.22	39.08	41.03
	B	2,449.60	2,572.00	2,700.80	2,836.00	2,977.60	3,126.40	3,282.40
	Y	63,689.60	66,872.00	70,220.80	73,736.00	77,417.60	81,286.40	85,342.40
76.2	H	30.77	32.31	33.93	35.62	37.40	39.27	41.24
	B	2,461.60	2,584.80	2,714.40	2,849.60	2,992.00	3,141.60	3,299.20
	Y	64,001.60	67,204.80	70,574.40	74,089.60	77,792.00	81,681.60	85,779.20
76.3	H	30.92	32.47	34.09	35.80	37.59	39.47	41.44
	B	2,473.60	2,597.60	2,727.20	2,864.00	3,007.20	3,157.60	3,315.20
	Y	64,313.60	67,537.60	70,907.20	74,464.00	78,187.20	82,097.60	86,195.20
76.4	H	31.08	32.63	34.26	35.97	37.77	39.66	41.65
	B	2,486.40	2,610.40	2,740.80	2,877.60	3,021.60	3,172.80	3,332.00
	Y	64,646.40	67,870.40	71,260.80	74,817.60	78,561.60	82,492.80	86,632.00
76.5	H	31.23	32.79	34.43	36.15	37.96	39.86	41.85
	B	2,498.40	2,623.20	2,754.40	2,892.00	3,036.80	3,188.80	3,348.00
	Y	64,958.40	68,203.20	71,614.40	75,192.00	78,956.80	82,908.80	87,048.00
76.6	H	31.38	32.95	34.60	36.33	38.14	40.05	42.05
	B	2,510.40	2,636.00	2,768.00	2,906.40	3,051.20	3,204.00	3,364.00
	Y	65,270.40	68,536.00	71,968.00	75,566.40	79,331.20	83,304.00	87,464.00
76.7	H	31.53	33.11	34.77	36.50	38.33	40.25	42.26
	B	2,522.40	2,648.80	2,781.60	2,920.00	3,066.40	3,220.00	3,380.80
	Y	65,582.40	68,868.80	72,321.60	75,920.00	79,726.40	83,720.00	87,900.80
76.8	H	31.69	33.27	34.93	36.68	38.51	40.44	42.46
	B	2,535.20	2,661.60	2,794.40	2,934.40	3,080.80	3,235.20	3,396.80
	Y	65,915.20	69,201.60	72,654.40	76,294.40	80,100.80	84,115.20	88,316.80
76.9	H	31.84	33.43	35.10	36.86	38.70	40.63	42.67
	B	2,547.20	2,674.40	2,808.00	2,948.80	3,096.00	3,250.40	3,413.60
	Y	66,227.20	69,534.40	73,008.00	76,668.80	80,496.00	84,510.40	88,753.60

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
77.0	H	31.99	33.59	35.27	37.03	38.88	40.83	42.87
	B	2,559.20	2,687.20	2,821.60	2,962.40	3,110.40	3,266.40	3,429.60
	Y	66,539.20	69,867.20	73,361.60	77,022.40	80,870.40	84,926.40	89,169.60
77.1	H	32.15	33.76	35.45	37.22	39.08	41.03	43.08
	B	2,572.00	2,700.80	2,836.00	2,977.60	3,126.40	3,282.40	3,446.40
	Y	66,872.00	70,220.80	73,736.00	77,417.60	81,286.40	85,342.40	89,606.40
77.2	H	32.31	33.93	35.62	37.40	39.27	41.24	43.30
	B	2,584.80	2,714.40	2,849.60	2,992.00	3,141.60	3,299.20	3,464.00
	Y	67,204.80	70,574.40	74,089.60	77,792.00	81,681.60	85,779.20	90,064.00
77.3	H	32.47	34.09	35.80	37.59	39.47	41.44	43.51
	B	2,597.60	2,727.20	2,864.00	3,007.20	3,157.60	3,315.20	3,480.80
	Y	67,537.60	70,907.20	74,464.00	78,187.20	82,097.60	86,195.20	90,500.80
77.4	H	32.63	34.26	35.97	37.77	39.66	41.65	43.73
	B	2,610.40	2,740.80	2,877.60	3,021.60	3,172.80	3,332.00	3,498.40
	Y	67,870.40	71,260.80	74,817.60	78,561.60	82,492.80	86,632.00	90,958.40
77.5	H	32.79	34.43	36.15	37.96	39.86	41.85	43.94
	B	2,623.20	2,754.40	2,892.00	3,036.80	3,188.80	3,348.00	3,515.20
	Y	68,203.20	71,614.40	75,192.00	78,956.80	82,908.80	87,048.00	91,395.20
77.6	H	32.95	34.60	36.33	38.14	40.05	42.05	44.16
	B	2,636.00	2,768.00	2,906.40	3,051.20	3,204.00	3,364.00	3,532.80
	Y	68,536.00	71,968.00	75,566.40	79,331.20	83,304.00	87,464.00	91,852.80
77.7	H	33.11	34.77	36.50	38.33	40.25	42.26	44.37
	B	2,648.80	2,781.60	2,920.00	3,066.40	3,220.00	3,380.80	3,549.60
	Y	68,868.80	72,321.60	75,920.00	79,726.40	83,720.00	87,900.80	92,289.60
77.8	H	33.27	34.93	36.68	38.51	40.44	42.46	44.58
	B	2,661.60	2,794.40	2,934.40	3,080.80	3,235.20	3,396.80	3,566.40
	Y	69,201.60	72,654.40	76,294.40	80,100.80	84,115.20	88,316.80	92,726.40
77.9	H	33.43	35.10	36.86	38.70	40.63	42.67	44.80
	B	2,674.40	2,808.00	2,948.80	3,096.00	3,250.40	3,413.60	3,584.00
	Y	69,534.40	73,008.00	76,668.80	80,496.00	84,510.40	88,753.60	93,184.00

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
78.0	H	33.59	35.27	37.03	38.88	40.83	42.87	45.01
	B	2,687.20	2,821.60	2,962.40	3,110.40	3,266.40	3,429.60	3,600.80
	Y	69,867.20	73,361.60	77,022.40	80,870.40	84,926.40	89,169.60	93,620.80
78.1	H	33.76	35.45	37.22	39.08	41.03	43.08	45.24
	B	2,700.80	2,836.00	2,977.60	3,126.40	3,282.40	3,446.40	3,619.20
	Y	70,220.80	73,736.00	77,417.60	81,286.40	85,342.40	89,606.40	94,099.20
78.2	H	33.93	35.62	37.40	39.27	41.24	43.30	45.46
	B	2,714.40	2,849.60	2,992.00	3,141.60	3,299.20	3,464.00	3,636.80
	Y	70,574.40	74,089.60	77,792.00	81,681.60	85,779.20	90,064.00	94,556.80
78.3	H	34.09	35.80	37.59	39.47	41.44	43.51	45.69
	B	2,727.20	2,864.00	3,007.20	3,157.60	3,315.20	3,480.80	3,655.20
	Y	70,907.20	74,464.00	78,187.20	82,097.60	86,195.20	90,500.80	95,035.20
78.4	H	34.26	35.97	37.77	39.66	41.65	43.73	45.91
	B	2,740.80	2,877.60	3,021.60	3,172.80	3,332.00	3,498.40	3,672.80
	Y	71,260.80	74,817.60	78,561.60	82,492.80	86,632.00	90,958.40	95,492.80
78.5	H	34.43	36.15	37.96	39.86	41.85	43.94	46.14
	B	2,754.40	2,892.00	3,036.80	3,188.80	3,348.00	3,515.20	3,691.20
	Y	71,614.40	75,192.00	78,956.80	82,908.80	87,048.00	91,395.20	95,971.20
78.6	H	34.60	36.33	38.14	40.05	42.05	44.16	46.36
	B	2,768.00	2,906.40	3,051.20	3,204.00	3,364.00	3,532.80	3,708.80
	Y	71,968.00	75,566.40	79,331.20	83,304.00	87,464.00	91,852.80	96,428.80
78.7	H	34.77	36.50	38.33	40.25	42.26	44.37	46.59
	B	2,781.60	2,920.00	3,066.40	3,220.00	3,380.80	3,549.60	3,727.20
	Y	72,321.60	75,920.00	79,726.40	83,720.00	87,900.80	92,289.60	96,907.20
78.8	H	34.93	36.68	38.51	40.44	42.46	44.58	46.81
	B	2,794.40	2,934.40	3,080.80	3,235.20	3,396.80	3,566.40	3,744.80
	Y	72,654.40	76,294.40	80,100.80	84,115.20	88,316.80	92,726.40	97,364.80
78.9	H	35.10	36.86	38.70	40.63	42.67	44.80	47.04
	B	2,808.00	2,948.80	3,096.00	3,250.40	3,413.60	3,584.00	3,763.20
	Y	73,008.00	76,668.80	80,496.00	84,510.40	88,753.60	93,184.00	97,843.20

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
79.0	H	35.27	37.03	38.88	40.83	42.87	45.01	47.26
	B	2,821.60	2,962.40	3,110.40	3,266.40	3,429.60	3,600.80	3,780.80
	Y	73,361.60	77,022.40	80,870.40	84,926.40	89,169.60	93,620.80	98,300.80
79.1	H	35.45	37.22	39.08	41.03	43.08	45.24	47.50
	B	2,836.00	2,977.60	3,126.40	3,282.40	3,446.40	3,619.20	3,800.00
	Y	73,736.00	77,417.60	81,286.40	85,342.40	89,606.40	94,099.20	98,800.00
79.2	H	35.62	37.40	39.27	41.24	43.30	45.46	47.74
	B	2,849.60	2,992.00	3,141.60	3,299.20	3,464.00	3,636.80	3,819.20
	Y	74,089.60	77,792.00	81,681.60	85,779.20	90,064.00	94,556.80	99,299.20
79.3	H	35.80	37.59	39.47	41.44	43.51	45.69	47.97
	B	2,864.00	3,007.20	3,157.60	3,315.20	3,480.80	3,655.20	3,837.60
	Y	74,464.00	78,187.20	82,097.60	86,195.20	90,500.80	95,035.20	99,777.60
79.4	H	35.97	37.77	39.66	41.65	43.73	45.91	48.21
	B	2,877.60	3,021.60	3,172.80	3,332.00	3,498.40	3,672.80	3,856.80
	Y	74,817.60	78,561.60	82,492.80	86,632.00	90,958.40	95,492.80	100,276.80
79.5	H	36.15	37.96	39.86	41.85	43.94	46.14	48.45
	B	2,892.00	3,036.80	3,188.80	3,348.00	3,515.20	3,691.20	3,876.00
	Y	75,192.00	78,956.80	82,908.80	87,048.00	91,395.20	95,971.20	100,776.00
79.6	H	36.33	38.14	40.05	42.05	44.16	46.36	48.68
	B	2,906.40	3,051.20	3,204.00	3,364.00	3,532.80	3,708.80	3,894.40
	Y	75,566.40	79,331.20	83,304.00	87,464.00	91,852.80	96,428.80	101,254.40
79.7	H	36.50	38.33	40.25	42.26	44.37	46.59	48.92
	B	2,920.00	3,066.40	3,220.00	3,380.80	3,549.60	3,727.20	3,913.60
	Y	75,920.00	79,726.40	83,720.00	87,900.80	92,289.60	96,907.20	101,753.60
79.8	H	36.68	38.51	40.44	42.46	44.58	46.81	49.15
	B	2,934.40	3,080.80	3,235.20	3,396.80	3,566.40	3,744.80	3,932.00
	Y	76,294.40	80,100.80	84,115.20	88,316.80	92,726.40	97,364.80	102,232.00
79.9	H	36.86	38.70	40.63	42.67	44.80	47.04	49.39
	B	2,948.80	3,096.00	3,250.40	3,413.60	3,584.00	3,763.20	3,951.20
	Y	76,668.80	80,496.00	84,510.40	88,753.60	93,184.00	97,843.20	102,731.20

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
80.0	H	37.03	38.88	40.83	42.87	45.01	47.26	49.63
	B	2,962.40	3,110.40	3,266.40	3,429.60	3,600.80	3,780.80	3,970.40
	Y	77,022.40	80,870.40	84,926.40	89,169.60	93,620.80	98,300.80	103,230.40
80.1	H	37.22	39.08	41.03	43.08	45.24	47.50	49.88
	B	2,977.60	3,126.40	3,282.40	3,446.40	3,619.20	3,800.00	3,990.40
	Y	77,417.60	81,286.40	85,342.40	89,606.40	94,099.20	98,800.00	103,750.40
80.2	H	37.40	39.27	41.24	43.30	45.46	47.74	50.12
	B	2,992.00	3,141.60	3,299.20	3,464.00	3,636.80	3,819.20	4,009.60
	Y	77,792.00	81,681.60	85,779.20	90,064.00	94,556.80	99,299.20	104,249.60
80.3	H	37.59	39.47	41.44	43.51	45.69	47.97	50.37
	B	3,007.20	3,157.60	3,315.20	3,480.80	3,655.20	3,837.60	4,029.60
	Y	78,187.20	82,097.60	86,195.20	90,500.80	95,035.20	99,777.60	104,769.60
80.4	H	37.77	39.66	41.65	43.73	45.91	48.21	50.62
	B	3,021.60	3,172.80	3,332.00	3,498.40	3,672.80	3,856.80	4,049.60
	Y	78,561.60	82,492.80	86,632.00	90,958.40	95,492.80	100,276.80	105,289.60
80.5	H	37.96	39.86	41.85	43.94	46.14	48.45	50.87
	B	3,036.80	3,188.80	3,348.00	3,515.20	3,691.20	3,876.00	4,069.60
	Y	78,956.80	82,908.80	87,048.00	91,395.20	95,971.20	100,776.00	105,809.60
80.6	H	38.14	40.05	42.05	44.16	46.36	48.68	51.12
	B	3,051.20	3,204.00	3,364.00	3,532.80	3,708.80	3,894.40	4,089.60
	Y	79,331.20	83,304.00	87,464.00	91,852.80	96,428.80	101,254.40	106,329.60
80.7	H	38.33	40.25	42.26	44.37	46.59	48.92	51.36
	B	3,066.40	3,220.00	3,380.80	3,549.60	3,727.20	3,913.60	4,108.80
	Y	79,726.40	83,720.00	87,900.80	92,289.60	96,907.20	101,753.60	106,828.80
80.8	H	38.51	40.44	42.46	44.58	46.81	49.15	51.61
	B	3,080.80	3,235.20	3,396.80	3,566.40	3,744.80	3,932.00	4,128.80
	Y	80,100.80	84,115.20	88,316.80	92,726.40	97,364.80	102,232.00	107,348.80
80.9	H	38.70	40.63	42.67	44.80	47.04	49.39	51.86
	B	3,096.00	3,250.40	3,413.60	3,584.00	3,763.20	3,951.20	4,148.80
	Y	80,496.00	84,510.40	88,753.60	93,184.00	97,843.20	102,731.20	107,868.80

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
81.0	H	38.88	40.83	42.87	45.01	47.26	49.63	52.11
	B	3,110.40	3,266.40	3,429.60	3,600.80	3,780.80	3,970.40	4,168.80
	Y	80,870.40	84,926.40	89,169.60	93,620.80	98,300.80	103,230.40	108,388.80
81.1	H	39.08	41.03	43.08	45.24	47.50	49.88	52.37
	B	3,126.40	3,282.40	3,446.40	3,619.20	3,800.00	3,990.40	4,189.60
	Y	81,286.40	85,342.40	89,606.40	94,099.20	98,800.00	103,750.40	108,929.60
81.2	H	39.27	41.24	43.30	45.46	47.74	50.12	52.63
	B	3,141.60	3,299.20	3,464.00	3,636.80	3,819.20	4,009.60	4,210.40
	Y	81,681.60	85,779.20	90,064.00	94,556.80	99,299.20	104,249.60	109,470.40
81.3	H	39.47	41.44	43.51	45.69	47.97	50.37	52.89
	B	3,157.60	3,315.20	3,480.80	3,655.20	3,837.60	4,029.60	4,231.20
	Y	82,097.60	86,195.20	90,500.80	95,035.20	99,777.60	104,769.60	110,011.20
81.4	H	39.66	41.65	43.73	45.91	48.21	50.62	53.15
	B	3,172.80	3,332.00	3,498.40	3,672.80	3,856.80	4,049.60	4,252.00
	Y	82,492.80	86,632.00	90,958.40	95,492.80	100,276.80	105,289.60	110,552.00
81.5	H	39.86	41.85	43.94	46.14	48.45	50.87	53.41
	B	3,188.80	3,348.00	3,515.20	3,691.20	3,876.00	4,069.60	4,272.80
	Y	82,908.80	87,048.00	91,395.20	95,971.20	100,776.00	105,809.60	111,092.80
81.6	H	40.05	42.05	44.16	46.36	48.68	51.12	53.67
	B	3,204.00	3,364.00	3,532.80	3,708.80	3,894.40	4,089.60	4,293.60
	Y	83,304.00	87,464.00	91,852.80	96,428.80	101,254.40	106,329.60	111,633.60
81.7	H	40.25	42.26	44.37	46.59	48.92	51.36	53.93
	B	3,220.00	3,380.80	3,549.60	3,727.20	3,913.60	4,108.80	4,314.40
	Y	83,720.00	87,900.80	92,289.60	96,907.20	101,753.60	106,828.80	112,174.40
81.8	H	40.44	42.46	44.58	46.81	49.15	51.61	54.19
	B	3,235.20	3,396.80	3,566.40	3,744.80	3,932.00	4,128.80	4,335.20
	Y	84,115.20	88,316.80	92,726.40	97,364.80	102,232.00	107,348.80	112,715.20
81.9	H	40.63	42.67	44.80	47.04	49.39	51.86	54.45
	B	3,250.40	3,413.60	3,584.00	3,763.20	3,951.20	4,148.80	4,356.00
	Y	84,510.40	88,753.60	93,184.00	97,843.20	102,731.20	107,868.80	113,256.00

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
82.0	H	40.83	42.87	45.01	47.26	49.63	52.11	54.71
	B	3,266.40	3,429.60	3,600.80	3,780.80	3,970.40	4,168.80	4,376.80
	Y	84,926.40	89,169.60	93,620.80	98,300.80	103,230.40	108,388.80	113,796.80
82.1	H	41.03	43.08	45.24	47.50	49.88	52.37	54.99
	B	3,282.40	3,446.40	3,619.20	3,800.00	3,990.40	4,189.60	4,399.20
	Y	85,342.40	89,606.40	94,099.20	98,800.00	103,750.40	108,929.60	114,379.20
82.2	H	41.24	43.30	45.46	47.74	50.12	52.63	55.26
	B	3,299.20	3,464.00	3,636.80	3,819.20	4,009.60	4,210.40	4,420.80
	Y	85,779.20	90,064.00	94,556.80	99,299.20	104,249.60	109,470.40	114,940.80
82.3	H	41.44	43.51	45.69	47.97	50.37	52.89	55.53
	B	3,315.20	3,480.80	3,655.20	3,837.60	4,029.60	4,231.20	4,442.40
	Y	86,195.20	90,500.80	95,035.20	99,777.60	104,769.60	110,011.20	115,502.40
82.4	H	41.65	43.73	45.91	48.21	50.62	53.15	55.81
	B	3,332.00	3,498.40	3,672.80	3,856.80	4,049.60	4,252.00	4,464.80
	Y	86,632.00	90,958.40	95,492.80	100,276.80	105,289.60	110,552.00	116,084.80
82.5	H	41.85	43.94	46.14	48.45	50.87	53.41	56.08
	B	3,348.00	3,515.20	3,691.20	3,876.00	4,069.60	4,272.80	4,486.40
	Y	87,048.00	91,395.20	95,971.20	100,776.00	105,809.60	111,092.80	116,646.40
82.6	H	42.05	44.16	46.36	48.68	51.12	53.67	56.36
	B	3,364.00	3,532.80	3,708.80	3,894.40	4,089.60	4,293.60	4,508.80
	Y	87,464.00	91,852.80	96,428.80	101,254.40	106,329.60	111,633.60	117,228.80
82.7	H	42.26	44.37	46.59	48.92	51.36	53.93	56.63
	B	3,380.80	3,549.60	3,727.20	3,913.60	4,108.80	4,314.40	4,530.40
	Y	87,900.80	92,289.60	96,907.20	101,753.60	106,828.80	112,174.40	117,790.40
82.8	H	42.46	44.58	46.81	49.15	51.61	54.19	56.90
	B	3,396.80	3,566.40	3,744.80	3,932.00	4,128.80	4,335.20	4,552.00
	Y	88,316.80	92,726.40	97,364.80	102,232.00	107,348.80	112,715.20	118,352.00
82.9	H	42.67	44.80	47.04	49.39	51.86	54.45	57.18
	B	3,413.60	3,584.00	3,763.20	3,951.20	4,148.80	4,356.00	4,574.40
	Y	88,753.60	93,184.00	97,843.20	102,731.20	107,868.80	113,256.00	118,934.40

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
83.0	H	42.87	45.01	47.26	49.63	52.11	54.71	57.45
	B	3,429.60	3,600.80	3,780.80	3,970.40	4,168.80	4,376.80	4,596.00
	Y	89,169.60	93,620.80	98,300.80	103,230.40	108,388.80	113,796.80	119,496.00
83.1	H	43.08	45.24	47.50	49.88	52.37	54.99	57.74
	B	3,446.40	3,619.20	3,800.00	3,990.40	4,189.60	4,399.20	4,619.20
	Y	89,606.40	94,099.20	98,800.00	103,750.40	108,929.60	114,379.20	120,099.20
83.2	H	43.30	45.46	47.74	50.12	52.63	55.26	58.02
	B	3,464.00	3,636.80	3,819.20	4,009.60	4,210.40	4,420.80	4,641.60
	Y	90,064.00	94,556.80	99,299.20	104,249.60	109,470.40	114,940.80	120,681.60
83.3	H	43.51	45.69	47.97	50.37	52.89	55.53	58.31
	B	3,480.80	3,655.20	3,837.60	4,029.60	4,231.20	4,442.40	4,664.80
	Y	90,500.80	95,035.20	99,777.60	104,769.60	110,011.20	115,502.40	121,284.80
83.4	H	43.73	45.91	48.21	50.62	53.15	55.81	58.60
	B	3,498.40	3,672.80	3,856.80	4,049.60	4,252.00	4,464.80	4,688.00
	Y	90,958.40	95,492.80	100,276.80	105,289.60	110,552.00	116,084.80	121,888.00
83.5	H	43.94	46.14	48.45	50.87	53.41	56.08	58.89
	B	3,515.20	3,691.20	3,876.00	4,069.60	4,272.80	4,486.40	4,711.20
	Y	91,395.20	95,971.20	100,776.00	105,809.60	111,092.80	116,646.40	122,491.20
83.6	H	44.16	46.36	48.68	51.12	53.67	56.36	59.17
	B	3,532.80	3,708.80	3,894.40	4,089.60	4,293.60	4,508.80	4,733.60
	Y	91,852.80	96,428.80	101,254.40	106,329.60	111,633.60	117,228.80	123,073.60
83.7	H	44.37	46.59	48.92	51.36	53.93	56.63	59.46
	B	3,549.60	3,727.20	3,913.60	4,108.80	4,314.40	4,530.40	4,756.80
	Y	92,289.60	96,907.20	101,753.60	106,828.80	112,174.40	117,790.40	123,676.80
83.8	H	44.58	46.81	49.15	51.61	54.19	56.90	59.75
	B	3,566.40	3,744.80	3,932.00	4,128.80	4,335.20	4,552.00	4,780.00
	Y	92,726.40	97,364.80	102,232.00	107,348.80	112,715.20	118,352.00	124,280.00
83.9	H	44.80	47.04	49.39	51.86	54.45	57.18	60.04
	B	3,584.00	3,763.20	3,951.20	4,148.80	4,356.00	4,574.40	4,803.20
	Y	93,184.00	97,843.20	102,731.20	107,868.80	113,256.00	118,934.40	124,883.20

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
84.0	H	45.01	47.26	49.63	52.11	54.71	57.45	60.32
	B	3,600.80	3,780.80	3,970.40	4,168.80	4,376.80	4,596.00	4,825.60
	Y	93,620.80	98,300.80	103,230.40	108,388.80	113,796.80	119,496.00	125,465.60
84.1	H	45.24	47.50	49.88	52.37	54.99	57.74	60.62
	B	3,619.20	3,800.00	3,990.40	4,189.60	4,399.20	4,619.20	4,849.60
	Y	94,099.20	98,800.00	103,750.40	108,929.60	114,379.20	120,099.20	126,089.60
84.2	H	45.46	47.74	50.12	52.63	55.26	58.02	60.93
	B	3,636.80	3,819.20	4,009.60	4,210.40	4,420.80	4,641.60	4,874.40
	Y	94,556.80	99,299.20	104,249.60	109,470.40	114,940.80	120,681.60	126,734.40
84.3	H	45.69	47.97	50.37	52.89	55.53	58.31	61.23
	B	3,655.20	3,837.60	4,029.60	4,231.20	4,442.40	4,664.80	4,898.40
	Y	95,035.20	99,777.60	104,769.60	110,011.20	115,502.40	121,284.80	127,358.40
84.4	H	45.91	48.21	50.62	53.15	55.81	58.60	61.53
	B	3,672.80	3,856.80	4,049.60	4,252.00	4,464.80	4,688.00	4,922.40
	Y	95,492.80	100,276.80	105,289.60	110,552.00	116,084.80	121,888.00	127,982.40
84.5	H	46.14	48.45	50.87	53.41	56.08	58.89	61.83
	B	3,691.20	3,876.00	4,069.60	4,272.80	4,486.40	4,711.20	4,946.40
	Y	95,971.20	100,776.00	105,809.60	111,092.80	116,646.40	122,491.20	128,606.40
84.6	H	46.36	48.68	51.12	53.67	56.36	59.17	62.13
	B	3,708.80	3,894.40	4,089.60	4,293.60	4,508.80	4,733.60	4,970.40
	Y	96,428.80	101,254.40	106,329.60	111,633.60	117,228.80	123,073.60	129,230.40
84.7	H	46.59	48.92	51.36	53.93	56.63	59.46	62.43
	B	3,727.20	3,913.60	4,108.80	4,314.40	4,530.40	4,756.80	4,994.40
	Y	96,907.20	101,753.60	106,828.80	112,174.40	117,790.40	123,676.80	129,854.40
84.8	H	46.81	49.15	51.61	54.19	56.90	59.75	62.74
	B	3,744.80	3,932.00	4,128.80	4,335.20	4,552.00	4,780.00	5,019.20
	Y	97,364.80	102,232.00	107,348.80	112,715.20	118,352.00	124,280.00	130,499.20
84.9	H	47.04	49.39	51.86	54.45	57.18	60.04	63.04
	B	3,763.20	3,951.20	4,148.80	4,356.00	4,574.40	4,803.20	5,043.20
	Y	97,843.20	102,731.20	107,868.80	113,256.00	118,934.40	124,883.20	131,123.20

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
85.0	H	47.26	49.63	52.11	54.71	57.45	60.32	63.34
	B	3,780.80	3,970.40	4,168.80	4,376.80	4,596.00	4,825.60	5,067.20
	Y	98,300.80	103,230.40	108,388.80	113,796.80	119,496.00	125,465.60	131,747.20
85.1	H	47.50	49.88	52.37	54.99	57.74	60.62	63.66
	B	3,800.00	3,990.40	4,189.60	4,399.20	4,619.20	4,849.60	5,092.80
	Y	98,800.00	103,750.40	108,929.60	114,379.20	120,099.20	126,089.60	132,412.80
85.2	H	47.74	50.12	52.63	55.26	58.02	60.93	63.97
	B	3,819.20	4,009.60	4,210.40	4,420.80	4,641.60	4,874.40	5,117.60
	Y	99,299.20	104,249.60	109,470.40	114,940.80	120,681.60	126,734.40	133,057.60
85.3	H	47.97	50.37	52.89	55.53	58.31	61.23	64.29
	B	3,837.60	4,029.60	4,231.20	4,442.40	4,664.80	4,898.40	5,143.20
	Y	99,777.60	104,769.60	110,011.20	115,502.40	121,284.80	127,358.40	133,723.20
85.4	H	48.21	50.62	53.15	55.81	58.60	61.53	64.61
	B	3,856.80	4,049.60	4,252.00	4,464.80	4,688.00	4,922.40	5,168.80
	Y	100,276.80	105,289.60	110,552.00	116,084.80	121,888.00	127,982.40	134,388.80
85.5	H	48.45	50.87	53.41	56.08	58.89	61.83	64.92
	B	3,876.00	4,069.60	4,272.80	4,486.40	4,711.20	4,946.40	5,193.60
	Y	100,776.00	105,809.60	111,092.80	116,646.40	122,491.20	128,606.40	135,033.60
85.6	H	48.68	51.12	53.67	56.36	59.17	62.13	65.24
	B	3,894.40	4,089.60	4,293.60	4,508.80	4,733.60	4,970.40	5,219.20
	Y	101,254.40	106,329.60	111,633.60	117,228.80	123,073.60	129,230.40	135,699.20
85.7	H	48.92	51.36	53.93	56.63	59.46	62.43	65.56
	B	3,913.60	4,108.80	4,314.40	4,530.40	4,756.80	4,994.40	5,244.80
	Y	101,753.60	106,828.80	112,174.40	117,790.40	123,676.80	129,854.40	136,364.80
85.8	H	49.15	51.61	54.19	56.90	59.75	62.74	65.87
	B	3,932.00	4,128.80	4,335.20	4,552.00	4,780.00	5,019.20	5,269.60
	Y	102,232.00	107,348.80	112,715.20	118,352.00	124,280.00	130,499.20	137,009.60
85.9	H	49.39	51.86	54.45	57.18	60.04	63.04	66.19
	B	3,951.20	4,148.80	4,356.00	4,574.40	4,803.20	5,043.20	5,295.20
	Y	102,731.20	107,868.80	113,256.00	118,934.40	124,883.20	131,123.20	137,675.20

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
86.0	H	49.63	52.11	54.71	57.45	60.32	63.34	66.51
	B	3,970.40	4,168.80	4,376.80	4,596.00	4,825.60	5,067.20	5,320.80
	Y	103,230.40	108,388.80	113,796.80	119,496.00	125,465.60	131,747.20	138,340.80
86.1	H	49.88	52.37	54.99	57.74	60.62	63.66	66.84
	B	3,990.40	4,189.60	4,399.20	4,619.20	4,849.60	5,092.80	5,347.20
	Y	103,750.40	108,929.60	114,379.20	120,099.20	126,089.60	132,412.80	139,027.20
86.2	H	50.12	52.63	55.26	58.02	60.93	63.97	67.17
	B	4,009.60	4,210.40	4,420.80	4,641.60	4,874.40	5,117.60	5,373.60
	Y	104,249.60	109,470.40	114,940.80	120,681.60	126,734.40	133,057.60	139,713.60
86.3	H	50.37	52.89	55.53	58.31	61.23	64.29	67.50
	B	4,029.60	4,231.20	4,442.40	4,664.80	4,898.40	5,143.20	5,400.00
	Y	104,769.60	110,011.20	115,502.40	121,284.80	127,358.40	133,723.20	140,400.00
86.4	H	50.62	53.15	55.81	58.60	61.53	64.61	67.84
	B	4,049.60	4,252.00	4,464.80	4,688.00	4,922.40	5,168.80	5,427.20
	Y	105,289.60	110,552.00	116,084.80	121,888.00	127,982.40	134,388.80	141,107.20
86.5	H	50.87	53.41	56.08	58.89	61.83	64.92	68.17
	B	4,069.60	4,272.80	4,486.40	4,711.20	4,946.40	5,193.60	5,453.60
	Y	105,809.60	111,092.80	116,646.40	122,491.20	128,606.40	135,033.60	141,793.60
86.6	H	51.12	53.67	56.36	59.17	62.13	65.24	68.50
	B	4,089.60	4,293.60	4,508.80	4,733.60	4,970.40	5,219.20	5,480.00
	Y	106,329.60	111,633.60	117,228.80	123,073.60	129,230.40	135,699.20	142,480.00
86.7	H	51.36	53.93	56.63	59.46	62.43	65.56	68.83
	B	4,108.80	4,314.40	4,530.40	4,756.80	4,994.40	5,244.80	5,506.40
	Y	106,828.80	112,174.40	117,790.40	123,676.80	129,854.40	136,364.80	143,166.40
86.8	H	51.61	54.19	56.90	59.75	62.74	65.87	69.17
	B	4,128.80	4,335.20	4,552.00	4,780.00	5,019.20	5,269.60	5,533.60
	Y	107,348.80	112,715.20	118,352.00	124,280.00	130,499.20	137,009.60	143,873.60
86.9	H	51.86	54.45	57.18	60.04	63.04	66.19	69.50
	B	4,148.80	4,356.00	4,574.40	4,803.20	5,043.20	5,295.20	5,560.00
	Y	107,868.80	113,256.00	118,934.40	124,883.20	131,123.20	137,675.20	144,560.00

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP**

RANGE		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
87.0	H	52.11	54.71	57.45	60.32	63.34	66.51	69.83
	B	4,168.80	4,376.80	4,596.00	4,825.60	5,067.20	5,320.80	5,586.40
	Y	108,388.80	113,796.80	119,496.00	125,465.60	131,747.20	138,340.80	145,246.40
87.1	H	52.37	54.99	57.74	60.62	63.66	66.84	70.18
	B	4,189.60	4,399.20	4,619.20	4,849.60	5,092.80	5,347.20	5,614.40
	Y	108,929.60	114,379.20	120,099.20	126,089.60	132,412.80	139,027.20	145,974.40
87.2	H	52.63	55.26	58.02	60.93	63.97	67.17	70.53
	B	4,210.40	4,420.80	4,641.60	4,874.40	5,117.60	5,373.60	5,642.40
	Y	109,470.40	114,940.80	120,681.60	126,734.40	133,057.60	139,713.60	146,702.40
87.3	H	52.89	55.53	58.31	61.23	64.29	67.50	70.88
	B	4,231.20	4,442.40	4,664.80	4,898.40	5,143.20	5,400.00	5,670.40
	Y	110,011.20	115,502.40	121,284.80	127,358.40	133,723.20	140,400.00	147,430.40
87.4	H	53.15	55.81	58.60	61.53	64.61	67.84	71.23
	B	4,252.00	4,464.80	4,688.00	4,922.40	5,168.80	5,427.20	5,698.40
	Y	110,552.00	116,084.80	121,888.00	127,982.40	134,388.80	141,107.20	148,158.40
87.5	H	53.41	56.08	58.89	61.83	64.92	68.17	71.58
	B	4,272.80	4,486.40	4,711.20	4,946.40	5,193.60	5,453.60	5,726.40
	Y	111,092.80	116,646.40	122,491.20	128,606.40	135,033.60	141,793.60	148,886.40
87.6	H	53.67	56.36	59.17	62.13	65.24	68.50	71.93
	B	4,293.60	4,508.80	4,733.60	4,970.40	5,219.20	5,480.00	5,754.40
	Y	111,633.60	117,228.80	123,073.60	129,230.40	135,699.20	142,480.00	149,614.40
87.7	H	53.93	56.63	59.46	62.43	65.56	68.83	72.27
	B	4,314.40	4,530.40	4,756.80	4,994.40	5,244.80	5,506.40	5,781.60
	Y	112,174.40	117,790.40	123,676.80	129,854.40	136,364.80	143,166.40	150,321.60
87.8	H	54.19	56.90	59.75	62.74	65.87	69.17	72.62
	B	4,335.20	4,552.00	4,780.00	5,019.20	5,269.60	5,533.60	5,809.60
	Y	112,715.20	118,352.00	124,280.00	130,499.20	137,009.60	143,873.60	151,049.60
87.9	H	54.45	57.18	60.04	63.04	66.19	69.50	72.97
	B	4,356.00	4,574.40	4,803.20	5,043.20	5,295.20	5,560.00	5,837.60
	Y	113,256.00	118,934.40	124,883.20	131,123.20	137,675.20	144,560.00	151,777.60

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP
FOR ALL STEP PEACE OFFICERS
(Exhibit D)**

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP FOR PEACE OFFICERS (PO) - ANNUAL**

Ranges	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
0	\$ <u>89,124</u> \$86,529							
1	\$ <u>98,037</u> \$95,182	\$ <u>100,978</u> \$98,037	\$ <u>104,008</u> \$100,978	\$ <u>107,128</u> \$104,008	\$ <u>110,342</u> \$107,128	\$ <u>113,652</u> \$110,342	\$ <u>117,062</u> \$113,652	\$ <u>120,574</u> \$117,062
2	\$ <u>102,939</u> \$99,941	\$ <u>106,027</u> \$102,939	\$ <u>109,208</u> \$106,027	\$ <u>112,484</u> \$109,208	\$ <u>115,859</u> \$112,484	\$ <u>119,335</u> \$115,859	\$ <u>122,915</u> \$119,335	\$ <u>126,602</u> \$122,915
3	\$ <u>108,086</u> \$104,938	\$ <u>111,329</u> \$108,086	\$ <u>114,669</u> \$111,329	\$ <u>118,109</u> \$114,669	\$ <u>121,652</u> \$118,109	\$ <u>125,301</u> \$121,652	\$ <u>129,060</u> \$125,301	\$ <u>132,932</u> \$129,060
4	\$ <u>113,490</u> \$110,185	\$ <u>116,895</u> \$113,490	\$ <u>120,402</u> \$116,895	\$ <u>124,014</u> \$120,402	\$ <u>127,734</u> \$124,014	\$ <u>131,567</u> \$127,734	\$ <u>135,514</u> \$131,567	\$ <u>139,579</u> \$135,514
5	\$ <u>119,165</u> \$115,694	\$ <u>122,740</u> \$119,165	\$ <u>126,422</u> \$122,740	\$ <u>130,215</u> \$126,422	\$ <u>134,121</u> \$130,215	\$ <u>138,145</u> \$134,121	\$ <u>142,289</u> \$138,145	\$ <u>146,558</u> \$142,289
6	\$ <u>125,123</u> \$121,479	\$ <u>128,877</u> \$125,123	\$ <u>132,743</u> \$128,877	\$ <u>136,725</u> \$132,743	\$ <u>140,827</u> \$136,725	\$ <u>145,052</u> \$140,827	\$ <u>149,404</u> \$145,052	\$ <u>153,886</u> \$149,404
7	\$ <u>131,379</u> \$127,553	\$ <u>135,321</u> \$131,379	\$ <u>139,380</u> \$135,321	\$ <u>143,562</u> \$139,380	\$ <u>147,869</u> \$143,562	\$ <u>152,305</u> \$147,869	\$ <u>156,874</u> \$152,305	\$ <u>161,580</u> \$156,874
8	\$ <u>137,948</u> \$133,930	\$ <u>142,087</u> \$137,948	\$ <u>146,349</u> \$142,087	\$ <u>150,740</u> \$146,349	\$ <u>155,262</u> \$150,740	\$ <u>159,920</u> \$155,262	\$ <u>164,718</u> \$159,920	\$ <u>169,659</u> \$164,718
9	\$ <u>144,846</u> \$140,627	\$ <u>149,191</u> \$144,846	\$ <u>153,667</u> \$149,191	\$ <u>158,277</u> \$153,667	\$ <u>163,025</u> \$158,277	\$ <u>167,916</u> \$163,025	\$ <u>172,953</u> \$167,916	\$ <u>178,142</u> \$172,953
10	\$ <u>152,088</u> \$147,658	\$ <u>156,651</u> \$152,088	\$ <u>161,350</u> \$156,651	\$ <u>166,191</u> \$161,350	\$ <u>171,176</u> \$166,191	\$ <u>176,312</u> \$171,176	\$ <u>181,601</u> \$176,312	\$ <u>187,049</u> \$181,601
11	\$ <u>159,692</u> \$155,044	\$ <u>164,483</u> \$159,692	\$ <u>169,418</u> \$164,483	\$ <u>174,500</u> \$169,418	\$ <u>179,735</u> \$174,500	\$ <u>185,127</u> \$179,735	\$ <u>190,681</u> \$185,127	\$ <u>196,402</u> \$190,681
12	\$ <u>167,677</u> \$162,793	\$ <u>172,707</u> \$167,677	\$ <u>177,889</u> \$172,707	\$ <u>183,225</u> \$177,889	\$ <u>188,722</u> \$183,225	\$ <u>194,384</u> \$188,722	\$ <u>200,215</u> \$194,384	\$ <u>206,222</u> \$200,215
13	\$ <u>176,061</u> \$170,933	\$ <u>181,343</u> \$176,061	\$ <u>186,783</u> \$181,343	\$ <u>192,386</u> \$186,783	\$ <u>198,158</u> \$192,386	\$ <u>204,103</u> \$198,158	\$ <u>210,226</u> \$204,103	\$ <u>216,533</u> \$210,226
14	\$ <u>184,864</u> \$179,480	\$ <u>190,410</u> \$184,864	\$ <u>196,122</u> \$190,410	\$ <u>202,006</u> \$196,122	\$ <u>208,066</u> \$202,006	\$ <u>214,308</u> \$208,066	\$ <u>220,737</u> \$214,308	\$ <u>227,359</u> \$220,737

Ranges	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
15	\$	\$	\$	\$	\$	\$	\$	\$
	<u>194,107</u>	<u>199,930</u>	<u>205,928</u>	<u>212,106</u>	<u>218,469</u>	<u>225,023</u>	<u>231,774</u>	<u>238,727</u>
	\$188,454	\$194,107	\$199,930	\$205,928	\$212,106	\$218,469	\$225,023	\$231,774
16	\$	\$	\$	\$	\$	\$	\$	\$
	<u>203,812</u>	<u>209,927</u>	<u>216,225</u>	<u>222,711</u>	<u>229,393</u>	<u>236,275</u>	<u>243,363</u>	<u>250,664</u>
	\$197,876	\$203,812	\$209,927	\$216,225	\$222,711	\$229,393	\$236,275	\$243,363
17	\$	\$	\$	\$	\$	\$	\$	\$
	<u>214,003</u>	<u>220,423</u>	<u>227,036</u>	<u>233,847</u>	<u>240,862</u>	<u>248,088</u>	<u>255,531</u>	<u>263,197</u>
	\$207,770	\$214,003	\$220,423	\$227,036	\$233,847	\$240,862	\$248,088	\$255,531
18	\$	\$	\$	\$	\$	\$	\$	\$
	<u>224,703</u>	<u>231,444</u>	<u>238,388</u>	<u>245,539</u>	<u>252,906</u>	<u>260,493</u>	<u>268,307</u>	<u>276,357</u>
	\$218,159	\$224,703	\$231,444	\$238,388	\$245,539	\$252,906	\$260,493	\$268,307
19	\$	\$	\$	\$	\$	\$	\$	\$
	<u>235,938</u>	<u>243,017</u>	<u>250,307</u>	<u>257,816</u>	<u>265,551</u>	<u>273,517</u>	<u>281,723</u>	<u>290,175</u>
	\$229,066	\$235,938	\$243,017	\$250,307	\$257,816	\$265,551	\$273,517	\$281,723
20	\$	\$	\$	\$	\$	\$	\$	\$
	<u>247,735</u>	<u>255,167</u>	<u>262,822</u>	<u>270,707</u>	<u>278,828</u>	<u>287,193</u>	<u>295,809</u>	<u>304,683</u>
	\$240,520	\$247,735	\$255,167	\$262,822	\$270,707	\$278,828	\$287,193	\$295,809

Longevity Pay

10 Years	5.00%
15 Years	4.00%
19 Years	3.00%
Max Longevity	12.0%

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP FOR PEACE OFFICERS (PO) – BIWEEKLY**

Ranges	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
0	<u>\$3,427.85</u> \$3,328.04							
1	<u>\$3,770.67</u> \$3,660.84	<u>\$3,883.79</u> \$3,770.67	<u>\$4,000.30</u> \$3,883.79	<u>\$4,120.31</u> \$4,000.30	<u>\$4,243.92</u> \$4,120.31	<u>\$4,371.23</u> \$4,243.92	<u>\$4,502.37</u> \$4,371.23	<u>\$4,637.44</u> \$4,502.37
2	<u>\$3,959.20</u> \$3,843.88	<u>\$4,077.97</u> \$3,959.20	<u>\$4,200.31</u> \$4,077.97	<u>\$4,326.32</u> \$4,200.31	<u>\$4,456.11</u> \$4,326.32	<u>\$4,589.80</u> \$4,456.11	<u>\$4,727.49</u> \$4,589.80	<u>\$4,869.31</u> \$4,727.49
3	<u>\$4,157.16</u> \$4,036.08	<u>\$4,281.87</u> \$4,157.16	<u>\$4,410.33</u> \$4,281.87	<u>\$4,542.64</u> \$4,410.33	<u>\$4,678.92</u> \$4,542.64	<u>\$4,819.29</u> \$4,678.92	<u>\$4,963.86</u> \$4,819.29	<u>\$5,112.78</u> \$4,963.86
4	<u>\$4,365.02</u> \$4,237.88	<u>\$4,495.97</u> \$4,365.02	<u>\$4,630.85</u> \$4,495.97	<u>\$4,769.77</u> \$4,630.85	<u>\$4,912.86</u> \$4,769.77	<u>\$5,060.25</u> \$4,912.86	<u>\$5,212.06</u> \$5,060.25	<u>\$5,368.42</u> \$5,212.06
5	<u>\$4,583.27</u> \$4,449.77	<u>\$4,720.77</u> \$4,583.27	<u>\$4,862.39</u> \$4,720.77	<u>\$5,008.26</u> \$4,862.39	<u>\$5,158.51</u> \$5,008.26	<u>\$5,313.26</u> \$5,158.51	<u>\$5,472.66</u> \$5,313.26	<u>\$5,636.84</u> \$5,472.66
6	<u>\$4,812.43</u> \$4,672.26	<u>\$4,956.80</u> \$4,812.43	<u>\$5,105.51</u> \$4,956.80	<u>\$5,258.67</u> \$5,105.51	<u>\$5,416.43</u> \$5,258.67	<u>\$5,578.93</u> \$5,416.43	<u>\$5,746.29</u> \$5,578.93	<u>\$5,918.68</u> \$5,746.29
7	<u>\$5,053.05</u> \$4,905.88	<u>\$5,204.64</u> \$5,053.05	<u>\$5,360.78</u> \$5,204.64	<u>\$5,521.61</u> \$5,360.78	<u>\$5,687.25</u> \$5,521.61	<u>\$5,857.87</u> \$5,687.25	<u>\$6,033.61</u> \$5,857.87	<u>\$6,214.62</u> \$6,033.61
8	<u>\$5,305.70</u> \$5,151.17	<u>\$5,464.88</u> \$5,305.70	<u>\$5,628.82</u> \$5,464.88	<u>\$5,797.69</u> \$5,628.82	<u>\$5,971.62</u> \$5,797.69	<u>\$6,150.77</u> \$5,971.62	<u>\$6,335.29</u> \$6,150.77	<u>\$6,525.35</u> \$6,335.29
9	<u>\$5,570.99</u> \$5,408.73	<u>\$5,738.12</u> \$5,570.99	<u>\$5,910.26</u> \$5,738.12	<u>\$6,087.57</u> \$5,910.26	<u>\$6,270.20</u> \$6,087.57	<u>\$6,458.30</u> \$6,270.20	<u>\$6,652.05</u> \$6,458.30	<u>\$6,851.61</u> \$6,652.05
10	<u>\$5,849.54</u> \$5,679.16	<u>\$6,025.03</u> \$5,849.54	<u>\$6,205.78</u> \$6,025.03	<u>\$6,391.95</u> \$6,205.78	<u>\$6,583.71</u> \$6,391.95	<u>\$6,781.22</u> \$6,583.71	<u>\$6,984.66</u> \$6,781.22	<u>\$7,194.20</u> \$6,984.66
11	<u>\$6,142.02</u> \$5,963.12	<u>\$6,326.28</u> \$6,142.02	<u>\$6,516.07</u> \$6,326.28	<u>\$6,711.55</u> \$6,516.07	<u>\$6,912.89</u> \$6,711.55	<u>\$7,120.28</u> \$6,912.89	<u>\$7,333.89</u> \$7,120.28	<u>\$7,553.91</u> \$7,333.89
12	<u>\$6,449.12</u> \$6,261.28	<u>\$6,642.59</u> \$6,449.12	<u>\$6,841.87</u> \$6,642.59	<u>\$7,047.12</u> \$6,841.87	<u>\$7,258.54</u> \$7,047.12	<u>\$7,476.29</u> \$7,258.54	<u>\$7,700.58</u> \$7,476.29	<u>\$7,931.60</u> \$7,700.58
13	<u>\$6,771.57</u> \$6,574.34	<u>\$6,974.72</u> \$6,771.57	<u>\$7,183.96</u> \$6,974.72	<u>\$7,399.48</u> \$7,183.96	<u>\$7,621.47</u> \$7,399.48	<u>\$7,850.11</u> \$7,621.47	<u>\$8,085.61</u> \$7,850.11	<u>\$8,328.18</u> \$8,085.61
14	<u>\$7,110.15</u> \$6,903.06	<u>\$7,323.46</u> \$7,110.15	<u>\$7,543.16</u> \$7,323.46	<u>\$7,769.45</u> \$7,543.16	<u>\$8,002.54</u> \$7,769.45	<u>\$8,242.61</u> \$8,002.54	<u>\$8,489.89</u> \$8,242.61	<u>\$8,744.59</u> \$8,489.89
15	<u>\$7,465.66</u> \$7,248.21	<u>\$7,689.63</u> \$7,465.66	<u>\$7,920.32</u> \$7,689.63	<u>\$8,157.93</u> \$7,920.32	<u>\$8,402.67</u> \$8,157.93	<u>\$8,654.75</u> \$8,402.67	<u>\$8,914.39</u> \$8,654.75	<u>\$9,181.82</u> \$8,914.39

Ranges	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
16	<u>\$7,838.94</u> \$7,610.62	<u>\$8,074.11</u> \$7,838.94	<u>\$8,316.33</u> \$8,074.11	<u>\$8,565.82</u> \$8,316.33	<u>\$8,822.80</u> \$8,565.82	<u>\$9,087.48</u> \$8,822.80	<u>\$9,360.11</u> \$9,087.48	<u>\$9,640.91</u> \$9,360.11
17	<u>\$8,230.89</u> \$7,991.15	<u>\$8,477.82</u> \$8,230.89	<u>\$8,732.15</u> \$8,477.82	<u>\$8,994.11</u> \$8,732.15	<u>\$9,263.94</u> \$8,994.11	<u>\$9,541.86</u> \$9,263.94	<u>\$9,828.11</u> \$9,541.86	<u>\$10,122.96</u> \$9,828.11
18	<u>\$8,642.43</u> \$8,390.74	<u>\$8,901.71</u> \$8,642.43	<u>\$9,168.76</u> \$8,901.71	<u>\$9,443.82</u> \$9,168.76	<u>\$9,727.14</u> \$9,443.82	<u>\$10,018.95</u> \$9,727.14	<u>\$10,319.52</u> \$10,018.95	<u>\$10,629.10</u> \$10,319.52
19	<u>\$9,074.56</u> \$8,810.25	<u>\$9,346.79</u> \$9,074.56	<u>\$9,627.20</u> \$9,346.79	<u>\$9,916.01</u> \$9,627.20	<u>\$10,213.49</u> \$9,916.01	<u>\$10,519.90</u> \$10,213.49	<u>\$10,835.49</u> \$10,519.90	<u>\$11,160.56</u> \$10,835.49
20	<u>\$9,528.28</u> \$9,250.76	<u>\$9,814.13</u> \$9,528.28	<u>\$10,108.56</u> \$9,814.13	<u>\$10,411.81</u> \$10,108.56	<u>\$10,724.17</u> \$10,411.81	<u>\$11,045.89</u> \$10,724.17	<u>\$11,377.27</u> \$11,045.89	<u>\$11,718.59</u> \$11,377.27

Longevity Pay

10 Years	5.00%
15 Years	4.00%
19 Years	3.00%
Max Longevity	12.0%

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE AND STEP FOR PEACE OFFICERS (PO) - HOURLY**

Ranges	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
0	<u>\$42.85</u>							
	<u>\$41.60</u>							
1	<u>\$47.13</u>	<u>\$48.55</u>	<u>\$50.00</u>	<u>\$51.50</u>	<u>\$53.05</u>	<u>\$54.64</u>	<u>\$56.28</u>	<u>\$57.97</u>
	<u>\$45.76</u>	<u>\$47.13</u>	<u>\$48.55</u>	<u>\$50.00</u>	<u>\$51.50</u>	<u>\$53.05</u>	<u>\$54.64</u>	<u>\$56.28</u>
2	<u>\$49.49</u>	<u>\$50.97</u>	<u>\$52.50</u>	<u>\$54.08</u>	<u>\$55.70</u>	<u>\$57.37</u>	<u>\$59.09</u>	<u>\$60.87</u>
	<u>\$48.05</u>	<u>\$49.49</u>	<u>\$50.97</u>	<u>\$52.50</u>	<u>\$54.08</u>	<u>\$55.70</u>	<u>\$57.37</u>	<u>\$59.09</u>
3	<u>\$51.96</u>	<u>\$53.52</u>	<u>\$55.13</u>	<u>\$56.78</u>	<u>\$58.49</u>	<u>\$60.24</u>	<u>\$62.05</u>	<u>\$63.91</u>
	<u>\$50.45</u>	<u>\$51.96</u>	<u>\$53.52</u>	<u>\$55.13</u>	<u>\$56.78</u>	<u>\$58.49</u>	<u>\$60.24</u>	<u>\$62.05</u>
4	<u>\$54.56</u>	<u>\$56.20</u>	<u>\$57.89</u>	<u>\$59.62</u>	<u>\$61.41</u>	<u>\$63.25</u>	<u>\$65.15</u>	<u>\$67.11</u>
	<u>\$52.97</u>	<u>\$54.56</u>	<u>\$56.20</u>	<u>\$57.89</u>	<u>\$59.62</u>	<u>\$61.41</u>	<u>\$63.25</u>	<u>\$65.15</u>
5	<u>\$57.29</u>	<u>\$59.01</u>	<u>\$60.78</u>	<u>\$62.60</u>	<u>\$64.48</u>	<u>\$66.42</u>	<u>\$68.41</u>	<u>\$70.46</u>
	<u>\$55.62</u>	<u>\$57.29</u>	<u>\$59.01</u>	<u>\$60.78</u>	<u>\$62.60</u>	<u>\$64.48</u>	<u>\$66.42</u>	<u>\$68.41</u>
6	<u>\$60.16</u>	<u>\$61.96</u>	<u>\$63.82</u>	<u>\$65.73</u>	<u>\$67.71</u>	<u>\$69.74</u>	<u>\$71.83</u>	<u>\$73.98</u>
	<u>\$58.40</u>	<u>\$60.16</u>	<u>\$61.96</u>	<u>\$63.82</u>	<u>\$65.73</u>	<u>\$67.71</u>	<u>\$69.74</u>	<u>\$71.83</u>
7	<u>\$63.16</u>	<u>\$65.06</u>	<u>\$67.01</u>	<u>\$69.02</u>	<u>\$71.09</u>	<u>\$73.22</u>	<u>\$75.42</u>	<u>\$77.68</u>
	<u>\$61.32</u>	<u>\$63.16</u>	<u>\$65.06</u>	<u>\$67.01</u>	<u>\$69.02</u>	<u>\$71.09</u>	<u>\$73.22</u>	<u>\$75.42</u>
8	<u>\$66.32</u>	<u>\$68.31</u>	<u>\$70.36</u>	<u>\$72.47</u>	<u>\$74.65</u>	<u>\$76.88</u>	<u>\$79.19</u>	<u>\$81.57</u>
	<u>\$64.39</u>	<u>\$66.32</u>	<u>\$68.31</u>	<u>\$70.36</u>	<u>\$72.47</u>	<u>\$74.65</u>	<u>\$76.88</u>	<u>\$79.19</u>
9	<u>\$69.64</u>	<u>\$71.73</u>	<u>\$73.88</u>	<u>\$76.09</u>	<u>\$78.38</u>	<u>\$80.73</u>	<u>\$83.15</u>	<u>\$85.65</u>
	<u>\$67.61</u>	<u>\$69.64</u>	<u>\$71.73</u>	<u>\$73.88</u>	<u>\$76.09</u>	<u>\$78.38</u>	<u>\$80.73</u>	<u>\$83.15</u>
10	<u>\$73.12</u>	<u>\$75.31</u>	<u>\$77.57</u>	<u>\$79.90</u>	<u>\$82.30</u>	<u>\$84.77</u>	<u>\$87.31</u>	<u>\$89.93</u>
	<u>\$70.99</u>	<u>\$73.12</u>	<u>\$75.31</u>	<u>\$77.57</u>	<u>\$79.90</u>	<u>\$82.30</u>	<u>\$84.77</u>	<u>\$87.31</u>
11	<u>\$76.78</u>	<u>\$79.08</u>	<u>\$81.45</u>	<u>\$83.89</u>	<u>\$86.41</u>	<u>\$89.00</u>	<u>\$91.67</u>	<u>\$94.42</u>
	<u>\$74.54</u>	<u>\$76.78</u>	<u>\$79.08</u>	<u>\$81.45</u>	<u>\$83.89</u>	<u>\$86.41</u>	<u>\$89.00</u>	<u>\$91.67</u>
12	<u>\$80.61</u>	<u>\$83.03</u>	<u>\$85.52</u>	<u>\$88.09</u>	<u>\$90.73</u>	<u>\$93.45</u>	<u>\$96.26</u>	<u>\$99.15</u>
	<u>\$78.27</u>	<u>\$80.61</u>	<u>\$83.03</u>	<u>\$85.52</u>	<u>\$88.09</u>	<u>\$90.73</u>	<u>\$93.45</u>	<u>\$96.26</u>
13	<u>\$84.64</u>	<u>\$87.18</u>	<u>\$89.80</u>	<u>\$92.49</u>	<u>\$95.27</u>	<u>\$98.13</u>	<u>\$101.07</u>	<u>\$104.10</u>
	<u>\$82.18</u>	<u>\$84.64</u>	<u>\$87.18</u>	<u>\$89.80</u>	<u>\$92.49</u>	<u>\$95.27</u>	<u>\$98.13</u>	<u>\$101.07</u>
14	<u>\$88.88</u>	<u>\$91.54</u>	<u>\$94.29</u>	<u>\$97.12</u>	<u>\$100.03</u>	<u>\$103.03</u>	<u>\$106.12</u>	<u>\$109.31</u>
	<u>\$86.29</u>	<u>\$88.88</u>	<u>\$91.54</u>	<u>\$94.29</u>	<u>\$97.12</u>	<u>\$100.03</u>	<u>\$103.03</u>	<u>\$106.12</u>
15	<u>\$93.32</u>	<u>\$96.12</u>	<u>\$99.00</u>	<u>\$101.97</u>	<u>\$105.03</u>	<u>\$108.18</u>	<u>\$111.43</u>	<u>\$114.77</u>
	<u>\$90.60</u>	<u>\$93.32</u>	<u>\$96.12</u>	<u>\$99.00</u>	<u>\$101.97</u>	<u>\$105.03</u>	<u>\$108.18</u>	<u>\$111.43</u>
16	<u>\$97.99</u>	<u>\$100.93</u>	<u>\$103.95</u>	<u>\$107.07</u>	<u>\$110.28</u>	<u>\$113.59</u>	<u>\$117.00</u>	<u>\$120.51</u>
	<u>\$95.13</u>	<u>\$97.99</u>	<u>\$100.93</u>	<u>\$103.95</u>	<u>\$107.07</u>	<u>\$110.28</u>	<u>\$113.59</u>	<u>\$117.00</u>
17	<u>\$102.89</u>	<u>\$105.97</u>	<u>\$109.15</u>	<u>\$112.43</u>	<u>\$115.80</u>	<u>\$119.27</u>	<u>\$122.85</u>	<u>\$126.54</u>
	<u>\$99.89</u>	<u>\$102.89</u>	<u>\$105.97</u>	<u>\$109.15</u>	<u>\$112.43</u>	<u>\$115.80</u>	<u>\$119.27</u>	<u>\$122.85</u>
18	<u>\$108.03</u>	<u>\$111.27</u>	<u>\$114.61</u>	<u>\$118.05</u>	<u>\$121.59</u>	<u>\$125.24</u>	<u>\$128.99</u>	<u>\$132.86</u>
	<u>\$104.88</u>	<u>\$108.03</u>	<u>\$111.27</u>	<u>\$114.61</u>	<u>\$118.05</u>	<u>\$121.59</u>	<u>\$125.24</u>	<u>\$128.99</u>
19	<u>\$113.43</u>	<u>\$116.83</u>	<u>\$120.34</u>	<u>\$123.95</u>	<u>\$127.67</u>	<u>\$131.50</u>	<u>\$135.44</u>	<u>\$139.51</u>
	<u>\$110.13</u>	<u>\$113.43</u>	<u>\$116.83</u>	<u>\$120.34</u>	<u>\$123.95</u>	<u>\$127.67</u>	<u>\$131.50</u>	<u>\$135.44</u>
20	<u>\$119.10</u>	<u>\$122.68</u>	<u>\$126.36</u>	<u>\$130.15</u>	<u>\$134.05</u>	<u>\$138.07</u>	<u>\$142.22</u>	<u>\$146.48</u>
	<u>\$115.63</u>	<u>\$119.10</u>	<u>\$122.68</u>	<u>\$126.36</u>	<u>\$130.15</u>	<u>\$134.05</u>	<u>\$138.07</u>	<u>\$142.22</u>

Longevity Pay

10 Years	5.00%
15 Years	4.00%

Ranges	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
19 Years		3.00%						
Max Longevity		12.0%						

SAN DIEGO UNIFIED PORT DISTRICT

**SALARY SCHEDULE BY RANGE FOR ALL
TEMPORARY EMPLOYEE POSITIONS (Exhibit E)**

**SAN DIEGO UNIFIED PORT DISTRICT
SALARY SCHEDULE BY RANGE FOR TEMPORARY (TP) EMPLOYEES - HOURLY**

Ranges	Minimum	Midpoint	Maximum
1	\$20.00	\$110.00	\$200.00

The draft ordinance for Item xx is Attachment A of the Agenda Sheet.

FILE NUMBER: 2024-358

DATE: Tuesday, September 10, 2024

SUBJECT: Ordinance Granting Lease to NASSCO for Lot 20 Mooring Position

DESCRIPTION: Ordinance Granting a 16-Year and Three-Month Lease to National Steel and Shipbuilding Company for the Lot 20 Temporary Mooring Location at 2798 Harbor Drive, San Diego

EXECUTIVE SUMMARY:

National Steel and Shipbuilding Company (NASSCO) has a 50-year lease with the District through December 31, 2040, that is comprised of approximately 79 acres of land and 47 acres of water area located at 2798 Harbor Drive in San Diego (Existing Lease). NASSCO specializes in the design, construction, and repair of ships for military and commercial customers.

On September 12, 2023, the Board of Port Commissioners (Board), adopted Resolution No. 2023-081 certifying the Final Environmental Impact Report (FEIR) for the NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project (Project), adopted Resolution No. 2023-082 granting concept approval for the Project, and adopted Resolution No. 2023-083 authorizing the issuance of a non-appealable Coastal Development Permit. The Project includes four distinct elements, including: (1) replacement of the Repair Complex Wharf; (2) repairs to the quay wall and revetment along stretches of shorelines throughout the NASSCO leasehold; (3) as-needed structural repair and/or replacement of selected piles at shipyard berths and piers; and (4) removal and replacement of the existing floating dry dock and construction of supporting infrastructure, including mooring dolphins. The September 12, 2023 Agenda Sheet describing the Project and the Board actions is included at Attachment A.

While project elements one through three would occur within NASSCO's Existing Lease, a portion of project element four would occur outside of NASSCO's existing leasehold in water area granted to the District by the State Lands Commission (SLC) via Senate Bill 507 (SB 507). Specifically, NASSCO would construct a new mooring dolphin outside of their existing leasehold for the purposes of repositioning and securing a floating dry dock on a temporary basis during vessel launches from the ways and building dock, hereinafter collectively referred to as "Lot 20".

Since a portion of Lot 20 is located outside of NASSCO's Existing Lease, the District and NASSCO have negotiated a proposed new 16-year and three-month lease for Lot 20 (Lease) that would be coterminous with the Existing Lease and is included as Attachment B. The Lease would consist of approximately 97,018 square feet of water area and would be located immediately west of NASSCO's Existing Lease (Attachment C – Lot 20 Location Map). The Lease would provide rent to the District in the amount of \$162,984 per year (or \$0.14 per square foot/month) which is comparable to neighboring water leases in SB 507 granted water. The Lease would allow the temporary mooring of the drydock during vessel launches only, and this Lease area would remain open to public

navigation most of the time, except for when the drydock is in the temporary mooring position. The Lease will allow NASSCO to operate more efficiently by reducing the amount of time and operations required to release newly constructed or repaired vessels into the water from NASSCO's ways and building docks. The Lease would not result in an increase or expansion of NASSCO's operations and major ship repair, and construction work would not occur in the drydock while it is located in the temporary mooring position.

Staff recommends that the Board adopt an ordinance granting the new Lease to NASSCO for the Lot 20 Temporary Mooring Location.

RECOMMENDATION:

Adopt an Ordinance Granting a 16-Year and Three-Month Lease to National Steel and Shipbuilding Company for the Lot 20 Mooring Dolphin Located at 2798 Harbor Drive, San Diego

FISCAL IMPACT:

The Lease provides rent to the District in the amount of \$162,984 per year, which will be escalated by four percent (4%) annually. Since the lease is for water area granted in trust to the District pursuant to SB 507, the District is required to pay SLC approximately 20% of the net new revenue generated from the lease.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A thriving and modern maritime seaport.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

National Steel and Shipbuilding Company (NASSCO) has a 50-year lease with the District through December 31, 2040 that is comprised of approximately 79 acres of land and 47 acres of water area located at 2798 Harbor Drive, San Diego (Existing Lease). NASSCO specializes in the design, construction, and repair of ships for military and commercial customers.

As discussed above, the Lease will allow for the temporary siting of a drydock in the water area adjacent NASSCO's existing lease. Lot 20 would only be used on a temporary basis for the purposes of repositioning and securing a floating dry dock during vessel launches from the ways and building dock. NASSCO would construct a new mooring dolphin on the Lease premises to allow for the siting of the drydock. The Lot 20 project was analyzed in the NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project FEIR (UPD# EIR-2023-006; Clerk Document No. 75953) authorized by the Board on September 12, 2023 via Resolution 2023-081 and the District authorized issuance of a CDP for the project via Resolution 2023-083 (CDP-2023-03). Since a significant portion

of Lot 20 is located outside of the U.S. Pierhead Line, that portion falls within the California Coastal Commission (CCC) CDP jurisdiction, and the CCC has issued a CDP No. 6-23-0515 (CCC CDP) for the Lot 20 project.

Since Lot 20 is partially located outside of NASSCO's Existing Lease, the District and NASSCO have negotiated a new 16-year and three-month lease for Lot 20 that would be coterminous with the Existing Lease. The Lease would consist of approximately 97,018 square feet of water area located immediately west of NASSCO's Existing Lease water area and beyond the U.S. Pierhead Line. The Lease would require NASSCO to strictly adhere to the mitigation measures and conditions identified in the FEIR, District CDP and CCC CDP. The Lease provides rent to the District in the amount of \$162,984 per year, which will be escalated by four percent (4%) annually. Since the lease is for water area granted in trust to the District pursuant to SB 507, the District is required to pay SLC approximately 20% of the revenue generated from the lease.

CONCLUSION

The Lease will allow NASSCO to operate more efficiently by reducing the amount of time and operations required to launch newly constructed or repaired vessels into the water from NASSCO's ways and building docks. The Lease will require NASSCO to strictly adhere to the mitigation measures from the FEIR and CDP authorized for issuance by the Board as well as the CDP issued by CCC. Staff recommends that the Board adopt an ordinance granting a new lease to NASSCO for the Lot 20 Temporary Mooring Location.

General Counsel's Comments:

The General Counsel's Office reviewed this agenda and approved the proposed lease agreement as presented to it as to form and legality.

Environmental Review:

The proposed Board action, including without limitation granting a 16 year and 3 month lease to National Steel and Shipbuilding Company for the Lot 20 Temporary Mooring Location, was adequately analyzed in the Final Environmental Impact Report (FEIR) for the NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project (UPD#EIR-2023-006; SCH #2022040595, Clerk Document No. 75953) prepared and certified by the District on September 12, 2023 (Resolution No. 2023-081). The proposed project is not a separate project for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist. (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR, the District finds and recommends that the proposed Board action does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the previous FEIR due to the involvement of new significant environmental effects or an increase in severity of

previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the previous FEIR, (b) identifies significant impacts more severe than those analyzed in the previous FEIR, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, or (d) shows mitigation measures or alternatives which are considerably different from those analyzed in the previous FEIR would substantially reduce one or more significant effects on the environment. Because none of these factors have been triggered, pursuant to CEQA Guidelines §15162(b), the District has determined no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in the furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

The proposed Board action complies with Section 87 which allows for all visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

A portion of the Lot 20 project is located in an area that is under the CDP permitting jurisdiction of the CCC. The CCC issued CDP No. 6-23-0515 for their portion of the Lot 20 project on March 14, 2024. For the portion of the Lot 20 project located in the District's CDP permitting jurisdiction, the District authorized issuance of the CDP for NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project on September 12, 2023 (Resolution No. 2023-083). The District CDP was issued on September 28, 2023 (CDP-2023-03; Clerk Document No. 75994). The proposed Board action is consistent with the CCC CDP and District CDP. Therefore, no additional action under the California Coastal Act is required at this time.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Ryan Donald
Department Manager, Real Estate

Attachment(s):

Attachment A: Agenda for Item 2023-0211
Attachment B: Lease for Lot 20

Attachment C: Lot 20 Location Map



San Diego Unified Port District

File #:2023-0211

DATE: September 12, 2023

SUBJECT:

NATIONAL STEEL AND SHIPBUILDING COMPANY (NASSCO) FLOATING DRY DOCK REPLACEMENT AND WATERFRONT IMPROVEMENT PROJECT LOCATED AT 2798 EAST HARBOR DRIVE IN SAN DIEGO:

A) ADOPT RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT AS COMPLETE AND PREPARED IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING THE FINDINGS OF FACT, ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECTING FILING OF THE NOTICE OF DETERMINATION FOR THE “NASSCO FLOATING DRY DOCK REPLACEMENT AND WATERFRONT IMPROVEMENT PROJECT”

B) ADOPT RESOLUTION GRANTING CONCEPT APPROVAL TO NASSCO FOR THE “NASSCO FLOATING DRY DOCK REPLACEMENT AND WATERFRONT IMPROVEMENT PROJECT”

C) ADOPT RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT TO NASSCO FOR THE PROJECT ELEMENTS WITHIN THE DISTRICT’S COASTAL DEVELOPMENT PERMIT JURISDICTION FOR THE “NASSCO FLOATING DRY DOCK REPLACEMENT AND WATERFRONT IMPROVEMENT PROJECT”

EXECUTIVE SUMMARY:

National Steel and Shipbuilding Company (NASSCO), as the Project applicant and Project proponent, submitted an application in August 2020 for their proposed NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project (Project) that includes four distinct Project elements, all of which are discussed in detail below. However, as discussed below as well, a portion of one of the Project elements (Project Element 1) is located beyond the U.S. Pierhead Line and is currently within the California Coastal Commission’s (CCC) Coastal Development Permit (CDP) jurisdiction. The Project elements within the CDP jurisdiction of the District constitute the “CDP Project” and reflect those improvements/elements contained in the attached draft Non-Appealable CDP (Attachment A). Briefly, the CDP Project includes the following:

- Removal and replacement of the existing floating dry dock and construction of supporting infrastructure, excluding related components within the CCC CDP jurisdiction as described below under “Proposed Project”;
- Replacement of the Repair Complex Wharf;

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Resolution No.
2023-083

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- Repairs to the quay wall and revetment along stretches of shoreline throughout NASSCO's leasehold; and
- As-needed structural repair and/or replacement of selected piles at shipyard berths and piers.

The purpose of the Project is to maintain and improve facilities for waterfront infrastructure associated with shipbuilding and repair operations at the NASSCO shipyard. The repair and replacement Project is designed to address existing deficiencies related to the age and condition of structures, shoreline sloughing, and outdated operational conditions at the existing dry dock. The Project would replace aging structures, improve existing infrastructure to comply with existing code and standards, improve safety, and increase the efficiency of operations at the ship repair yard. The proposed improvements would not increase total operations or the number of vessels serviced because no new berthing space would be provided.

In late 2020, the District, as lead agency under the California Environmental Quality Act (CEQA), initiated the environmental review process for the Project. A Draft Mitigated Negative Declaration (MND) was prepared and circulated for a 34-day public review period (April 28 to May 31, 2022). Based upon public comments received on the Draft MND, to provide a more comprehensive analysis of the Project's environmental effects and to allow for greater public involvement in the environmental review process, staff subsequently prepared the subject Environmental Impact Report (EIR). The Draft EIR was prepared and circulated for a 46-day public review and comment period, which began on April 18, 2023 and ended on June 2, 2023. The EIR provides environmental clearance for the entire Project, including components currently located within CCC CDP jurisdiction.

The Final EIR concluded that for the Project, with the incorporation of applicable mitigation measures outlined in the proposed Project's Mitigation Monitoring and Reporting Program (MMRP), all resource area impacts are reduced to less than significant. The MMRP is included as Exhibit B to the draft Resolution "Certifying the 'NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project' Final Environmental Impact Report, Adopting the Findings of Fact, Adopting the Mitigation Monitoring and Reporting Program, and Directing Filing of the Notice of Determination" (EIR Resolution) attached to this Agenda Sheet. The Final EIR and MMRP have been prepared in accordance with CEQA, the State CEQA Guidelines, and the District's Guidelines for Compliance with CEQA. Copies of the Final EIR and MMRP have been previously provided to the Board.

The Project requires concept approval pursuant to BPC Policy No. 357. Additionally, pursuant to the District's CDP Regulations and the California Coastal Act, the issuance of a Non-Appealable CDP is required for those Project elements within the District's CDP jurisdiction. As described below, elements of the Project are located beyond the U.S. Pierhead Line and currently outside of the District's CDP jurisdiction. These elements are within the CCC's CDP jurisdiction; therefore, development of these elements would require a separate CDP issued by the CCC. As conditioned, the Project elements that are within the District's CDP jurisdiction are consistent with the certified Port Master Plan (PMP). Staff is recommending certification of the Final EIR and requesting the Board to grant concept approval and authorize issuance of a Non-Appealable CDP.

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RECOMMENDATION:

NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project:

- A) Adopt resolution certifying the Final Environmental Impact Report as complete and prepared in compliance with the California Environmental Quality Act, adopting the Findings of Fact, adopting the Mitigation Monitoring and Reporting Program, and directing filing of the Notice of Determination for the “NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project”
- B) Adopt resolution granting concept approval to NASSCO for the “NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project”
- C) Adopt resolution authorizing issuance of a Non-Appealable Coastal Development Permit to NASSCO for the Project elements within the District’s CDP jurisdiction for the “NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project”

FISCAL IMPACT:

The Board’s actions will have no direct fiscal impact to the District. NASSCO will be responsible for all costs associated with the Project. Furthermore, NASSCO has been subject to cost recovery fees in accordance with BPC Policy No. 106, Cost Recovery User Fee Policy.

COMPASS STRATEGIC GOALS :

NASSCO proposes to maintain and improve facilities for waterfront infrastructure associated with shipbuilding and repair operations at its shipyard. The Project includes four distinct Project elements that are designed to improve efficiency and functionality of the existing NASSCO facility by replacing aging structures, improving existing infrastructure, and increasing efficiency of operations.

This agenda item supports the following Strategic Goals:

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background:

NASSCO is a company that specializes in the design, construction, and repair of ships for military and commercial customers. Ship repair and shipbuilding activities have occupied the Project site since the 1930s. NASSCO began operations in the early 1960s, with major renovations in the late 1970s and early 1980s.

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The Project site is within the NASSCO leasehold, located at 2798 East Harbor Drive in San Diego, California (see Exhibit 1 of Attachment A). Although the NASSCO leasehold encompasses 126 acres of tidelands area, Project improvements would occur on approximately 2.2 acres of water-side facilities within the leasehold and overall construction- and operation-related activities would occur within an approximately 75-acre area.

NASSCO submitted a tenant application for the Project in August 2020. Staff conducted an Initial Study for the Project and prepared a Draft MND (Clerk's Document No. 75769), which was circulated for a 34-day public review period (April 28 to May 31, 2022). Based upon public comments received on the Draft MND, staff subsequently prepared the subject EIR to provide a more comprehensive analysis of the Project's environmental effects and provide greater public involvement in the environmental review process.

Proposed Project:

As addressed in the EIR, the Project consists of the following four elements that are designed to maintain and improve facilities for waterfront infrastructure associated with NASSCO's shipbuilding and repair operations:

1. Removal and replacement of the existing floating dry dock and construction of supporting infrastructure;
2. Replacement of the Repair Complex Wharf;
3. Repairs to the quay wall and revetment along stretches of shoreline throughout NASSCO's leasehold, which includes shoreline segments from Lot 20 to Pier 12, floating dry dock approach pier to Berth 8, Ways to Building Dock, Berth 2 to Berth 3, Berth 4 to Berth 5, and Berth 6 to Navy Base Quay Wall; and
4. As-needed structural repair and/or replacement of selected piles at Berths 2, 3, 4, 5, 6, at Pier 12 and the floating dry dock approach pier, and at the Berth 1 Platform.

Most of the proposed work would take place within the District's CDP jurisdiction; however, some proposed work would occur outside the U.S. Pierhead Line, currently within the CDP jurisdiction of the CCC. Those components would not be covered by the District's CDP, and NASSCO would apply directly to the CCC for authorization and entitlements for those Project components, which consist of:

- temporary repositioning of the floating dry dock within a portion of proposed Lot 20 mooring position that encroaches within the CCC jurisdiction; and
- installation of an offshore (west aft) mooring dolphin, which would be installed within the CCC jurisdiction for purposes of temporarily repositioning and securing the floating dry dock within proposed Lot 20 mooring position.

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EIR Project Elements:

The Project includes replacement or repair to each of the four Project elements described below, including the floating dry dock, Repair Complex Wharf, revetment along the quay wall, and structural piles associated with berths and piers throughout NASSCO's leasehold (see Exhibit 2 of Attachment A).

Project Element 1 - Floating Dry Dock Replacement and Modification

The existing floating dry dock facilities consist of a floating dry dock, a pile-supported mooring dolphin, and a pile-supported approach pier with integrated mooring dolphin used for vehicle and pedestrian access to the floating dry dock. NASSCO's current shipyard configuration requires the floating dry dock to be relocated from the home position to another berth within the leasehold during vessel launches from the inclined building ways or building dock.

The Project includes removal of the existing floating dry dock and replacement with a new floating dry dock of similar characteristics and the same functionality. The replacement floating dry dock would be 828.54 feet long and 170.60 feet wide (slightly narrower and longer than the existing dry dock) and would have the same lifting capacity as the existing dry dock (35,000 long tons). The new floating dry dock would be positioned in the same mooring location as the existing floating dry dock. The existing floating dry dock would be sold and dispositioned outside of California.

To support the siting of the new floating dry dock, the existing mooring dolphin would be demolished and replaced with four new concrete pile-supported mooring dolphins and associated fender systems. Two of the mooring dolphins would support the floating dry dock in the home position, and the remaining two mooring dolphins would support the floating dry dock in the temporary Lot 20 mooring position. One of the two mooring dolphins (offshore west aft) for the Lot 20 position and a portion of this temporary mooring position would be located beyond the U.S. Pierhead Line. This mooring dolphin and a portion of the Lot 20 mooring position would encroach within CCC's CDP jurisdiction and would not be covered by the District's CDP. Therefore, these components would be processed through a separate CDP application under the purview of the CCC.

The Lot 20 mooring position, located west of Pier 12, would be used for temporary siting of the floating dry dock during vessel launches from the ways and building dock. No changes in operational activities would occur except for reduced tugboat use due to more efficient operating conditions associated with use of the Lot 20 position.

To access the floating dry dock when the dock is in its temporary position, an 80-foot catwalk and gangway system would be constructed near the Lot 20 mooring position. The outboard end of the catwalk and the inboard end of the gangway would be supported by a concrete cap constructed on a pair of 16-inch round or square concrete piles. A 60-foot removable brow would connect the catwalk to the floating pontoon when positioned in the temporary location.

To allow for the repositioning of the floating dry dock, a 33-foot-long by 16.5-foot-wide portion of the existing floating dry dock approach pier would be removed at the waterward end, and a new fender system would be installed to protect the floating dry dock approach pier, consisting of 19 fender piles, rubber fender units, timber whalers, and timber chocks installed along a 150-foot length along the

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eastern side of the approach pier. In addition, structural piles on the existing approach pier would be repaired or replaced. Improvements to the supporting infrastructure are required to comply with current standards and codes.

During construction of the new floating dry dock infrastructure, the new floating dry dock may be positioned at the Lot 20 mooring position upon delivery and until construction of the permanent mooring location is completed, which may be for a period up to six months. There may be a period of transition when both the existing floating dry dock and the new floating dry dock would be berthed within NASSCO's leasehold to allow shipbuilding and repair activities within the existing floating dry dock to be completed before fully transitioning to the new floating dry dock. During this transition period, only one floating dry dock would be operational.

Overall, Project Element 1 would result in a net increase in 4,170 square feet of permanent overwater coverage associated with the proposed floating dry dock, mooring dolphins, and fender systems and a net increase in 300 feet of temporary overwater coverage associated with the temporary catwalk and gangway system. There would be a net increase of 201 piles. These components would result in a net increase in the in-water fill area of 367 square feet and a net increase in fill volume of 629 cubic yards.

Project Element 2 - Repair Complex Wharf Replacement

In its current condition, the existing timber-constructed Repair Complex Wharf is not useable to support repair operations. The Project includes demolition and replacement of the 12,600 square foot timber wharf with a larger 18,640 square foot wharf facility supported by concrete piles and protected by a wharf fender system. A sheet-piled bulkhead (i.e., retaining wall) would be installed to reinforce the 293-foot shoreline adjacent to the improved wharf. Following installation of the sheet-piled bulkhead and placement of backfill (12,003 square feet), the new pile-supported concrete wharf pad (6,330 square feet) and fender system (310 square feet) would be constructed just south of the existing wharf.

Overall, Project Element 2 would result in a net increase in overwater coverage of 6,040 square feet. Approximately 100 existing supporting piles would be removed and disposed, resulting in a net decrease of 22 piles and a net increase in 293 linear feet of sheet pile. These components would result in a net increase in pile area of 272 square feet and pile fill volume of 566 cubic yards. Additionally, there would be a net increase in backfill area of 12,203 square feet and backfill volume of 3,357 cubic yards.

Project Element 3 - Quay Wall Revetment Repairs and Replacement

Project Element 3 includes repairs to the failed revetments along the 950 linear feet of exposed shoreline between Berth 2 and Berth 5. In addition, the Project includes repairs to an additional 1,500 linear feet of exposed shoreline segments (up to 500 feet per year for three years), including Lot 20 to Pier 12, the floating dry dock approach pier to Berth 8, Ways to Building Dock, and Berth 6 to Navy Base quay wall. Repairs of the revetment would include building up a new rock toe, overlaid with an approximate 9-inch layer of filter stone and 2-foot layer of quarter-ton rock riprap. Grout bags and concrete may also be placed to fill voids on the failed slope. Fill would be underlain with filter fabric. In total, quay wall revetment repairs would occur along approximately 2,450 linear feet within the

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leasehold, with a backfill area of 53,900 square feet in area and a backfill volume of 7,940 cubic yards.

Project Element 4 - Structural Pile Repair and Replacement

Project Element 4 consists of the repair and/or replacement of approximately 957 existing structural piles that support Berths 2, 3, 4, 5, 6, and Pier 12, the floating dry dock approach pier, and the Berth 1 Platform. These structural piles show signs of deterioration, cracking, corrosion, and wear. Approximately 100 piles would be repaired or replaced per year with a total construction duration lasting approximately 10 years. The distribution may change based on the need at the facility, but the total number would not exceed 100 per year and 10 per day. If the condition of the structural piles is beyond repair, the piles would be replaced in kind with the same dimension and material. Overall, Project Element 4 would result in a net increase in pile fill area of 1,301 square feet and a net increase in pile fill volume of 1,445 cubic yards.

Project Construction:

Most Project components (i.e., floating dry dock replacement and modification, Repair Complex Wharf improvements, and quay wall revetment repairs [berths 2-5]) are anticipated to be constructed between 2024 and 2026; however, as-needed quay wall repairs may extend to 2028 and structural pile repair and replacement may extend to 2035. Construction activities would occur 24 hours per day and seven days per week; however, as permitted by the City of San Diego's noise abatement and control officer, work during evening and nighttime hours (between 7:00 p.m. and 7:00 a.m.) would be limited to activities that would not generate disturbing, excessive, or offensive noise. Pile driving activities would be prohibited outside of the daylight hours.

Existing designated areas at or near the construction site would be utilized for staging, laydown, and construction contractor parking. Contractor equipment and materials would generally be mobilized and demobilized from the water side of the Project site and by using a barge. Up to 10 construction contract workers would be present on the construction site each day. Construction activities would generate approximately two truck trips per day.

Best Management Practices (BMPs) during in-water construction activities would be implemented. Practices and procedures would include the District's *Best Management Practices and Environmental Standards for Overwater Structural Repair and Maintenance Activities for Existing Port Facilities Conducted by the San Diego Unified Port District* (District 2019) as may be augmented by the Regional Water Quality Control Board during the Clean Water Act Section 401 Water Quality Certification process. These BMPs are further discussed in the MMRP.

Project Operation:

The proposed repair and replacement Project is designed to address existing deficiencies related to the age and condition of structures, shoreline sloughing, and outdated operational conditions at the existing dry dock. Except for the proposed west offshore mooring dolphin that would serve the temporary Lot 20 position, all waterside improvements would occur within the existing NASSCO leasehold. The new floating dry dock and associated infrastructure would enable NASSCO employees to continue their existing shipbuilding and repair operations under safe working

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conditions. The Repair Complex Wharf is sited within the facility which is predominantly allocated to support ship repair operations. The new Repair Wharf Complex size and configuration would allow for the centralization of materials needed to support ship repair within this area as opposed to other areas throughout the facility. This is anticipated to reduce forklift and truck activity within the facility and reduce the amount of time equipment is in transit. In addition, the new temporary Lot 20 position would improve the efficiency of NASSCO's shipbuilding operations and reduce the hours tugboats operate because of the mechanical type of mooring system that would be implemented on the new dry dock. The system minimizes the need for mooring lines, which results in a more efficient relocation when launching newly constructed vessel from the Ways and Building Dock. In addition, the Project would reduce diesel emissions through the provision of at least 75 percent of off-road diesel construction equipment (greater than 50 horsepower) that meets Tier 4 California Emissions Standards for off-road diesel engines. Lastly, the replacement floating dry dock would replace the existing Tier 0 diesel emergency generator with cleaner Tier 4-rated diesel generators outfitted with a closed-loop cooling water system. Overall, the Project would not result in an expansion of the existing use of the site, an increase in shipbuilding and repair operations, or additional employees beyond those needed during construction.

Environmental Impact Report:

The "NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project" EIR (UPD #EIR-2023-006; SCH #2022040595) has been prepared in accordance with CEQA (Public Resources Code § 21000 et seq.), the State CEQA Guidelines (Cal. Code Reg., title 14, § 15000 et seq.), and the District's CEQA Guidelines for Compliance with the CEQA. The District has prepared the EIR to evaluate environmental impacts associated with implementation of the Project.

Project Objectives

In accordance with Section 15124(b) of the State CEQA Guidelines, the following objectives were identified for the Project in the EIR:

- Meet the needs of the current and anticipated fleets of the military and commercial customers by modernizing the NASSCO shipyard facility through the improvement and/or replacement of existing infrastructure and equipment.
- Continue the use of existing waterways, available shoreline, and existing shipyard facilities within the Port in an environmentally responsible manner.
- Enhance environmental protection and meet current safety standards by modernizing equipment and facilities.
- Preserve jobs by maintaining the physical capacity and technical capability to support the Navy's presence as well as commercial maritime needs in San Diego.
- Install infrastructure that allows repositioning the floating dock from its home location to a location within the leasehold more efficiently, thereby reducing the amount of time and operations required to release newly constructed or repaired vessels into the water from

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NASSCO's Ways infrastructure.

- Demolish and rebuild the Repair Complex Wharf, which has historically been used as a laydown area for vessel repair and staging but has been temporarily taken out of use due to safety concerns.
- Repair the existing deteriorating revetment and quay wall to restore the revetment to full functionality, protect against erosion, protect structures on land, and prevent further deterioration.
- Repair or replace deteriorating piles to ensure the continued stability and safety of existing structures, such as the Approach Pier to the Drydock.

Notice of Preparation and Scoping Meeting

On January 25, 2023, a Notice of Preparation (NOP) was published for a 30-day public review period in accordance with Section 15082 of the State CEQA Guidelines (Clerk's Document No. 74851). The NOP, which included an invitation to a public Scoping Meeting, was mailed to public agencies, organizations, and interested individuals to solicit their comments on the scope and content of the environmental analysis. The NOP indicated that the Draft EIR would evaluate potentially significant impacts to air quality, biological resources, energy, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, and transportation.

On February 16, 2023, the District held a public Scoping Meeting to help identify the range of actions, alternatives, mitigation measures and significant effects to be analyzed in depth in the EIR and eliminate from detailed study issues found not to be important. In response to the NOP solicitation, the District received four comment letters from the following agencies, organizations and persons: U.S. Department of the Navy; Coast Law Group, on behalf of the Environmental Health Coalition; Native American Heritage Commission; and Mitchell Tsai, on behalf of the Southwest Mountain States Regional Council of Carpenters. The primary issues raised by the commenters included: air quality; cultural resources; greenhouse gas emissions; hazards and hazardous materials; hydrology and water quality; and transportation, circulation, and parking.

Draft EIR

The Project's Draft EIR (Clerk's Document No. 75645) was circulated for a 46-day public review period, which began on April 18, 2023 and ended on June 2, 2023. A total of six comment letters received were received from: Coast Law Group, on behalf of the Environmental Health Coalition; Mitchell Tsai, on behalf of the Southwest Mountain States Regional Council of Carpenters; San Diego County Air Pollution Control District; California Department of Fish and Wildlife, California Department of Transportation; and the California Regional Water Quality Control Board. The comment letters discussed information related to biological resources, water quality, hazards and hazardous materials, and air quality. None of the received comments constituted significant new information or resulted in substantial revision requiring recirculation under State CEQA Guidelines Section 15088.5. Information contained in the District's responses to comments clarifies and further

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substantiates the conclusions contained in the Draft EIR.

The Draft EIR analysis resulted in a few key points, summarized below:

- The Project would result in “Less Than Significant” impacts with no mitigation required for effects related to air quality, greenhouse gas emissions, energy, land use and planning, noise, and transportation, circulation, and parking.
- The “potentially significant” environmental impacts associated with the Project that would require mitigation measures pertain to biological resources, geology and soils, hazards and hazardous materials, and hydrology and water quality. The necessary mitigation measures related to the Project’s impacts are discussed below:
 1. The biological resources impacts would be reduced to “Less Than Significant” with implementation of mitigation measures MM-BIO-1 through MM-BIO-7, MM-WQ-1 and MM-WQ-2, and MM-HAZ-1 through MM-HAZ-10. These mitigation measures would require preconstruction nesting surveys and construction monitoring by a qualified biologist to avoid impacts on protected bird species; require biological construction monitoring, the use of construction soft-starts, and development of a monitoring plan to protect marine mammals, sea turtles, and fishes; and implement water quality measures to protect potential marine habitat during construction. Overwater coverage impacts would be offset by requiring compensation through purchase of mitigation credits, restoration, and/or creation of marine habitat. Potential eelgrass impacts would be mitigated by implementation of water quality measures, conducting pre- and post-construction eelgrass surveys, and developing a mitigation plan for any loss of eelgrass. In-water fill impacts would be mitigated in consultation with the resource agencies and permitting processes by removal of existing overwater coverage within San Diego Bay and/or compensation through purchase of mitigation credits. Implementation of the above measures would avoid conflicts with San Diego Bay Integrated Natural Resources Management Plan.
 2. Impacts related to geology and soils would be reduced to “Less Than Significant” with implementation of mitigation measure MM-GEO-1, which would require the project applicant to prepare and submit a final site-specific geotechnical investigation to ensure project structures would be designed and engineered to specifications based on site-specific geotechnical conditions.
 3. Impacts related to hazards and hazardous materials would be reduced to “Less Than Significant” with implementation of mitigation measures MM-HAZ-1 through MM-HAZ-10, MM-WQ-1, and MM-WQ-2. Mitigation measures MM-HAZ-1 through MM-HAZ-9 would provide additional procedures for prevention and containment of accidental leaks and spills, routine inspection and instrumentation of equipment, worker training, and visual hazardous materials monitoring. Implementation of mitigation measure MM-HAZ-10 would require the project proponent to implement a Sediment Management Program that would include a Sampling and Analysis Plan, pre-construction sampling, Sediment Characterization Report, Sediment Management Plan, post-construction sampling,

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potential remediation, and reporting. Mitigation measure MM-HAZ-10 also requires the applicant to show evidence that the CWA Section 404 permit, Rivers and Harbors Act Section 10 permit and CWA 401 Water Quality Certification have been issued by the U.S. Army Corps of Engineers (USACE) and the Regional Water Quality Control Board (RWQCB), respectively, prior to the start of any in-water work. MM-WQ-1 requires water quality monitoring during construction. MM-WQ-2 further requires implementation of double silt curtains to contain spread of sediment and best management practices for construction activities that would disturb the bay floor.

4. The hydrology and water quality impacts would be reduced to “Less Than Significant” with implementation of mitigation measures MM-WQ-1 and MM-WQ-2, MM-BIO-4, and MM-HAZ-1 through MM-HAZ-10.

MM-WQ-1 would require NASSCO to provide evidence to the District of receipt of the CWA Section 401 Water Quality Certification and Section 404 permit prior to initiating in-water work with the potential to disturb sediments as well to develop and implement a turbidity monitoring plan to the satisfaction of the District and the RWQCB through the deployment of silt curtains around pile removal and pile driving areas to limit the spread of the turbidity plume outside the specific work area. MM-WQ-2 would require the implementation of best management practices during sediment disturbances. MM-BIO-4 requires contractor education and the implementation of construction measures, such as silt curtains, which would facilitate continued avian foraging, in accordance with regulations.

Implementation of MM-HAZ-1 through MM-HAZ-9 and MM-WQ-2 would reduce potential impacts associated with the release of hazardous wastes and materials into the San Diego Bay during in-water construction to less than significant by requiring specific measures to avoid potentially adverse impacts on water quality, including secondary containment of hazardous materials (e.g., oils and fuels), equipment inspection to avoid leaks, spill kits to prevent spills from entering the bay, barge loading procedures to avoid overloading barges, and use of a flattop barge with containment walls to prevent debris from entering the water. In addition, best management practices for work that would potentially disturb the bay floor would be required.

Further, implementation of mitigation measure MM-HAZ-1 through MM-HAZ-10, MM-WQ-1, and MM-WQ-2 would reduce potential impacts from the disturbance of contaminated sea-floor sediments associated with past contamination identified and remediated under Cleanup and Abatement Order (CAO) R9-2012-0024 to less than significant by requiring implementation of a sediment management program, requiring a water quality monitor, and implementing water quality BMPs.

- Project implementation would not result in “significant and unavoidable” impacts.

Project Alternatives

State CEQA Guidelines require EIRs to present a range of reasonable alternatives that could meet most of the Project’s basic objectives, but that would avoid or substantially lessen one or more

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significant environmental impacts. The EIR examined a range of reasonable alternatives to determine whether they could meet the Project objectives while avoiding or substantially lessening one or more of the Project's significant impacts.

Four alternatives were initially considered for evaluation. In addition to evaluating the No Project/ No Build Alternative scenario, one other alternative was carried forward for full analysis in the Draft EIR. The two other alternatives that were considered but rejected included a "Reduced Pile Repair/Replacement Alternative" and a "Floating Dry Dock Alternate Location Alternative." The alternative that was carried forward and analyzed in the Draft EIR - the "Reduced Overwater Coverage Alternative" - eliminates certain Project elements to reduce one or more significant environmental impacts of the proposed Project.

Alternative 1 - No Project/No Build Alternative

The No Project/No Build Alternative is required by CEQA to discuss and analyze potential impacts that would occur if the proposed Project was not implemented. Under the No Project/No Build Alternative, the NASSCO shipyard would operate as it currently does until the expiration of the current lease in 2040. None of the proposed Project elements would be constructed and implemented.

The No Project/No Build Alternative would not address deficiencies related to the age and condition of structures, shoreline sloughing, and operational conditions at the existing dry dock. Specifically, this alternative would retain the existing floating dry dock that has reached the end of its useful life and retain the supporting infrastructure (e.g., mooring dolphins and approach pier) that do not comply with current standards and codes. Additionally, the No Project/No Build Alternative would maintain the current configuration of the shipyard, which requires the floating dry dock to be relocated from the home position to another berth within the leasehold during vessel launches from the inclined building ways or building dock. Therefore, this alternative would not achieve the operational efficiency of repositioning the floating dry dock in the Lot 20 position during vessel launches, which is a shorter distance from the home location than the berth that is currently used. In addition, the Repair Complex Wharf, which is currently in disrepair and provides limited storage and laydown space, would remain in its current condition. The existing failed revetment and exposed shoreline would also be left in its current condition and would remain susceptible to damage from wave action. Lastly, damaged piles would be retained in their current condition and would remain susceptible to deterioration and instability. Without the Project improvements, the NASSCO shipyard would not be able to safely function in supporting various shipbuilding and repair operations.

Alternative 2 - Reduced Project Elements

Alternative 2 would include all Project Elements, except Project Element 2 (Repair Complex Wharf Replacement) would be reduced in scale. A portion of the existing Repair Complex Wharf is located within an area of existing sediment contamination associated with the Shipyard Sediment Site under CAO R9-2012-0024 issued by the San Diego RWQCB. Although remedial activities were completed under the CAO, contaminated sediment under the Repair Complex Wharf could not be removed because the existing structure made the area inaccessible to dredging and, unlike other inaccessible areas within the boundaries of the CAP, sand and gravelly sand cover were not used under the Repair Complex Wharf.

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To reduce the potential disturbance to contaminated sediment within the Shipyard Sediment Site, Alternative 2 would only rebuild the Repair Wharf Complex to the same size as the existing condition, which is 12,600 square feet. This would represent an overall reduction in size by approximately 6,000 square feet, reducing overwater structures and shading by approximately the same amount, and reducing the proposed backfill area and volume by approximately 10,000 to 12,000 square feet and 2,000 to 3,000 cubic yards, respectively. It is expected, however, that sheet pile sections would still be required to bolster the existing shoreline and supported by some amount of backfill.

Under this alternative, the pile supported concrete pad would increase by approximately 6,300 square feet (for a total of approximately 12,600 square feet) as it would take the place of the area proposed for backfill under the proposed Project. Consequently, while there would be substantially less overwater shading and backfill, this alternative would also require approximately double the number of 24-inch octagonal and 18-inch square precast concrete piles to support the larger concrete pad (12,600 square feet vs 6,330 square feet). Therefore, although the amount of overwater coverage, shading, and bay fill would be decreased, pile driving activities would increase.

The purpose of this alternative is to reduce Project impacts related to biological resources, hazards and hazardous materials, and hydrology and water quality. Because this alternative would require a smaller footprint than the proposed Project within the Shipyard Sediment Site identified under CAO R9-2012-0024, add less overwater structure coverage, and significantly reduce the amount of backfill added in the bay, it is anticipated to result in reduced impacts on biological resources, hazards and hazardous materials, and hydrology and water quality.

Alternative 2 would reduce Project impacts related to air quality and health risk; biological resources; climate change, greenhouse gas emissions, and energy; hazards and hazardous materials; and hydrology and water quality during construction. However, these impacts would not be entirely avoided. Constructing the smaller Repair Complex Wharf and other Project components (i.e., improvements to the approach pier, installation of the Lot 20 inshore mooring dolphin, and other pile repair and replacement throughout the Project site) would still result in impacts to those resource areas, but to a lesser degree. Further, the reduced size of the Repair Complex Wharf under Alternative 2 would provide limited storage and laydown capabilities compared to the proposed Project. Therefore, Alternative 2 would be less effective in meeting the Project objectives (#1, #2, and #6) that include implementing infrastructure improvements that continue the use of available space within the leasehold in support of NASSCO's shipbuilding and repair operations and not completely achieving improved efficiencies to help meet the needs of the current and anticipated military and commercial customers.

Environmentally Superior Alternative

Pursuant to CEQA, the EIR is required to identify the environmentally superior alternative. Although the No Project/No Build Alternative (Alternative 1) reduces the greatest number of impacts, CEQA requires that when the environmentally superior alternative is the No Project/No Build Alternative, another alternative should be identified.

The Reduced Overwater Coverage Alternative (Alternative 2) is considered the environmentally superior alternative, and overall impacts on environmental resources would be reduced compared to

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the proposed Project. However, Alternative 2 would not reduce impacts of the proposed Project to the extent that the Project's less-than-significant impacts would be entirely avoided.

Final EIR

The Final EIR consists of two volumes, organized as follows:

- Volume 1 contains the EIR dated July 2023. The text shown in “tracked changes” in this volume are changes to the text and other information added by the District in response to public comments received on the Draft EIR. Volume 1 is composed of the following:
 - The Errata provides minor revisions and clarifications since the initial publication of the Final EIR on July 28, 2023;
 - The Executive Summary summarizes the Project's environmental impacts and mitigation measures;
 - Chapter 1 provides an introduction to the Final EIR;
 - Chapter 2 lists the proposed Project's central objectives and underlying purpose and provides a detailed description of the environmental setting and proposed Project characteristics;
 - Chapter 3 contains the Project's environmental analysis, impacts, and mitigation measures;
 - Chapter 4 contains the environmental analysis for the Project's cumulative effects;
 - Chapter 5 addresses growth-inducing impacts and effects not found to be significant;
 - Chapter 6 evaluates alternative to the Project;
 - Chapter 7 lists the EIR preparers and agencies consulted;
 - Chapter 8 lists the references used in the EIR's references;
 - Chapter 9 provides public comments on the Draft EIR and corresponding District responses; and
 - Attachment 1 contains the MMRP.
- Volume 2 contains the Draft EIR and the appendices to the EIR.

These two volumes collectively constitute the Final EIR. The Final EIR can be accessed on the District's website at:

<https://www.portofsandiego.org/public-records/port-updates/notices-disclosures/ceqa-documents>.

This link was also provided to the Board via Board memo on July 27, 2023 and August 31, 2023, and the Final EIR was made available to the public on July 28, 2023. In addition, on July 28, 2023, pursuant to Section 15088(b) of the State CEQA Guidelines, the District provided an electronic copy of the District's written responses to all commenters that commented on the Draft EIR.

After the initial publication of the Final EIR, two Errata were prepared to provide minor revisions and clarifications. These revisions do not change the significance conclusions of the Final EIR. The First Errata replaces a table in the Final EIR with corrected data from the California Air Resources Board (CARB). The Second Errata clarifies the Project's application of Toxics Best Available Control Technologies (Toxics BACT or T-BACT) during construction and operation. Additionally, it describes

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the rationale for using a 10 in one million cancer risk threshold in the EIR's Health Risk Assessment and updates diesel emissions reductions associated with the proposed use of Final Tier 4-rated construction equipment for 75% of the Project's off-road diesel construction equipment greater than 50 horsepower.

The Project would not result in significant air quality or health risk impacts without the use of Tier 4-rated construction equipment. However, as part of NASSCO's ongoing efforts to reduce Diesel Particulate Matter (DPM) emissions, NASSCO proposed to include cleaner Tier 4 construction equipment as part of the Project. As indicated in the Errata, this proposal would reduce DPM emissions from off-road equipment by 59 percent and overall DPM emissions by 29 percent. It should be noted that the analysis provided in the Errata is conservative because it does not account for the potential use of electric-powered construction equipment, and NASSCO's proposal to use Tier 2 or greater rated construction equipment for the remaining 25% balance of construction equipment. Implementation of these provisions and related monitoring would be made a condition of the Draft CDP.

After the Final EIR was published, District staff received additional written comments on the EIR from the Environmental Health Coalition (EHC) and Coast Law Group, who represents EHC and San Diego Coastkeeper. Staff responded to these supplemental comments, which focused on air quality and water quality impacts of the Project. The comments and corresponding responses are included as Attachment B. The information contained in staff's responses clarifies and further substantiates the conclusions contained in the Final EIR. Further, none of the received comments constituted significant new information or resulted in substantial revision requiring recirculation of the EIR under State CEQA Guidelines section 15088.5.

Staff recommends the Board certify the Final EIR.

Mitigation Monitoring and Reporting Program (MMRP)

As concluded by the Draft EIR and Final EIR, the Project would result in potentially significant impacts related to biological resources associated with in-water construction activity and increased water coverage, geology and soils due to the potential for Project structures to cause geologic hazards from seismic-related ground failure or be located on unstable geologic units and soils, hazards and hazardous materials associated with existing known or potential contaminants within the Project site disturbed by construction activity, and hydrology and water quality also associated with disturbance of bay floor sediments during construction activities. All Project level and cumulative impacts can be mitigated to below a level of significance.

All mitigation measures have been prepared in compliance with State CEQA Guidelines § 15126.4. Pursuant to State CEQA Guidelines Section 15097, the MMRP identifies the required mitigation measures, the party responsible for carrying them out, and a monitoring and reporting mechanism. Compliance with the MMRP will be included as a condition of the Non-Appealable CDP for the Project. The MMRP is included as Exhibit B to the draft EIR Resolution attached to the Agenda Sheet, and as Attachment A to the draft CDP; the draft CDP is provided as Attachment A to this Agenda Sheet.

Staff recommends the Board adopt the MMRP.

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Findings of Fact:

CEQA requires the Board to adopt written findings of fact for all significant Project impacts identified in the Final EIR (CEQA Guidelines Section 15091) including impacts that are considered less than significant after mitigation. The Findings of Fact are included as Exhibit A to the draft EIR Resolution attached to this Agenda Sheet.

Staff recommends the Board adopt the Findings of Fact.

Concept Approval:

Pursuant to BPC Policy No. 357, plans for new tenant development must be presented to the Board for approval if the Project is estimated to cost more than \$500,000. The Project involves the development of improvements to existing ship repair yard facilities at the Project site at a cost estimate of \$50,000,000. Approval of the Project would allow for the improvement and modernization of land facilities and in-water infrastructure leading to safer and more efficient shipyard operations, reductions in resource consumption, and better environmental quality.

Staff recommends concept approval of the Project.

Coastal Development Permit:

The Project site is in Planning District 4 of the certified PMP. The landside area is designated Marine Related Industrial and waterside area is designated Specialized Berthing. The CDP Project would result in continuance of the permitted, existing use and the physical improvements would serve to facilitate implementation of the certified PMP. Therefore, the CDP Project is consistent with the District's certified PMP.

The CDP Project constitutes "development" under Section 30106 of the California Coastal Act as it would result in the demolition and construction of structures. Accordingly, a Coastal Act authorization from the District is required. Pursuant to the District's CDP Regulations, the CDP Project has been determined to be a "non-appealable" development because it is not considered an "excluded", "emergency", or "appealable" development. Additionally, Coastal Act Section 30715 lists the sole categories of development that are appealable, and the CDP Project is not within these categories of development. Therefore, the CDP Project requires authorization of a Non-Appealable CDP.

The CDP Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The Project is fully consistent with the Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein since the CDP Project is the construction, replacement, and maintenance of facilities at a secure ship repair yard that does not provide any public access amenities. The majority of the proposed work would take place within the District's CDP jurisdiction (i.e., Project Elements 2, 3, and 4). Part of Project Element 1 is currently within the CCCs CDP jurisdiction, per SB 507 and the California Coastal Act, and would not be covered by the District CDP. NASSCO would apply directly to the CCC for authorization and entitlements for components of Project Element 1 previously described.

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A copy of the draft CDP is provided as Attachment A to this Agenda Sheet. Conditions are incorporated into the CDP to ensure the CDP Project's conformance with the Final EIR's MMRP and related District requirements.

Staff recommends the Board adopt a resolution approving the issuance of the Non-Appealable CDP to NASSCO for the CDP Project (components that are within the District's CDP jurisdiction).

Next Steps:

Following Board certification of the Final EIR, including adoption of the MMRP and adoption of the Findings of Fact, a Notice of Determination will be filed with the County of San Diego Recorders' Office. Following the Board's authorization of the Non-Appealable CDP, NASSCO will work with District staff in the processing of a real estate agreement to secure property rights for the Project element components (Portion of Lot 20 and associated offshore west aft mooring dolphin) currently located within the CCC's CDP jurisdiction. NASSCO will also coordinate with the CCC and resource agencies to obtain necessary permits, primarily related to in-water construction, and commence work. Construction of the proposed Project would be phased. Most Project components (i.e., floating dry dock replacement and modification, Repair Complex Wharf improvements, and quay wall revetment repairs [berths 2-5]) are anticipated to be constructed between 2024 and 2026; however, as-needed quay wall repairs may extend to 2028 and structural pile repair and replacement may extend to 2035.

General Counsel's Comments:

The Office of the General Counsel has reviewed the agenda sheet and attachments as presented to it and approves them as to form and legality.

Environmental Review:

The proposed Board actions complete the CEQA process for the Project.

The proposed Project complies with Section 87(a)(1) of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct impact on DEI workforce or contract reporting at this time.

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PREPARED BY:

Scott Vurbeff
Senior Planner, Development Services

Attachments:

Attachment A: Draft Non-Appealable CDP

Attachment B: Staff Responses to Supplemental Final EIR Comments from the Environmental Health Coalition and Coast Law Group

SAN DIEGO UNIFIED PORT DISTRICT

WATER AREA LEASE TO

NATIONAL STEEL AND SHIPBUILDING COMPANY

OF PROPERTY LOCATED AT

2798 HARBOR DRIVE

SAN DIEGO, CALIFORNIA

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DEFINITIONS

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EXHIBIT G	ENVIRONMENTAL DISCLOSURE FORM

WATER AREA LEASE

THIS WATER AREA LEASE is entered into as of _____, 2024 (the "**Effective Date**") by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("**Landlord**") and the NATIONAL STEEL AND SHIPBUILDING COMPANY, a Nevada corporation ("**Tenant**").

WHEREAS, District and Tenant are parties to that certain Lease dated October 22, 1991 and recorded in the Office of the District Clerk as Document No. 27624 (as amended by Amendment No. 1 dated December 6, 1994 and recorded in the Office of the District Clerk as Document No. 32187, Amendment No. 2 dated July 10, 2007 and recorded in the Office of the District Clerk as Document No. 52211, Amendment No. 3 dated November 9, 2010 and recorded in the Office of the District Clerk as Document No. 57216, and Amendment No. 4 dated April 17, 2017 and recorded in the Office of the District Clerk as Document No. 66530, the "**Original Lease**"); and

WHEREAS, under to the Original Lease, Tenant leases from District approximately 5,507,621 square feet of District tidelands that include both landside and waterside parcels; and

WHEREAS, Tenant operates the Leasehold under the Original Lease as a shipyard for the repairing and building of ships as well as for steel fabricating, foundry, and general metal manufacturing; and

WHEREAS, District and Tenant are also parties to (i) that certain Lease dated January 1, 1995 and recorded in the Office of the District Clerk as Document No. 32300 (as amended by Amendment No. 1 dated February 21, 2018 and recorded in the Office of the District Clerk as Document No. 67878, the "**Warehouse Lease**"), and (ii) that certain Lease dated August 5, 2008 and recorded in the Office of the District Clerk as Document No. 54041 (as amended by Amendment No. 1 dated February 21, 2018 and recorded in the Office of the District Clerk as Document No. 67879, the "**Access Road Lease**"); and

WHEREAS, on the premises under the Warehouse Lease, Tenant operates a warehouse and laydown area almost directly adjacent to Tenant's leasehold under the Original Lease and in furtherance of its shipyard business on premises of the Original Lease; and

WHEREAS, pursuant to the Access Road Lease, Tenant leases landside District tidelands on a nonexclusive basis for purposes of vehicular access between the leaseholds under the Original Lease and the Warehouse Lease; and

WHEREAS, each of the Original Lease, Warehouse Lease, and Access Road Lease all have an expiration date of December 31, 2040; and

WHEREAS, the Original Lease, the Warehouse Lease, and the Access Road Lease shall be collectively be referred to herein as the "**Existing Leases**" and the leasehold premises under the Existing Leases shall be collectively referred to in this Lease as the "**Adjacent Premises**"; and

WHEREAS, at the September 12, 2023 meeting of the Board of Port Commissioners (the "**Board**"), the Board adopted (i) Resolution No. 2023-081 certifying the Final Environmental Impact Report recorded in the Office of the District Clerk as Document No. 75953 for Tenant's Floating Dry Dock Replacement and Waterfront Improvement Project and the installation of the Mooring Dolphin (hereinafter defined) (collectively, the "**Project**"), (ii) Resolution No. 2023-082

granting concept approval to Tenant for the Project, and (iii) Resolution No. 2023-083 issuing Coastal Development Permit No. 2023-03 (the “**District CDP**”) to Tenant for those elements of the Project within Landlord’s coastal development permitting jurisdiction; and

WHEREAS, the Project will primarily be constructed on the leasehold under the Original Lease; however, the drydock being constructed as part of the Project (“**Drydock**”) will, from time to time, be located entirely or partially on the Premises under this Lease;

WHEREAS, in order for Tenant to complete the Project pursuant to the CDPs (as defined in Section 4.2) and operate the Drydock in connection with Tenant’s operations on Landlord tidelands, Tenant requires a lease over the Premises;

WHEREAS, the Premises will be open, navigable and free of any barriers, equipment and other property (except the Mooring Dolphin) when the Drydock is not in the temporary mooring position; and

WHEREAS, Landlord is willing to Lease the Premises to Tenant in accordance with the terms of this Lease; and

NOW THEREFORE, for good and valuable consideration, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and upon the terms and conditions hereinafter set forth, the Premises described in Section 1.2 below, and Landlord and Tenant hereby agree as follows:

1. BASIC LEASE PROVISIONS

The following basic lease terms are referred to in other provisions of this Lease and constitute a part of this Lease and are to be read together with and constitute a part of the terms of this Lease.

1.1 **Term (See Article 3):**

The Term of this Lease shall be for sixteen (16) years and three (3) months commencing on the Effective Date and expiring on December 31, 2040 (the “**Expiration Date**”).

1.2 **Premises:**

The Premises consist of the real property more particularly described in Exhibit A attached hereto and depicted in Exhibit B consisting of approximately 97,018 square feet of water area, inclusive of all subsurface areas, located at 2798 Harbor Drive in the City of San Diego, California, attached hereto. For the avoidance of doubt, the Premises includes the area to be occupied by a permanent mooring dolphin (the “**Mooring Dolphin**”) and the Drydock when it is in its temporary mooring position. For purposes of this Lease, the Mooring Dolphin and Drydock will constitute Improvements under this Lease.

1.3 **Permitted Use (See Article 4):**

The Premises shall only be used as follows and for no other purpose (the “**Permitted Use**”): (i) for the construction and maintenance of the Mooring Dolphin; (ii) the temporary mooring of the Drydock during vessel launches; and (iii) any other use of the Premises approved by Landlord in writing (any such approval to be within Landlord’s sole and absolute discretion) provided such use is not restricted by any CDP, any Laws or the certified Port Master Plan (“**PMP**”). Under no circumstances shall Tenant perform abrasive blasting, painting, solvent cleaning or refueling activities exterior to the hull and superstructure of any vessel located within the Drydock, or any

other activity that could reasonably create a potential release of Hazardous Material, while the Drydock is temporarily located within the Premises.

1.4 **Rent (See Article 5):**

Tenant's obligation to pay all Rent due under this Lease shall commence on the Effective Date. Tenant's "**Monthly Rent**" obligations for the time periods during the Term set forth below shall be as follows:

TIME PERIOD	Monthly Rent
Effective date - July 31, 2025	\$13,582.52
August 1, 2025 - July 31, 2026	\$14,125.82
August 1, 2026 - July 31, 2027	\$14,690.85
August 1, 2027 - July 31, 2028	\$15,278.49
August 1, 2028 - July 31, 2029	\$15,889.63
August 1, 2029 - July 31, 2030	\$16,525.21
August 1, 2030 - July 31, 2031	\$17,186.22
August 1, 2031 - July 31, 2032	\$17,873.67
August 1, 2032 - July 31, 2033	\$18,588.62
August 1, 2033 - July 31, 2034	\$19,332.16
August 1, 2034 - July 31, 2035	\$20,105.45
August 1, 2035 - July 31, 2036	\$20,909.67
August 1, 2036 - July 31, 2037	\$21,746.05
August 1, 2037 - July 31, 2038	\$22,615.89
August 1, 2038 - July 31, 2039	\$23,520.53

August 1, 2039 - July 31, 2040	\$24,461.35
August 1, 2040 - December 31, 2040	\$25,439.81

1.5 Insurance (See Article 18):

1.5.1 Commercial General Liability:

Not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage and not less than Twenty Million Dollars (\$20,000,000) combined coverage for short-term pollution events. The general aggregate shall be not less than Two Million Dollars (\$2,000,000) unless a Four Million Dollars (\$4,000,000) per location aggregate limit is provided by separate endorsement.

1.6 Notice Addresses (See Article 27):

To Tenant:

Vice President and General Counsel
National Steel and Shipbuilding Company
Post Office Box 85278
San Diego, CA 92186-5278

To Landlord:

Executive Director
San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488

1.7 Tangible Net Worth Covenant

Tenant acknowledges and agrees that Tenant being adequately capitalized to satisfy all of Tenant's obligations under this Lease is of paramount importance to Landlord, and Tenant agrees that Tenant's "**Tangible Net Worth**" (defined as total assets minus goodwill minus total liabilities in accordance with generally accepted accounting principles) shall at all times be sufficient to meet its obligations under this Lease and, at minimum, be equal to or greater than Forty Million Dollars (\$40,000,000), and throughout the Term, Tenant shall be required to maintain a minimum Tangible Net Worth equal to or greater than such amount. Tenant's failure to maintain a Tangible Net Worth in accordance with the preceding sentence shall constitute a default under this Lease unless Tenant provides other financial assurances acceptable to Landlord or meets the Tangible Net Worth requirement within 90 days of notice from Landlord.

2. GENERAL DEFINITIONS

Certain initially capitalized terms used in this Lease are more particularly defined or are cross-referenced in the Definitions Addendum attached to this Lease. The definitions set forth in the Definitions Addendum are incorporated herein by this reference.

3. TERM

The "Term" of this Lease shall be the period commencing on the Effective Date and ending on the Expiration Date as described in Section 1.1, unless sooner terminated or extended as provided in this Lease. The Term is set forth in Section 1.1.

4. USE

4.1 Permitted Use.

Tenant agrees that the Premises shall be used only and exclusively for the Permitted Use described in Section 1.3 and for no other purpose whatsoever.

Tenant further agrees to comply with all project conditions and mitigation measures contained in the final Environment Impact Report "NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project" (UPD# EIR-2023-006; Document 75953), including but not limited to the "Mitigation Monitoring and Reporting Program", and the resolution certifying said final Environmental Impact Report, Resolution No. 2023-081, adopted by the Board of Port Commissioners on September 12, 2023.

4.1.1 Within Premises.

Tenant further agrees that all in-water barriers, security equipment, and other property used in connection with Tenant's use of the Premises shall be located within the bounds of the Premises and no equipment or improvements used in connection with Tenant's operations at the Premises shall be located partially or totally outside of the Premises; provided that, notwithstanding the foregoing, so long as this Lease remains in effect, any temporary security fencing or similar equipment, in each case, to the extent necessary in connection with Tenant's operations at the Premises shall not be a violation of this provision so long as Tenant shall not impede maritime navigation or the use or operations of neighboring properties and/or waterways. In no event shall Tenant encroach onto neighboring leasehold properties or impede access thereto. Notwithstanding the foregoing, the Premises will be open, navigable and free of any barriers, equipment, and other property (except the Mooring Dolphin) when the Drydock is not in the temporary mooring position.

4.1.2 No Use Other Than Permitted Use.

Except as expressly described in Section 4.1, Tenant shall not use or permit the Premises to be used for any other uses or purposes whatsoever. These restrictions on use of the Premises absolutely prohibit a change in use.

4.2 Compliance with Laws.

Tenant agrees that, in all activities on or in connection with the Premises, and in all uses thereof, including without limitation the Permitted Use and any construction of the Improvements or the making of any Alterations, it will abide by and comply with, and cause Tenant Parties to abide by and comply with, all applicable Laws at Tenant's sole cost and expense, and Landlord shall not have any obligations or responsibilities to comply with any applicable Laws as to the Premises or any use thereby by Tenant. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility, at Tenant's sole cost and expense, to comply with the

requirements of: (i) the San Diego Unified Port District Code, including without limitation, Article 10 (Stormwater Management and Discharge Control), (ii) the ADA, including but not limited to regulations promulgated thereunder, (iii) applicable federal, state and local laws and regulations regarding employment and labor practices, including, without limitation, the provisions of Section 6.5 and Article 17 below, (iv) any Coastal Development Permit, including the District CDP and Coastal Development Permit No. 6-23-0515 issued by the California Coastal Commission (the “**Coastal CDP**” and, together with the District CDP and any other Coastal Development Permit applicable to the Premises or any of the Existing Leases, each a “**CDP**” collectively the “**CDPs**”) (including any conditions of approval or mitigation measures or project changes pursuant to environmental review under the California Environmental Quality Act (“**CEQA**”)) or any other California Coastal Commission (“**CCC**”) regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Improvements including the use or development thereof, and (v) any other development permits or approvals required by Landlord.

In addition, Tenant shall comply with and abide by such guidelines and requirements established by Landlord from time to time pursuant to the terms of the Lease upon written notice by Landlord to Tenant, provided, however, such guidelines and requirements do not unreasonably interfere with Tenant’s use of the Premises. Without limitation of the foregoing, any failure of Tenant to fully satisfy and fulfill the requirements and conditions under any CDP (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under CEQA) or any other CCC regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Improvements including the use or development thereof shall constitute a default under this Lease subject to applicable notice and cure periods set forth in Section 12.1.2.

4.3 CDP Compliance.

For avoidance of doubt, any failure to comply with any condition of any CDP following the notice and cure period set forth in Section 12.1.2 shall constitute a default under this Lease.

4.4 Waste or Nuisance.

Tenant shall not use, or fail to maintain, the Premises in a manner that constitutes waste or nuisance.

4.5 Reservations.

Landlord reserves the right and power to grant easements and licenses on, over, under and across the Premises to others, and the right and power for Landlord or the grantee to enter the Premises, for purposes such as constructing, installing, maintaining, repairing, replacing and removing utility systems and equipment and public improvements within the Premises; provided that such access shall be during normal business hours and upon at least two (2) days' prior notice to Tenant (except in the case of an emergency in which case no prior notice shall be required but each of Landlord and such grantee shall notify Tenant's on site manager thereof by phone prior to entering the Premises) and Landlord shall, and shall cause each of such grantee to: (a) comply with all applicable and reasonable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which Landlord and each such grantee can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises. Should Landlord so request, Tenant shall, at no cost to Tenant (other than de minimis expense), promptly join with Landlord in the execution of such documents as may be reasonably requested by Landlord to create or accommodate such grant. Landlord agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with Tenant's

business. Further, Tenant shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way; but nothing herein is a waiver of any rights or remedies that Tenant may have at law or in equity for Landlord's breach of this Section 4.5.

5. RENT

Tenant agrees to pay to Landlord Monthly Rent and Additional Rent (collectively "**Rent**") in accordance with this Article 5. All payments of Rent and other sums due Landlord hereunder shall be paid in legal tender of the United States, without notice, invoice, setoff, deduction or demand, except as otherwise expressly provided herein. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the Rent shall be deemed to be a waiver of any current or preceding breach by Tenant of any provision hereof. No endorsement or statement on any check or any letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease, at law or in equity. Tenant waives all rights that it may have under present or future law to designate the items to which any payments made by Tenant are to be credited. Tenant agrees that Landlord may apply any payments made by Tenant to such items of Rent as Landlord designates, irrespective of any designation or request by Tenant as to the items to which such payments should be credited.

Payments can be made by either check or electronic transfer with remittance information emailed to ARInvoices@portofsandiego.org. Checks must be made payable to the San Diego Unified Port District or Port of San Diego, and mailed to SDUPD General Account Lockbox, PO Box 841615, Los Angeles, CA 90084-1615. Wiring instructions are as follows:

Wells Fargo Bank
 420 Montgomery Street
 MAC: A0112-102
 San Francisco, CA 94104
 Account Title: Port of San Diego
 Account Number: 4944983881
 ACH/Wire Routing Number: 121000248

The designated place of payment and filing may be changed at any time by District upon thirty (30) days' written notice to Tenant. Tenant assumes all risk of loss and responsibilities for late charges, as herein described, if payments are made by mail.

Landlord may change the designated place of payment or filing at any time upon thirty (30) days' written notice to Tenant. Tenant assumes all risk of loss and responsibility for Late Charges and interest at the Default Rate for late payments, as hereinafter described.

5.1 Intentionally deleted.

5.2 Late Charges.

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease. Accordingly, in the event Tenant is delinquent in rendering to Landlord an accounting of Rent due or in remitting the Rent due on the date due in accordance with the provisions of this Lease, Tenant shall pay, in addition to the unpaid Rent, five percent (5%) of the Rent due. If Rent is still unpaid at the end of ten (10) days after the date due, Tenant shall pay an additional five percent (5%) (collectively, "**Late Charges**"). The parties hereby agree that said Late Charges are Additional Rent and are not interest and that the Late

Charges apply whether or not Tenant receives notice of its failure to pay Rent, and that said Late Charges are appropriate to compensate Landlord for loss resulting from rent delinquency including, without limitation, lost opportunities and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late submittal of an accounting of Rent due and/or late payment of Rent be less than One Hundred Dollars (\$100). Acceptance of such Late Charges and any portion of the late payment by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights and remedies. In addition to the application of a Late Charge, if Tenant fails to pay any Rent when due, the unpaid amount shall accrue interest at the Default Rate from the date due until paid and such interest shall itself be Additional Rent.

5.3 Net Lease.

Tenant acknowledges that the Rent will be absolutely net of any costs or expenses to Landlord relating to Premises or any Improvements and acknowledges and agrees that Landlord shall not be responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises or any Improvements during the Term, whether foreseen or unforeseen and whether or not within the contemplation of the parties at the commencement of the Term, except as shall be otherwise expressly provided in this Lease. Without limitation of the foregoing, Landlord shall not be required to construct, install, provide or arrange for any utilities, roadway, docks, tide walls, drainage or other improvements of any nature on, in, under or above the Premises or any other location.

5.4 Reimbursement.

If under the terms of this Lease an amount expended by Landlord is to be reimbursed by Tenant pursuant to the "**Reimbursement Procedure**" then Tenant shall reimburse Landlord for the subject amount within thirty (30) days of Tenant's receipt of an invoice or statement from Landlord for the subject amount and, if applicable, copies of any applicable third party invoices, work description and/or other reasonable evidence of the work performed for or by, and costs incurred by, Landlord. Any amounts owed to Landlord pursuant to the Reimbursement Procedure shall constitute Additional Rent and shall accrue interest at the Default Rate from the date due until paid if not paid within the time period permitted under the Reimbursement Procedure.

6. CONSTRUCTION AND ALTERATION OF IMPROVEMENTS

6.1 Alterations.

6.1.1 Major Alterations.

The term "**Major Alterations**" means all Alterations other than Minor Alterations (as such term is defined in Section 6.1.2 below). Tenant shall comply with all Laws, at its sole cost and expense, including without limitation, obtaining any governmental permits and approvals required for the Major Alterations. Tenant may not make any Major Alterations without the prior written consent of Landlord in each instance, which consent may be granted or withheld in Landlord's sole discretion. Landlord may condition its approval of a Major Alteration on compliance with the Laws and Tenant obtaining insurance coverages in addition to those required under Article 18 if such additional coverage is customarily obtained in connection with work similar in scope to the Major Alteration. All Major Alterations shall be in accordance with plans and specifications, including but not limited to working drawings (collectively, "**Alteration Plans**") submitted to and approved in writing by Landlord prior to the commencement of the Major Alterations. Following approval by Landlord, any changes in the Alteration Plans are subject to Landlord's approval, in Landlord's sole discretion. Provided Landlord approves the Alteration Plans, if Tenant elects to

proceed with the Major Alterations, Tenant must construct and complete all of the Major Alterations set forth in the Alteration Plans in one (1) integrated construction project with all due diligence.

6.1.2 Minor Alterations.

The term "**Minor Alterations**" means Alterations that satisfy all of the following requirements: (i) they do not require or involve structural modifications to the Premises; (ii) no discretionary permit or approval is required from any government agency to perform the Alteration and no CEQA review is needed in connection with the permits that are to be issued in connection with the Alteration; (iii) they do not trigger any stormwater construction BMP permit or permanent structural BMP permit or alterations to existing permanent structural BMPs; and (iv) they are consistent with the Permitted Use. Tenant may make Minor Alterations without Landlord's written consent provided that Tenant gives Landlord at least thirty (30) days' prior written notice of the Minor Alterations, which notice describes the Minor Alterations in sufficient detail in order for Landlord to confirm that such Minor Alterations satisfy the requirements of this Section 6.1.2 and within such thirty (30) day period Landlord does not object to Tenant's determination that the subject Alterations are Minor Alterations.

6.1.3 Diligent Construction.

Once construction of any Alteration is commenced, Tenant shall diligently prosecute construction of the Alterations to Completion.

6.1.4 Construction Requirements.

In constructing any Alterations, Tenant shall comply with all Construction Requirements and all Laws, including, without limitation, any PMP requirements, mitigation measures or conditions of approval under the terms of any of the governmental approvals of the Project, including any CDP applicable to the Premises or the use or development thereof and any conditions of approval or mitigation measures or project changes pursuant to any environmental review under CEQA.

6.2 Cost Reporting.

With respect to any Major Alterations, within sixty (60) days following Completion of the Major Alterations, as applicable, Tenant shall furnish Landlord with an itemized statement of all construction costs incurred and paid by Tenant. The statement shall be sworn to and signed, under penalty of perjury, by Tenant or its authorized representative. Such statements shall include, but are not limited to a general ledger, vendor invoices, cancelled checks, construction loan documentation, agreements with third-party contractors, and contractor progress payment billings. Additionally, should Tenant perform any construction with its own personnel, the itemized statement shall include the following non-confidential information with respect to the actual work performed: a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates.

6.3 Force Majeure Event.

"**Force Majeure Event**" means actual delay in Tenant's construction actually caused by: (a) a strike or labor dispute other than a strike or dispute which would have been avoided had Tenant complied with Laws and any agreements it has entered into with the striking union or parties; (b) inclement weather (that causes a suspension of work) in excess of the ten (10) year average for the area within Landlord's jurisdiction during the month or months when work was suspended; (c) fire, an earthquake, an explosion or other natural disaster resulting in suspension of work;

(d) inability to procure or general shortage of labor, equipment, materials, or supplies in the open market, or failure of transportation (but, in each case, not attributable to a mere increase in price or Tenant's acts or failure to act); (e) acts of a public enemy, insurrections, riots, mob violence, sabotage, acts of terrorism, and malicious mischief; (f) casualty causing material damage to previously constructed Improvements; or (g) delays in the issuance of any governmental approvals or authorizations from government agencies other than Landlord necessary to proceed with development or operation of the Improvements (provided that Tenant has timely and properly filed all applications, submitted all required documents and fees and taken all other actions necessary to obtain such governmental approvals or authorizations and that Tenant is not responsible in any way for the delay in the issuance of such governmental approvals or authorizations). In order to claim an excuse of failure to operate, Tenant must notify Landlord in writing within twenty (20) days of the commencement of any Force Majeure Event and describe in such notice the Force Majeure Event creating delay or interference, why such delay or interference is occurring, the expected duration of such delay or interference and the best efforts Tenant is taking to minimize the period of delay or interference. Any period of applicable Force Majeure Event shall be added to the times for the commencement and completion of construction; provided, however, in no event shall the period of excused delay exceed 365 days in the aggregate. Tenant covenants to make best efforts to minimize and otherwise overcome the impact on Tenant's construction schedule or operation caused by any Force Majeure Event and, in addition to Tenant's initial notice described above, on Landlord's request from time to time, shall provide Landlord with a report on the status of the Force Majeure Event, its expected duration, Tenant's construction schedule and Tenant's best efforts to minimize and otherwise overcome the impact on Tenant's construction schedule or operation caused by any Force Majeure Event.

6.4 Signs and Flags.

All signs visible from outside the Premises must be expressly approved by Landlord prior to installation. All signage in the Landlord's jurisdiction is subject to San Diego Unified Port District Code Section No. 8.30, BPC Policy No. 770 and Tenant Signage Guidelines. If Landlord hereafter adopts any other ordinance or policy governing signage, Tenant shall also comply with such ordinance or policy subject to any grandfathering terms thereof. Tenant agrees that no banners, balloons, inflatables, pennants, flags, signs, digital displays, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Premises in a manner or location clearly visible from outside the Premises without Landlord's prior written consent.

6.5 Prevailing Wage.

6.5.1 Tenant acknowledges and agrees that:

(a) Landlord makes no representation concerning the applicability of any wage laws, including, but not limited to California Labor Code §§ 1720 through 1815, et seq. ("**PWL**"). To the extent Tenant intends to perform any construction, alteration, demolition, installation or repair work ("**Construction**") on the Premises, Tenant warrants and acknowledges that: (1) Landlord is not paying for or subsidizing, in whole or in part, any such Construction; and (2) Tenant shall make its own determination regarding the applicability of any PWL to such Construction. Landlord is not responsible for Tenant's failure to comply with any applicable provisions of the PWL. Tenant assumes any and all risk in connection with the application of PWL to any Construction performed on the Premises on behalf of Tenant.

(b) Tenant's violations of PWL shall constitute a default under this Lease.

6.6 Historical Designation.

Neither Tenant nor Landlord shall designate, cause anyone to designate, submit or support any application to designate, the Premises or any Improvements as a federal, state or local historical landmark or as a historical resource. The terms of this Section 6.6 shall survive the expiration or earlier termination of this Lease.

7. TITLE TO AND REMOVAL OF ALTERATIONS AND IMPROVEMENTS

7.1 Title.

All Improvements which may be installed or placed in, on, over or under the Premises, from time to time by Tenant as permitted by the terms of this Lease or with Landlord's prior written consent, (i) shall be so installed or constructed at the sole cost of Tenant, (ii) shall remain Tenant's property during the Term, and (iii) at the expiration or earlier termination of the Term, those Improvements which are to remain pursuant to Section 7.2. shall automatically become the property of Landlord without additional compensation from Landlord; provided that, subject to Section 7.3 below, Tenant's trade fixtures (fixtures relating uniquely to Tenant and which are removable without non-repairable damage to the other Improvements), furnishings and moveable equipment shall remain the property of Tenant and shall be removed by Tenant as provided in Section 7.3. Upon Landlord's request, following the Expiration Date or earlier termination of this Lease, Tenant covenants and agrees to execute and deliver (at no cost or expense to Landlord) a quitclaim deed as provided in Article 23 to confirm Landlord's ownership of the Improvements which are to remain pursuant to Section 7.2, which covenant shall survive the expiration or earlier termination of this Lease.

7.2 Removal of Improvements.

At any time during the Term of this Lease, Landlord may notify Tenant in writing of what Improvements Landlord requires (in its sole discretion) to be removed from the Premises at the end of the Term (such election is referred to herein as the "**Landlord End of Term Election**"). If Landlord has not provided the Landlord End of Term Election by the end of the Term, then Landlord shall be deemed to have elected for all Improvements to be removed; provided that notwithstanding the foregoing, at any time during the last twelve (12) months of the Term, Tenant may request in writing from Landlord a Landlord End of Term Election, and if Landlord does not provide a Landlord End of Term Election within ninety (90) days of receiving such written request, then Landlord shall have been deemed to have elected for all Improvements to be removed in accordance with the terms of this Section 7.2. If Landlord shall elect to have Tenant remove any or all of the Improvements and/ or Tenant is required to perform remedial work pursuant to Section 21.3, (i) the Term of this Lease shall be extended as provided in Section 7.5, (ii) to the greatest extent possible, Tenant shall obtain all permits required to perform such work in advance of the end of the Term and, if not possible, as promptly as possible after the end of the Term (meaning prior to extension pursuant to Section 7.5), and (iii) subject to terms of Section 7.5 requiring such work to commence sooner, as promptly as possible after the end of the Term (meaning prior to extension of the Term pursuant to Section 7.5), remove such Improvements and perform and complete any remedial work that may be required by Section 21.3. Tenant acknowledges that demolition of Improvements and/or the remediation work pursuant to Section 21.3 may require Tenant to obtain permits, certain of which may be discretionary. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to remove) caused by such removal, and unless such requirement is waived by Landlord in its sole and absolute discretion, Tenant shall surrender the Premises to Landlord in a buildable condition. For this purpose, a "**buildable condition**" means the removal of any subsurface Improvements (including foundations and pilings, pipelines and conduits, and public and private utilities unless otherwise agreed to by Landlord), removal of any Hazardous Materials pursuant

to Section 21.3, demolition of the relevant Improvements, and removal of any debris resulting from demolition. In addition, and without limitation of Landlord's other remedies, if any Improvements are not in full compliance with Article 6 or Article 15, Landlord may require, at Tenant's sole cost and expense, that such Improvements be modified to a state and condition which complies with Article 6 and Article 15 as determined by Landlord. If Tenant fails to complete such removal and remediation and/or to repair any damage caused by the removal of any Improvements or to perform modifications required pursuant to the preceding sentence within the period allowed under Section 7.5, Landlord may do so and may charge the cost thereof to Tenant pursuant to the Reimbursement Procedure, together with Additional Rent for estimated administrative costs in the amount of ten percent (10%) of such cost, and interest on all such sums at the Default Rate from the date incurred until paid. Nothing contained in this Section 7.2 shall be interpreted to limit Tenant's obligations under Section 21.3.

7.3 Removal of Personal Property.

Except as provided below, all of Tenant's personal property including machines, appliances and equipment and trade fixtures (even though not personal property), shall be removed from the Premises by Tenant by the Expiration Date or earlier termination of this Lease. If such personal property required to be removed is not removed by Tenant in accordance with this Section 7.3, then Landlord shall have the right to have such personal property removed and to repair any and all damage occasioned by their removal, all at the expense of Tenant pursuant to the Reimbursement Procedure.

7.4 Security for Cost of Demolition and Remediation Work.

7.4.1 Demolition and Remediation Report.

Within one hundred eighty (180) days of the receipt of the Landlord End of Term Election, but no sooner than six (6) years before the end of Term, Tenant, at its own cost and expense, shall obtain and deliver to Landlord a report prepared by a contractor licensed in the State of California with expertise in demolition and remediation, which report details and estimates the current cost and time period for completion of (i) the removal and demolition work if then required to be completed by Tenant under Section 7.2 and (ii) any remedial work that may be required by Section 21.3 ("**Demolition and Remediation Report**"). The contractor licensed in the State of California with expertise in demolition and remediation selected by Tenant is referred to herein as the "**Demolition and Remediation Contractor**" and the time period for completion of the removal and demolition work as if then required by Section 7.2 and any remedial work that may be required by Section 21.3 is referred to herein as the "**Removal Period**".

7.4.2 Demolition and Remediation Security Funding.

The terms of this Section 7.4.2 will have no application and may be disregarded if both of the following have occurred: (i) Landlord has either provided a Landlord End of Term Election requiring all of the Improvements to remain in place or Landlord has not provided a Landlord End of Term Election on or prior to the date that is twelve (12) months before the end of the Term; and (ii) any required Demolition and Remediation Report and any reports required under the terms of Article 21 establishes that there is no known condition requiring remedial work. For the purpose of funding the cost of the demolition and remediation work that may be required under Section 7.2 and Section 21.3, then commencing in the month following the receipt of the Demolition and Remediation Report and continuing on the same day Rent for each month thereafter is due until such day of the last calendar month prior to the end of the Term (the "**Demolition and Remediation Security Funding Period**") Tenant shall deposit with Landlord, or at Landlord's election, into an escrow account (with an escrow holder, and pursuant to escrow instructions,

acceptable to Landlord in its sole discretion) a level sinking fund monthly dollar amount which will fully fund the Demolition and Remediation Security Amount by the end of the Demolition and Remediation Security Funding Period. The "**Demolition and Remediation Security Amount**" shall be the Estimated Demolition and Remediation Cost annually compounded at three percent (3%) over the Demolition and Remediation Security Funding Period. The "**Estimated Demolition and Remediation Cost**" shall be the total of (i) the demolition and remediation cost amount estimated by the Demolition and Remediation Report, and (ii) the product of (x) the number of months in the Removal Period and (y) the Rent at the time the first monthly deposit is to be made. The determination of the monthly deposit amount shall be calculated by dividing the Estimated Demolition and Remediation Amount by the number of months in the Demolition and Remediation Security Funding Period. If the Demolition and Remediation Security Amount is held in escrow, any interest earned on the Demolition and Remediation Security Amount shall be added to the escrow fund, but shall not be treated as a credit against the Demolition and Remediation Security Amount deposits required to be made by Tenant pursuant to this Section 7.4.2. If Landlord holds the Demolition and Remediation Security Amount, Landlord shall not be required to keep the Demolition and Remediation Security Amount in trust, segregate it or keep it separate from Landlord's general funds, and Tenant shall not be entitled to payment of interest on the Demolition and Remediation Security Amount but such interest, if any, shall be applied toward the Demolition and Remediation Security Amount. In lieu of deposit of cash funds as required above, Tenant may propose a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to Landlord in Landlord's sole discretion. In no event shall Tenant's obligations under Section 7.2 or Section 21.3 or to pay Rent during the Removal Period be limited to the amount of the Demolition and Remediation Security Amount.

(a) *Update.* If a Landlord End of Term Election requiring Tenant to remove any or all of the Improvements is provided to Tenant on or prior to the date that is twenty-four (24) months before the end of the Term and/or Tenant is required to perform remedial work pursuant to Section 21.3, at least twelve (12) months prior to the expiration of the Term Tenant shall deliver to Landlord a report prepared by a Demolition and Remediation Contractor, which report updates any prior Demolition and Remediation Report for the purpose of providing a current estimate of the projected cost at the end of the Term of the demolition and remediation work required by Section 7.2 above ("**Demolition and Remediation Report Update**"). If the current balance of the Demolition and Remediation Security Amount is less than the cost projected in the Demolition and Remediation Report Update, then, within thirty (30) days after delivering the Demolition and Remediation Report Update to Landlord, Tenant shall deposit in the escrow account or with Landlord, as applicable, additional funds so that the total Demolition and Remediation Security Amount is no less than the estimated cost of the demolition and remediation work as set forth in the Demolition and Remediation Report Update. If the current balance of the Demolition and Remediation Security Amount is more than the cost projected in the Demolition and Remediation Report Update, then, within sixty (60) days after Landlord's receipt of the Demolition and Remediation Report Update, Landlord shall refund the Tenant, as applicable, funds so that the total Demolition and Remediation Security Amount is no more than the estimated cost of the demolition and remediation work as set forth in the Demolition and Remediation Report Update.

(b) *Disbursement To Tenant.* If the Landlord End of Term Election is for Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3, then Landlord will release (or authorize the escrow holder to release, as applicable) the Demolition and Remediation Security Amount to fund the cost of the demolition and remediation work pursuant to customary construction draw procedures, including a ten percent (10%) retainage which will be paid upon completion of such work as evidenced by a certificate of completion from the Demolition and Remediation Contractor and a copy of final lien releases in statutory form from the Demolition and Remediation Contractor and all of its

subcontractors. However, Tenant shall remain responsible for the actual costs of the demolition and remediation work in excess of the Demolition and Remediation Security Amount. If the Landlord End of Term Election is for Tenant to remove any or all of the Improvements and Landlord decides to keep any or all of the Improvements, Landlord will release to Tenant (or authorize the escrow holder to release, as applicable) the unused portion of the Demolition and Remediation Security Amount.

(c) *Disbursement to Landlord.* If Tenant fails to perform the demolition and remediation work as and when required by the terms of Section 7.2, if Landlord elects to enforce Tenant's obligation, then in addition to all other remedies Landlord may have as a result of such failure, without limitation of Tenant's cost responsibility for the same, Landlord shall have the right to apply the Demolition and Remediation Security Amount to pay for the cost of performing the demolition and remediation work on Tenant's behalf or, if Landlord determines not to perform the demolition and remediation work and not to enforce Tenant's obligation, and Tenant's failure has continued following the notice and cure period set forth in Section 12.1.3, then Landlord may retain the Demolition and Remediation Security Amount as liquidated damages for Tenant's failure to perform the demolition and remediation work.

(d) *Landlord Security Interest.* Tenant grants to Landlord a security interest in the Demolition and Remediation Security Amount, and shall execute such documents as Landlord may request in order to perfect such security interest.

7.4.3 Effect of Funding on Removal and Remediation Obligations

Notwithstanding anything to the contrary stated in this Lease, while Landlord is required to send an End of Term Election on or prior to the date that is twelve (12) months before the end of the Term in order to trigger Tenant's obligation to fund the Demolition and Remediation Security Amount in accordance with Section 7.4.2, Landlord's failure to send an End of Term Election on or prior to the date that is twelve (12) months before the end of the Term shall in no way affect any of the following: (a) Landlord's ability to send an End of Term Election within the last twelve (12) months of the Term pursuant to the terms of Section 7.2 that requires Tenant to remove any or all of the Improvements; (b) Tenant's obligation to remove any or all of the Improvements pursuant to an End of Term Election received in accordance with the terms of Section 7.2; and/or (c) any of Tenant's obligations under Section 21.3.

7.5 Removal Extension.

If the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3, then subject to the terms of this Section 7.5, solely for the purpose of completing such work and during such extension, the Term of the Lease shall be extended until the earlier of (i) six (6) months, and (ii) the completion of such work as evidenced by a certificate of completion from the Demolition and Remediation Contractor and copy of final lien releases in statutory form from the Demolition and Remediation Contractor and all of its subcontractors. The period of such extension is referred to herein as the "**Removal Extension**". During the Removal Extension, the Premises and Improvements shall not be used by Tenant for any purpose other than the performance of the demolition and/or remediation work unless permitted by Landlord in writing in its sole discretion. During the Removal Extension, Tenant shall be required to pay Rent in an amount equal to that portion of the Term immediately preceding the Removal Extension to Landlord; provided that in the event Tenant's removal and remediation work is not completed within the Removal Extension, Rent shall be due in accordance with the terms of Article 26 regarding holdover. Without relieving Tenant from its obligations under this Lease respecting the condition of the Premises at the end of the Term, all of the Tenant's obligations under this Lease (including Tenant's indemnification

and insurance obligations but excluding any obligation to be open or operate) and Tenant's right to enter onto the Premises and perform the demolition and remediation work shall continue in full force and effect during the Removal Extension. Notwithstanding the foregoing, if the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3 and any Demolition and Remediation Report indicates that the Removal Period is estimated to be greater than six (6) months, then Tenant shall commence such work sufficiently prior to the end of the Term (prior to extension as provided in this Section) so that such work is anticipated to be completed no later than six (6) months after the end of the Term (prior to the Removal Extension) (e.g., if the estimated Removal Period is ten (10) months, Tenant shall commence such work at least four (4) months prior to the end of the Term (prior to extension pursuant to this Section 7.5).

7.6 Survival.

The terms of this Article 7 shall survive the expiration or termination of this Lease.

8. ENTITLEMENTS

8.1 Entitlement Costs.

If any discretionary approval, including without limitation environmental analysis under CEQA, the PMP, a Port Master Plan Amendment ("**PMPA**"), a CDP and/or a Coastal Act exclusion, are necessary in Landlord's sole and absolute determination in connection with any Alterations, demolition or remediation work or other projects undertaken by Tenant on or at the Premises (collectively, the "**Discretionary Project**"), Tenant agrees to enter into agreements with the third party consultants preparing the reports and other materials required to process the Discretionary Project making Tenant directly responsible for the costs of such services and to reimburse Landlord pursuant to the Reimbursement Procedure for all costs and expenses incurred by Landlord in obtaining the necessary approval for the Discretionary Project, including but not limited to, the preparation and certification of any required CEQA document by the Landlord, the preparation and approval of the PMPA by the Landlord and the CCC, the preparation and approval or issuance of a CDP by the Landlord or, if appealed, the CCC, or the Coastal Act exclusion by the Landlord and any other costs and expenses arising out of the entitlement process in Landlord's sole and absolute determination. If Tenant fails to reimburse Landlord for such costs pursuant to the Reimbursement Procedure, in addition to any other remedies Landlord may have, Landlord may thereafter discontinue the processing of the Discretionary Project and Tenant shall be responsible for any costs and expenses incurred by Landlord related to such discontinuance as Additional Rent and such failure beyond all applicable notice and cure periods shall be a default of Tenant. Nothing herein shall obligate Landlord to seek, process or obtain any approvals or entitlements for the benefit of Tenant and Landlord makes no warranty or representation to Tenant that Tenant will obtain the entitlements and approvals required for Tenant's Discretionary Project.

8.2 Entitlements Indemnity.

Without limitation of Tenant's other obligations under this Lease, Tenant agrees at its sole cost and expense and with counsel approved by Landlord in Landlord's sole discretion to indemnify, defend and hold harmless the Landlord Parties from any claims, demands, actions, causes of action, suits and Related Costs, arising out of Landlord's approval(s) of the Discretionary Project including without limitation any third party challenges to the approval of the Discretionary Project and any CEQA review, CCC review for a PMPA or appealable CDP or Coastal Act exclusion. Landlord may, in its sole and absolute discretion, participate in the defense of any claims, demands, actions and causes of action, suits and Tenant shall reimburse the Landlord for all reasonable costs of defense incurred by the Landlord, including, without limitation reimbursement

for attorneys' fees, experts' fees and other costs. Landlord's participation shall not relieve Tenant of any of its obligations under this Paragraph. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease.

8.3 Reservation of Discretion.

Tenant acknowledges and agrees that, notwithstanding the terms and conditions of this Lease, Landlord reserves its discretion to approve or disapprove all actions, which require by Law the exercise of discretion, including without limitation all legislative and quasi-judicial actions and which Landlord cannot lawfully be committed to by contract (collectively, "**Discretionary Action**") and that nothing in this Lease will be construed as circumventing or limiting Landlord's discretion with respect to environmental review required by CEQA, approval of a PMPA, CDP, CDP exclusion, or other permits and entitlements, the exercise of eminent domain, code enforcement and the making of findings and determinations required by Law. Tenant acknowledges and agrees that any and all Discretionary Actions may be approved or denied by the Landlord, in its sole and absolute determination, and accepts the risk that the Landlord will deny any and all Discretionary Actions, and hereby waives any claims, demands, actions, causes of action, suits against the Landlord for said denial.

9. LIENS

9.1 No Right to Bind Landlord.

Neither Tenant, nor any Tenant Party, shall have any power or authority to do any act or thing, or to make any contract or agreement which will bind Landlord in any way whatsoever, and Landlord shall have no responsibility to Tenant, Tenant Party or other Person who performs, causes to perform, engages in or participates in any construction of any Improvements, Alterations or any other work on the Premises at the request of Tenant or Tenant Party or other Persons. Landlord shall not be required to take action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

9.2 Notice of Non-Responsibility.

Tenant shall give written notice to all contractors, subcontractors and materialmen of Landlord's non-responsibility in connection with any Improvements or Alterations or other work on the Premises, and shall immediately provide Landlord with true copies of such notices not less than fifteen (15) days prior to the commencement of any work on the Premises.

9.3 Mechanic's Liens.

Tenant shall timely pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Premises. Tenant will keep the Premises free and clear of all mechanic's liens and other liens on account of work done for or at the Premises. Tenant shall indemnify, defend, release and save Landlord free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for or at the Premises and all Related Costs.

9.4 Contest of Lien.

If Tenant in good faith wishes to contest any claim of lien, Tenant shall be entitled to do so, provided that Tenant first records a surety bond or a similar instrument sufficient to unconditionally release the lien from the Premises..

9.5 Landlord's Right to Pay.

If Tenant shall be in default in paying any charge for which a lien claim has been filed, and if Tenant shall not have recorded a surety bond or a similar instrument as required under Section 9.4 above, upon thirty (30) days prior notice to Tenant, Landlord may, but shall not be so obliged to, pay said lien claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord together with interest on the full amount thereof at the Default Rate from the dates of Landlord's payments until paid.

9.6 Notice of Liens.

Should any claims of lien be filed against the Premises or any action affecting the title to the Premises be commenced, the party receiving notice of such lien or action shall give the other party written notice thereof within five (5) business days of receipt.

9.7 Right of Entry/ Notices of Non-Responsibility.

Nothing herein shall imply any consent on the part of Landlord to subject Landlord's estate to liability under any mechanic's or other lien. Without limiting Tenant's responsibilities under Section 9.2 above, Landlord and the Landlord Parties shall have the right to enter upon and inspect the Premises at all times, with at least 48 hours prior notice (except in the case of an emergency, in which no prior notice shall be required but each of Landlord and such grantee shall notify Tenant's on site manager thereof by phone prior to entering the Premises), and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in any such lien, give Landlord written notice of its intention to commence such work in sufficient time (which in no event shall be less than the statutory period for posting notices of non-responsibility prior to the commencement of work) to give Landlord adequate opportunity to post and record such notices.

10. LEASE ENCUMBRANCE

10.1 Restrictions on Encumbrance.

10.1.1 Landlord's Consent.

Tenant shall not encumber or hypothecate this Lease, Tenant's leasehold interest, or the Improvements thereon, or any part thereof or interest therein (such encumbrance or hypothecation being referred to herein as a "**Financing Transaction**"), without Landlord's prior written consent to the Financing Transaction in each instance, which consent, subject to the terms of Section 10.1.2, shall not be unreasonably withheld. Tenant shall submit its request for consent to the Financing Transaction in writing to Landlord, together with the required minimum documentation required pursuant to BPC Policy No. 355, or any other BPC policy then in effect governing Landlord's consent to a Financing Transaction. Within ten (10) days of receiving Tenant's request, Landlord may request from Tenant additional information regarding the lender and/or the proposed financing. Landlord shall provide its response to Tenant's request for approval of the Financing Transaction within forty-five (45) days following Landlord's receipt of Tenant's request and all information requested by Landlord from Tenant. As a condition of approval, Tenant shall provide to Landlord a copy of the final loan documents for the Financing Transaction which conform to the terms set forth in the loan application or commitment delivered pursuant to Section 10.1.2(e) below, when such documents are available. Tenant shall reimburse Landlord pursuant to the Reimbursement Procedure for all Landlord's costs and expenses

associated with its review of the Financing Transaction. Said costs shall include, without limitation, Landlord's legal fees (whether with in-house or outside counsel or both) and disbursements relating to or arising out of Landlord's review of any such Financing Transaction, regardless of whether such Financing Transaction is consummated or approved, and Landlord's transaction processing fees charged by Landlord for Landlord's analysis and processing of Tenant's request.

10.1.2 Conditions.

Landlord's consent to any Financing Transaction may be conditioned upon, among other things, the following conditions and/or requirements, all of which Tenant acknowledges are reasonable given the context and terms and conditions of this Lease:

- (a) the lender shall be a Financial Institution;
- (b) a Lease amendment shall be executed to reflect updated or additional lease provisions for the purpose of conforming this Lease to Landlord's then standard leasing terms, practices, and policies, provided such terms have been and are included in substantially all similar leases or amendments entered into by landlord at or around the time of the proposed modification or, in the case of a newly adopted term, practice or policy, such terms will be included in future similar leases or amendments entered into by landlord;
- (c) the maximum loan proceeds secured by the encumbrance shall not be in excess of the greater of (i) seventy five percent (75%) of the then fair market value of the Improvements (or the as-completed value if the subject loan is being used to finance the cost of an Alteration) as determined by a third party appraisal approved by Landlord (which may be the Permitted Lender's appraisal if so approved by Landlord), or (ii) the amount required to repay the outstanding principal balance of the existing financing that encumbers the leasehold under a Permitted Encumbrance previously consented to by Landlord;
- (d) the loan secured by the encumbrance shall have a payment term that provides for the full repayment of the loan prior to the Expiration Date of the then current Term of this Lease; and
- (e) Tenant shall have provided to Landlord pursuant to Section 10.1.1: (i) the Financing Transaction term sheet, application or commitment, (ii) a recent appraisal supporting the Financing Transaction, (iii) financial statements of Tenant for not less than the past two (2) years, (iv) the draft and final loan documents and (v) such other documents, information and materials relating to the Financing Transaction as Landlord may request.

10.1.3 Definition of "Permitted Lender" and "Permitted Encumbrance".

The term "Permitted Lender" as hereinafter used in this Lease means the lender under the Financing Transaction holding a mortgage, deed of trust or other similar security interest constituting a first lien on Tenant's interest in this Lease which has been consented to in writing by Landlord as provided above ("**Permitted Encumbrance**").

10.2 Rights of Permitted Lender.

10.2.1 Voluntary Lease Surrender.

If Tenant owes the Permitted Lender any amounts under the Permitted Encumbrance, Landlord will not accept the voluntary surrender, cancellation, or termination of this Lease by Tenant before the Term expires unless the Permitted Lender provides prior written consent. Nothing in this Section 10.3.1 shall impair Landlord's right to terminate this Lease as a result of

Tenant's default or by reason of Landlord's other rights to terminate as set forth in this Lease, subject to the Permitted Lender's notice and cure rights pursuant to Section 10.3.2 below, if applicable.

10.2.2 Right to Cure/New Lease.

(a) *Notice of Default.* So long as the loan secured by the Permitted Encumbrance remains unsatisfied, Landlord hereby agrees to give the Permitted Lender a copy of any written notice of any default which Landlord has given to Tenant, whereupon the Permitted Lender shall have the right, but not the obligation, to prevent any termination of this Lease by Landlord as a result of such default by curing such default within (i) twenty (20) days of receipt of such notice for any default in the payment of Rent, or (ii) subject to the terms of this Section 10.3.2, within forty-five (45) days of receipt of such notice for any other default under this Lease.

(b) *Possession Required.* If such default as specified in part (ii) of Section 10.3.2(a) cannot be cured until the Permitted Lender has obtained possession of the Premises through foreclosure or otherwise, and if the Permitted Lender has delivered to Landlord within the forty-five (45) day cure period specified above Permitted Lender's written commitment (in form acceptable to Landlord in its sole discretion) to use commercially reasonable efforts to cure such default with due diligence upon obtaining possession of the Premises through foreclosure or otherwise, then the Permitted Lender shall have such additional time (but in no event to exceed 180 days from the date of obtaining possession of the Premises) as is reasonably necessary to cure such default; provided, however, that the Permitted Lender: (a) unless judicially stayed, commences the judicial or other foreclosure of the Permitted Encumbrance within forty-five (45) days from receipt of written notice of the occurrence of any event which constitutes, or which would constitute, upon the expiration of an applicable cure period, a default under this Lease; (b) prosecutes said foreclosure with due diligence; and (c) cures, during said period, all monetary events of default and, during the period of said stay and/or foreclosure, continues to pay and perform during said period of stay and/or foreclosure all other monetary obligations of Tenant in a timely manner, including, without limitation, payment of all Rent, taxes, assessments, utility charges, insurance premiums and all other amounts required to be paid by Tenant under this Lease. Notwithstanding anything herein to the contrary, nothing herein shall require a Permitted Lender who has taken possession of the Premises to cure any non-monetary default that, by its nature, is not capable of being cured by the Permitted Lender, such as a Bankruptcy Event (an "**Incurable Default**"), and such Incurable Default shall be deemed to be waived following the Permitted Lender's taking possession of the Premises and provided that Permitted Lender has timely cured all monetary defaults and, following taking possession all other non-monetary defaults that are of a continuing nature. In no event shall Tenant's waste or failure to maintain be an Incurable Default.

(c) *No Termination by Landlord.* Landlord will not terminate this Lease by reason of a default by Tenant provided that the Permitted Lender (i) has cured and continues to cure all defaults under the Lease in the payment of Rent in a timely manner as provided in Section 10.3.2(a)(i) above, and (ii) has cured all other defaults in a timely manner as provided in Sections 10.3.2(a)(ii) and 10.3.2(b) above, other than any Incurable Default.

(d) *New Lease.* In the event of a termination of this Lease by reason of a surrender, cancellation, or termination by Tenant (subject to and in accordance with Section 10.3.1), or as a result of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other Law affecting creditors rights, or as a result of a termination of this Lease by Landlord in violation of Section 10.3.2(c) above, then Landlord shall deliver notice to Permitted Lender that the Lease has been terminated. The notice shall include a statement of all amounts that would

be due under this Lease but for the termination, and all other defaults then known to Landlord. The Permitted Lender shall then have the option, to be exercised within thirty (30) days following receipt of such notice of termination to enter into a new lease ("**New Lease**") with Landlord, on the following terms and conditions:

(i) The New Lease shall commence as of the date of the termination of this Lease and shall be for the remainder of the Term, and at the Rent, terms, covenants and conditions as this Lease (but excluding any right to extend the Term).

(ii) Upon execution of the New Lease, the Permitted Lender as tenant shall pay any and all sums that would at the time of execution thereof be due under this Lease, but for termination, and shall pay all expenses, costs, attorneys' fees, court costs, and disbursements incurred by Landlord in connection with any default and termination, recovery of possession of the Premises, and the execution, preparation and delivery of the New Lease.

(iii) Upon execution of the New Lease, the Permitted Lender as tenant shall cure all other defaults under this Lease, which have not yet been cured (other than any Incurable Default), with due diligence in a timely manner in accordance with the cure periods under the Lease assuming such cure periods commence with the execution of the New Lease and without additional notice.

(iv) Nothing herein shall be construed to require Landlord to deliver possession of the Premises to Permitted Lender. Upon execution and delivery of the New Lease, Permitted Lender may take any and all appropriate action as may be necessary to remove parties in possession from the Premises.

Should the Permitted Lender fail to accept said offer for such New Lease in writing within said thirty (30) day period, or, having so accepted said offer, should it fail promptly to execute the New Lease or satisfy the requirements of (ii) and (iii) above in a timely manner, then the termination of this Lease shall be effective as to the Permitted Lender and the Permitted Lender shall have no further rights hereunder.

10.2.3 Loan Default.

If a Permitted Encumbrance is in default at any time, and the Permitted Lender is complying with the cure requirements described in Section 10.3.2 above, the Permitted Lender shall, as provided by law, have the right, without Landlord's prior consent, to:

- (a) Accept an Assignment of this Lease in lieu of foreclosure; or
- (b) Cause a foreclosure sale to be held pursuant to either judicial proceedings or power of sale as provided in its Permitted Encumbrance. Provided, however, no Assignment to the successful bidder (a "**Foreclosure Purchaser**") other than the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender shall be effective without Landlord's prior written consent in accordance with Section 10.4 below.

10.2.4 Assume Lease Obligations.

Before the Permitted Lender, or any Foreclosure Purchaser, acquires the leasehold interest, it shall, as an express condition precedent, agree in writing to be bound by all provisions of, and assume each and every obligation of Tenant, under this Lease. A Permitted Lender that has: (i) acquired the leasehold interest and assumed the Tenant's obligations, or (ii) entered into a New Lease pursuant to Section 10.3.2(d) above, shall be released from all obligations under this Lease first arising after it assigns the leasehold interest to an assignee consented to by Landlord, in accordance with Section 10.4.

10.3 Landlord's Consent to Assignment or Transfer.

10.3.1 Landlord's Consent to Assignment.

Landlord's prior written consent pursuant to Article 11 shall be required for the following: (i) an Assignment of this Lease to a Foreclosure Purchaser other than the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender, or (ii) an Assignment of this Lease or Sublease of all or substantially all of the Premises by the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender should the Permitted Lender or such designee become the tenant by reason of: (a) being the successful bidder upon said foreclosure, or (b) an Assignment in lieu of foreclosure, or (c) a New Lease entered into pursuant to Section 10.3.2(d) above.

10.3.2 Notice of Foreclosure Sale.

Permitted Lender shall include a statement in any notice of foreclosure sale covering the requirements under Section 10.4.1 for Landlord's consent to an Assignment upon said foreclosure.

10.3.3 Assignment of Security Interest.

Neither Permitted Lender nor assignees or any subsequent holder of Permitted Lender's security interest in the Premises shall assign or transfer its security interest in the Premises in whole or in part without Landlord's prior written consent, in each instance. Such consent shall not be unreasonably withheld. Although such holder shall be required to obtain Landlord's express written consent, Landlord shall not withhold such consent (and such assignee or holder will for all purposes of this Lease be deemed to be a Permitted Lender) if the Assignment is to one of the following entities and a copy of the Assignment, in a form acceptable to Landlord, is furnished to Landlord:

(a) A Financial Institution in good legal standing under the laws of its jurisdiction of incorporation having a tangible net worth exceeding One Billion Dollars (\$1,000,000,000) (which sum shall be adjusted to Constant Dollars at the beginning of each Rental Period); or

(b) The United States of America or any state thereof, or any agency thereof;
or

(c) An assignee by operation of law; e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender.

10.4 Landlord's Participation.

Upon each Financing Transaction, Tenant shall pay to Landlord a fee (the "**Financing Participation Fee**") in an amount equal to Two and One-half percent (2.5%) of the Net Proceeds of such transaction. Prior to Landlord's consent to any Financing Transaction, Tenant shall deliver to Landlord a written statement showing the calculation of the Financing Participation Fee owed to Landlord from Tenant based on the terms of the contemplated Financing Transaction (but subject to adjustment for actual, final expenses). The statement of the calculation of the Financing Participation Fee shall contain such detail as may be reasonably requested by Landlord to verify the calculation of the Financing Participation Fee. The Financing Participation Fee due Landlord shall be payable in full to Landlord concurrent with the completion of the Financing Transaction. When owed, the Financing Participation Fee shall constitute Additional Rent.

For the purposes of this Section 10.5, the term “**Net Proceeds**” shall mean with respect to a Financing Transaction, the difference between (a) the loan amount made pursuant to such Financing Transaction and (b) the sum of (i) the total of any outstanding indebtedness being paid off or refinanced by the Financing Transaction, (ii) proceeds (if any) that reimburse the Tenant for documented equity investment, and/or (iii) any portion of the debt under the Financing Transaction to be expended on improving the Premises, less any reasonable costs or fees of the Financing Transaction payable by Tenant. In the event that a Financing Transaction relates to (i) this Lease and (ii) an encumbrance or hypothecation of Tenant's leasehold interest, the improvements thereon, or any part thereof or interest therein with respect to one or more of the Existing Leases, then the Net Proceeds for such Financing Transaction for purposes of this Section 10.4 shall be multiplied by a fraction, the numerator of which is the square footage of the Premises, and the denominator of which is the square footage of the Premises plus the total square footage of the Adjacent Premises under the applicable Existing Lease(s).

11. ASSIGNMENT/SUBLEASE

11.1 Consent Required.

Subject to the terms of Section 11.8, no Assignment, Sublease or Change in Entity (collectively, “**Transfer**”) shall be made or permitted without in each instance the prior written consent of Landlord, which consent shall not be unreasonably withheld. It is mutually agreed that Landlord is a government agency holding title to the Premises in trust for the citizens of California and acting as a prudent steward of the Premises and that the personal qualifications of the parties Controlling Tenant are a part of the consideration for granting this Lease. As such, a Change in Entity is as relevant to Landlord as an Assignment of this Lease. For purposes of this Article 11, the term Sublease shall not include the rental of boat slips and dock lockers to tenants not operating a business on or from the Premises.

11.2 Request for Consent.

If a Transfer is proposed, Tenant shall notify Landlord in writing, which notice (the “**Transfer Notice**”) shall include (i) the proposed effective date of the Transfer, which shall not be less than ninety (90) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) with respect to a Sublease, a completed Sublease Questionnaire form [Form 317 or 320 depending on the term of the Sublease, copies of which Landlord will provide to Tenant upon written request] including, among other information, a description of the portion of the Premises which is proposed to be Subleased, (iii) all of the terms of the proposed Transfer, the name and address of the proposed transferee with respect to an Assignment or Sublease (“**Transferee**”), if the Transfer is a result of a Change in Entity, a complete description of the direct and indirect ownership and Control of Tenant just before and just after the Transfer and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer and the agreements incidental or related to such Transfer, (iv) a statement of any current litigation or litigation which was resolved within the prior five (5) years affecting the proposed Transferee or persons or entities acquiring an interest resulting in a Change in Entity of Tenant or a Tenant Parent, (v) current financial statements of the proposed Transferee certified by a reputable, certified public accountant (which shall be audited if that is the customary practice of the Transferee), and (vi) such other information as Landlord may require. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease upon written notice thereof to Tenant. Whether or not Landlord shall grant consent, Tenant shall pay Landlord's legal and other fees incurred by Landlord pursuant to the Reimbursement Procedure, regardless of whether such

transaction is consummated. Any Transfer shall be subject to the terms and provisions of this Lease. Notwithstanding anything to the contrary in this Lease, if Tenant claims that Landlord has unreasonably withheld or delayed its consent under this Article 11 or otherwise has breached or acted unreasonably under this Article 11, Tenant's sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any successor statute, and all other remedies. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

11.3 Consent Factors.

If Landlord consents to any Transfer, Tenant may within one hundred eighty (180) days after the date of delivery of the Transfer Notice, enter into such Transfer of Tenant's interest in the Premises or portion thereof, upon the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord, provided that if there are any material adverse changes to the financial condition of the Transferee or any other material changes to any proposed Transfer terms specified in the Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 11.

Without limitation of Landlord's right to withhold its consent for other reasonable reasons, the parties hereby agree that it shall be reasonable under this Lease and under any applicable Law for Landlord to withhold consent to any proposed Transfer where Landlord determines in its reasonable discretion that one or more of the following apply (it being understood that for the purposes of this Section 11.3 and 11.5.1 in the case of a Change in Entity, references to "Transferee" shall mean Tenant following the Change in Entity):

11.3.1 Insufficient Experience.

The Transferee is not experienced in the ownership or management of similar projects or the proposed Transferee lacks sufficient business reputation and experience to operate a successful business of the type and quality contemplated under this Lease;

11.3.2 Inconsistent Use.

The Transferee's proposed use of the Premises following the proposed Transfer will not be for the Permitted Use or the quality of the use is not of the quality contemplated under this Lease;

11.3.3 Reputation.

The Transferee (i) is not reputable (a reputation for dishonesty, criminal conduct or association with criminal elements), (ii) is of a character or reputation or engaged in a business which is not consistent with the quality or reputation of the comparable shipyard operations within the San Diego Bay, or may reflect adversely on the quality or reputation of the business conducted from the Premises or (iii) has a history of, or a reputation for, either discriminatory employment practices which violate any Laws or non-compliance with Environmental Laws;

11.3.4 Financial Stability.

The Transferee is not a party of sufficient financial worth and financial stability in light of Tenant's obligations under this Lease;

11.3.5 Default.

At the time of request or Transfer, Tenant or a Tenant Affiliate is in default under this Lease beyond all applicable notice and cure periods, any of the Existing Leases, or any other agreement between Landlord and a Tenant Affiliate.

11.3.6 Other Grounds.

Any other reasonable grounds considering the unique nature and interests of Landlord including the fact that Landlord holds the Premises in trust for the people of the State of California and Landlord's duty of care in administering a valuable public resource.

Tenant acknowledges and agrees that each of the grounds set forth in Section 11.3 above in the event of proposed Transfer is a reasonable restriction on Transfer for purposes of California Civil Code Section 1951.4. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

11.4 Effect of Transfer.

If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, within ten (10) days after execution, an executed copy of all documentation pertaining to the Transfer, and any document evidencing a Transfer shall be in form reasonably acceptable to Landlord, and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from liability under Articles 19, 21, and/or 22.

11.5 Transfer Conditions.

In the event Landlord consents to any Transfer (other than for a Sublease for less than twenty-five percent (25%) of the floor area of the Improvements computed in the aggregate for one or a series of transactions), then at Landlord's election said consent shall be conditioned upon the following: (i) the Transferee (other than a Subtenant under a Sublease of less than all or substantially all of the Premises) shall agree to be bound by all provisions, and assume each and every obligation, under this Lease (including those obligations arising or pertaining to periods prior to the effective date of the Transfer), or in the case of a Subtenant under a Sublease of less than all or substantially all of the Premises, such Subtenant shall execute a document acceptable to Landlord acknowledging that all rights of the Subtenant are subject to all terms and conditions of this Lease as the same relate to the space subject to the Sublease; (ii) if requested by Landlord, a Lease amendment shall be executed to reflect updated or additional lease provision provided by Landlord in its reasonable discretion; (iii) Transferee shall comply with other conditions and qualifications determined by the BPC; and (iv) in the case of a Sublease, the Subtenant shall execute an attornment agreement as provided in Section 11.6.

11.6 Subtenant Attornment.

Every Sublease hereunder is subject to the express condition, and by accepting a Sublease hereunder each Subtenant shall be conclusively deemed to have agreed, that if this Lease terminates or if Landlord succeeds to Tenant's estate in the Premises, the Subtenant shall, at the option of Landlord, attorn to and recognize Landlord as the Subtenant's landlord under the Sublease, provided that Landlord shall not (i) be liable for any act or omission or negligence of Tenant, (ii) be subject to any counterclaim, offset or defense which theretofore accrued to such Subtenant against Tenant, (iii) be bound by any payment of Rent or other sums of money for more than one (1) month in advance or any security deposit (unless actually received by Landlord),

(iv) be obligated to perform any work in the sublet space, (v) in the event of a casualty, be obligated to repair or restore Improvements, (vi) in the event of a partial Taking, be obligated to repair or restore Improvements, (vii) be obligated to make any payment to such Subtenant, or (viii) be bound by any obligations that Landlord lacks the capacity to perform. Any Subtenant shall promptly execute and deliver any instrument Landlord may reasonably request to evidence such attornment. Upon early termination of this Lease, Tenant shall pay over to Landlord all sums held by Tenant for the benefit of Subtenants or as security under the provisions of the existing Subleases.

11.7 Sublease Rent Requirements.

Subject to the terms of any Permitted Encumbrance, each Sublease shall require the Subtenant thereunder to make all payments of Rent and other sums of money due under the Sublease to Landlord during the existence of a default beyond all applicable cure periods hereunder and following written notice of the same from Landlord, and Landlord shall apply said payments made to all Rent that is due and payable to Landlord pursuant to this Lease, and any remaining amounts will be held and applied to future Rent payable under this Lease.

11.8 Reporting of Sublease Information.

If Tenant has entered into any Subleases, then within thirty (30) days of a request from Landlord and within sixty (60) days after the end of each calendar year, Tenant shall submit to Landlord a rent roll obtaining all relevant information with respect to each Sublease then in effect and a site plan showing the locations of any Subleases.

11.9 Permitted Lender and Foreclosure Purchasers.

The foregoing provisions of this Article 11 shall not apply to the following Transfers, which are governed by Sections 10.3 and 10.4: (i) a Transfer to a Permitted Lender or a designee of the Permitted Lender who is Controlled by or is who is under common Control with the Permitted Lender pursuant to the foreclosure of the Permitted Encumbrance or an Assignment in lieu of foreclosure or (ii) a Transfer to a Foreclosure Purchaser.

11.10 Landlord Participation Fee.

Upon each (i) Assignment of this Lease pursuant to this Article 11 to a Third Party (as defined below), (ii) a sale of substantially all of the assets of Tenant (whether through one transaction or a series of transactions) to a Third Party or a Change in Entity of Tenant, or (iii) Sublease of all or substantially all of the Premises to a Third Party (any of the transactions in clauses (i), (ii) or (iii), a “**Fee Generating Transfer**”), Tenant shall pay to Landlord a fee (the “**Assignment Participation Fee**”) in an amount equal to (x) in the event the Fee Generating Transfer is a result of either a sale of substantially all of the assets of Tenant (whether through one transaction or a series of transactions) to a Third Party or Change in Entity of Tenant as set forth in (ii) above, the amount of One Hundred and Fifty Thousand Dollars (\$150,000) or (y) in the event of any other Fee Generating Transfer, as set forth in (i) or (iii) above, the amount of Two and One-half percent (2.5%) of the Gross Proceeds of such transaction (for the avoidance of doubt, this clause (y) shall not apply to a sale of substantially all of the assets of Tenant (whether through one transaction or a series of transactions) to a Third Party or any Change in Entity of Tenant. Prior to Landlord’s consent to any transaction subject to an Assignment Participation Fee, Tenant shall deliver to Landlord a written statement showing the calculation of the Assignment Participation Fee owed to Landlord from Tenant based on the terms of the contemplated transaction (but subject to adjustment for actual, final expenses). The statement of the calculation of the Assignment Participation Fee shall contain such detail as may be reasonably requested by Landlord to verify

the calculation of the Assignment Participation Fee for such transaction. The Assignment Participation Fee due Landlord shall be payable in full to Landlord concurrent with the completion of the Fee Generating Transfer transaction and shall be a joint and several obligations of the transferee and transferor. When owed, the Assignment Participation Fee shall constitute Additional Rent.

For the purposes of this Section 11.10, the term “**Third Party**” shall mean any Person other than: (i) (w) General Dynamics Corporation, a Delaware corporation (the “**Approved Parent**”) (x) a wholly owned, direct or indirect, subsidiary of Approved Parent, (y) the partners, members, or shareholders, as the case may be, of Approved Parent, as of the date of this Lease (the “**Existing Owners**”); or (z) to an entity that is Controlled (which for purposes hereof must satisfy both prongs (i) and (ii) of the definition of Controlled), directly or indirectly, by one or more of the Existing Owners, (ii) a Permitted Lender (or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender); (iii) an assignee of a Permitted Lender (or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender) (whether the Permitted Lender acquires the leasehold interest under this Lease by foreclosure or deed-in-lieu of foreclosure or pursuant to a new lease); provided, however, that if the Gross Proceeds paid by the assignee exceed the Aggregate Debt Amount (as defined below), then such assignee of the Permitted Lender (or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender) shall be a Third Party. The term “**Aggregate Debt Amount**” shall mean the aggregate amount of the outstanding principal, interest and other amounts secured by the applicable Permitted Encumbrance at the time of acquisition by the Permitted Lender of the leasehold interest in the Premises.

For the purposes of this Section 11.10, with respect to any Fee Generating Transfer, the term “**Gross Proceeds**” shall mean the purchase price or other consideration paid (either in cash or by an assumption of debt or other consideration and, if paid over time, the present value of the total consideration using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%)) to the Tenant and/or holders of direct or indirect interests in Tenant in connection with such Fee Generating Transfer less the sum of (x) any prorations, brokerage fees, closing costs or other customary deductions to the purchase price for which the seller is responsible (and provided such amounts are reasonable), and (y) if the Third Party is the assignee of a Permitted Lender (or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender), the Aggregate Debt Amount.

Upon the request of Landlord from time to time (which request shall be no more frequent than once per year), Tenant shall provide Landlord with a schedule listing the names and mailing address of all holders of a Controlling interest (direct or indirect (at all levels) interests) in Tenant other than holders of interests traded on a recognized public exchange and excluding any limited partners in fund investment vehicles that do not Control such investment vehicles. In the event that such shareholder, partner, member or other interest holder is a trust, Tenant shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust.

12. DEFAULTS AND REMEDIES

12.1 Defaults.

In addition to any terms hereof expressly providing for a default hereunder, the occurrence of any one (1) or more of the following events shall constitute a default by Tenant hereunder:

12.1.1 Failure to Pay

Failure by Tenant to pay, when due, any Rent, other payment, and/or charge herein, is where such failure continues for a period of five (5) days the due date. Provided, however, any such notice provided in this Section 12.1.1 or in subsequent Section 12.2.3 shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.

12.1.2 Failure to Perform.

Failure by Tenant to perform any express or implied covenants or conditions in this Lease (other than as provided in the other subsections in this Section 12.1), should such failure continue for thirty (30) days after written notice thereof is given to Tenant; provided that if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of ninety (90) days after written notice thereof from Landlord to Tenant.

12.1.3 Bankruptcy Event.

The occurrence of a Bankruptcy Event.

12.1.4 Specified Defaults.

The occurrence of any event expressly stated to constitute a default under the Lease.

12.1.5 Other Agreements.

Tenant or a Tenant Affiliate is in default under any of the Existing Leases or any other agreement between Landlord and Tenant or a Tenant Affiliate.

12.2 Remedies.

Upon the occurrence of any default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

12.2.1 Termination of Lease.

Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall immediately surrender the Premises to Landlord. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss Tenant proves reasonably could have been avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves reasonably could be avoided; plus

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost

of recovering possession of the Premises, expenses of reletting (including necessary repair, renovation and alteration of the Premises), reasonable attorneys' fees, and any other reasonable costs; plus

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in subparagraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Default Rate. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

Failure by Landlord to enforce one or more of the remedies herein provided upon a default shall not be deemed or construed to constitute a waiver of such default. Tenant hereby waives for Tenant and for all those claiming under Tenant all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

12.2.2 Continue Lease in Effect.

Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due if Tenant has the right to sublet or assign this Lease, subject only to reasonable limitations).

12.2.3 Perform Acts on Behalf of Tenant.

Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate.

12.2.4 Increased Security Deposit.

Require Tenant to pay a Security Deposit in an amount equal to three (3) months of the Monthly Rent (which remedy may be exercised on more than one occasion with further increases in the Security Deposit on any subsequent Event of Default or any failure of Tenant to cure the default at issue within the time period set forth in Section 12.1.3)

12.2.5 Payment by Tenant.

Upon any default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses and staff time) in: (1) obtaining possession of the Premises; (2) removing and storing Tenant's or any other occupant's property; (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant; (4) performing Tenant's obligations which Tenant failed to perform; and (5) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default.

12.2.6 Assignment of Plans and Other Matters.

If this Lease is terminated or Landlord otherwise takes possession of the Premises by reason of Tenant's default, Tenant hereby agrees that, if Landlord so requests, (i) Tenant, at Tenant's sole cost and expense, shall assign and transfer to Landlord all of Tenant's right, title and interest in and to all plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, free and clear of liens and claims by third parties, in connection with and (ii) Tenant shall execute and deliver to Landlord, within five (5) business days of Landlord's request, in a form provided by and acceptable to Landlord, an instrument confirming the Assignment and transfer of such property and interests to Landlord and shall, within such five (5) business day period, deliver the originals of such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises to Landlord. Tenant agrees to reasonably cooperate with Landlord at no cost or expense to Landlord in seeking any consent from the preparer of any plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, to the extent assignable, to this Assignment which may be required for Landlord to rely on such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises.

13. BANKRUPTCY

13.1 Bankruptcy Event.

Upon occurrence of a Bankruptcy Event, Landlord shall have all rights and remedies available pursuant to Article 12. After the commencement of a Bankruptcy case: (i) Tenant shall perform all post-petition obligations of Tenant under this Lease; and (ii) if Landlord is entitled to damages (including unpaid Rent) from and after any order for relief pursuant to the terms of this Lease, then all such damages shall be entitled to administrative expense priority pursuant to the **Bankruptcy Code**. Tenant acknowledges that this Lease is a lease of nonresidential real property and therefore Tenant, as the debtor in possession, or the trustee shall not seek or request any extension of time to assume or reject this Lease or to perform any obligations of this Lease which arise from or after the order of relief.

13.2 Assignment/Assumption.

Any Person to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of Assignment, and any such assignee shall upon request by Landlord execute and deliver to Landlord an instrument confirming such assumption in a form acceptable to Landlord. If Tenant desires to assume and assign this Lease under the Bankruptcy Code to any Person who shall have made a bona fide offer, then Tenant shall give Landlord written notice of such proposed Assignment (which notice shall set forth the name and address of such Person, all of the terms and conditions of such offer, and the adequate assurance to be provided Landlord to assure such Person's future performance under this Lease) prior to the date Tenant shall make application to the appropriate court for authority and approval to enter into such Assignment and assumption. Landlord shall thereupon have the prior right and option, to be exercised by notice to the Tenant given at any time prior to the effective date of such proposed Assignment, to accept an Assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the Assignment of this Lease. If the Tenant fails to assume or assume and assign this Lease in accordance with the requirements of the Bankruptcy Code within the period provided by the Bankruptcy Code or allowed by the Bankruptcy Court, then the Lease shall be deemed rejected and the Landlord shall

have all rights and remedies available to it pursuant to Section 12.2. At any time during the Term, upon not less than five (5) days' prior written notice, Tenant shall provide Landlord with audited financial statements for Tenant for not less than the past two (2) years. Such statements are to be certified by an authorized representative of Tenant to be true, correct and complete, prepared in accordance with generally accepted accounting principles and audited by any independent certified public accountant. Notwithstanding the foregoing, as long as Tenant is a subsidiary of a publicly-traded company, it may satisfy the aforementioned requirement by providing the annual and quarterly SEC filings of its parent company.

13.3 Adequate Assurances.

In the event Tenant or proposed assignee under Section 13.2 proposes under the Bankruptcy Code to cure any default under this Lease or to assume or assign this Lease and is obliged to provide adequate assurance to Landlord that (a) a default shall be cured, (b) Landlord shall be compensated for its damages arising from any breach of this Lease and (c) future performance of Tenant's obligations under this Lease shall occur, then such adequate assurances shall include all of the following, as designated by Landlord in its sole and absolute discretion:

- (a) Those acts specified in the Bankruptcy Code or other applicable laws as included within the meaning of "adequate assurance";
- (b) A prompt cash payment to compensate Landlord for any monetary defaults or actual damages arising directly from a breach of this Lease;
- (c) A cash deposit in an amount at least equal to the then-current amount of the Security Deposit; and
- (d) The assumption or Assignment of all of Tenant's interest and obligations under this Lease.

14. EMINENT DOMAIN

14.1 Eminent Domain.

If all or any portion of the Premises shall be condemned pursuant to exercise of the power of eminent domain, or acquired under an actual threat of the exercise of such power (collectively, "Condemnation") the rights and obligations of Landlord and Tenant with respect thereto shall be as set forth in this Article 14. Nothing in this Article 14 shall be interpreted to prevent Landlord from exercising its power of eminent domain as to Tenant's leasehold interest and/or Premises.

14.2 Notice of Condemnation.

If either party hereto receives notice of any Condemnation or intended Condemnation (including, without limitation, service of process), within five (5) business days of receipt, the party in receipt thereof shall deliver to the other party an exact copy of such notice of or relating to any intended Condemnation and the date such notice was received.

14.3 Representation of Interest.

Landlord and Tenant shall each have the right to represent its respective interests in such proceeding or negotiation with respect to a Condemnation or intended Condemnation and to make full proof of its claims. Landlord and Tenant each agrees to execute and deliver to the other any instrument which may be required to effectuate or facilitate the provisions of this Article 14.

14.4 Early Termination.

In the event of a Condemnation of all of the Premises or such portion of the Premises so that Tenant cannot reasonably and economically use the remainder of the Premises for the purposes permitted under this Lease (as reasonably determined by Tenant and approved by Landlord in its sole discretion), this Lease shall terminate as of the date of such Condemnation. A termination of this Lease pursuant to this section shall act to relieve Tenant from any further liability under this Lease except as to obligations accruing or arising on or prior to termination or which are otherwise required to be performed in connection with such termination or surrender of the Premises or which otherwise expressly survive termination. Tenant shall deliver the Premises to Landlord in the condition required for the surrender of the Premises under this Lease.

14.5 Partial Condemnation.

If only a portion of the Premises is subject to Condemnation, and this Lease is not terminated pursuant to Section 14.4 above, then this Lease shall continue in full force and effect upon the same terms and conditions as set forth herein, and the Minimum Annual Rent shall be reduced in proportion to the reduction in the value of the Premises after the Condemnation as compared to the value of the Premises immediately prior to the Condemnation (as reasonably determined by Landlord and approved by Tenant in its reasonable discretion).

14.6 Temporary Condemnation.

If any portion of the Premises, including the entirety thereof, is subject to a temporary Condemnation, then this Lease shall continue in full force and effect and there shall be no adjustment or abatement in Rent during the term of such temporary Condemnation. Any portion of an award, settlement or other compensation or damages which may be given for such temporary Condemnation attributable to the Term shall be the property of Tenant and any portion attributable to any period following the expiration of the Term shall be the property of Landlord. As used herein, a "temporary Condemnation" shall mean any taking which is not intended by the condemning authority to be permanent at the time such Condemnation initially occurs.

14.7 Award.

14.7.1 Leasehold Award.

In the event of any Condemnation of all or any portion of the Premises (other than a temporary Condemnation), Landlord shall be entitled to any and all awards and/or settlements or other compensation or damages which may be given for (a) any "bonus value" respecting this Lease (i.e., the excess value of the leasehold arising from the fact that the scheduled rent is less than the market rent for the Premises), and (b) the land (and water, if applicable) comprising the Premises and any Improvements. Any and all other awards and/or settlements or other compensation or damages (collectively, "**Leasehold Award**") for Improvements constructed by Tenant and the leasehold estate created by this Lease (excluding any bonus value thereof) shall be paid as follows:

(a) Provided this Lease is not terminated pursuant to Section 14.4 above, the Leasehold Award shall be payable in trust to any Permitted Lender that is a Financial Institution, if any, and shall be disbursed for the payment of the costs of repairing and restoring the remaining portion of the Premises to substantially its value, condition and character prior to such Condemnation to the extent the same may be feasible. If there is no Permitted Lender that is a Financial Institution or if there is but the Permitted Lender declines to act as a trustee for the disbursement of funds as provided above, then such Leasehold Award shall be payable in trust to a bank, title company or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, and shall

be disbursed by such trustee as provided above. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal loan disbursement procedures (e.g. upon receipt of appropriate mechanics lien releases, invoices, etc.) so long as such disbursement procedures are reasonably acceptable to Landlord and ensure that the Leasehold Award is applied to the costs of repairing and restoring the Premises.

(b) If this Lease is terminated pursuant to Section 14.4, or if there are excess proceeds available after completion of the repair and restoration of the Premises as provided above, then any portion of the Leasehold Award not used for the repair and restoration of the remaining portion of the Premises pursuant to subparagraph (a) above, or used to place the Premises in the condition required for the surrender of same to Landlord, shall be divided between Landlord and Tenant, with Landlord to receive a sum computed by multiplying such excess funds awarded with respect to such Improvement by a fraction, the numerator of which shall be the number of years (or portion thereof) of the Term that have, at the time of such Condemnation, expired, and the denominator of which shall be the total number of years in the full Term. The remaining amount shall be paid to Tenant, subject to the Permitted Lender's rights under subparagraph (c) below.

(c) Any portion of the Leasehold Award relating to Improvements and not used as described in subparagraph (a) and (b) and which is payable to Tenant pursuant to subparagraph (b) shall be paid to the Permitted Lender to be applied against its Permitted Encumbrance to the extent such payment is required to be made by Tenant pursuant to the terms of the Permitted Encumbrance held by the Permitted Lender.

(d) Any remaining portion of the Leasehold Award after payment as described above shall be paid to Tenant. Notwithstanding the foregoing sentence, with respect to any Leasehold Award received in connection with any Condemnation for street widening or the installation of utilities, public sidewalks or walkways which occurs at any time following the Effective Date, and provided such Condemnation does not result in material physical damage to then existing buildings or driveways, parkway access or access ways serving the Improvements, Landlord instead of Tenant, shall be entitled to receive, in addition to any award otherwise payable to Landlord pursuant to this Article 14, all of that portion of the Leasehold Award distributed to Tenant pursuant to this subparagraph (d).

(e) In addition to any other amounts to which Tenant is entitled as set forth above, Tenant shall be entitled to pursue any rights and remedies it may have against such condemning authority for: (i) any of Tenant's personal property; (ii) compensation pursuant to the provisions of California Government Code Section 7262 et seq.; (iii) compensation for loss of good will pursuant to California Code of Civil Procedure Section 1263.510 et seq.; and (iv) any other personal rights and remedies to which the occupant and user of the condemned portion of the Leased Premises may be entitled under law. Said amounts shall not be deemed a part of an "award" as provided above.

(f) Nothing in this Section 14 shall be construed to allow the Tenant to prosecute any claim against the condemning authority or Landlord which would diminish or otherwise adversely affect the Leasehold Award or Landlord's rights herein.

14.7.2 Default.

Anything in this Article 14 to the contrary notwithstanding, Tenant shall not be entitled to any funds, awards, rights, benefits or entitlement of any kind arising from or out of a Condemnation, except so far as is designated for damage to Tenant's personal property, if the same occurs during the period Tenant is in default under this Lease or after Landlord has exercised any remedy referred to in Section 12.2 above by reason of Tenant's default. Tenant

shall be entitled to any award allocated by a court of competent jurisdiction to Tenant's personal property.

15. MAINTENANCE AND REPAIR

15.1 Maintenance and Repair.

The Premises and all Improvements shall be maintained in good operating condition by Tenant, at Tenant's sole cost and expense. Tenant, at its sole cost and expense, shall be fully responsible for all care, maintenance, and repair of the Premises and all Improvements as necessary to keep the Improvements free of deferred maintenance and in good operating condition except for reasonable wear and tear. Tenant acknowledges that over the Term of this Lease, that in order to adhere to these maintenance and repair standards, certain repairs and replacements will be required and that regular reinvestment should be anticipated. Without limitation of the foregoing, Tenant shall perform all maintenance and make all repairs and replacements, ordinary as well as extraordinary, structural or otherwise, which may be necessary or required so that all times the Premises and the Improvements (together with all equipment, trade fixtures, mechanical and utility systems, installations and appurtenances) shall be free of deferred maintenance and in good operating condition, satisfactory to Landlord in its sole discretion except for reasonable wear and tear which does not adversely affect the appearance and condition of the Premises or Improvements. Further, to the extent applicable, Tenant shall provide containers for the collection of trash and garbage outside the Improvements, which may require Landlord's approval, and keep the Premises in a clean, safe, healthy and sanitary condition, free and clear of rubbish, litter, and any fire hazards. Tenant's maintenance shall include, without limitation, all preventive maintenance, painting and replacements necessary to maintain and preserve the Premises and Improvements, and compliance with the Best Management Practices ("BMPs") set forth in the Jurisdictional Runoff Management Program incorporated by reference in Article 10 of the San Diego Unified Port District Code.

Prior to Tenant performing any non-routine repairs or replacements (i.e., those not occurring with an expected or known frequency in the normal course of business) to the exterior, the structure or building systems or which will substantially interfere with the typical operation of the Improvements, or affect the portions of the Improvements generally accessible to the public such as the lobby area of a hotel, plans and specifications must first be submitted to Landlord and receive Landlord's written approval, pursuant to the procedures provided in Article 6 herein as if such repairs or replacements were Alterations.

Tenant waives all rights to make repairs at the expense of Landlord, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of the California Civil Code.

15.2 Condition in Compliance with Laws.

Tenant, at its sole cost and expense, shall keep the Premises and Improvements (together with all equipment, trade fixtures, mechanical and utility systems, installations and appurtenances) in full compliance with all applicable Laws and the requirements of any insurer providing insurance for the Premises or any part thereof.

15.3 Performance by Landlord.

15.3.1 Inspection and Correction.

Landlord always shall have the right but not the duty or obligation to enter, view, inspect, determine the condition of, and protect its interests in the Premises and Improvements during normal business hours and upon a two (2) days' prior notice to Tenant (except in the case of an

emergency in which case no prior notice shall be required but Landlord shall notify the on site manager thereof by phone prior to entering the Premises) and Landlord shall: (a) comply with all applicable and reasonable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which Landlord can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements. If Landlord determines that the Premises or Improvements are not in the condition required pursuant to the terms of this Lease, Landlord shall deliver written notice to Tenant detailing the items to be corrected and Tenant shall commence the necessary maintenance, alteration, repair and replacement work necessary to remedy the issues set forth in Landlord's notice within ten (10) business days after written notice from Landlord and diligently pursue such work to completion. Further, if at any time Landlord determines the Premises or Improvements are not in the condition required pursuant to the terms of this Lease, upon ten (10) days prior written notice thereof Landlord may require Tenant to file and pay for a performance bond. The amount of said bond shall be adequate, in Landlord's reasonable opinion, to correct all unsatisfactory conditions.

15.3.2 Landlord Repair Rights.

At Landlord's option, if Tenant fails to commence to perform the necessary maintenance, alteration, repair and replacement work within ten (10) business days of Landlord's written demand therefor and thereafter diligently prosecute such work to completion (except in the event of an emergency in which case no such notice shall be required), Landlord may, but need not, perform such maintenance, alteration, repair or replacement work, and Tenant shall pay Landlord the actual cost thereof, together with interest thereon at the Default Rate from the date incurred until paid and an administrative fee in the amount of fifteen percent (15%) of the cost of such work, pursuant to the Reimbursement Procedure. Such payments shall constitute Additional Rent under this Lease and shall be paid monthly as billed by Landlord or in a lump sum payment, as directed by Landlord. If requested by Landlord, Tenant shall pay to Landlord the entire estimated cost of such work in advance, but such payment shall not relieve Tenant from the obligation to pay any excess costs that may be actually incurred by Landlord. For all maintenance, alteration, repair and replacement work undertaken by Landlord, Tenant hereby indemnifies and shall defend, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, and hold the Landlord Parties harmless from any and all liability, Related Costs, demands, damages, expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), arising directly or indirectly out of such work or the performance thereof, unless the same is the result of the gross negligence or willful misconduct of Landlord. Landlord shall have no obligation to repair or maintain any portion of the Premises. The rights of Landlord under this Section shall not create any obligations or increase any obligations of Landlord elsewhere in this Lease, nor shall the exercise of such rights, or the failure to exercise same, limit any other rights or remedies of Landlord. Tenant shall provide Landlord Parties access to the Premises for the purposes set forth in this Section 15.3.

15.4 Records.

Tenant shall, at all times during the Term, keep or cause to be kept, accurate and complete records of maintenance conducted on the Premises in San Diego; provided, however, Tenant shall not be required to maintain records in excess of a period of seven (7) years from the date such record was created. The records must be supported by source documents of original entry such as invoices, receipts, work orders, construction contracts, service contracts or other pertinent supporting documents. All of Tenant's maintenance records relating to the Premises shall be kept either at such locations in San Diego, California as are reasonably acceptable to Landlord. Landlord shall have the right at any time to examine such maintenance records without

restriction and, at Landlord's request, Tenant shall provide Landlord with copies thereof at Tenant's expense for the purpose of determining the accuracy thereof.

16. TAXES AND PROPERTY EXPENSES

16.1 Taxes.

This Lease may result in a taxable possessory interest and be subject to the payment of property and other taxes. Tenant shall pay, prior to delinquency, all Tax Expenses (hereinafter defined) to the extent applicable and attributable to any time period during the Term now or hereafter assessed against, or relating in any way to the Tenant, this Lease, the Premises, the Improvements, or the use or occupancy thereof by Tenant and Tenant Parties. Tenant shall promptly following written request therefor from Landlord, provide Landlord with evidence of the payment of Tax Expenses. "Tax Expenses" shall include, without limitation, all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent, including gross receipts or sales taxes applicable to Tenant's receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used by Tenant in connection with the Premises) and any taxes and assessments relating to the business or other activities of Tenant upon or in connection with the Premises. Tax Expenses also shall include, without limitation, to the extent applicable:

(a) Any tax on Landlord's receipt of Rent, right to Rent or other income from the Premises;

(b) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, possessory interest tax or use tax or other Tax Expenses, and any assessments, taxes, fees, levies and charges that may be imposed by government agencies for services such as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of Tax Expenses for purposes of this Lease; and

(c) Any assessment, tax, fee, levy, or charge, which is levied or assessed based upon the area of the Premises or the Improvements or the Rent payable hereunder, including, without limitation, any gross income tax upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof.

16.2 Property Expenses.

Without limitation of Tenant's other obligations under this Lease, Tenant agrees to pay all Property Expenses applicable to the Premises. As used herein, "Property Expenses" include, without limitation, all costs and expenses of any nature incurred or payable, or arising in connection with, the ownership, management, maintenance, construction, repair, replacement, restoration or operation of the Premises and/or the Improvements, including, without limitation, any amounts paid for: (i) the cost of supplying any utilities, the cost of operating, maintaining, repairing, renovating and managing any utility systems, mechanical systems, communications systems, sanitary and storm drainage systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and

inspections; (iii) the cost of any insurance carried or required to be carried by Tenant with respect to the Premises and/or the Improvements including without limitation any premiums and deductibles; (iv) the cost of supplies, tools, equipment and materials, and all fees, charges and other costs incurred in connection with the management, operation, repair and maintenance of the Premises and/or the Improvements; (v) payments under any easement, license, permit, operating agreement, declaration, or covenant or instrument pertaining to the Premises; and (vi) the cost of any Improvements, capital repairs, capital alterations, or capital equipment, required by any government agency or otherwise required under this Lease.

17. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION AND OFAC

17.1 Nondiscrimination.

Tenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the ADA; and any other applicable Laws now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such Laws, including without limitation the ADA, Tenant shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Landlord and Tenant. Each Subtenant shall comply with the requirements of this Article 17.

17.2 Compliance with Employment and Labor Requirements.

Tenant shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other Laws now existing or hereinafter enacted, regarding employment and labor practices. Tenant shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

17.3 OFAC Compliance.

Tenant represents and warrants that (i) Tenant and each Person owning an interest in Tenant is not now, and shall not during the term of this Lease become, a Person with whom Landlord or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "**USA Patriot Act**") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("Prohibited Persons") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and/or on any other similar list pursuant to any authorizing statute, executive order or regulation, nor a Person (also, a "Prohibited Person") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person, (iii) no Prohibited Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (iv) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and (v) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

17.4 Diversity, Equity, and Inclusion.

Tenant shall, within ninety (90) days of the Effective Date of this Lease, provide a written statement of Tenant's commitment to non-discrimination, diversity, equity, and inclusion in the workplace. In addition, within ninety (90) days of receipt of written request, Tenant shall provide a brief description of plans to implement good faith efforts, based on the nature of Tenant's business operations, to recruit contractors, consultants, and employees, and/or applicants for employment (collectively, "**Tenants Hires**") in a non-discriminatory manner in compliance with all applicable Laws.

In addition, following the two (2) year anniversary of the Lease Effective Date, Tenant shall, within ninety (90) days of receiving a written request from Landlord, provide a written report describing Tenant's actions and outcomes in furtherance of its commitment to non-discrimination, diversity, equity, and inclusion (provided that Landlord may only request such written report once every three (3) years following an initial request hereunder). Tenant's report shall not identify individual Tenant Hires by name.

18. INSURANCE

18.1 Insurance.

Tenant shall maintain insurance acceptable to Landlord in full force and effect throughout the Term. Any insurance required of Tenant under this Lease may be furnished under a blanket policy carried by Tenant.

18.2 Forms of Coverage.

The policies for said insurance shall, as a minimum, provide the following:

18.2.1 Commercial General Liability.

"**Occurrence**" form Commercial General Liability covering the Premises, operations, and contractual liability assumed by Tenant in this Lease in the amount of not less than as set forth in Section 1.5. Tenant's indemnification obligations under this Lease shall in no event be limited by the terms or qualifications to the contractual liability coverage under such insurance.

18.2.2 All Risk and Builder's Risk Property Coverage.

All Risk Property Coverage, including flood and debris cleanup provisions, in an amount not less than the full 100% replacement value of all Improvements, together with business interruption and extra expense coverage, including a provision for the continuation of Rent payments for 24 months, a vandalism and malicious mischief endorsement, earthquake sprinkler leakage coverage, boiler and machinery coverage and, if so required by Landlord, earthquake coverage. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of Landlord. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to Landlord and Tenant to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged Improvements and applied to Tenant's Rent obligations hereunder, as applicable. However, if there is a Permitted Lender that is a Financial Institution, then all proceeds from such policies of insurance (other than from the business interruption and extra expense coverage) shall be payable in trust, with safeguards reasonably acceptable to Landlord, to such Permitted Lender to be disbursed for the repair and restoration of the Improvements (or, if there is no Permitted Lender that is a Financial Institution, or if there is, but the Permitted Lender declines to hold and disburse such proceeds, to a bank or trust company doing business in the County of San Diego agreed

upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, which proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the parties, or if the parties fail to agree, then in the bank's regular passbook savings account). All interest shall be added to the trust funds to be disbursed with the principal. All such proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of Landlord so as to ensure the application of such proceeds in compliance with this Lease.

During the construction of any Alterations or restoration work, builder's risk completed value form insurance covering the perils insured under the ISO special causes of loss form, including collapse, water damage, transit and flood and earthquake coverage, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) and covering the full insurable value (exclusive of the cost of noninsurable items) of all equipment, supplies and materials at any off-site storage location used with respect to any Alterations or in transit. The coverage shall be endorsed with a Loss Payee endorsement in favor of Landlord. The insurance proceeds shall be paid and disbursed in the same manner as set forth in this Section 18.2.2 above.

18.2.3 Worker's Compensation.

Workers' compensation insurance covering all persons employed by Tenant at the Premises and with respect to whom death or bodily injury claims could be asserted against Tenant, Landlord or the Premises, with statutorily required limits, and employer's liability insurance with minimum limits of not less than One Million Dollars (\$1,000,000) for each accident/employee/disease. Workers' compensation insurance shall include a waiver of subrogation in favor of Landlord Parties. Notwithstanding anything in this Lease to the contrary, Tenant may self-insure its worker's compensation insurance obligations under this section of the Lease.

18.2.4 Automobile Liability.

Business automobile liability insurance covering liability arising out of vehicles used on or about the Premises by Tenant or its employees (including owned, non-owned, leased, rented and/or hired vehicles) insuring against liability for bodily injury, death and property damage in an amount not less than One Million Dollars (\$1,000,000) each accident limit.

18.2.5 UST Insurance Obligations.

In the event underground storage tanks are located on the Premises, Tenant is required to comply with all Laws applicable to underground storage tanks, including, without limitation, United States Code, Title 42, Chapter 82, Subchapter IX, 40 CFR Part 280, 40 CFR Part 281 and 40 CFR Parts 282.50 – 282.105, and Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Tenant is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Tenant shall provide Landlord with a certified copy of its Certification of Financial Responsibility. If Tenant's program for financial responsibility requires insurance, then Tenant's policy(ies) shall name the Landlord Parties as additional insureds, and all other terms of Section 18.3 below, shall apply. Should Tenant change its financial assurance mechanisms, Tenant shall immediately provide Landlord with a certified copy of its revised Certification of Financial Responsibility.

18.2.6 Contractor's Pollution Liability Coverage.

If the Landlord determines, in its sole and absolute discretion, that Tenant performs or contracts for any work which involves a Hazardous Materials Activity or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher. The Landlord Parties shall also be named as an additional insured on any such policy. Immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, Tenant shall provide notice of the same to Landlord.

18.3 General Requirements.

18.3.1 Certificates and Other Requirements.

All required insurance shall be in force the first day of the Term, and shall be maintained continuously in force throughout the Term. In addition, the cost of all required insurance shall be borne by Tenant. During the entire Term, Tenant shall provide Landlord with insurance certificates, in a form acceptable to Landlord, issued by the insurer evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Article 18 ("**Certificates**"). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the forgoing, Landlord reserves the right to require complete, certified copies of all required policies at any time.

18.3.2 Additional Insureds and Other Requirements.

All liability insurance policies shall name, or be endorsed to name the Landlord Parties as additional insureds and protect the Landlord Parties against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be suspended or voided, except after Landlord has been furnished with thirty (30) days' prior written notice. To the extent the policy is blanket endorsed or is specifically endorsed to provide the same, all insurance policies shall also provide that the subject policy shall not be cancelled without thirty (30) days' prior written notice to Landlord. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess or contributory to any insurance issued in the name of Landlord. Further, all insurance companies must be satisfactory to Landlord.

18.3.3 Deductibles.

Any deductibles or self-insured retentions must be declared and acceptable to Landlord. If the deductibles or self-insured retentions are unacceptable to Landlord, then Tenant shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Landlord Parties; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

18.3.4 Updates.

Landlord shall retain the right at any time to review the coverage, form, amount and type of insurance required herein. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for the Landlord Parties and/or members of the public using

the Premises or using services connected with Tenant's use or occupancy of the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form, amount and type to provide adequate protection. Landlord's requirements shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

18.3.5 New Certificates.

If Landlord changes the insurance requirements as provided in Section 18.3.4 above, Landlord shall notify Tenant in writing of such changes. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates with Landlord issued by the insurer evidencing acceptable insurance policies incorporating such changes within thirty (30) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates evidencing acceptable insurance policies with Landlord, incorporating such changes, within ninety (90) days of receipt of such notice. In the event Tenant fails to deposit insurance Certificates as required herein, and such failure is not cured within ten (10) days following written notice thereof to Tenant, this Lease shall be in default without further notice to or cure right by Tenant, and Landlord shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish Landlord with renewals or binders in a timely manner, Landlord may (but shall not be required to), procure said insurance on Tenant's behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant to Landlord pursuant to the Reimbursement Procedure.

18.3.6 Default.

If Tenant fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, and such failure is not cured within ten (10) days following written notice thereof to Tenant, Landlord has the right to declare this Lease in default without further notice to Tenant, and Landlord shall be entitled to exercise all legal remedies.

18.3.7 No Limit on Liability.

The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease.

18.3.8 Compliance with Insurance Requirements.

Tenant agrees not to use the Premises in any manner that will result in the cancellation of any insurance Landlord may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjacent premises, notwithstanding that such use may be included within the Permitted Use. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises and represents to Landlord that Tenant will confirm that it is in compliance with such requirements at all times.

18.4 Waiver of Subrogation.

Tenant hereby releases the Landlord Parties from any and all liability or responsibility to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise for any loss or

damage to the Premises, any Improvements, or any of Tenant's personal property or business caused by or arising from a fire or any other event that is covered by the insurance required to be carried pursuant to this Lease or is actually carried, even if such fire or other event shall have been caused by the fault or negligence of any of the Landlord Parties. Each Subtenant similarly releases the Landlord Parties. Tenant, and any Subtenant, shall also obtain an endorsement waiving the insurance company's subrogation rights against the Landlord Parties for any insurance policies required by the terms of this Lease. Tenant and Subtenant shall also defend and indemnify the Landlord Parties in the manner specified in Section 19.1 in the event any Person asserts such a claim.

18.5 Subtenants to Maintain Insurance.

All Subtenants shall maintain insurance in the amounts required under Section 18.2, which shall comply with the requirements of Section 18.3. In addition, all Subleases shall provide that the Subtenant releases the Landlord Parties pursuant to the requirements of Section 18.4.

19. INDEMNITY

19.1 Indemnity.

Tenant hereby indemnifies and shall defend the Landlord Parties, at Tenant's sole cost and expense and with counsel selected by Landlord in its reasonable discretion, and hold the Landlord Parties harmless from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (i) the performance by Tenant of its obligations under this Lease, (ii) the construction of any Improvements or Alterations, (iii) any breach by Tenant of its obligations under this Lease, (iv) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Premises or the Adjacent Premises, (v) the use, occupancy, possession or operation of the Premises or the Adjacent Premises by any Tenant Party, or any acts or omissions of any Tenant Party, except only claims or litigation resulting directly from and to the extent of the gross negligence or willful misconduct of Landlord (but subject to Section 18.4). Landlord, at its election, may conduct its own defense with its own counsel independent from Tenant's counsel (and in that event Tenant will select its own counsel) and the reasonable costs incurred by Landlord in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to reimbursement pursuant to the Reimbursement Procedure. The terms of this Article 19 shall survive the expiration or earlier termination of this Lease. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease or otherwise.

20. DAMAGE OR DESTRUCTION

20.1 Casualty.

In the event of any damage to or destruction of any Improvements, whether or not from a risk coverable by the insurance described in Article 18. Tenant shall promptly repair and restore such Improvements, in a manner approved in writing by Landlord (acting in its reasonable discretion), so that after such restoration and repair, the Improvements are at least as valuable and usable as immediately prior to such damage or destruction. Tenant shall be entitled to have any insurance policy proceeds held in trust with the Permitted Lender or other trustee selected pursuant to Section 18.2.2 disbursed as progress payments as the work of repair, restoration or replacement progresses, to be used solely for paying for such work; and upon completion of such work free and clear of liens, if required by the terms of the Permitted Encumbrance any remaining

balance of any insurance proceeds shall be paid first to the Permitted Lender to the Permitted Encumbrance, and thereafter, if the Permitted Lender permits or requires by the terms of the Permitted Encumbrance, to Tenant. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal disbursement procedures (e.g. upon receipt of appropriate mechanic's lien releases, invoices, etc.) so long as such disbursement procedures are reasonably satisfactory to Landlord and ensure that the proceeds of insurance are applied to the costs of repairing or replacing the Improvements. To the extent that the insurance proceeds are insufficient to pay for the costs of repairing the damaged Improvements, Tenant shall pay such deficiency to the trustee for application to the restoration costs on or before the earlier to occur of (i) sixty (60) days from the date of such damage or destruction, or (ii) the date the insurer first makes available such insurance proceeds for repair, restoration or replacement. In the event Tenant or the Permitted Lender fails to commence to repair, restore or replace the damaged Improvements (including without limitation, engaging architects and engineers to prepare plans and specifications for the restoration), or pursue any permits necessary to repair, restore or replace the damaged Improvements, within ninety (90) days of such damage or destruction or to diligently prosecute such work to completion, Tenant shall be deemed to be in default hereunder upon written notice thereof from Landlord to Tenant and, in addition to any other remedies, Landlord shall be entitled to receive and retain such insurance proceeds to apply them to the repair, restoration and replacement of the Improvements. The provisions of Articles 6 and 7 shall apply to all work performed pursuant to this Article 20. Notwithstanding the foregoing, if Tenant and the Permitted Lender are not able to obtain sufficient insurance proceeds (in the case of an insured casualty) or construction funds (in the case of an uninsured casualty) to commence repair, restoration or replacement of the damaged Improvements within ninety (90) days of such damage or destruction, and in the case of an insured casualty, Tenant and the Permitted Lender have used their best efforts to so obtain such insurance proceeds, or in the case of an uninsured casualty, Tenant and the Permitted Lender have used their best efforts to obtain sufficient construction funds, then Tenant and the Permitted Lender shall have such additional time as is necessary to obtain such insurance proceeds or construction funds (but in no event to exceed one hundred eighty (180) days from the date of such damage or destruction) in which to commence to repair, restore or replace the damaged Improvements.

20.2 Casualty During the Last Part of Term.

Notwithstanding Section 20.1 to the contrary, if there is damage or destruction to the Improvements during the last five (5) years of the Term (including all exercised options) and the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements as determined by the Demolition and Remediation Report, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (a) Tenant shall, within ninety (90) days after the date of the casualty, give Landlord written notice of its election to terminate ("**Notice of Election to Terminate**"); and (b) Tenant shall, at the election of Landlord (which election shall be communicated in writing to Tenant ("**Demolition Notice**") within thirty (30) days of Landlord's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed Improvements and any other Improvements that Landlord may designate in the Demolition Notice and, if applicable, remediate the premises, and shall complete said demolition, removal and remediation and shall vacate the Premises within ninety (90) days of Landlord's delivery of the Demolition Notice (which vacation date shall fix the termination date of this Lease). Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's personal property that would be retained by Tenant at the end of the Term) paid as a result of the damage or destruction giving rise to the termination, shall be distributed in accordance with the following order of priority: first, to the

payment of the costs to raze and remove the Improvements as required above, second, to repayment of any outstanding Permitted Encumbrance, if required by the terms thereof; and third, to Landlord all remaining insurance proceeds.

20.3 No Rental Abatement.

Tenant shall not be entitled to any abatement or reduction in the Rent during any period of time that any Improvements are in need of repair, restoration or replacement or are under construction for such repairs, restoration or replacements or any other period of time during the Term of this Lease.

20.4 Waiver of Statutory Provisions.

The provisions of this Lease, including this Article 20, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or Improvements, or any other portion thereof, and any California statute or regulation, now or hereafter in effect, regarding the rights or obligations of a tenant concerning damage or destruction following a casualty event are waived and shall have no application to this Lease or any damage or destruction to all or any part of the Premises or Improvements as a result of a casualty event.

21. HAZARDOUS MATERIALS

21.1 Hazardous Materials.

21.1.1 Tenant Use of Hazardous Materials.

Tenant shall not generate, emit, release, or dispose of Hazardous Materials in or about the Premises or Improvements. Tenant shall not bring onto, use, or store Hazardous Materials in or about the Premises or Improvements unless expressly approved, at Landlord's reasonable discretion, in advance in writing by Landlord. Landlord's approval may be conditioned upon Tenant's submission of Safety Data Sheets ("**SDS**") or other information reasonably requested by Landlord regarding the Hazardous Material. Notwithstanding this requirement, Landlord hereby authorizes Tenant to bring onto, use, or store Hazardous Materials in or about the Premises or Improvements that are necessary for Tenant to perform the Permitted Use described in Section 1.3. Tenant shall maintain SDS and other information detailing the Hazardous Materials brought onto, used, or stored by Tenant in or about the Premises, including dates, locations, and quantities of Hazardous Materials, and shall provide that SDS and other information to Landlord upon request.

The generation, bringing onto, use, storage, emission, release, or disposal of Hazardous Material, or of products or materials which include any hazardous substance as a component, in or about the Premises or Improvements by Tenant or a Tenant Party is defined as a **Hazardous Materials Activity**. Hazardous Materials Activity shall not create or impose any liability or obligation on Landlord with respect to such Hazardous Material or Hazardous Materials Activity and Tenant assumes all liability and obligations related thereto. All Hazardous Materials Activity shall be in strict compliance with all applicable Laws and other requirements in effect during the Term, including, without limitation, Laws and requirements that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment ("**Environmental Laws**") and shall comply at all times with all Environmental Laws.

21.1.2 Notice of Release or Investigation.

If Tenant becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Premises or (ii) any notice, inquiry, investigation, proceeding, or claim by any government agency or other Person regarding an actual or threatened release of any Hazardous Material on, in, under, from or about the Premises in connection with a Hazardous Materials Activity (collectively "**Inquiry**"), Tenant shall promptly provide verbal notice of the same to Landlord, and give Landlord written notice of the same within twenty-four (24) hours and shall simultaneously furnish to Landlord copies of any notices of inquiry or investigation, claims, notices of violation, reports, warning or other writings received by Tenant that concern the release or Inquiry. Tenant shall provide Landlord with advance written notice of meetings scheduled with any federal, state or local government agency (such as, but not limited to, the United States Environmental Protection Agency, the Regional Water Quality Control Board, Department of Toxic Substances Control or Air Resources Board) ("**government agency**") that may be relevant to or potentially impact the Premises at least ten (10) full business days prior to such meeting or as soon as reasonably possible if such meeting is scheduled for less than ten (10) business days from the date the meeting is proposed. Landlord shall be entitled to have its representatives attend and participate in any and all such meetings. -If the government agency brings up the Premises in any other scheduled meeting, Tenant shall suggest that a separate meeting should be scheduled so that Landlord can participate.

21.1.3 Landlord Right to Inspect and Data.

Landlord or its designated representatives, at Landlord's sole discretion, may, but is no way obligated to, enter upon the Premises and make any inspections, tests or measurements Landlord deems necessary or desirable to determine if a release or discharge of Hazardous Materials has occurred. Landlord shall furnish Tenant a minimum of twenty-four (24) hours" notice prior to conducting any inspections or tests, unless, in Landlord's sole judgment, circumstances require otherwise. If Landlord reasonably suspects a possible release of Hazardous Materials by Tenant or its agents or a use of Hazardous Materials by Tenant or its agents in violation of Environmental Law, then Landlord, at Landlord's reasonable discretion, may require Tenant, at Tenant's sole expense, to have additional reasonable investigation for such Hazardous Materials conducted by an environmental consultant or engineering firm designated by Landlord. Such tests may include, without limitation, the Premises and any area outside the Premises that Landlord reasonably believes may have been contaminated by a release or discharge at or from the Premises, including but not limited to soil, subsoil media, surface water, sediments, and groundwater. Tenant shall provide Landlord, as soon as reasonably possible after they become available to Tenant, copies of all final reports and data obtained or generated as a result of environmental sampling or testing activities on the Premises, including raw and verified lab data and consultant reports. Landlord shall be permitted to have representatives present during any environmental sampling or testing on or at the Premises or outside of the Premises, and may obtain split samples, if requested, copies of the results of on-site testing and visual inspections, and complete access to all samples and tests taken or conducted as a result of any investigations of the Premises. Access to any consultant reports issued by or on behalf of Tenant concerning the Premises shall be furnished to Landlord as soon as reasonably possible after the reports are finalized. Landlord's failure to inspect, test or take other actions pursuant to this Section 21.1.3 shall in no way relieve Tenant of any responsibility for a release of a Hazardous Material.

21.1.4 Clean-up Obligations.

If Hazardous Materials Activity, Tenant Hazardous Material, or Pre-Existing Hazardous Material has resulted or does result in contamination of the Premises and/or the Improvements, any adjacent or nearby property, the San Diego Bay, or any soil, subsoil media, surface water,

sediments, or groundwater, Tenant shall promptly take all necessary actions at Tenant's sole expense, to investigate, remove or remediate such Hazardous Materials released by Tenant or its agents in compliance with all Environmental Laws (“**Environmental Cleanup**”). For purposes of the definition of “Environmental Cleanup” in this Lease, Landlord shall not impose numeric Hazardous Material cleanup levels for the Premises that are more stringent than numeric cleanup levels for the Premises that are prescribed by the San Diego Regional Water Quality Control Board or other regulatory agency acting within its jurisdiction, but Landlord reserves reasonable, good faith discretion regarding the means and methods of any removal or remediation of Hazardous Materials, taking into account the reasonably anticipated future public trust uses of the Premises as set forth in and consistent with the California Harbors & Navigation Code, including without limitation Harbors & Navigation Code App. 1 §§ 4, 87, and the Port Master Plan (as they each may be amended in the future). Moreover, notwithstanding anything to the contrary in this Lease, Landlord's discretion over the means and methods of any removal or remediation of Hazardous Materials pursuant to this subsection shall be governed exclusively by this Section 21.1.4, but solely as to the extent of the removal or remediation of Hazardous Materials and not as to any other proposed Alterations or Improvements. Tenant shall provide notice to Landlord prior to performing any removal or remedial action. In the event that an Environmental Cleanup conducted by or required of Tenant interferes with the current or future use of the Premises or other property of Landlord, Tenant shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the clean-up activities and Landlord's request to alter the Environmental Cleanup because of the interference), upon notice from Landlord, as necessary to prevent and/or eliminate such interference. Tenant shall not propose, and Landlord is under no obligation to agree to, any covenant or use restriction or other institutional controls as part of any removal or remediation required as a result of this Section 21.1.4. Unless otherwise agreed in writing by Landlord, an Environmental Cleanup required under this Section shall avoid and not include the use of restrictive covenants or other institutional controls. To the extent Landlord incurs any costs or expenses in performing Tenant's obligation to conduct an Environmental Cleanup which is Tenant's obligation under this Lease or under Environmental Law, Tenant shall reimburse Landlord for all such costs and expenses in accordance with the Reimbursement Procedure. This provision does not limit the indemnification obligation set forth in Section 21.2 and 19.1.

21.1.5 Clean-up Extending Beyond Lease Term.

Should any Environmental Cleanup of Hazardous Materials for which Tenant is responsible not be completed prior to the expiration or sooner termination of this Lease, then: (i) Tenant shall deposit with Landlord (or if the parties agree in their reasonable discretion, into a third-party escrow) an amount of money equal to the balance of the estimated costs of the Environmental Cleanup for disbursement for such Environmental Cleanup costs, and (ii) if the nature of the contamination or Environmental Cleanup required of Tenant is of such a nature as to make any portion of the Premises untenable or unleaseable, then Tenant shall be liable to Landlord as a holdover Tenant until the Environmental Cleanup has been sufficiently completed to render the Premises in full compliance with all Environmental Laws as determined by an agency appropriately exercising lead oversight over the Premises and/or a court of law and to make the Premises suitable, in Landlord's good faith determination, for lease to third parties. The estimated cost of the Environmental Cleanup shall require the reasonable approval of the Landlord. Landlord shall promptly release funds from such deposit from time to time upon Tenant's request to pay for such Environmental Cleanup costs incurred by Tenant. To the extent Landlord reasonably estimates, at any time, that the funds remaining on deposit are unlikely to be sufficient to cover all remaining anticipated Environmental Cleanup costs, then Tenant shall deposit, within thirty (30) days of Landlord's written demand therefor, such additional funds with Landlord as

Landlord may reasonably estimate at such time may be required to complete the Environmental Cleanup.

21.1.6 Financial Security.

If Landlord determines, in its reasonable discretion, that Tenant has not maintained insurance as outlined in Section 1.5 and Section 18, or other financial resources sufficient to enable Tenant to fulfill its obligations under this Article 21 whether or not accrued, liquidated, conditional, or contingent, then Tenant shall, at the request of Landlord, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Landlord as is appropriate to assure that Tenant will be able to perform its duties and obligations hereunder.

21.2 Hazardous Materials Indemnification.

Tenant hereby assumes for itself and shall indemnify and defend Landlord Parties, at Tenant's sole cost and expense and with counsel selected by Landlord, and hold the Landlord Parties harmless from any and all claims, demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, (judicial or administrative), judgments, and all Related Costs (whether or not based upon personal injury, negligence, strict liability, property damage, or contamination of, or adverse effects upon, the environment (including waters, sediment, and/or natural resources), including any loss of or damage to Landlord's real or personal property, and claims for cost recovery and contribution), which occur or arise during or after the Term relating to, or resulting from, any Hazardous Materials Activity, Tenant Hazardous Material or any Pre-Existing Hazardous Material or any breach by Tenant under this Article 21. Tenant's obligations under Article 21 (including the indemnification of Landlord by Tenant under this section) include, without limitation, any Environmental Cleanup required by this Lease, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Lease or any federal, state or local governmental agency because of Hazardous Materials present in the air, soil, subsoil media, surface water, sediments or ground water above, on, or under the Premises consistent with Tenant's obligations set forth in this Lease. The obligations apply whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any government agency has issued a clean-up or other order. Landlord shall have a direct right of action against Tenant even if no third party has asserted a claim. Furthermore, Landlord shall have the right to assign said indemnity and Environmental Cleanup requirements under Article 21. This indemnification and Environmental Cleanup requirements under Article 21 includes, but is not necessarily limited to:

- (a) Losses attributable to diminution in the value of the Premises;
- (b) Losses of rental or other income from the Premises;
- (c) Loss of or damage to natural resources;
- (d) Loss or restriction of use of rentable space(s) in the Premises;
- (e) Adverse effect on the marketing of any space(s) in the Premises;
- (f) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement or cost recovery or contribution actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including reasonable attorney, consultant, and expert fees and expenses); and

(g) All Related Costs (including, without limitation, reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Landlord in undertaking any assessment or remediation of the Premises that is not fully resolved by Tenant by the time this Lease terminates or expires.

21.3 Termination of Lease.

Upon the expiration or earlier termination of the Term, Tenant shall: (i) cause all Tenant Hazardous Material and Pre-Existing Hazardous Material to be removed from the Premises and disposed of in accordance with all applicable provisions of Environmental Law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by Tenant or any Tenant Party to store any Hazardous Material on the Premises, and repair any damage to the Premises caused by such removal; (iii) cause any soil, subsoil media, surface waters, sediments, groundwater or other portion of the Premises which has become contaminated by any Tenant Hazardous Material and Pre-Existing Hazardous Material to be decontaminated, detoxified, or otherwise cleaned-up in accordance with the applicable requirements of any relevant government authorities; and (iv) surrender possession of the Premises to Landlord free of any Tenant Hazardous Material and Pre-Existing Hazardous Material.

21.4 Storage Tanks.

21.4.1 Storage Tanks.

No underground storage tanks ("**USTs**") or aboveground storage tanks ("**ASTs**") shall be permitted to be installed on or under the Premises without the prior written consent of Landlord in its reasonable discretion. In the event Tenant obtains such approval to install a UST or a AST on or under the Premises, Tenant shall be responsible for complying with all Laws pertaining to such UST or AST, including tank monitoring of such UST or AST as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Tenant further agrees to take sole responsibility for reporting unauthorized releases from UST to HMMD and Landlord within twenty-four (24) hours of such unauthorized release. Tenant will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material or any required Environmental Cleanup including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. Tenant shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST or an AST. Tenant further agrees to be responsible for maintenance and repair of the USTs and ASTs; obtaining tank permits; filing a business plan with HMMD or other responsible agency; and for paying for all regulatory agency fees relating to USTs and ASTs.

21.4.2 Records.

Tenant agrees to keep complete and accurate records regarding USTs and ASTs on the Premises for at least the prior three (3) years period including, but not limited to, records relating to permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs and ASTs, and any unauthorized releases of Hazardous Materials. Tenant also agrees to make such records available for Landlord upon request.

21.4.3 Aboveground Storage Tanks.

In the event Tenant obtains such approval to install an AST, Tenant shall be responsible for complying with all Laws pertaining to such AST. Tenant shall, in accordance with this Lease and applicable Laws, secure and pay for all necessary permits and approvals, prepare a spill

prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith. In addition, Tenant shall maintain and repair said tanks to conform and comply with all other applicable Laws for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing the San Diego Regional Water Quality Control Board ("**SDRWQCB**"), Landlord, and/or responsible agency, to conduct periodic inspections. Tenant also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by Law.

21.5 Environmental Covenants.

21.5.1 Regulated Waste Removal.

Tenant hereby acknowledges that excavation of soils, including sediment, from the Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Landlord takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Tenant hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless the Landlord Parties from and against any and all claims (including under negligence or strict liability), liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

21.5.2 Residual Hazardous Materials.

Landlord shall have no liability or responsibility for ensuring that Tenant's workers, including without limitation those conducting testing, construction and maintenance activities on the Premises, are protected from residual contaminants in 29 Code of Federal Regulations ("**CFR**"). Tenant shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Tenant hereby waives any claim, or potential claim, it may have to recover any damages, losses, Related Costs related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless the Landlord Parties from and against any and all such Related Costs, claims (including under negligence or strict liability), liabilities, losses and damages, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

21.5.3 Covenant Not To Sue and Release of Landlord.

Tenant hereby RELEASES the Landlord Parties from, COVENANTS NOT TO SUE the Landlord Parties for, and agrees not to seek to have any regulatory agency or third party impose liability upon or seek damages or costs from Landlord for or related to, any contamination or violation of Environmental Laws existing at or arising from the Premises and ASSUMES FOR ITSELF (as between Tenant and Landlord Parties) all obligations, requirements and liabilities of Tenant under Article 21, including for claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of Tenant under Article 21., With respect to all releases made by Tenant under or pursuant to this Article 21, Tenant hereby

waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the provision of California Civil Code § 1542 set forth in Article 22 below.

21.6 Survival.

The terms of this Article 21 shall survive the expiration or earlier termination of this Lease.

22. "AS-IS" LEASE AND WAIVERS

22.1 Tenant's Acknowledgment.

Tenant acknowledges that prior to entering into this Lease, Landlord has provided the disclosure required under California Health and Safety Code § 25359.7, as set forth in the Environmental Disclosure Addendum attached to this Lease as Exhibit G, which is incorporated herein by reference, and has given Tenant sufficient opportunity to consider, inspect and review, to Tenant's complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Premises; (2) the physical condition of the Premises, including, without limitation, the condition and value of any Improvements and the soils, subsoil media, sediments, surface waters and groundwaters at or under the Premises; (3) the risk of climate change and the possible adverse consequences thereof, including, without limitation, rises in sea level and possible damage to and destruction of the Premises; (4) the development potential of the Premises including without limitation on the preceding clause (3), the effect of all Laws, including, without limitation, those concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (5) the financial prospects of the Premises and local market conditions; (6) Tenant's determination of the feasibility of Tenant's intended use and enjoyment of the Premises; (7) the presence of any Pre-Existing Hazardous Material and any other contamination of the Premises, including the contamination of any Improvements, soils, subsoil media, groundwater and San Diego Bay water and sediment; and (8) all other facts, circumstances, and conditions affecting, concerning or relating to the Premises. The land use; the environmental, biological, physical and legal condition of the Premises; the risks associated with possible climate change; the feasibility of Tenant's intended use and enjoyment of the Premises; and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Premises"; and, without limitation on any other provision of this Lease, Tenant expressly assumes the risk that adverse conditions affecting the Premises have not been revealed by Tenant's investigations.

22.2 Only Landlord's Express Written Agreements Binding.

Tenant acknowledges and agrees that no Person acting on behalf of Landlord is authorized to make, and that except as expressly set forth in this Lease, neither Landlord nor anyone acting for or on behalf of Landlord has made, any representation, warranty, statement, guaranty or promise to Tenant, or to anyone acting for or on behalf of Tenant, concerning the Condition of the Premises or any other aspect of the Premises. Tenant further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any Person for or acting on behalf of Landlord which is not expressly set forth in this Lease will be valid or binding on Landlord.

22.3 As-Is Lease.

Tenant further acknowledges and agrees that Tenant's execution of this Lease shall constitute Tenant's representation, warranty and agreement that the Condition of the Premises has been independently verified by Tenant to its full satisfaction, and that, except to the extent of the express covenants of Landlord set forth in this Lease, Tenant will be leasing the Premises based

solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Tenant's representatives; and that **TENANT IS LEASING THE PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE TENANT'S EXECUTION OF THIS LEASE.** Without limiting the scope or generality of the foregoing, Tenant expressly assumes the risk that the Premises do not or will not comply with any Laws now or hereafter in effect.

22.4 Waivers, Disclaimers and Indemnity.

22.4.1 Waiver and Disclaimer.

Tenant hereby fully and forever waives, and Landlord hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

22.4.2 Landlord's Materials.

Tenant further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Tenant has received or may hereafter receive from Landlord Parties or its agents or consultants (collectively the "Landlord's Materials") have been furnished without warranty of any kind and on the express condition that Tenant will make its own independent verification of the accuracy, reliability and completeness of such Landlord's Materials and that Tenant will not rely thereon. Accordingly, subject to terms of Section 22.4.3 below, Tenant agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Landlord Parties or any of the persons or entities who prepared or furnished any of the Landlord's Materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such Landlord's Materials and Tenant hereby fully and forever releases, acquits and discharges Landlord Parties and each Person furnishing such Landlord's Materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

22.4.3 Release and Waiver.

(a) *Release.* Except to the extent of Claims (as defined below) against Landlord arising from any breach by Landlord of its covenants and obligations expressly provided in this Lease, Tenant, on behalf of Tenant, each Tenant Party and their respective successors and assigns, hereby fully and forever releases, acquits and discharges Landlord of and from, and hereby fully, and forever waives and agrees not to assert or seek to have any third party or regulatory agency assert, any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, Related Costs, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "**Claims**"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that any Tenant Party or any of Tenant's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (i) any act or omission of Landlord (or any Person acting for or on behalf of Landlord or for whose conduct Landlord may be liable), whether or not such act be the active, passive, or sole negligence of Landlord, in connection with prior ownership, maintenance, operation or use of the Premises; (ii) any condition of environmental contamination or pollution at the Premises (including, without

limitation, any Pre-Existing Hazardous Material or other contamination or pollution of any soils, subsoil media, sediments, surface waters or ground waters at the Premises and any cleanup or abatement order effecting the Premises); (iii) to the extent not already included in clause (ii) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Premises or into any soils, subsoil media, sediments, surface waters or groundwaters at or under the Premises); (iv) the violation of, or noncompliance with, any Environmental Law or other applicable Law now or hereafter in effect, however and whenever occurring; (v) the condition of the soil at the Premises; (vi) the Condition of the Premises, including, without limitation, the condition of any Improvements including, without limitation, the structural integrity and seismic compliance of such Improvements; (vii) any matters which would be shown on an accurate ALTA land survey of the Premises (including, without limitation, all existing easements and encroachments, if any); (viii) all applicable Laws now or hereafter in effect; (ix) matters which would be apparent from a visual inspection of the Premises; or (x) to the extent not already covered by any of the foregoing clauses (i) through (ix) above, the use, maintenance, development, construction, ownership or operation of the Premises by Landlord or any predecessor(s)-in-interest in the Premises of Landlord.

(b) *Waiver of Civil Code Section 1542.* With respect to all releases made by Tenant under or pursuant to Article 21 and this Article 22, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN THEIR FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY THEM WOULD HAVE MATERIALLY AFFECTED THEIR SETTLEMENT WITH THE DEBTOR OR THE RELEASED PARTY.”

TENANT: _____

22.4.4 Survival.

The terms of this Article 22 shall survive the expiration or earlier termination of this Lease.

23. QUITCLAIM OF TENANT’S INTEREST UPON TERMINATION

Subject to the terms of this Article 23 and Article 7, upon the expiration or earlier termination of the Lease, all Improvements, excluding trade fixtures, shall become the property of Landlord and a part of the realty and shall be surrendered to Landlord. In order to confirm such transfer of ownership, at Landlord’s request following the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord a Tenant-executed quitclaim deed in recordable form conveying the Improvements to Landlord free and clear of any mechanic’s or materialmen’s liens and other encumbrances. Without limitation of the foregoing, in the event that Tenant does not execute a quitclaim deed within thirty (30) days of receipt of written request therefor, Tenant hereby appoints Landlord as Tenant’s attorney-in-fact to execute such deed in the name and on behalf of Tenant and to record same in the official records of San Diego County, California. This power of attorney is irrevocable and coupled with an interest.

24. PEACEABLE SURRENDER

Upon expiration of this Lease or earlier termination thereof, Tenant shall peaceably surrender the Premises to Landlord in good condition with all refuse removed and in as good condition and

repair as the Premises were as of the Effective Date, except for reasonable wear and tear and except for as the Premises may have been rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease. Notwithstanding the foregoing, Tenant shall leave or remove such Improvements as directed by Landlord pursuant to Section 7.2, and surrender the Premises in the condition required under Section 7.2. If Tenant fails to surrender the Premises at the expiration of this Lease or the earlier termination or cancellation thereof in the condition required under this Lease, in addition to Landlord's other remedies, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding tenant claims based on Tenant's failure to surrender or Landlord's failure to deliver the Premises.

25. WAIVER

No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently. Any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment. Landlord shall have the power and authority to waive any requirement of Tenant under this Lease except as such authority may be limited by the Port Act or BPC from time to time; provided, however, Landlord may elect to obtain approval of the BPC as a condition to exercising this authority.

26. HOLDOVER

This Lease shall terminate without further notice at expiration of the Term. Any holding over by Tenant after either expiration or termination without Landlord's written consent shall be a tenancy-at-sufferance upon all of the provisions of this Lease, except those pertaining to the Term, and except that Minimum Annual Rent shall be 150% of the Minimum Annual Rent in effect prior to the expiration or termination. If Tenant, with Landlord's consent, remains in possession of the Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. All provisions of this Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and Tenant shall continue to pay all Rent required by this Lease. Notwithstanding anything herein to the contrary, in no event may the Term of this Lease, together with any holdover period, exceed sixty-six (66) years.

27. NOTICES

All notices provided for by this Lease or by Law to be given or served upon Landlord or Tenant shall be addressed as provided in Section 1.6 (as such address may have been changed by subsequent notice given to the other party) and shall be in writing and: (i) personally served upon Landlord or Tenant, or any Person hereafter authorized by either party in writing to receive such notice, (ii) delivered via reputable over-night courier service, or (iii) delivered by U.S. postal service certified letter.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

28. SECURITY DEPOSIT

28.1 Amount of Security Deposit.

A security deposit in an amount equal to Forty Thousand Seven Hundred and Forty Eight Dollars (\$40,748) shall be provided to Landlord by Tenant, within five (5) business day of Tenant's execution of this Lease. The security deposit shall be held by Landlord and used for the purpose of remedying Tenant's defaults under this Lease. If there shall be any default (or such other event) under this Lease, then Landlord shall have the right, but shall not be obligated, to use, apply or retain all or any portion of the security deposit for the payment of any (a) rent or any other sum applicable to such event, or (b) amount Landlord may spend or become obligated to spend, or for the compensation of Landlord for any losses incurred, by reason of such event (including any damage or deficiency arising in connection with the reletting of the Premises). If any portion of the security deposit (in whatever form) is so used or applied, then within five (5) business days after Landlord gives written notice to Tenant of such use or application, Tenant shall increase the Letter of Credit (as defined below) (or deliver to Landlord additional funds, in the case of a cash security deposit) in an amount sufficient to restore the security deposit to the original security deposit amount, and Tenant's failure to do so shall constitute a default under this Lease if such failure is not cured within the notice and cure period set forth in Section 12.1.2 above. Tenant waives any and all rights, Tenant may have under Section 1950.7 of the California Civil Code, any successor statute, and all similar provisions of Law, now or hereafter in effect. Tenant agrees that (i) any statutory time frames for the return of a security deposit are superseded by the express period identified in this Article 28, and (ii) Landlord may claim from the security deposit any and all sums expressly identified in this Article 28, and any additional sums reasonably necessary to compensate Landlord for any and all losses or damages caused by Tenant's default of this Lease, including, but not limited to, all damages or Rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code. Tenant shall not be entitled to interest on the security deposit.

28.2 Letter of Credit.

Except as provided below, the security deposit shall be in the form of an Irrevocable Stand-By Letter of Credit ("**Letter of Credit**") drawn on a bank having a branch located in San Diego County and having a Moody's Long Term Letter of Credit rating of single A or higher and a Moody's Long Term Deposit rating of single A or higher. The principal sum shall be made payable to Landlord or order. Each Letter of Credit provided during the Term shall be valid for a minimum of twelve (12) months from date of issuance. Provided, however, when the remaining Term is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the Expiration Date of this Lease. If a Letter of Credit is not valid for the entire remaining Term plus three (3) months beyond, then such Letter of Credit shall be extended or renewed at least ninety (90) days prior to its expiration.

All or any portion of the principal sum of the Letter of Credit shall be available unconditionally to Landlord for the purposes and uses provided herein. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the Landlord, in its reasonable discretion, and if not so acceptable, may be rejected. The Letter of Credit and Drawing Certificate shall not be acceptable if it requires Landlord to send written notice of default or request or demand payment from Tenant after default, prior to Landlord drawing on any funds under the Letter of Credit.

28.3 Cash Alternative.

Notwithstanding the above, if said security deposit or the cumulative total amount of security deposits required by Landlord under this Lease does not exceed Eighty-Five Thousand Dollars (\$85,000), Tenant may elect to provide said security deposit in the form of cash.

28.4 Adjustments.

The amount of the security deposit may be increased from time to time at the discretion of the Landlord. Following any such adjustment, the amount of the security deposit may not exceed three (3) times the average of the monthly Rent payments during the year preceding the adjustment. In the event the amount of the security deposit is increased, Tenant shall submit the additional security deposit within thirty (30) days of notification of the increase.

28.5 Maintain Through Term.

Tenant shall maintain the required security deposit continuously throughout the Term. The security deposit or the remaining portion thereof not used or applied by Landlord, shall be rebated, released, assigned, surrendered, or endorsed to Tenant or order, as applicable, within ninety (90) days following the expiration or earlier termination of this Lease.

29. GENERAL PROVISIONS

29.1 Terms; Captions.

The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.2 Binding Effect.

Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, successors or assigns, provided this clause shall not permit any Assignment by Tenant contrary to the provisions of Article 11 of this Lease.

29.3 No Merger.

If both Landlord's and Tenant's estates in the Premises become vested in the same owner (other than by termination of this Lease following a default hereunder, subject to the rights of a Permitted Lender pursuant to Section 10.3 above), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of any Permitted Lender.

29.4 Recording.

Unless the parties agree otherwise in writing in advance, on or before the date of this Lease, Landlord and Tenant shall execute a Memorandum of Lease in the form of Exhibit E attached hereto (the "**Memorandum of Lease**"). At Tenant's option, Tenant shall cause the Memorandum of Lease to be recorded at Tenant's sole cost and Tenant shall be solely responsible for any transfer taxes or fees required to be paid in connection with the recording of the Memorandum of Lease.

29.5 Transfer of Landlord's Interest.

Tenant acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, Landlord has the right to transfer all or any portion of its interest in the Premises and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer. Each landlord hereunder shall be liable only for those obligations arising during its period of ownership and shall be released from further obligations upon any transfer. The liability of Landlord and any transferee of Landlord shall be limited to their respective interests in the Premises, as the case may be, and Landlord and such transferee shall be without personal liability under this Lease, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.

29.6 Time of Essence.

Time is of the essence with respect to this Lease and each of its provisions.

29.7 Partial Invalidity.

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by Law.

29.8 Entire Agreement.

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter hereof. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. However, Tenant acknowledges and agrees that other documents may restrict Tenant's use of the Premises or impose other obligations not specifically referenced in this Lease including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

29.9 Joint and Several.

If there is more than one Person constituting Tenant (i) the obligations imposed upon such persons or entities under this Lease shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of such persons and entities with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

29.10 Tenant's Authority.

If Tenant is a corporation, partnership or limited liability company, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and

existing entity qualified to do business in the state in which the Premises is located and that Tenant has full right and authority to execute and deliver this Lease and that each Person signing on behalf of Tenant is authorized to do so.

29.11 Financial and Other Information Supplied by Tenant.

Tenant represents and warrants that any financial or other information supplied by Tenant to Landlord regarding Tenant or any Guarantor prior to entering into the Lease or during the Term or regarding any Transfer, or to Tenant's actual knowledge, regarding any Transferee, is true and accurate and not misleading in any material respect. The breach of this warranty shall be a default of this Lease by Tenant.

29.12 Attorneys' Fees.

Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Landlord under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

29.13 Transaction Costs.

To the extent Tenant requests any approval, consent or other action by Landlord (including, without limitation, in connection with any proposed Alterations, Financing Transaction or Transfer), Tenant shall pay or reimburse Landlord, upon written demand therefor, all of Landlord's reasonable attorneys' fees and other third party costs incurred by Landlord relating to Landlord's review, together with Landlord's then current processing or cost recovery fee for similar transactions consistent with any schedule of such fees then utilized by Landlord. Landlord will provide Tenant with a copy of any such fee schedule following written request therefor from Tenant. Such costs and fees shall be payable to Landlord whether or not Landlord grants such approval or consent, or undertakes the action requested by Tenant.

29.14 Governing Law.

Venue for any legal proceeding shall be in San Diego County, California. This Lease shall be construed and enforced in accordance with the Laws of the State of California.

29.15 Brokers.

Landlord and Tenant each hereby warrant to each other that neither has retained or employed any real estate broker or agent in connection with the negotiation of this Lease. Tenant shall be solely responsible for the payment of any fee or commission due to any broker and agrees to indemnify and defend and hold Landlord harmless from any and all claims, demands, losses, liabilities, lawsuits and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing by Landlord.

29.16 Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

29.17 Drafting Presumption; Review Standard.

The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against the drafting party. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Lease, any approval or consent to be given by Landlord may be given or withheld in Landlord's sole discretion.

29.18 Estoppel Statement.

At any time and from time to time upon not less than fifteen (15) business days' notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord an estoppel statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rent has been paid, and stating whether or not Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying such default of which Tenant may have knowledge, and any other information regarding the Lease or Tenant's performance requested by Landlord. At any time and from time to time upon not less than fifteen (15) business days' notice by Tenant or a Permitted Lender, Landlord shall execute, acknowledge and deliver to such Permitted Lender an estoppel statement in the Form of Landlord's Estoppel Statement attached hereto as Exhibit F.

29.19 Certified Access Specialist.

For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist ("CASp"). (defined in California Civil Code Section 55.52(a)(3)). Pursuant to Section 1938 of the California Civil Code, Landlord hereby provides the following notification to Tenant: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the premises." If Tenant requests to perform a CASp inspection of the Premises, Tenant shall, at its sole cost, retain a CASp approved by Landlord (provided that Landlord may designate the CASp, at Landlord's option) to perform the inspection of the Premises at a time agreed upon by the parties. Tenant shall provide Landlord with a copy of any report or certificate issued by the CASp (the "CASp Report") and Tenant shall, at its sole cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CASp Report, which modifications will be completed in accordance with terms of this Lease, including, but not limited to, Section 6 hereof. Tenant agrees to keep the information in the CASp Report confidential except as necessary for the Tenant to complete such modifications.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, LANDLORD AND TENANT HAVE EXECUTED THIS WATER AREA LEASE AS OF THE EFFECTIVE DATE FIRST SET FORTH ABOVE.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Adam J. Meyer
Acting Director, Real Estate

**NATIONAL STEEL AND SHIPBUILDING
COMPANY,
a Nevada corporation**

By: _____]
Signature

NAME: _____

Its: _____

By: _____
Signature

NAME: _____

Its: _____

By: _____
Signature

DEFINITIONS

This Definitions Addendum constitutes a part of that certain Water Area Lease (the "**Lease**") entered into as of the Effective Date by and between Landlord and Tenant and by reference to the same in the Lease, the following definitions are incorporated into and constitute a part of the Lease.

DEFINITIONS ADDENDUM

ADA:	the Americans with Disabilities Act, 42 U.S.C. §12101 (et seq.) and the regulations promulgated thereunder, as the same may be amended from time to time.
ADDITIONAL RENT:	all sums of money other than Monthly Rent required to be paid by Tenant to Landlord under this Lease.
AFFILIATE:	any managing member or general partner of the subject Person (as the case may be), or any Person that Controls, is directly or indirectly Controlled by, or is under common ownership or Control with the subject Person.
AGGREGATE DEBT AMOUNT:	defined in Section 11.10.
ALTERATIONS:	any alterations, additions, installations, removals, demolitions, improvements or other physical changes to the Premises or any Improvements, including the alteration, addition, installation or removal of machines, equipment, appliances or fixtures.
ALTERATION PLANS:	defined in Section 6.1.
APPROVED PARENT:	defined in Section 11.10.
ASSIGNMENT:	any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of Tenant's interest in this Lease (including without limitation any easements), the leasehold estate created hereby, or the Premises, whether by operation of law or otherwise.
ASSIGNMENT PARTICIPATION FEE:	defined in Section 11.10.
ASTS:	defined in Section 21.4.1.
BANKRUPTCY CODE:	Title 11 of the United States Code, as amended.
BANKRUPTCY EVENT:	the occurrence with respect to Tenant, any Guarantor or any other Person liable for Tenant's obligations hereunder (including without limitation any general partner of Tenant) of any of the following: (a) such Person becoming insolvent, as that term is defined in the Bankruptcy Code; (b) appointment of a receiver or custodian for any property of such Person, or the institution of a foreclosure or attachment action upon any property of such Person; (c) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code or any insolvency laws; (d) filing of an involuntary petition against such Person as the subject debtor under the Bankruptcy Code or any insolvency laws, which either (1) is not dismissed within sixty (60) days after

DEFINITIONS ADDENDUM

	filing, or (2) results in the issuance of an order for relief against the debtor; (e) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors; or (f) an admission by Tenant or Guarantor of its inability to pay debts as they become due.
BMP:	defined in Section 15.1.
BPC:	Board of Port Commissioners of the San Diego Unified Port District.
BUILDABLE CONDITION:	defined in Section 7.2
CASP:	defined in Section 29.19.
CCC:	defined in Section 4.2.
CDP:	defined in Section 4.2.
CEQA:	defined in Section 4.2.
CERTIFICATES:	defined in Section 18.3.1.
CFR:	defined in Section 21.5.2.
CHANGE IN ENTITY:	includes, whether through one transaction or a series of transactions:
(i)	with respect to a corporation whose stock is not publicly traded through a nationally recognized exchange, partnership, association, limited liability company, or other entity (other than a corporation whose stock is traded through a nationally recognized exchange) any one or more of the following resulting in a change in Control of the subject entity: (A) the withdrawal, admittance or change, voluntary, involuntary or by operation of law or otherwise, of one or more of the partners, members or other principals or participants unless due to death or disability of the shareholders, partners and/or members, or (B) the assignment, hypothecation, pledge, encumbrance, transfer or sale, whether voluntary or involuntary or by operation of law or otherwise, of any stock, partnership, membership or equity interests (other than (i) to immediate family members by reason of gift or death, or (ii) to a family trust for the benefit of immediate family members), or (C) the dissolution, merger, consolidation or other reorganization of such corporation, partnership, association, limited liability company or other entity; or
(ii)	with respect to a corporation whose stock is publicly held and traded through a nationally recognized exchange, the transfer or sale, voluntary or involuntary, of all or substantially all of the assets or stock of the corporation to a third party.

DEFINITIONS ADDENDUM

Any event or transaction that would constitute a Change in Entity of Approved Parent, also shall constitute a Change in Entity of Tenant.

Notwithstanding the forgoing, a Change in Entity shall not include any of the event(s) or transaction(s) described in clauses (i)(A), (i)(B) and (i)(C) in the paragraph above between and among another entity or entities Controlled (which for purposes hereof must satisfy both prongs (i) and (ii) of the definition of Controlled) by Approved Parent. Any event(s) or transaction(s) that would otherwise constitute a Change in Entity but for the exceptions noted in the prior sentence shall, notwithstanding such exceptions, constitute a Change in Entity if such event(s) or transaction(s) is a subterfuge to avoid any of Tenant's obligations under this Lease. Following any Change in Entity, Tenant shall continue to be obligated to comply with the Tangible Net Worth requirements of Section 1.7.

CLAIMS: defined in Section 22.4.3(a).

COMPLETION AND COMPLETE: shall mean that Tenant has obtained and delivered to Landlord (i) a final certificate of occupancy, if such certificate of occupancy can be issued, for substantially all of any Alterations, as applicable, from the appropriate governing authority, (ii) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, the Alterations, as applicable, have been completed in accordance, in all material respects, with the Plans, and (iii) a copy of final lien releases in statutory form from all of Tenant's contractors and all subcontractors.

CONDEMNATION: defined in Section 14.2.

CONDITION OF THE PREMISES: defined in Section 22.1.

CONSTANT DOLLARS: shall mean that the referenced dollar amount shall be adjusted on each anniversary of the Effective Date by an amount equal to the percentage increase in the CPI from the Effective Date to the most recent anniversary of the Effective Date preceding the date the Constant Dollar equivalent is to be calculated.

CONSTRUCTION COSTS: defined in Section 6.3.

CONSTRUCTION REQUIREMENTS: those requirements, conditions and procedures regulating the installation, construction, modification and repair of Improvements and Alterations as described in Exhibit C attached to this Lease.

DEFINITIONS ADDENDUM

CONTROL, CONTROLLED AND CONTROLLING: shall be deemed to be either or both (i) the ownership of more than fifty percent (50%) of the stock or other voting interest of the subject entity or the ownership of beneficial interests in the subject entity, or (ii) the power to direct the management of the subject entity with respect to major decisions of the subject entity, whether through voting interests or by way of agreement.

CPI: Consumer Price Index for All Urban Consumers for all items in Los Angeles, Long Beach, and Anaheim, CA. Items based on the period 1982 - 84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics.

DEFAULT RATE: an annual rate equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.

DEMOLITION AND REMEDIATION CONTRACTOR: defined in Section 7.4.1.

DEMOLITION AND REMEDIATION REPORT: defined in Section 7.4.1.

DEMOLITION AND REMEDIATION REPORT UPDATE: defined in Section 7.4.1(a).

DEMOLITION AND REMEDIATION SECURITY AMOUNT: defined in Section 7.4.1.

DEMOLITION AND REMEDIATION SECURITY FUNDING PERIOD: defined in Section 7.4.1.

DEMOLITION NOTICE: defined in Section 20.2.

DISCRETIONARY ACTION: defined in Section 8.3.

DISCRETIONARY PROJECT: defined in Section 8.1.

ENVIRONMENTAL CLEANUP: defined in Section 21.1.4.

DEFINITIONS ADDENDUM

ENVIRONMENTAL LAWS: defined in Section 21.1.1.

ESTIMATED DEMOLITION AND REMEDIATION COST: defined in Section 7.4.1.

EXPIRATION DATE: defined in Section 1.1 but if this Lease has been validly extended pursuant to an Option to Extend, the Expiration Date shall be the last day of the applicable Option Term.

FINANCIAL INSTITUTION: shall mean (i) an insurance company qualified to do business in the state of California; or (ii) a U.S. federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof (e.g., the California State Teachers' Retirement System); or (iv) a real estate investment trust; or (v) any lender or investment fund whose regular on-going business includes real property secured financing for commercial or industrial properties, or (vi) a combination of two or more of the preceding entities.

FINANCING PARTICIPATION FEE: defined in Section 10.5.

FINANCING TRANSACTION: defined in Section 10.1.1.

FORCE MAJEURE EVENT: defined in Section 6.36.3.

FORECLOSURE PURCHASER: defined in Section 10.3.3.

GOVERNMENT AGENCY: defined in Section 21.1.2.

GROSS PROCEEDS: defined in Section 11.10.

HAZARDOUS MATERIAL: shall mean any pollutant, contaminant, or hazardous, dangerous or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a "Hazardous Material" or "Hazardous Substance" within the meaning of any applicable Law (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 25316 and anything that may result in contamination or pollution as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Law relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Law,

DEFINITIONS ADDENDUM

	Hazardous Material as defined herein includes any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any Environmental Laws.
HAZARDOUS MATERIALS ACTIVITY:	defined in Section 21.1.1.
IMPROVEMENTS:	those buildings, structures and other improvements (including vaults, utilities and other underground improvements) now or hereafter (including Alterations) located on, in, over or under the Premises.
INCURABLE DEFAULT:	defined in Section 10.3.2(b)
INQUIRY:	defined in Section 21.1.2.
LANDLORD:	The San Diego Unified Port District, and where applicable the Landlord acting through the BPC.
LANDLORD END OF TERM ELECTION:	defined in Section 7.2
LANDLORD PARTIES:	Landlord, its officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, successors and assigns.
LATE CHARGES:	defined in Section 5.2.
LAWS:	All present and future California state, federal and local laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, including, without limitation, the ADA , and any law of like import, and all rules, regulations and government orders with respect thereto, including without limitation any of the foregoing relating to Hazardous Materials, environmental matters (including, but not limited to, Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, the Clean Water Act, Oil Pollution Act, the Toxic Substances Control Act and comparable and supplemental California laws), public health and safety matters and landmarks protection, as any of the same now exist or may hereafter be adopted or amended. Said Laws shall include, but are not limited to the Laws enacted by the San Diego Unified Port District Act, such as Article 10 of the San Diego Unified Port District Code; any applicable ordinances of the city in which the Premises are located, including the building code thereof, and any governmental permits and approvals, including, without limitation, any California Coastal Development Permit, applicable to the Premises or the use or development thereof.
LEASEHOLD AWARD:	defined in Section 14.7.1.

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LETTER OF CREDIT: defined in Section 28.2.

MAJOR ALTERATIONS: defined in Section 6.1.1.

MEMORANDUM OF LEASE: defined in Exhibit E.

MINOR ALTERATIONS: defined in Section 6.1.2.

MSDS: defined in Section 21.1.1.

NET PROCEEDS: defined in Section 10.5.

NEW LEASE: defined in Section 10.3.2(d)

NOTICE OF ELECTION TO TERMINATE: defined in Section 20.2.

OFAC: defined in Section 17.3.

PERMITTED ENCUMBRANCE: defined in Section 10.2.

PERMITTED LENDER: defined in Section 10.2.

PERMITTED USE: defined in Section 1.3.

PERSON: any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.

PMP: defined in Section 1.3.

PMPA: defined in Section 8.1.

PRE-EXISTING HAZARDOUS MATERIAL: any Hazardous Material located on or under the Premises as of the Effective Date, whether known or unknown but only to the extent such Hazardous Material was re-suspended, released, redeposited, discharged, emitted, exacerbated by, requires investigation or remediation as a result of, or otherwise arises out of or results from, the use, occupancy, possession, or operation of the Premises by Tenant or a Tenant Party subsequent to the Effective Date, including to the extent such Hazardous Materials has come to be located on any other property.

It shall be Tenant's obligation to prove that any Hazardous Material located on or under the Premises as of the Effective Date has not been suspended, released, deposited, discharged, emitted, exacerbated by, does not require investigation or remediation as a result of, and/or does not otherwise arise out of or result from, the use, occupancy, possession, or operation of

DEFINITIONS ADDENDUM

either: (i) the Premises by Tenant or a Tenant Party subsequent to the Effective Date or (ii) Tenant's operations under any of the Existing Leases, regardless of whether prior to or following the Effective Date.

Except as expressly provided in this definition, Hazardous Material located on or under the Premises as of the Effective Date, shall not be considered "Pre-Existing Hazardous Material" for the purposes of this Lease.

PREMISES: defined in Section 1.2.

PROHIBITED PERSON: defined in Section 17.3.

PROHIBITED PERSONS: defined in Section 17.3.

PROPERTY EXPENSES: defined in Section 16.2.

PWL: defined in Section 6.5

**REGULATED WASTE
REMOVAL:** defined in Section 21.5.1.

**REIMBURSEMENT
PROCEDURE:** defined in Section 5.4.

RELATED COSTS: any costs, damages (of all kinds including punitive damage, diminution in value and loss of use), claims, liabilities, expenses (including reasonable attorneys', consultants' and experts' fees), losses, fines, penalties and court costs related to the subject matter of the Related Costs and amounts paid in settlement of any claims or actions related to the subject matter of the Related Costs.

REMOVAL EXTENSION: defined in Section 7.5.

REMOVAL PERIOD: defined in Section 7.4.1.

RENT: defined in Article 5.

SUBLEASE: any sublease (or sub-sublease or other level of sublease), and any occupancy, franchise, license, operating agreement, concession agreement or management agreement or other right to use applicable to this Lease or the Premises or any part thereof.

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SUBTENANT:	any subtenant (or sub-subtenant or other level of subtenant), occupant, franchisee, licensee, operator, concessionaire or manager under any Sublease.
TAX EXPENSES:	shall have the meaning as defined in Section 16.1.
TENANT:	defined in the Preamble of this Lease.
TENANT HAZARDOUS MATERIAL:	any Hazardous Material (i) generated, brought onto, used, stored, emitted, released or disposed of in or about the Premises or Improvements by Tenant or a Tenant Party during the Term of this Lease, (ii) generated, brought onto, used, stored, emitted, released or disposed of in or about the Premises or Improvements by Tenant or a Tenant Party, (iii) generated, resuspended, released, deposited, discharged, emitted, or exacerbated by any of the same in (i), (ii) and (iii) hereof, including to the extent such Hazardous Material has come to be located on any other property.
TENANT PARENT:	a Person which Controls, directly or indirectly, Tenant.
TENANT PARTY:	Tenant, its agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns and its Subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of those Subtenants.
TENANT RELATED PARTY:	(i) a corporation or other business entity into or with which Tenant shall be merged or consolidated (such as a "successor corporation"), or to which substantially all of the assets of Tenant may be transferred or sold; or (ii) a corporation or other business entity (a "related corporation") which shall Control, be Controlled by or be under common Control with Tenant.
TERM:	defined in Section 1.1.
THIRD PARTY:	defined in Section 11.10.
TRANSFER:	defined in Section 11.1.
TRANSFER NOTICE:	defined in Section 11.2.
TRANSFeree:	defined in Section 11.2 and 11.3.
USA Patriot Act:	defined in Section 17.3.
USTs:	defined in Section 21.4.1.

**LEGAL DESCRIPTION FOR
NATIONAL STEEL AND SHIPBUILDING COMPANY
REAL ESTATE LEASED PREMISES
PARCEL/DRAWING NO XXX-XXX
WITHIN CORPORATE LIMITS OF SAN DIEGO**

PARCEL 1 (WATER AREA)

COMMENCING AT STATION NUMBER 479 LYING ON THE U.S. PIERHEAD LINE AND DELINEATED ON MAP ENTITLED "HARBOR LINES, SAN DIEGO BAY, CALIFORNIA, FILE NO. (D.O. SERIES) 426," APPROVED BY THE SECRETARY OF THE ARMY, APRIL 29, 1963 AND FILED IN THE OFFICE OF THE DISTRICT ENGINEER, LOS ANGELES, CALIFORNIA, THENCE NORTH 56° 20' 11" WEST (N. 56° 51' 00" W PER HARBOR LINES MAP) 1288.48 FEET TO POINT "A" AS DESCRIBED IN PARCEL NO. 1 AND PARCEL 2 OF AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 4 TO NATIONAL STEEL AND SHIPBUILDING COMPANY (NASSCO) RECORDED APRIL 17, 2017 AS DOCUMENT NO. 66530; THENCE CONTINUING ALONG THE U.S. PIERHEAD LINE NORTH 56° 20' 11" WEST (NORTH 56° 20' 08" WEST PER SAID NASSCO LEASE) 1361.65 FEET TO A POINT BEING DISTANT SOUTH 56° 20' 11" EAST 95.00 FEET FROM THE WESTERLY MOST CORNER OF PARCEL 2 OF THE SAID NASSCO LEASE ALSO BEING THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID U.S. PIERHEAD LINE SOUTH 33° 39' 49" WEST 128.36 TO A POINT HEREINAFTER KNOWN AND DESIGNATED AS **POINT "B"**; THENCE CONTINUING SOUTH 33° 39' 49" WEST 405.76 FEET; THENCE SOUTH 56° 20' 11" EAST 178.48 FEET; THENCE NORTH 33° 39' 49" WEST 534.12 FEET TO SAID U.S. PIERHEAD LINE; THENCE ALONG SAID U.S. PIERHEAD LINE NORTH 56° 20' 11" WEST 178.48 FEET TO **THE TRUE POINT OF BEGINNING**

SAID PARCEL CONTAINS 95,330 SQUARE FEET OR 2.19 ACRES OF LEASE AREA.

PARCEL 2 (WATER AREA)

COMMENCING AT THE ABOVE DESCRIBED **POINT "B"** IN PARCEL 1; THENCE NORTH 56° 20' 11" WEST 11.10 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 56° 20' 11" WEST 39.25 FEET; THENCE SOUTH 33° 39' 49" WEST 43.00 FEET; THENCE SOUTH 56° 20' 11" EAST 39.25 FEET; THENCE NORTH 33° 39' 49" EAST 43.00 FEET TO THE **TRUE POINT OF BEGINNING**.

SAID PARCEL CONTAINS 1,688 SQUARE FEET OR 0.04 ACRES OF LEASE AREA.

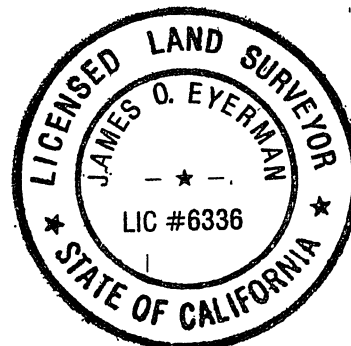
SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OUR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS ACT.



JAMES O. EYERMAN
PLS 6336

05/03/24
DATE

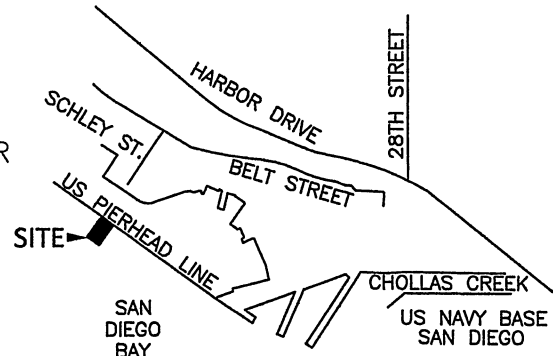


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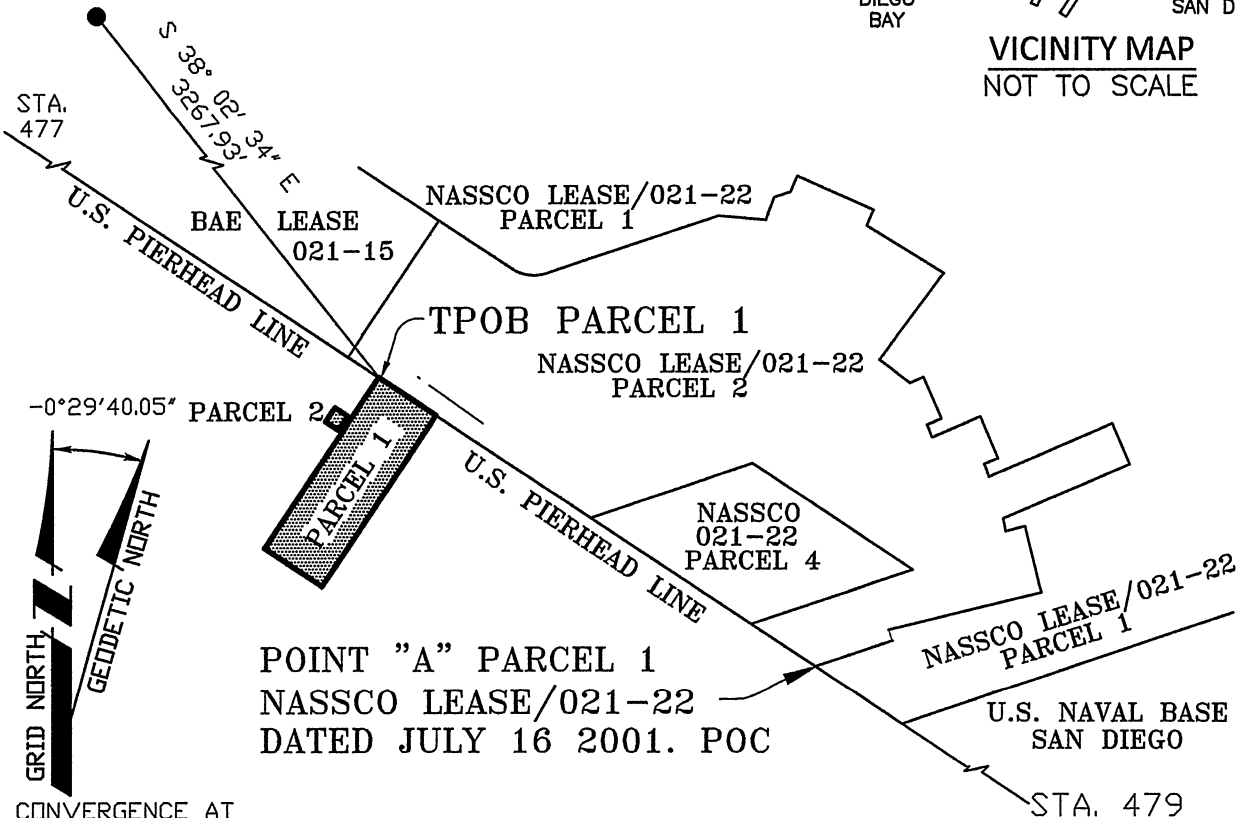
- FDM FOUND MONUMENT
- TPOB TRUE POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- BD BRASS DISK
- DIA DIAMETER
- SDUPD SAN DIEGO UNIFIED PORT DISTRICT
- STA HARBOR LINES 426 STATION NUMBER
- MM MISCELLANEOUS MAP

EXHIBIT "B"

FDM 3" DIA BD STAMPED "SDUPD-047" AS SHOWN ON R.I.S. 17055.
N. 1834282.634 E. 6284840.265 EL. 10.17

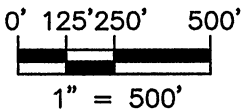


VICINITY MAP
NOT TO SCALE



CONVERGENCE AT STATION "SDUPD-47"

PROPOSED LEASE AREAS ARE SHOWN HATCHED.



BEARINGS AND DISTANCES ARE GRID AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6 (CCS83) (EPOCH 1991.35).

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT ON 05/03/2024. MY REGISTRATION EXPIRES ON 12/31/2024.



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DRAWN JOE
CHECKED JOE
REVIEWED _____

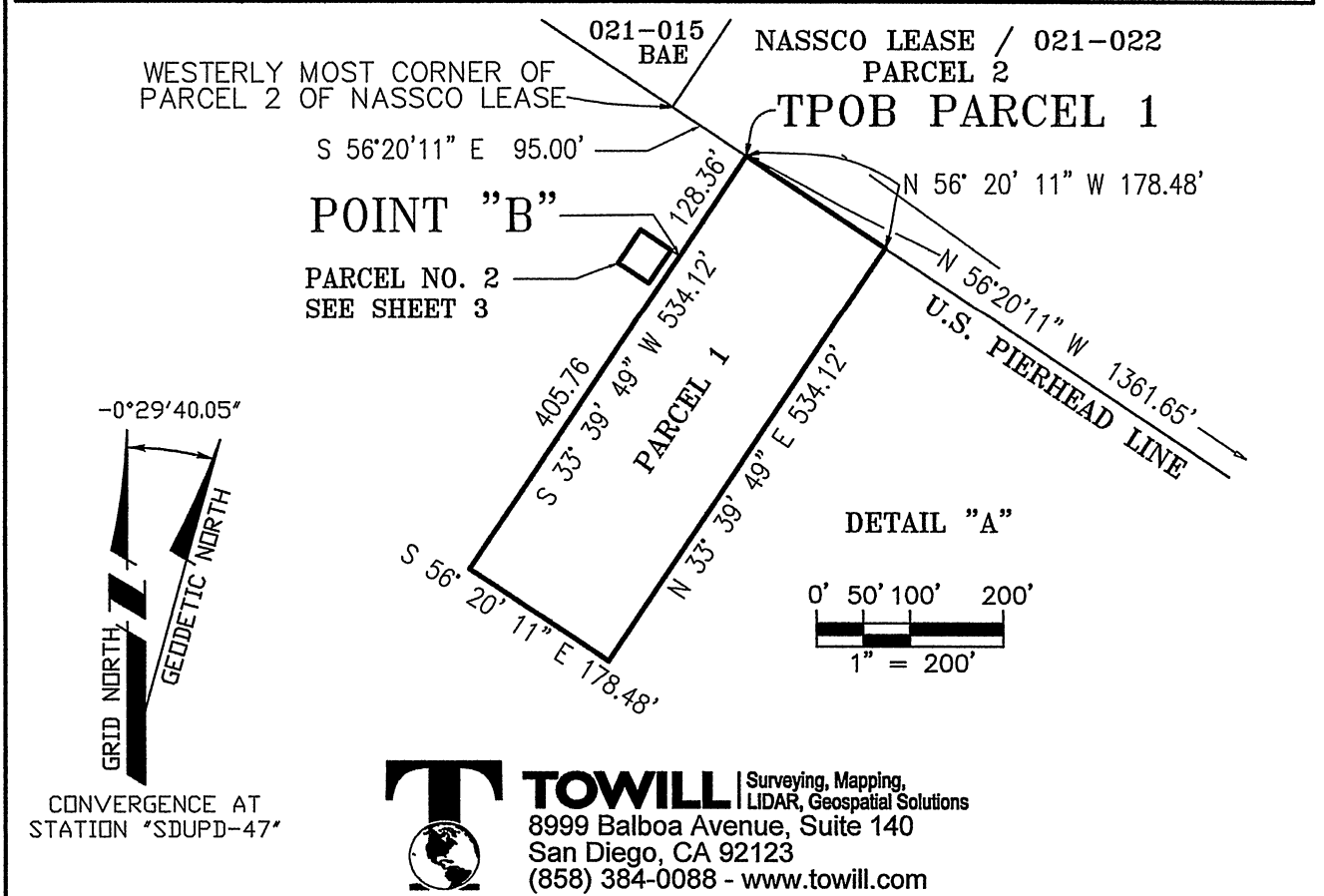
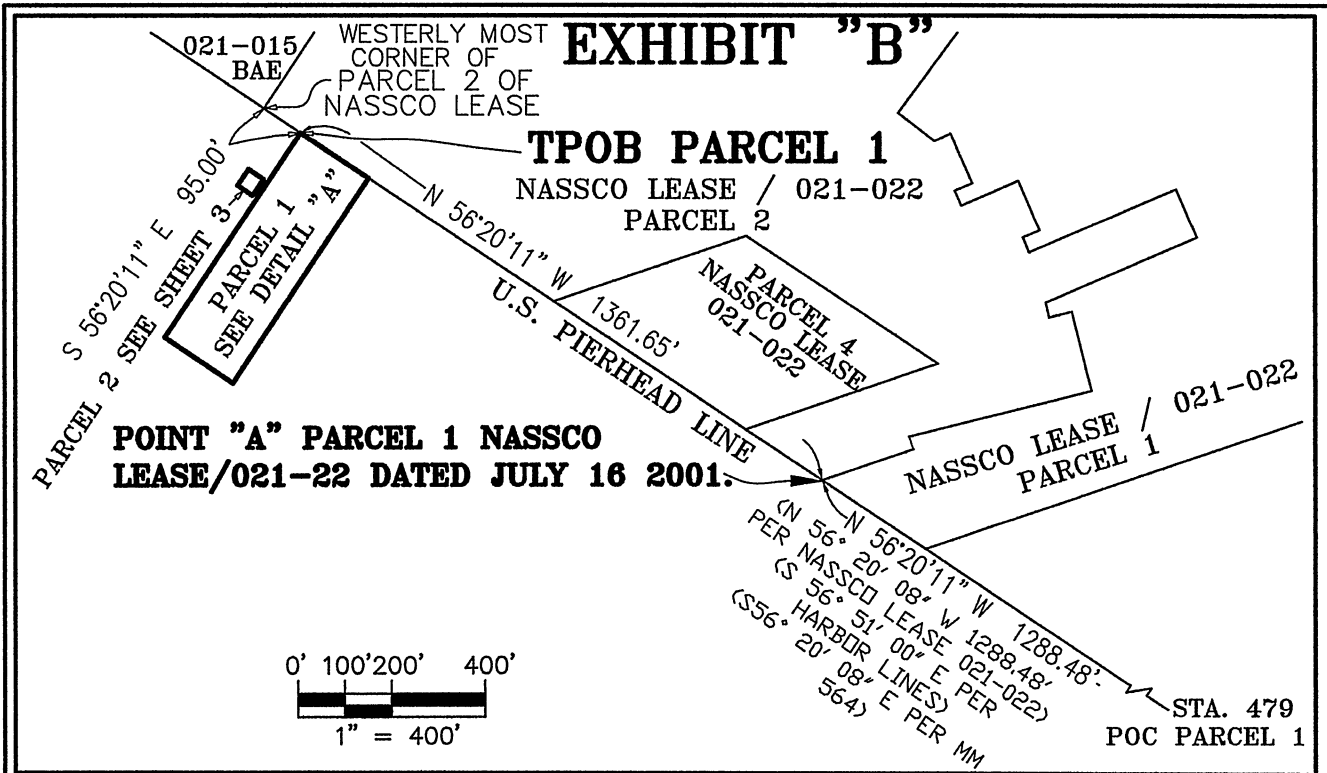
SAN DIEGO UNIFIED PORT DISTRICT
LEASE

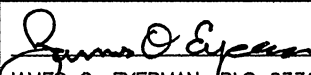
DATE 05/03/2024
SCALE 1"=400'
REF NONE

James O. Eyerman
JAMES O. EYERMAN, PLS 6336

NATIONAL STEEL AND SHIPBUILDING COMPANY

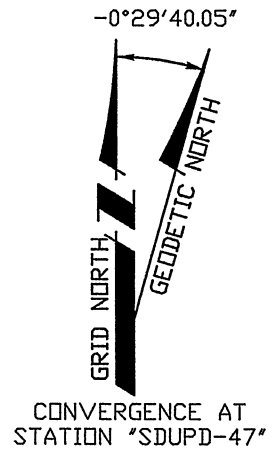
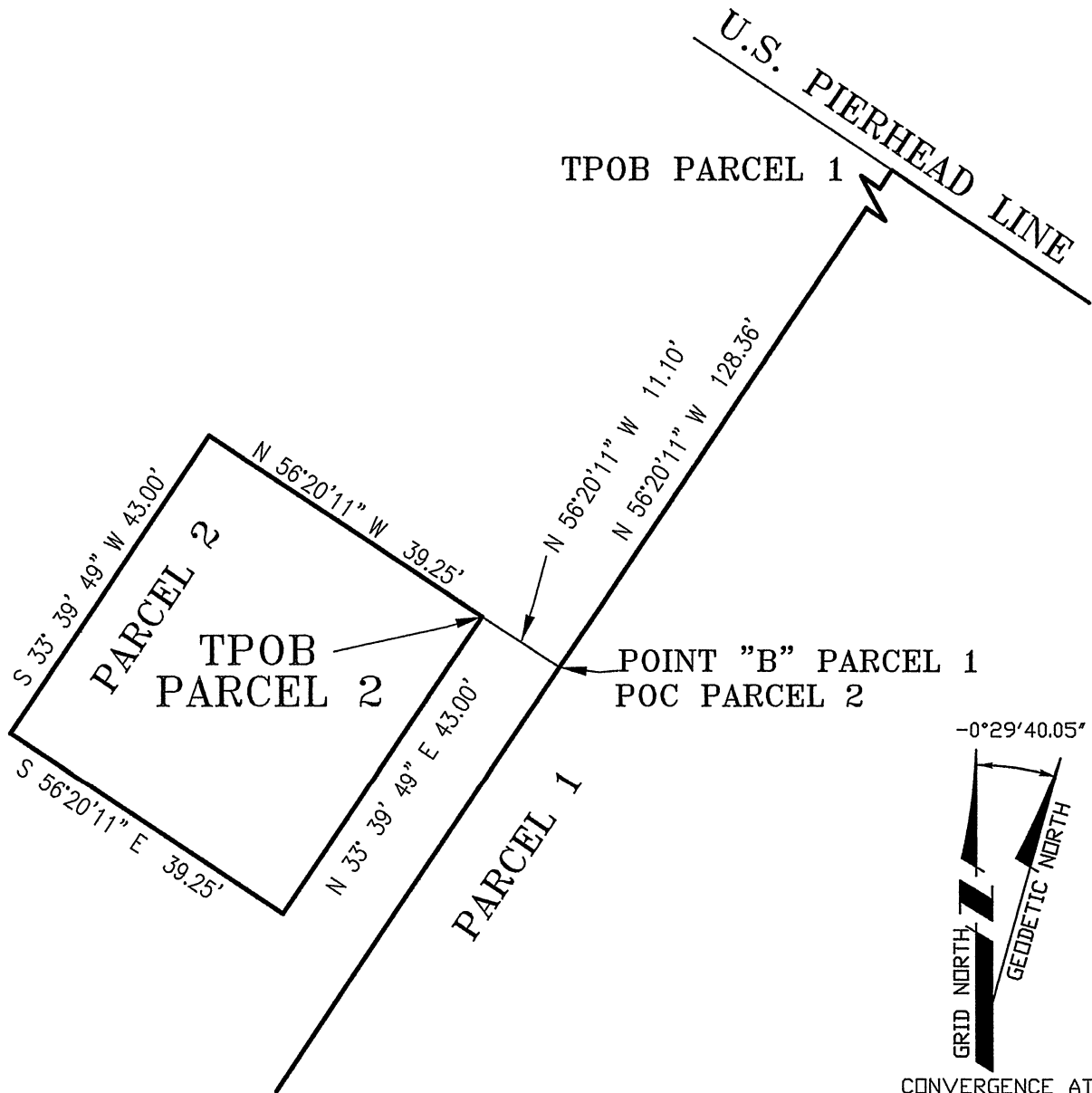
DRAWING NO. SHEET 1 OF 3
XXX-XXX



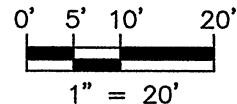
DRAWN JOE CHECKED JOE REVIEWED _____	SAN DIEGO UNIFIED PORT DISTRICT LEASE NATIONAL STEEL AND SHIPBUILDING COMPANY	DATE 05/03/2024 SCALE SEE-DETAILS REF NONE
 JAMES O. EYERMAN, PLS 6336		DRAWING NO. SHEET 2 OF 3 XXX-XXX

LEASE PLAT MAP NASSCO 20240501.DWG

EXHIBIT "B"



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DRAWN JOE
 CHECKED JOE
 REVIEWED

SAN DIEGO UNIFIED PORT DISTRICT
 LEASE

DATE 05/03/2024
 SCALE 1"=20'
 REF NONE

James O. Eyerman
 JAMES O. EYERMAN, PLS 6336

NATIONAL STEEL AND
 SHIPBUILDING COMPANY

DRAWING NO.
 SHEET 3 OF 3
 XXX-XXX

EXHIBIT C
CONSTRUCTION REQUIREMENTS

1. **GENERALLY.** TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT C, SUCH OTHER GENERAL CONSTRUCTION RELATED RULES AND REQUIREMENTS AS LANDLORD MAY ADOPT OR REQUIRE FROM TIME TO TIME FOR CONSTRUCTION BY TENANTS, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE PREMISES ("CONSTRUCTION WORK").
2. **Contractors.** Landlord shall have the right to approve the general contractor for Construction Work (other than Minor Alterations). All contractors and subcontractors performing any Construction Work must be licensed in the State of California.
3. **Architects and Engineers.** All architects and engineers must have an active license to practice in the State of California.
4. **Contractors, Architects and Engineers Agreements.** Landlord shall have the right to approve the architectural, engineering and construction contracts for all the Improvements (other than Minor Alterations). [All such contracts shall provide, in form and content reasonably satisfactory to Landlord, (i) for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder (ii) that if this Lease is terminated Landlord may, at its election, use any plans and specifications created by such architect, engineer or contractor for the contemplated Improvements at the Premises.]
5. **Construction Barricades.** Tenant shall install a construction barricade around the area of Construction Work (other than Minor Alterations), and erect such other protective measures as may be reasonably required by Landlord.
6. **Dust and Trash Control.** Tenant shall take commercially reasonable steps to minimize dust resulting from any Construction Work, and shall promptly dispose of all trash generated from the Construction Work.
7. **Performance and Payment Bonds.** Tenant shall furnish Landlord with the following separate corporate surety bonds not less than five (5) days prior to the commencement of any Construction Work with a hard cost reasonably estimated by Tenant to be greater than \$1,000,000 (as such amount is increased on each anniversary of the Commencement Date by the percentage increase in the CPI from the Commencement Date):
 - 7.1 A corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the projected hard costs of such Construction Work. The Performance Bond and its issuer shall be reasonably satisfactory to Landlord. The Performance Bond shall name Tenant as principal and Landlord as obligee, assuring full completion by Tenant of such Construction Work.
 - 7.2 A corporate surety Payment Bond, issued by a surety company licensed to transact business as such in the State of California, with Tenant as principal and Landlord as obligee, in a sum equal to one hundred percent (100%) of the total hard construction cost anticipated to be incurred in connection with such Construction Work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the Construction Work or for labor done thereon and protecting Landlord from any and all liability,

loss or damages arising out of or in connection with any failure to make any such payments ("Payment Bond").

7.3 The Payment Bond and Performance Bond shall be in form and content reasonably satisfactory to Landlord.

7.4 Tenant may provide to Landlord a corporate guaranty from a contractor that is reasonably acceptable to Landlord in lieu of the Performance Bond and the Payment Bond for any Major Alteration, the terms of such guaranty to be acceptable to Landlord in its reasonable discretion.

8. Financial Assurances. At least ten (10) days prior to commencing any Construction Work (other than Minor Alterations), Tenant shall deliver to Landlord evidence reasonably demonstrating to Landlord that Tenant has obtained or retains financial resources and capabilities in an amount sufficient to complete the Construction Work.

9. Construction Schedule. Tenant shall, at least ten (10) days prior to date on which Tenant intends to commence construction of any Construction Work (other than Minor Alterations), deliver to Landlord a construction schedule. Tenant shall use commercially reasonable efforts, subject to Force Majeure Events, to perform the Construction Work in accordance with the construction schedule.

10. Contractor Insurance. All contractors and subcontractors performing Construction Work shall obtain and thereafter maintain so long as such Construction Work is occurring, at least the minimum insurance coverages set forth below, which insurance coverages may be modified by Landlord from time to time in its reasonable discretion:

- (i) Workers' compensation and employer's liability insurance:
 - (a) Workers' compensation insurance as required by any applicable law or regulation.
 - (b) Employer's liability insurance in the amount of \$1,000,000 each accident/employee/disease.
- (ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
 - (a) Required coverages:
 - (1) Premises and Operation;
 - (2) Products and Completed Operations;
 - (3) Contractual Liability;
 - (4) Broad Form Property Damage (including Completed Operations);
 - (5) Explosion, Collapse and Underground Hazards; and
 - (6) Personal Injury Liability.
 - (b) Minimum limits of liability:
 - (1) \$2,000,000 each occurrence (for bodily injury and property damage);
 - (2) \$2,000,000 for Personal Injury Liability; and

(3) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work).

(iii) **Automobile Liability Insurance:** Automobile liability insurance including coverage for owned, leased, rented, hired, and/or non-owned automobiles. The limits of liability shall not be less than \$1,000,000 for each accident limit for bodily injury, death and property damage.

(iv) **Umbrella/Excess Liability Insurance:** The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

(v) **Contractor's Pollution Liability Coverage:** If Landlord determines, in its sole and absolute discretion, that Tenant performs or contracts for any work which involves a **Hazardous Materials Activity** or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher.

Landlord Parties shall be named as an additional insured on the forgoing insurance, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Landlord. The foregoing insurance shall include a waiver of subrogation in favor of Landlord Parties.

11. Notice of Completion. Within thirty (30) days after Completion of any Construction Work (other than Minor Alterations), Tenant shall record a Notice of Completion in the office of the San Diego County Recorder and furnish a copy thereof to Landlord upon such recordation.

12. Lien Releases. Within sixty (60) days after Completion, Tenant shall deliver to Landlord unconditional final lien waivers from all contractors and materialmen.

13. Copy of Record Set of Plans and Certificate of Completion. Within thirty (30) days of the conclusion of any Construction Work (other than Minor Alterations), deliver to Landlord (i) a set of "as-built drawings", (ii) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, the Construction Work has been Completed in accordance, in all material respects, with the approved plans therefor, and (iii) a copy of the certificate of completion issued by the applicable government agency.

14. Conflict. In the event of conflict between the terms of these Construction Requirements and terms of the Lease, the terms of the Lease shall control.

EXHIBIT D
Intentionally Deleted

EXHIBIT E

MEMORANDUM OF LEASE

RECORDING REQUESTED BY:

(Above Space for Recorder's Use Only)

MEMORANDUM OF LEASE

This Memorandum of Lease, hereinafter "Memorandum," is dated _____, 20__, between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, Landlord, and NATIONAL STEEL AND SHIPBUILDING COMPANY, a Nevada corporation, Tenant, concerning that certain real property described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference made a part hereof (the "Leased Premises").

For good and adequate consideration, Landlord leases the Leased Premises to Tenant, and Tenant hires them from Landlord, for the term and on the provisions contained in that certain Lease of even date herewith by and between Landlord and Tenant (the "Lease"), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Landlord in each instance, all as more specifically set forth in said Lease, which said Lease is incorporated in this Memorandum by this reference.

The term of the Lease is Sixteen (16) years and three (3) months, beginning _____, 2024 and ending December 31, 2040.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease provisions. In the event of conflict between the terms of this Memorandum and terms of the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of the date first set forth above.

APPROVED AS TO FORM AND LEGALITY
DISTRICT
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT

By: _____
Assistant/Deputy

By: _____
Adam J. Meyer
Acting Director, Real Estate

**NATIONAL STEEL AND SHIPBUILDING
COMPANY,**
a Nevada corporation

By: _____
Signature

NAME: _____

Its: _____

By: _____
Signature

NAME: _____

Its: _____

LEGAL DESCRIPTION FOR
NATIONAL STEEL AND SHIPBUILDING COMPANY
REAL ESTATE LEASED PREMISES
PARCEL/DRAWING NO XXX-XXX
WITHIN CORPORATE LIMITS OF SAN DIEGO

PARCEL 1 (WATER AREA)

COMMENCING AT STATION NUMBER 479 LYING ON THE U.S. PIERHEAD LINE AND DELINEATED ON MAP ENTITLED "HARBOR LINES, SAN DIEGO BAY, CALIFORNIA, FILE NO. (D.O. SERIES) 426," APPROVED BY THE SECRETARY OF THE ARMY, APRIL 29, 1963 AND FILED IN THE OFFICE OF THE DISTRICT ENGINEER, LOS ANGELES, CALIFORNIA, THENCE NORTH 56° 20' 11" WEST (N. 56° 51' 00" W PER HARBOR LINES MAP) 1288.48 FEET TO POINT "A" AS DESCRIBED IN PARCEL NO. 1 AND PARCEL 2 OF AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 4 TO NATIONAL STEEL AND SHIPBUILDING COMPANY (NASSCO) RECORDED APRIL 17, 2017 AS DOCUMENT NO. 66530; THENCE CONTINUING ALONG THE U.S. PIERHEAD LINE NORTH 56° 20' 11" WEST (NORTH 56° 20' 08" WEST PER SAID NASSCO LEASE) 1361.65 FEET TO A POINT BEING DISTANT SOUTH 56° 20' 11" EAST 95.00 FEET FROM THE WESTERLY MOST CORNER OF PARCEL 2 OF THE SAID NASSCO LEASE ALSO BEING THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID U.S. PIERHEAD LINE SOUTH 33° 39' 49" WEST 128.36 TO A POINT HEREINAFTER KNOWN AND DESIGNATED AS **POINT "B"**; THENCE CONTINUING SOUTH 33° 39' 49" WEST 405.76 FEET; THENCE SOUTH 56° 20' 11" EAST 178.48 FEET; THENCE NORTH 33° 39' 49" WEST 534.12 FEET TO SAID U.S. PIERHEAD LINE; THENCE ALONG SAID U.S. PIERHEAD LINE NORTH 56° 20' 11" WEST 178.48 FEET TO **THE TRUE POINT OF BEGINNING**

SAID PARCEL CONTAINS 95,330 SQUARE FEET OR 2.19 ACRES OF LEASE AREA.

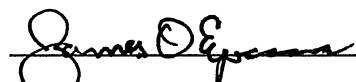
PARCEL 2 (WATER AREA)

COMMENCING AT THE ABOVE DESCRIBED **POINT "B"** IN PARCEL 1; THENCE NORTH 56° 20' 11" WEST 11.10 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 56° 20' 11" WEST 39.25 FEET; THENCE SOUTH 33° 39' 49" WEST 43.00 FEET; THENCE SOUTH 56° 20' 11" EAST 39.25 FEET; THENCE NORTH 33° 39' 49" EAST 43.00 FEET TO THE **TRUE POINT OF BEGINNING**.

SAID PARCEL CONTAINS 1,688 SQUARE FEET OR 0.04 ACRES OF LEASE AREA.

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OUR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS ACT.



JAMES O. EYERMAN
PLS 6336

05/03/24
DATE

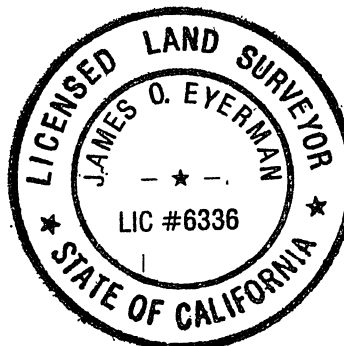


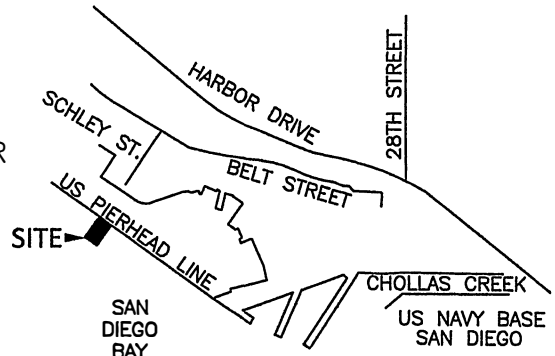
Exhibit B to Memorandum of Lease

LEGEND:

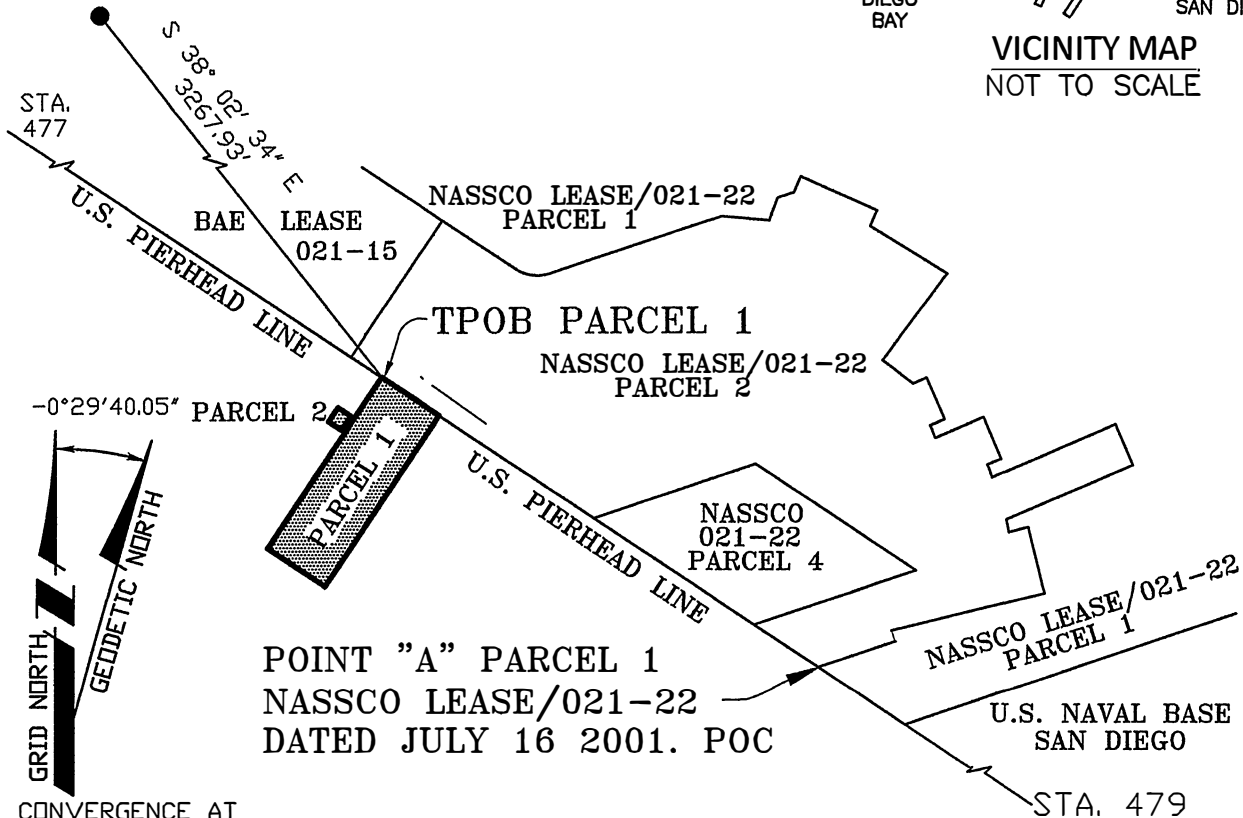
- FDM FOUND MONUMENT
- TPOB TRUE POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- BD BRASS DISK
- DIA DIAMETER
- SDUPD SAN DIEGO UNIFIED PORT DISTRICT
- STA HARBOR LINES 426 STATION NUMBER
- MM MISCELLANEOUS MAP

EXHIBIT "B"

FDM 3" DIA BD STAMPED "SDUPD-047" AS SHOWN ON R.D.S. 17055.
 N. 1834282.634 E. 6284840.265 EL. 10.17

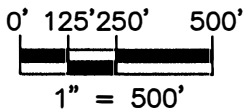


VICINITY MAP
NOT TO SCALE



CONVERGENCE AT STATION "SDUPD-47"

PROPOSED LEASE AREAS ARE SHOWN HATCHED.



BEARINGS AND DISTANCES ARE GRID AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6 (CCS83) (EPOCH 1991.35).

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT ON 05/03/2024. MY REGISTRATION EXPIRES ON 12/31/2024.



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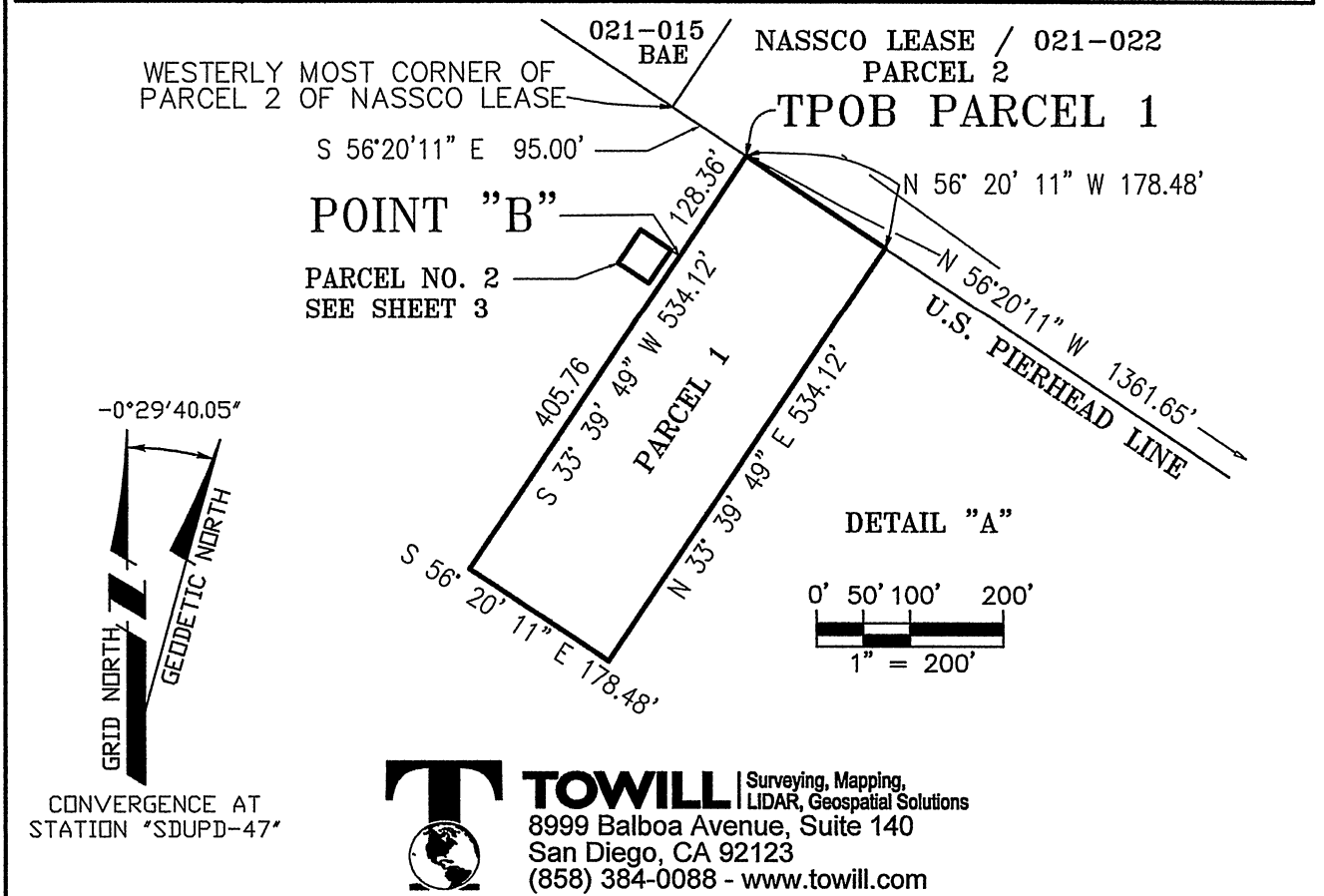
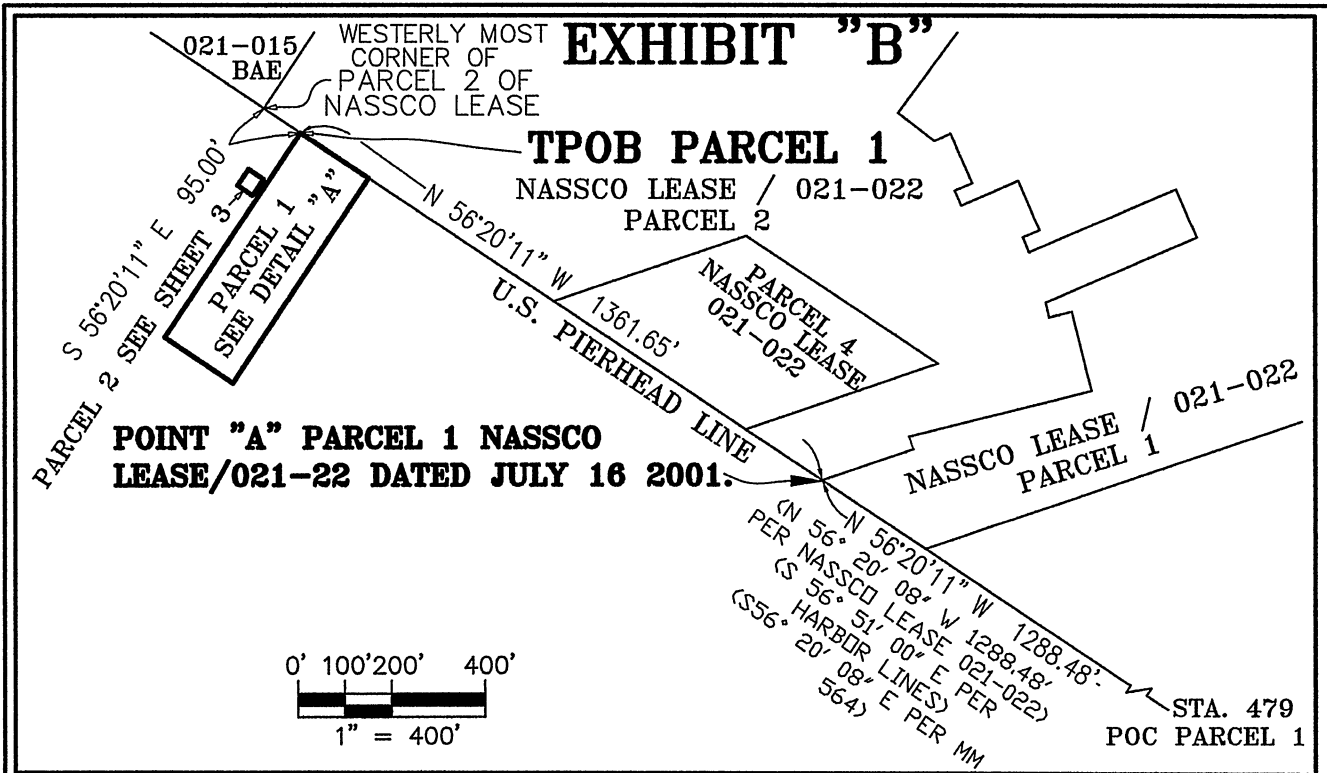
SAN DIEGO UNIFIED PORT DISTRICT
LEASE

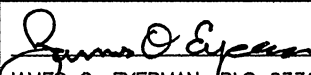
DATE 05/03/2024
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 REF. NONE

James O. Eyerman
 JAMES O. EYERMAN, PLS 6336

NATIONAL STEEL AND
 SHIPBUILDING COMPANY

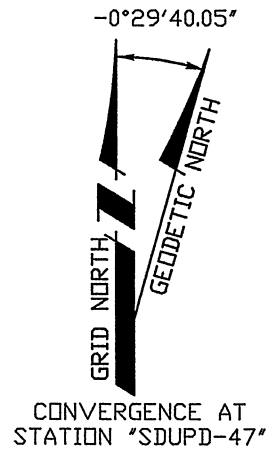
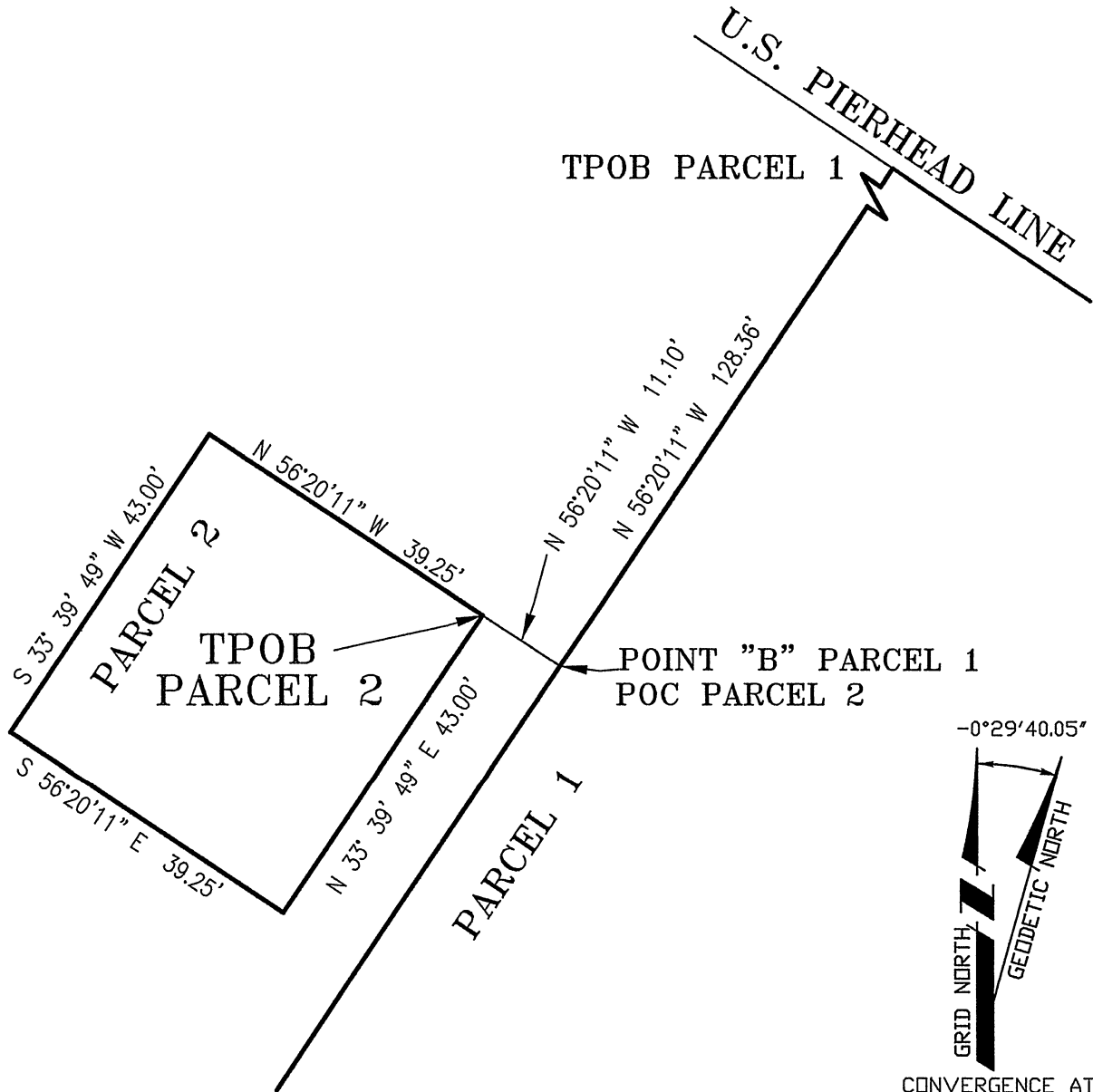
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 SHEET 1 OF 3
 XXX-XXX



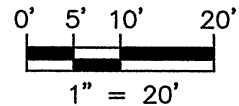
DRAWN JOE CHECKED JOE REVIEWED _____	SAN DIEGO UNIFIED PORT DISTRICT LEASE NATIONAL STEEL AND SHIPBUILDING COMPANY	DATE 05/03/2024 SCALE SEE-DETAILS REF NONE
 JAMES O. EYERMAN, PLS 6336		DRAWING NO. SHEET 2 OF 3 XXX-XXX

LEASE PLAT MAP NASSCO 20240501.DWG

EXHIBIT "B"



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DRAWN JOE
 CHECKED JOE
 REVIEWED _____

James O. Eyerman
 JAMES O. EYERMAN, PLS 6336

SAN DIEGO UNIFIED PORT DISTRICT
 LEASE
NATIONAL STEEL AND SHIPBUILDING COMPANY

DATE 05/03/2024
 SCALE 1"=20'
 REF. NONE

DRAWING NO. _____
 SHEET 3 OF 3
 XXX-XXX

(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

(FOR USE BY _____)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person whose name is
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document
and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

EXHIBIT F
FORM OF LANDLORD'S ESTOPPEL STATEMENT

*Name
 Address

Ladies and Gentlemen:

This Landlord Estoppel Statement ("Statement") is issued by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (hereinafter referred to as "Landlord"), as landlord under that certain lease dated _____, covering a portion of those lands conveyed to Landlord by that certain act of the Legislature of the State of California entitled "San Diego Unified Port District Act", Stats. 1962, 1st Ex. Sess., c. 67, as amended, between Landlord and _____ (hereinafter referred to as "Tenant"), as tenant, a copy of which lease is on file in the Office of the Clerk of Landlord bearing Document No. _____ (the "Lease").

To the actual knowledge of Landlord (without any duty of investigation or inquiry), Landlord hereby acknowledges and confirms to Recipient (as defined below) the following:

1. The Lease is currently in full force and effect and has not been modified in whole or in part [* , except as provided by that *(those) certain amendment(s)* described and dated as follows: * copies of which amendment(s)* is/are* on file in the Office of the Clerk of Landlord bearing Document No.(s)]*.
2. The Lease is for a term of * (*) years, commencing * and ending *.
3. As of the date of this Statement, Tenant is not, to the actual knowledge of Landlord (without any duty of investigation or inquiry), in default or in breach under the provisions of the Lease.
4. Landlord has no actual knowledge (without any duty of investigation or inquiry) of any other assignment or hypothecation of said leasehold estate, or any pledge or assignment of rents with respect to said premises *[except any security interest therein created in favor of * for a loan in the amount of * Dollars (\$*) as consented to by Landlord in an Administrative Approval or Resolution No. *, a copy of which is attached hereto and by reference incorporated herein]*. *[NOTE TO DRAFTER: Modify language if encumbrance has not yet been approved.]*
5. All rent, and any other charges payable by Tenant pursuant to the lease (referred to collectively hereinafter as "Rent") has been paid through and including *; provided, however, there may be Rent still due and owing which will be discovered at the time of audit by Landlord and, to that extent, Landlord cannot represent that all Rent has been paid.

6. This Statement is given by Landlord with the understanding that the statements herein made may be relied upon only by * (the "Recipient") and only for the purpose of estopping Landlord from asserting contrary facts against Tenant which Tenant also has no knowledge of.

Executed this _____ day of _____, 20__.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Adam J. Meyer
Acting Director, Real Estate

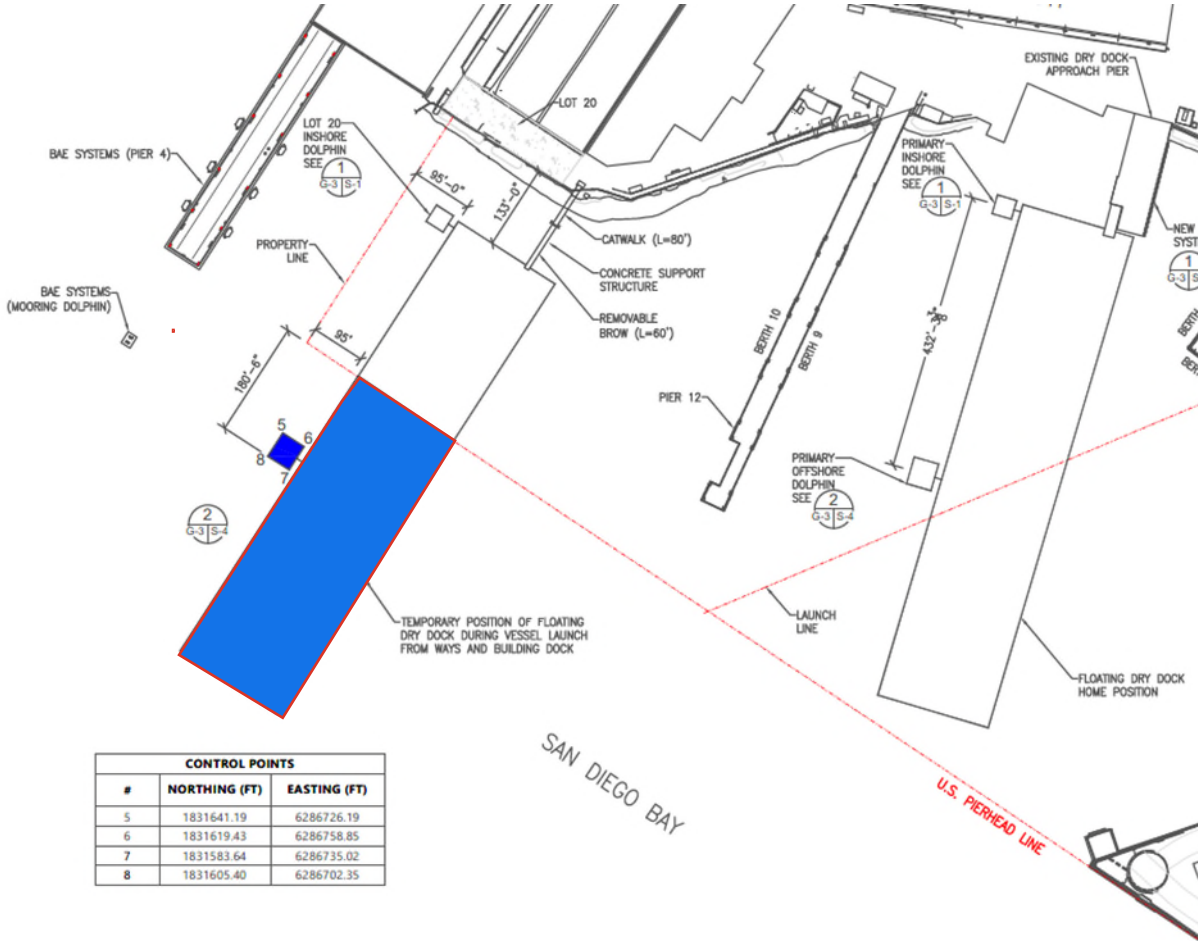
EXHIBIT G
ENVIRONMENTAL DISCLOSURE ADDENDUM

California Health and Safety Code Section 25359.7 requires any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property to give written notice of that condition to the tenant of the real property. Landlord is providing the following information concerning the presence of hazardous substances on and under the Premises to prospective Tenant ("**Tenant**"). This is a summary of information only, is not intended, nor shall it be deemed or construed, as a representation or warranty of any kind by Landlord and has been prepared for Tenant's convenience to facilitate Tenant's independent due diligence evaluation with respect to the releases of hazardous substances at and beneath the Premises.

According to environmental reports, including the 2024 Sediment Characterization Report for the Floating Dry Dock Replacement, prepared by Anchor QEA for the Tenant, and submitted to the San Diego Regional Water Quality Control Board (SDRWQCB), which has issued Cleanup and Abatement Order No. R9-2012-0024 for waters adjacent to the tenant and its northern neighbor, BAE Systems San Diego Ship Repair Inc., various Hazardous Substances have come to be located on or beneath the Premises, including tributyltin, metals, polycyclic aromatic hydrocarbons ("PAHs"), and polychlorinated biphenyls ("PCBs"). Environmental reports describing the environmental conditions at the Premises in more detail can be provided by Landlord upon written request or may be accessed at the [SDRWQCB Geotracker Website identified as [https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000003580].

Tenant Acknowledgement and Consent: By execution of this Lease, Tenant (a) acknowledges its receipt of the foregoing notice given pursuant to Section 25359.7 of the California Health and Safety Code; (b) acknowledges and agrees that Landlord shall have no liability or responsibility for the accuracy of any of the information contained in the reports prepared by and for third parties and available as noted above; and (c) acknowledges that Landlord has complied with its obligations under Section 25359.7 of the Health and Safety Code.

LOT 20 LOCATION MAP



CONTROL POINTS		
#	NORTHING (FT)	EASTING (FT)
5	1831641.19	6286726.19
6	1831619.43	6286758.85
7	1831583.64	6286735.02
8	1831605.40	6286702.35

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE xxxx****ORDINANCE GRANTING A 16-YEAR AND THREE-MONTH LEASE TO NATIONAL STEEL AND SHIPBUILDING COMPANY FOR THE LOT 20 TEMPORARY MOORING LOCATION AT 2798 HARBOR DRIVE, SAN DIEGO**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

WHEREAS, Section 21 of the Port Act requires that all grants, franchises, leases, permits or privileges for more than five years shall be made by ordinance; and

WHEREAS, National Steel and Shipbuilding Company (NASSCO) has a 50-year lease with the District through December 31, 2040, that is comprised of approximately 79 acres of land and 47 acres of water area located at 2798 Harbor Drive in San Diego (Existing Lease); and

WHEREAS, on September 12, 2023, the Board of Port Commissioners (Board), adopted Resolution No. 2023-081 certifying the Final Environmental Impact Report (FEIR) for the NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project (Project), adopted Resolution No. 2023-082 granting concept approval for the Project, and adopted Resolution No. 2023-083 authorizing the issuance of a non-appealable Coastal Development Permit; and

WHEREAS, the Project includes four distinct elements, including: (1) replacement of the Repair Complex Wharf; (2) repairs to the quay wall and revetment along stretches of shorelines throughout the NASSCO leasehold; (3) as-needed structural repair and/or replacement of selected piles at shipyard berths and piers; and (4) removal and replacement of the existing floating dry dock and construction of supporting infrastructure, including mooring dolphins; and

WHEREAS, while Project elements one through three would occur within NASSCO's Existing Lease, a portion of project element four would occur outside of NASSCO's existing leasehold in water area granted to the District by the State Lands Commission via Senate Bill 507 (SB 507); and

XXXX

WHEREAS, specifically, NASSCO would construct a new mooring dolphin outside of their existing leasehold for the purposes of repositioning and securing a floating dry dock on a temporary basis during vessel launches from the ways and building dock, hereinafter collectively referred to as “Lot 20”; and

WHEREAS, since a portion of Lot 20 is located outside of NASSCO’s Existing Lease, the District and NASSCO have negotiated a proposed new 16-year and three-month lease for Lot 20 (Lease) that would be coterminous with the Existing Lease and is attached as Attachment B to the corresponding agenda sheet to which this Ordinance relates; and

WHEREAS, the Lease would consist of approximately 97,018 square feet of water area and would be located immediately west of NASSCO’s Existing Lease (see Attachment C – Lot 20 Location Map to the corresponding agenda sheet to which this Ordinance relates); and

WHEREAS, the Lease would provide rent to the District in the amount of \$162,984 per year (or \$0.14 per square foot/month) which is comparable to neighboring water leases in SB 507 granted water; and

WHEREAS, the Lease would allow the temporary mooring of the drydock during vessel launches only, and this Lease area would remain open to public navigation most of the time, except for when the drydock is in the temporary mooring position; and

WHEREAS, the Lease will allow NASSCO to operate more efficiently by reducing the amount of time and operations required to release newly constructed or repaired vessels into the water from NASSCO’s ways and building docks; however, the Lease would not result in an increase or expansion of NASSCO’s operations and major ship repair and construction work would not occur in the drydock while it is located in the temporary mooring position; and

WHEREAS, staff recommends that the Board adopt an ordinance granting the new Lease to NASSCO for the Lot 20 Temporary Mooring Location.

NOW, THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

1. The 16-Year and Three-Month Lease for the Lot 20 Mooring Dolphin in substantially the same form as Attachment B to the corresponding agenda sheet to which this Ordinance relates be granted to National Steel and Shipbuilding Company.

XXXX

2. The Executive Director or his designated representative is hereby authorized to execute the Lease in substantial form as Attachment B to the agenda sheet to which this Ordinance relates.

3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy General Counsel

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

FILE NUMBER: 2024-342

DATE: Tuesday, September 10, 2024

SUBJECT: Establishing Board of Port Commissioners' Meeting Dates

DESCRIPTION: Resolution Establishing the Board of Port Commissioners' Regular Meeting Dates for Calendar Year 2025

EXECUTIVE SUMMARY:

Section 2 of Board of Port Commissioners (BPC) Policy No. 21 requires that the dates, time and location of the regular meetings of the Board of Port Commissioners of the San Diego Unified Port District be set annually by Resolution.

RECOMMENDATION:

Adopt a Resolution establishing the regular meeting dates of the Board of Port Commissioners for calendar year 2025 (Attachment A).

FISCAL IMPACT:

This agenda item has no fiscal impact.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Establishing regular meeting dates for the year will provide the Board of Port Commissioners, the public and other interested parties with advanced notice of upcoming meetings.

On each regular meeting date, there are two (2) meetings of the Board of Port Commissioners – a closed session meeting and a regular meeting. Each meeting is noticed separately. Any additional meetings that may be necessary during the year will be scheduled and posted as special meetings.

General Counsel's Comments:

The Office of the General Counsel has reviewed this staff report and the attachment as presented to it and approves them as to form and legality.

Environmental Review:

The proposed Board action, including without limitation establishing the Board of Port Commissioners' regular meeting dates for calendar year 2025, does not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because there is not a potential to result in a direct or indirect physical change in the environment. Therefore, the proposed Board action is not subject to CEQA and no further action under CEQA is required.

The proposed Board action complies with Section 21 and 35 of the Port Act, which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or an exclusion finding is not required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Donna Morales
District Clerk

Attachment(s):

Attachment A: San Diego Unified Port District 2025 Board of Port Commissioner
Regular Meeting Dates

Attachment A to File No. 2024-342

**San Diego Unified Port District
Board of Port Commissioners
2025 Regular Meeting Dates**

All Closed Session Meetings of the Board of Port Commissioners of the San Diego Unified Port District are scheduled to begin at 10:00 a.m. unless otherwise noticed and posted.

All Regular Meetings of the Board of Port Commissioners of the San Diego Unified Port District are scheduled to begin at 1:00 p.m. unless otherwise noticed and posted.

Tuesday, January 14, 2025
Tuesday, February 11, 2025
Tuesday, March 11, 2025
Tuesday, April 08, 2025
Tuesday, May 06, 2025
Tuesday, June 10, 2025
Tuesday, July 15, 2025
Tuesday, August 12, 2025
Tuesday, September 09, 2025
Tuesday, October 14, 2025
Tuesday, November 04, 2025
Tuesday, December 09, 2025

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION ESTABLISHING THE BOARD OF
PORT COMMISSIONERS' REGULAR MEETING
DATES FOR CALENDAR YEAR 2025**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to California Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Port Act § 18 requires that the Board of Port Commissioners (BPC) hold at least one regular meeting each month, and may hold any special meetings it deems necessary; and

WHEREAS, Section 2 of Board of Port Commissioners (BPC) Policy No. 21 requires that the dates, time and location of the regular meetings of the Board of Port Commissioners of the District be set annually by Resolution; and

WHEREAS establishing regular meeting dates for the year will provide the BPC, the public and other interested parties with advanced notice of upcoming meetings; and

WHEREAS, on each regular meeting date, there are two (2) meetings of the BPC - a closed session meeting and a regular meeting, with each meeting noticed separately; and

WHEREAS, any additional meetings that may be necessary during the year will be scheduled and posted as special meetings; and

WHEREAS, the BPC may meet in closed session as set forth in California Government Code § 54950, et seq.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

1. All Closed Session Meetings of the Board of Port Commissioners of the San Diego Unified Port District are scheduled to begin at 10:00 a.m. unless otherwise noticed and posted.

2. All Regular Meetings of the Board of Port Commissioners of the San Diego Unified Port District are scheduled to begin at 1:00 p.m. unless otherwise noticed and posted.

20xx-xxx

3. All regular meetings will be held on the following dates unless otherwise noticed and posted:

Tuesday, January 14, 2025
Tuesday, February 11, 2025
Tuesday, March 11, 2025
Tuesday, April 08, 2025
Tuesday, May 06, 2025
Tuesday, June 10, 2025
Tuesday, July 15, 2025
Tuesday, August 12, 2025
Tuesday, September 09, 2025
Tuesday, October 14, 2025
Tuesday, November 04, 2025
Tuesday, December 09, 2025

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

FILE NUMBER: 2024-350

DATE: Tuesday, September 10, 2024

SUBJECT: Memorandum Of Understanding with the Port of Ensenada for 20th Year Anniversary Sister Port Commemoration

DESCRIPTION: Adopt a Resolution Authorizing a new Memorandum of Understanding with the Port of Ensenada to Commemorate the 20th Year Anniversary of the Sister Port Relationship Between the Port of Ensenada and the Port of San Diego and Update Areas of Collaboration and Cooperation

EXECUTIVE SUMMARY:

On August 31, 2004, representatives from the Ports of San Diego and Ensenada met to sign a Memorandum of Understanding to formalize a sister-port relationship and commence discussions on areas of mutual benefit. These areas included commercial cargo, cruise business, tourism, and fishing activities.

The proposed new MOU (Attachment A) would commemorate and reaffirm the 20-year relationship and signify the work being done between the ports in support of a potential ferry service between Ensenada and San Diego, as well as cruise business marketing, aquaculture, and other mutual beneficial areas as agreed upon by both parties.

A celebration to commemorate the 20th anniversary of the original MOU signing will be held at the Port's Broadway Pier Pavilion on September 25, 2024 wherein a ceremonial signing of the new MOU will be held.

RECOMMENDATION:

Adopt a resolution authorizing a new Memorandum of Understanding with the Port of Ensenada to commemorate the 20th year anniversary of the Sister Port Relationship between the Port of San Diego and the Port of Ensenada and update areas of collaboration and cooperation.

FISCAL IMPACT:

The MOU in and of itself does not have any fiscal impact. Funds for the 20th Anniversary Commemoration event are included in the Fiscal Year 2025 Budget.

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COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A thriving and modern maritime seaport.
- A vibrant waterfront destination where residents and visitors converge.

- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Due to their geographic and trade lane proximity and similarities, the Ports of San Diego and Ensenada have forged an informal working relationship over the years. Based on current and historical discussions, areas of mutual interest include a potential passenger ferry service between Ensenada and San Diego, cruise marketing and development, and aquaculture.

Recently, staff members of both ports have engaged in reciprocal visits and discussions to evaluate a potential ferry service noted above. There have been notable developments in the last two years in this regard. The entities currently involved in this effort include Azteca Ferries (a private Mexican entity), the Port of Ensenada, U.S. Customs and Border Protection, the United States Coast Guard, California Air Resources Board, and the District. While there are still several significant approvals and tasks remaining to begin operations, Azteca Ferries has purchased an existing international ferry vessel (Victoria Clipper IV) which is in dry dock undergoing system and engine upgrades. California Air Resources Board has given Azteca Ferries tentative approval for the vessel to operate in state waters under the condition that the vessel's engines are upgraded to the cleanest tier, "tier IV". Vessel upgrades are tentatively set for completion in later this year. After the retrofit, the U.S. Coast Guard can begin its certification process. U.S. Customs and Border Protection is also assessing the Port Pavilion on Broadway Pier to identify potential required upgrades to clear ferry passengers into the United States. Pending approvals from all concerned agencies, ferry service is tentatively scheduled to begin no earlier than 2025.

The new Memorandum of Understanding will formalize the working discussions taking place regarding the proposed ferry service as well as other areas of mutual interest.

A celebration to commemorate the 20th anniversary of the original MOU signing will be held at the Port's Broadway Pier Pavilion on September 25, 2024 wherein a ceremonial signing of the new MOU will be held.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approve this agenda and proposed MOU, as presented, as to form and legality.

Environmental Review:

The proposed Board action, including without limitation adopting a resolution authorizing a new Memorandum of Understanding with the Port of Ensenada (Resolution 2004-92)

to commemorate the 20th year anniversary of the Sister Port relationship between the Port of Ensenada and the Port of San Diego and update areas of collaboration and cooperation, does not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because there is not a potential to result in a direct or indirect physical change in the environment. Therefore, the proposed Board action is not subject to CEQA and no further action under CEQA is required.

The proposed Board action complies with Section 21 and 35 of the Port Act, which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or an exclusion finding is not required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Miguel Reyes
Maritime Trade Development Manager

Attachment(s):
Attachment A: Sister Ports MOU

MEMORANDUM OF UNDERSTANDING

SISTER-PORTS: PORT OF ENSENADA & PORT OF SAN DIEGO

CONSIDERING that the relationship established between the Ports of San Diego and Ensenada has increased the desire to develop mutually beneficial cooperation between the ports;

CONSIDERING that the Unified Port District of San Diego (Port of San Diego) plays a crucial role in promoting regional economic development, and has expressed unwavering support for this cooperation;

CONSIDERING that the Administration of the National Port System of Ensenada (ASPIONAS) has been under the administration of the Mexican Navy since 2021;

CONSIDERING that the Port of Ensenada is a significant catalyst for development in the state of Baja California and its surroundings;

CONSIDERING that the official operating authority of the Administration of the National Port System Ensenada, SA de C.V. has expressed sincere support for this cooperation;

CONSIDERING that the Ports of Ensenada and San Diego have maintained a positive relationships and there is potential for economic expansion through a systematic and diversified basis of cooperation between both Ports.

The Authorities of both Ports hereby:

1. Subscribe to this Memorandum of Understanding in the spirit that unites the ports in a Sister-Ports relationship, and to promote a systematic and diversified sense of mutually beneficial cooperation between the two Ports and between the communities in which they are based.
2. Undertake to explore the possibilities of further cooperation in the areas of:
 - Evaluation of a passenger ferry service between San Diego and Ensenada;
 - Cruise business marketing;
 - Development of aquaculture;
 - Other mutual beneficial areas as agreed upon.

3. Celebrate reciprocal visits between delegations from both Ports, in order to embark on cooperative actions, host business and industry forums, and conduct work on the subjects that arise from such visits.
4. The agendas and criteria for these visits, and the interaction between the delegations from each Port, will be determined by mutual agreement.
5. The host Port will provide assistance and facilitate exposure of the visiting delegates to engineering aspects of the host Port and its region, including contemporary and traditional aspects of the local culture, social life and economy.

WITNESSES OF THIS PROCLAMATION.- who are representatives of the Port of San Diego and the Port of Ensenada by means of their signatures below, formalize and testify to this Memorandum of Understanding, declaring their affirmation of a "Sister Port" relationship between the Ports of San Diego and Ensenada, and symbolizing the extension of this relationship into the future.

Frank Urtasun

Chairman of the Board of Port Commissioners

Vicealmirante Joel Sandoval Gómez

Director General of ASIPONA Ensenada

DRAFT

RESOLUTION 20xx-xxx

**RESOLUTION AUTHORIZING A NEW
MEMORANDUM OF UNDERSTANDING WITH THE
PORT OF ENSENADA TO COMMEMORATE THE
20TH YEAR ANNIVERSARY OF THE SISTER PORT
RELATIONSHIP BETWEEN THE PORT OF
ENSENADA AND THE PORT OF SAN DIEGO AND
UPDATE AREAS OF COLLABORATION AND
COOPERATION**

WHEREAS, the San Diego Unified Port District (“District”) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (“Port Act”); and

WHEREAS, on August 31, 2004, representatives from the Ports of San Diego and Ensenada met to sign a Memorandum of Understanding (MOU) to formalize a sister-port relationship and commence discussions on areas of mutual benefit; and

WHEREAS, based on current and historical discussions, areas of mutual interest include a potential passenger ferry service between Ensenada and San Diego, cruise marketing and development, and aquaculture; and

WHEREAS, recently, staff members of both ports have engaged in reciprocal visits and discussions to evaluate a potential ferry service which have resulted in notable developments including Azteca Ferries (a private Mexican entity) purchasing an existing international ferry vessel (Victoria Clipper IV) which is in dry dock undergoing system and engine upgrades; and

WHEREAS, the California Air Resources Board has given Azteca Ferries tentative approval for the vessel to operate in state waters under the condition that the vessel’s engines are upgraded to the cleanest tier, “tier IV”; and

WHEREAS, after the retrofit, the U.S. Coast Guard can begin its certification process while the U.S. Customs and Border Protection will be assessing the Port Pavilion on Broadway Pier to identify potential required upgrades to clear ferry passengers into the United States; and

WHEREAS, the proposed new MOU will formalize the working discussions taking place regarding the proposed ferry service, reaffirm the 20-year relationship which include other areas of mutual interest such as cruise business marketing, aquaculture, and other mutual beneficial areas as agreed upon by both parties; and

20xx-xxx

WHEREAS, a celebration to commemorate the 20th anniversary of the original MOU signing will be held at the Port's Broadway Pier Pavilion on September 25, 2024 wherein a ceremonial signing of the new MOU will be held.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners hereby authorizes the Chairman of the Board and/or Executive Director or their designated representative to enter into a Memorandum of Understanding with the Port of Ensenada to Commemorate the 20th Year Anniversary of the Sister Port Relationship Between the Port of Ensenada and the Port of San Diego and Update Areas of Collaboration and Cooperation.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

FILE NUMBER: 2024-329

DATE: Tuesday, September 10, 2024

SUBJECT: Green Port Month, Year In Review, and MCAS Highlights Report

DESCRIPTION: Informational Presentation Celebrating Green Port Month and Providing a Summary of the 2023-2024 Green Port Year in Review and the 2023-2024 Maritime Clean Air Strategy Highlights Report

EXECUTIVE SUMMARY:

In 2008, the Board authorized a proclamation to annually recognize September as Green Port Month. The purpose of Green Port Month is to build awareness and celebrate the District's environmental initiatives, as well as encourage employees to manage resources in an environmentally sensitive and responsible manner. The 2023-2024 Green Port Year in Review includes a summary of the District's accomplishments to improve the environmental quality of San Diego Bay and its Tidelands.

In addition, a high-level status update on the goals and objectives of the Maritime Clean Air Strategy (MCAS) will be shared in the form of a Highlights Report for the 2023-2024 fiscal year which provides a summary of completed initiatives as well as a look ahead of upcoming projects that will satisfy several near-term goals and objectives to be accomplished by 2026 and long-term goals for 2030.

RECOMMENDATION:

Receive a presentation on the 2023-2024 Green Port Year in Review, Green Port Month, and the 2023-2024 Maritime Clean Air Strategy Highlights Report.

FISCAL IMPACT:

This Board action has no fiscal impact to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Green Port Month 2024

The District's Green Port Policy, BPC Policy No. 736, sets the framework for driving environmental, economic, and social sustainability for the organization (Attachment A). First issued in 2008 and then updated in 2017, the Board authorized proclamations to annually recognize September as Green Port Month (Attachment B). September 2024 marks the seventeenth consecutive year the District has celebrated Green Port Month. The purpose of Green Port Month is to build awareness about the District's environmental initiatives and encourage employees to manage resources in an environmentally sensitive and responsible manner.

2023-2024 Green Port Year in Review

Since the inception of Green Port Month in 2008, the District has promoted a diverse range of initiatives that support the mission of protecting and improving the environmental conditions of San Diego Bay and the Tidelands. Each year, a summary of signature achievements are presented in the annual Green Port Year in Review which recognizes a broad spectrum of environmental management accomplishments.

Referencing the theme of "Innovating Through Collaborative Leadership", the 2023-2024 Green Port Year in Review highlights important partnerships to advance the District's environmental initiatives. The report provides important data regarding the District's leadership to reduce greenhouse gas emissions, remove debris from San Diego Bay, and implement Blue Economy Incubator projects. The report also features the District's programs to educate community members, forge future environmental leaders, and much more (Attachment C).

Green Port Month Events

Throughout the month of September, District employees are encouraged to become ambassadors of the District's Green Port programs and participate in events that incorporate sustainability at work and in their homes. Events for 2024 include:

- Organic Waste Educational Events – Throughout September
- Thrift Shop Hosted by General Services – September 6, 2024
- Michelle White Environmental Awards - September 10, 2024
- #ThatsMyBay Service Day – September 19, 2024
- Green Mic & Eco-Potluck – September 20, 2024
- California Coastal Clean Up Day - September 21, 2024

2023-2024 Maritime Clean Air Strategy Highlights Report

Adopted in October 2021, the Maritime Clean Air strategy (MCAS) recommends a high-level status update on the goals and objectives identified in the MCAS, be provided to the Board once a year.

The 2023-2024 MCAS Highlights Report provides a summary of the completed initiatives as well as a look ahead of upcoming projects that will satisfy several near-term goals and objectives to be accomplished by 2026 and long-term goals for 2030 (Attachment D). In addition to providing an update on the MCAS goals and objectives, the Highlights Report also includes a summary of funding and statistics related to the advancement of MCAS

objectives and a recap of the community outreach and engagement events that were conducted throughout the 2023-2024 fiscal year.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda, as presented, as to form and legality.

Environmental Review:

This Board item does not constitute an “approval” or a “project” under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of its projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a “no project alternative” or adopting a Statement of Overriding Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, this Board item complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, this update is consistent with the Public Trust Doctrine.

Finally, this Board item does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District’s CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District’s certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board’s direction in no way limits the exercise of the District’s discretion under the District’s CDP Regulations.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Cashin Brown
Assistant Environmental Specialist, Climate & Sustainability

Attachment(s):

Attachment A:	BPC Policy No. 736 Green Port Policy
Attachment B:	2017 Proclamation of September as Green Port Month
Attachment C:	2023-2024 Green Port Year in Review
Attachment D:	2023-2024 MCAS Highlights Report



(2)

BPC Policy No. 736

Attachment A to Agenda File No. 2024-329

SUBJECT: GREEN PORT POLICY

PURPOSE: To establish a policy for the integration of overarching environmental sustainability principles and initiatives to guide business decisions, development and operations within the San Diego Unified Port District's (District) jurisdiction.

POLICY STATEMENT: The Board of Port Commissioners (Board) is dedicated to protecting and improving the environmental conditions of San Diego Bay and the tidelands. Additionally, the Board is committed to conducting District operations and managing resources in an environmentally sensitive and responsible manner. To that end, the Board has created this Green Port Policy, which is focused on incorporating a balance of environmental, social and economic concerns into operations on San Diego Bay and the tidelands.

For the purposes of this Policy, environmental sustainability is defined as the ability to meet the needs of the present without compromising the ability of future generations to meet their own needs. It is commonly measured in terms of environmental stewardship, social responsibility and economic prosperity.

The following mission and objectives have been developed to guide business decisions in adherence to the Green Port Policy.

MISSION: Provide leadership by minimizing environmental impacts from operations on tidelands and ensure a thriving community where people and the environment prosper.

OBJECTIVES: To effectively administer the Green Port Policy, the District will strive to:

- Minimize, to the extent practicable, environmental impacts directly attributable to operations on San Diego Bay and the tidelands.
- Strengthen the District's financial position by maximizing the long-term benefits of energy and resource conservation.
- Prevent pollution and improve personal, community, and environmental health.
- When possible, exceed applicable environmental laws, regulations and other industry standards.
- Ensure a balance of environmental, social and economic concerns are considered during planning, development and operational decisions.
- Define and establish performance-driven environmental sustainability objectives, targets and programs.
- Monitor key environmental indicators and consistently improve performance.

- Foster socially and environmentally responsible behavior through communications with employees, tenants, stakeholders and the community.
- Collaborate with tenants to develop an integrated, measurable, Bay-wide environmental sustainability effort.

RESOLUTION NUMBER AND DATE: 2008-183, dated September 2, 2008 (Supersedes BPC Policy 736, Resolution 2007-213, dated December 11, 2007)

(1)

**REFERENCE
COPY
54018**

Re Amendment of BPC Policy 736,]
]]
Green Port Policy]
_____]

RESOLUTION 2008-183

BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified
Port District, as follows:

That Board of Port Commissioners Policy No. 736, Green Port Policy (formerly
entitled Environmental Sustainability Policy), a copy of which is on file in the office of the
District Clerk, is hereby adopted.

ADOPTED this 2nd day of September, 2008.

sw
9/2/08

RESOLUTION 2017-133**RESOLUTION PROCLAIMING THE SAN DIEGO
UNIFIED PORT DISTRICT'S GREEN PORT MONTH
IS CELEBRATED ANNUALLY IN SEPTEMBER**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Section 21 of the Port Act allows the Board of Port Commissioners (Board) to pass all necessary resolutions for the regulation of the District, and Section 35 of the Port Act allows the Board to act as is necessary and convenient for the exercise of its powers; and

WHEREAS, in 2008, the Board authorized a proclamation to annually recognize September as Green Port Month; and

WHEREAS, the purpose of Green Port Month is to build awareness about the District's environmental initiatives and encourage employees to manage resources in an environmentally sensitive and responsible manner; and

WHEREAS, September 2017 marks the tenth consecutive year of Green Port Month; and

WHEREAS, the anniversary provides an opportunity to commemorate ongoing and emerging environmental achievements during the past decade; and

WHEREAS, Green Port programs have evolved during this time and cross a broad spectrum of traditional environmental management initiatives, including long-range planning, conservation, environmental protection, and new resource areas such as climate action planning, aquaculture, and blue technology; and

WHEREAS, as a result, staff recognizes the need to update the original Proclamation to celebrate Green Port Month; and

WHEREAS, Green Port Month also includes a schedule of activities that encourages District employees to incorporate sustainability at work and in their homes.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District hereby approves a proclamation that the San Diego Unified Port District's Green Port Month is celebrated annually in September, such proclamation to be on file with the Office of the District Clerk.

2017-133

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 12th day of September, 2017, by the following vote:

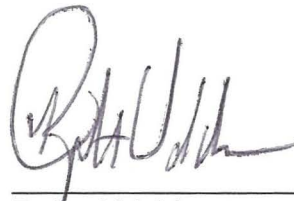
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Valderrama, and Zucchet

NAYS: None.

EXCUSED: Moore

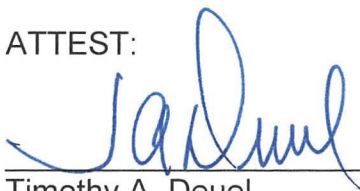
ABSENT: None.

ABSTAIN: None.

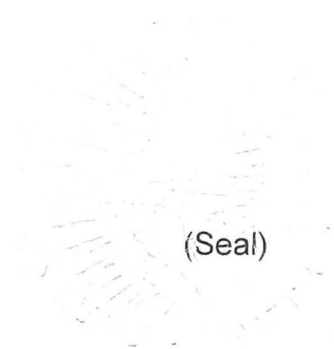


Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk



GREENPORT

Year in Review 2023-2024

Innovating through collaborative leadership



Environmental Champions

The Port of San Diego champions the safekeeping and environmental care of our dynamic waterfront. We are proud to be a leader in protecting our water, air, land, and wildlife to ensure the complete ecosystem of San Diego Bay remains a vital natural resource for generations to come. The delicate balance of a healthy San Diego Bay ecosystem is upheld through a collaborative network of programs and initiatives, each working on innovative ways to sustain our waterfront.



The First Fully Electric Tugboat in the U.S. is Christened at the Port of San Diego.

America's first all-electric tugboat dubbed the *eWolf* and its shoreside solar charging station are the result of a partnership among the Port of San Diego, Crowley, the San Diego County Air Pollution Control District, the California Air Resources Board, the U.S. Environmental Protection Agency, and the U.S. Department of Transportation Maritime Administration. The Port, Crowley, and other partners christened the *eWolf* on June 25, 2024.

Operating with zero emissions, the vessel will reduce 30,000 annual gallons of diesel fuel use. The *eWolf* will assist in advancing decarbonization on San Diego Bay while delivering capabilities that strengthen the region's vital supply chain.

The Port of San Diego Achieves Green Marine Recertification

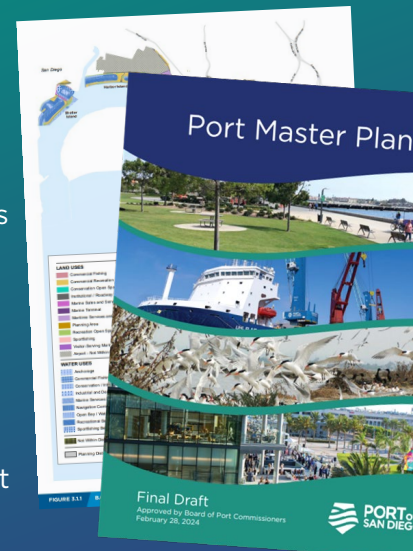


The Port of San Diego is ranked in the top ten percent of North American ports in the Green Marine program—North America's largest voluntary environmental certification program for the maritime industry.

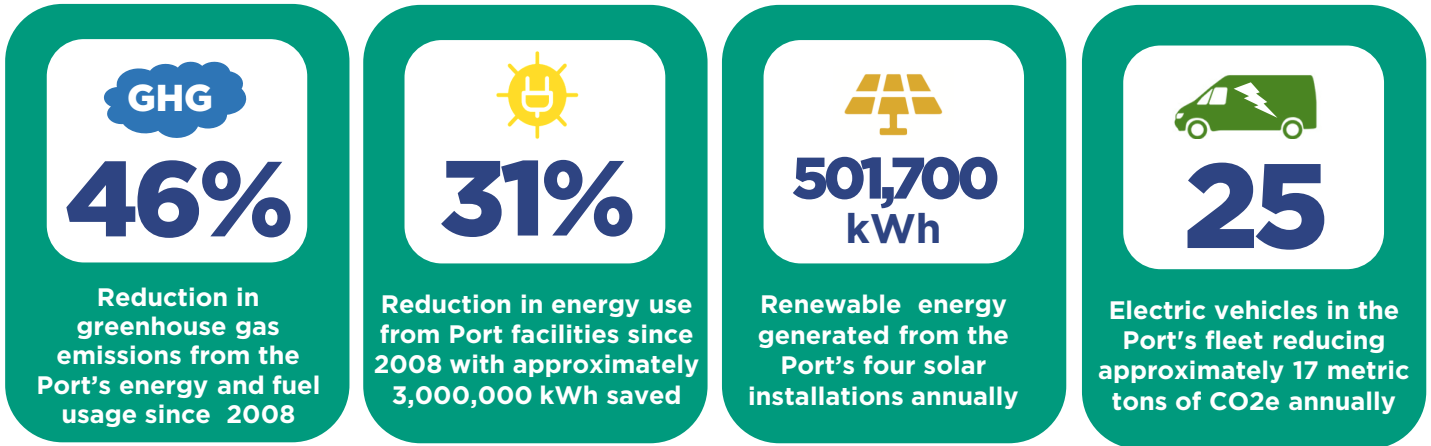


Future of the Port

The Port of San Diego's plan for the "future of the Port," formally known as the Port Master Plan Update (PMPU), reached a major milestone this year – on February 28, 2024, the Board of Port Commissioners unanimously certified the Final Program Environmental Impact Report and approved the PMPU. The PMPU is currently undergoing review by the California Coastal Commission, with certification anticipated in 2025.



Leading By Example - Port Sustainability at a Glance



Waste Diversion

- **48% of waste** generated at Port facilities was recycled and diverted from local landfills.
- Two electronic waste collection events for Port employees redirected over **2,900 pounds of E-waste** from the landfill.
- **36 derelict or abandoned vessels** and their hazardous waste were cleared from in and around San Diego Bay.



Cleanup Events

- Over **24,000 pounds of trash and debris** were removed from San Diego Bay and the Tidelands during the Creek to Bay Cleanup, Coastal Cleanup Day, Operation Clean Sweep, and Earth Day cleanups.



Trash Capture Devices

- The Port installed **181 trash capture devices** in stormdrains, including five new devices to capture and prevent trash from entering the Bay.

#ThatsMyBay FY 2024 Campaigns

#ThatsMyBay is an educational campaign to encourage actions everyone can take to reduce pollution from entering San Diego Bay.



Composting: This campaign to teach viewers about composting had **15.6 million impressions!**



Household Hazardous Waste: This campaign encouraged proper disposal of household hazardous waste and had **2.8 million impressions!**



Plastics: This campaign encouraged the reduction of single-use plastics had **3.7 million impressions!**

Environmental Conservation



Coastal Resilient Shorelines

With over 70% of San Diego Bay’s shoreline armored, the Port is piloting nature inspired shoreline solutions along the waterfront.

ECONcrete COASTALOCK

The project was installed in 2021 along Harbor Island. Two years of monitoring indicate the tidepool shaped structures have recruited a thriving new ecosystem while ensuring the structural integrity of the shoreline remains equal to or greater than what was present before. Funded through the Port’s Blue Economy Incubator Program, the Port and ECONcrete received a 2024 Climate Leadership Award for Innovative Partnerships.

Living Shoreline

A living shoreline made up 360 reef balls was deployed in South San Diego Bay to attract native oysters. The recruitment of native oysters attaching to the reef balls, has exceeded expectations and the living shoreline is becoming stronger while decreasing shoreline erosion. Monitoring indicates a healthy native oyster population, while several aquatic and bird species have also benefitted from the presence of the reef balls.

Shorelines Atlas

Through a \$312,000 grant from the Office of Local Defense Community Collaboration, the Port and US Navy initiated the San Diego Bay Sustainable Shorelines Atlas (Atlas) as a planning tool to support the long-term resilience and sustainability of San Diego Bay. The Atlas will be used to assess current shoreline conditions and recommendations to implement sustainable shoreline alternatives.



Blue Carbon Study

Results from the San Diego Bay Eelgrass Blue Carbon Study, a partnership between the Port, the U.S. Navy Region Southwest, and the U.S. Maritime Administration’s Maritime Environmental & Technical Assistance Program, found that there may be a strong link between the age of an eelgrass bed and how much carbon it stores. Older eelgrass beds store significantly more carbon than newer restored beds. Data collection and reporting for year 3 of this study will include an eDNA component to determine the origin of carbon stored in eelgrass sediments.

Environmental DNA (eDNA)

Environmental DNA (eDNA) is the genetic material shed by organisms in the water column. By collecting biological samples, scientists can process eDNA to make new discoveries about the sources of carbon in marine sediments.

Collaborative Action to Control Invasive Species

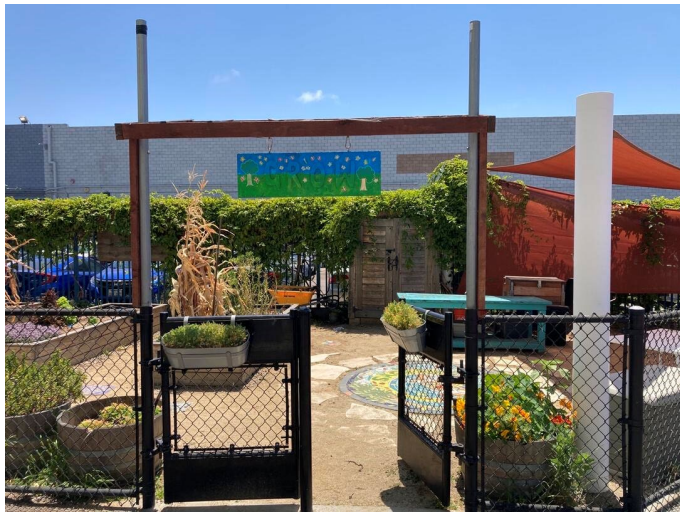
In the fall of 2023, an invasive green algae, *Caulerpa prolifera*, was discovered in the Coronado Cays, in South San Diego Bay. With \$1 million in funding from the Bipartisan Infrastructure Law, the State Water Resources Control Board Cleanup and Abatement Account, and the Port’s FY24 budget, the Southern California Caulerpa Action Team (SCCAT) came together to eradicate the invasive algae. Thanks to this collaboration, all known Caulerpa in San Diego Bay has been treated and divers continue surveying to prevent any further spread. The SCCAT agencies, include California Department of Fish and Wildlife, National Marine Fisheries Service, the Regional Water Quality Control Board, and US Fish and Wildlife Service, among others.



Maritime Clean Air Strategy

Overview

The Maritime Clean Air Strategy (MCAS) is a strategic planning document that the Port of San Diego adopted in October 2021 to identify future projects and initiatives that reduce emissions while also supporting efficient and modern maritime operations. The MCAS recognizes that bold and transformational action is urgently needed to improve air quality and public health and build upon the prior decarbonization efforts, like the Climate Action Plan.



Maritime Industrial Impact Fund (MIIF) Expansion

The MIIF supports projects off of Port tidelands that offset the impacts of the Ports maritime industrial activities. With public and stakeholder encouragement, the Port increased annual funding for the MIIF from 2% of annual gross maritime industrial revenue to 4%. With over \$2.5 million allocated to date, the MIIF has supported the installation of residential and school air filters, construction of the Bayshore Bikeway, and the City of National City’s electric Free Rides Around National City (FRANC) program.



Portside Community Academy

The Portside Community Academy was developed and launched by the Port of San Diego in 2023 with the goal to provide structured education on zero-emissions technologies and projects being pursued by the Port. The goal for this program is to develop a large team of community ambassadors in portside communities to increase education and awareness on the development of zero emissions technologies such as the zero-emission tugboat, all-electric mobile harbor cranes, and advancements in shore power technology that eliminates air pollution from ships idling at berth. In the past year, the Portside Academy graduated 55 participants.



For more on the MCAS:



Environmental Protection

Stormwater Program

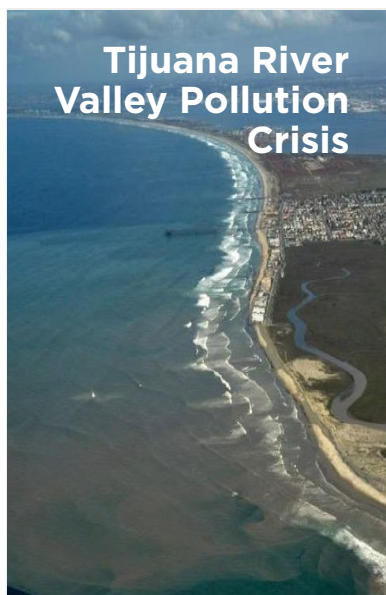
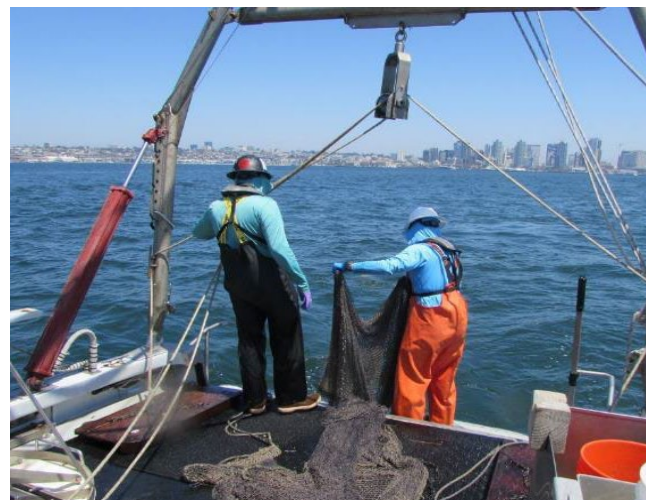


Education and use of Best Management Practices (BMPs) help to prevent pollution and illegal discharges from getting into the storm drain system and San Diego Bay. During the past year:

- **153 inspections** of Port and tenant facilities occurred to confirm pollution prevention requirements.
- **96% of stormwater BMPs** were properly implemented.
- **27 reports** of possible illegal discharges were investigated, include incidents of over-irrigation, vessel discharges, and oil spills.
- The Port's BMP Design Manual was updated to provide guidance for diverting, capturing and treating stormwater runoff.

Monitoring the Health of the Bay

The Regional Harbor Monitoring Program evaluates environmental conditions and trends in San Diego Bay. Samples were collected at over 50 locations in the Bay to evaluate marine life, sediments and water quality this past summer. Results are currently being analyzed and will be included in a report about the overall health of the bay.



Discharging billions of gallons of untreated sewage, trash, and other pollutants, the Tijuana River's transboundary flows degrade water quality and public health frequently closing beaches in southern San Diego County. The Port continues to collaborate with its partners to advocate for federal funding and legislative action to complete the Environmental Protection Agency's Comprehensive Infrastructure Solution, which includes expanded treatment capacity and the Tijuana River diversion. In solidarity with our regional partners, the Port adopted a resolution on April 8, 2024 declaring a local emergency for the Tijuana River Valley border pollution crisis.

Improving our Environmental Footprint

The Port demolished old storage tanks on Tenth Avenue Marine Terminal to increase maritime operational area and remove potential pollution.



Water and Land Use Planning

Enhanced Park Space



Sweetwater Park

With construction anticipated to be completed later this year, the Port's 23rd park, Sweetwater Park within the Chula Vista Bayfront, will incorporate many elements of the surrounding area including a dunes-inspired play area, bird watching blinds, walking trails, and a 100% native plant palette.



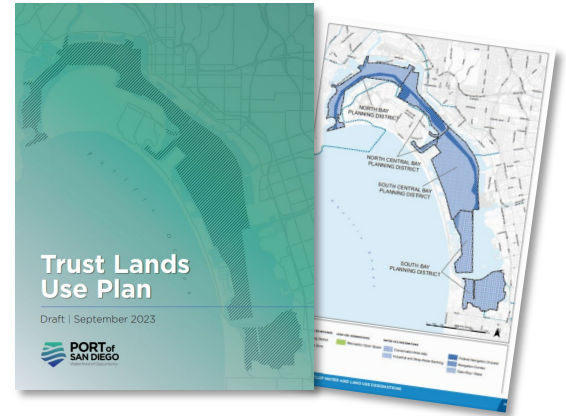
Freedom Park at Navy Pier

Scheduled to open in 2028, the conversion of Navy Pier to a park will provide visitors with unique experiences on the waterfront, including a nature garden, memorials and monuments, play structures, seating and shading, and interpretive signage. The new park space will connect to park areas around the USS Midway and extending to the Bob Hope Memorial, totaling nearly 10 acres, to form the largest veterans park on the West Coast.



Pepper Park Improvements

Pepper Park improvements will include upgrades and new amenities within the park's current footprint, including a new splash pad, a pirate-themed playground, a perched beach, an overlook/terrace, a hillside play area, and more. Construction of these improvements will begin by October 2024.



Trust Lands Use Plan

The Port is preparing a Trust Lands Use Plan (TLUP) for the submerged lands granted to the Port's management from the State Lands Commission per Senate Bill 507. Following a public review period on a Discussion Draft of the TLUP in July 2023, the Port submitted the Draft TLUP to the Commission in October 2023. Next steps include a comprehensive environmental and coastal review process of the Draft TLUP.



National City Balanced Plan

It is anticipated that the California Coastal Commission will certify the Port Master Plan Amendment for the National City Balanced Plan in late 2024. After certification of the Amendment, engineering design will proceed for the components of the National City Balanced Plan, including realignment of Marina Way and the expansion of Pepper Park.

Blue Economy and Aquaculture

The Port's Blue Economy Incubator (BEI) is building a portfolio of businesses and partnerships that deliver multiple social, environmental, and economic benefits to the Port and the region by removing barriers to entrepreneurs and providing funding, key assets, and support services including entitlement and permitting assistance, and pilot project facilitation.

For more info on Aquaculture & Blue Technology:



5th Edition Highlights Report

The Port's BEI program released its 5th edition of its annual highlights report, showcasing the accomplishments of ongoing pilots with Sunken Seaweed, FREDsense, and San Diego Bay Aquaculture. Recently completed pilots include EConcrete, an innovative tidepool shoreline armoring technology. This pilot project showcases the potential to incorporate Nature Inclusive Design into coastal protection infrastructures, addressing challenges posed by shifting coastal climates and bolstering climate resilience.

Innovation Opportunities

Through its BEI, the Port is seeking innovation opportunities that align with the Port Blue Economy priorities.

- Coastal Resiliency & Monitoring
- Environmental Protection & Remediation
- Maritime Decarbonization
- Nature Based Solutions
- Ocean Data
- Shellfish and Seaweed Aquaculture

Blue Economy Incubator in the Media

Our BEI has generated national media exposure and international coverage that has reached millions of viewers in the past year including TedTalk San Diego.



Our Impact in Numbers

20 MILLION juvenile-stage oysters expected to be produced annually when San Diego Bay Aquaculture's FLUPSY is fully permitted and operating at full capacity

\$1.95 MILLION in funding to support the launch of sustainable aquaculture and blue tech pilot projects

Over 30 PARTNERSHIPS created as part of the BEI growth strategy

10 innovative pilot projects supported through a port-wide collaboration process

500+ pounds of edible seaweed produced weekly by Sunken Seaweed's Humboldt shoreside tumble culture farm

24 national media exposure pieces and international coverage that has reached millions of viewers in the past year

\$172,000 in royalty payments that can be re-invested in supporting new pilot projects

50+ DIFFERENT SPECIES including sessile species, mobile invertebrates, fish, and algae – found living on EConcrete's bio-enhancing shoreline protection armor units

44+ MILLION Impressions from local, national and global media coverage around BEI innovation and investment

\$5.4 MILLION investment leveraged by Blue Economy Incubator Companies

1000 OCEAN STARTUPS

The Port of San Diego is proud to be the first Port in the world to be a member of 1000 Ocean Startups. The coalition of incubators, accelerators, competitions, matching platforms, and venture capital aims to restore ocean health and contribute to the United Nations Sustainability Goal 14: Life Below Water.

Future Environmental Leaders



The Port's Environmental Education Program (EEP) educates students, teachers, and the general public about pollution prevention, environmental stewardship, healthy ecosystems, and the natural resources in and around San Diego Bay. The program supports local non-profit organizations that provide innovative environmental education curriculum to students and communities. The Port supported 11 environmental education programs through the Environmental Fund and reached over 38,753 students from 2023-2024.



The Port also supports career development for undergraduate and graduate students. Through fellowship programs including the California Sea Grant Program, the CivicSpark Fellowship Program, and the #CaliforniansForAll CollegeCorps Fellowship Program, the Port provides on-the-job experience and hands-on-training for the next generation of environmental champions.



Michelle White Environmental Champion

Each year the Port honors environmental champions through the Michelle White Environmental Awards. For eleven years, Michelle was an important and influential member of the Port family and created the annual Green Port Month celebration.

This Year's Recipients are:

Port Staff:

- Christopher Brooke - *Engineering - Construction*
- Gabriella Rodriguez - *Marketing & Communications*
- Lourdes Sherman - *General Services*

Regional Partners:

- Southern California Caulerpa Action Team

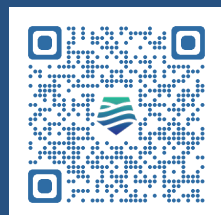
Port Tenants:

- Crowley Maritime
- SSA Marine



Port of San Diego Environment champions the safekeeping and environmental care of our diverse ecosystems.

For more information go to:
portofsandiego.org/environment



Maritime Clean Air Strategy Highlights 2023-2024













Published September 2024

The Maritime Clean Air Strategy Overview

The Maritime Clean Air Strategy (MCAS) is a strategic planning document the Port of San Diego Board of Commissioners adopted in October 2021 to help identify future projects and initiatives that reduce emissions while also supporting efficient and modern maritime operations. The MCAS recognizes that bold and transformational action is urgently needed to improve air quality and public health. In pursuit of “Health Equity for All”, the MCAS identifies several aspirational, near-term goals and objectives to be accomplished by 2026 and long-term goals for 2030.

Status of MCAS Objectives

Collectively, the MCAS has 39 separate initiatives which lead to projects, partnerships, and studies. As of July 2024, approximately 66% of MCAS objectives have been implemented.

Emission Sources:		In-Progress	Implemented
	Cargo Handling Equipment	1	
	Commercial Harbor Craft	3	2
	Shipyards		2
	Heavy-Duty Trucks	2	5
	Port of San Diego Fleet	2	2
	Ocean-Going Vessels	1	2
	Rail	1	1
Stakeholder-Driven Priorities:			
	Community Enrichment		4
	Public Health		4
	Enabling	3	4
TOTAL		13	26

By the Numbers

Electric cargo handling equipment on Tenth Avenue Marine Terminal (TAMT):



7 Electric Yard Trucks



3 Electric Heavy Lifts



2 Electric Mobile Harbor Cranes



2 Electric Reach Stackers



2 Electric Forklifts

16 pieces procured to-date

25 electric vehicles have been procured to-date:



12

Ford F-150 Lightning Trucks



8

Tesla Model Y Service Vehicles



4

Ford E-Transit 350 Work Vans



1

Nissan Leaf Service Vehicle

Funding Summary

The Port and partners have committed approximately **\$125 million** for maritime electrification and efficiency efforts to-date, including but not limited to:

\$38.6M

Tenants & Service Providers' Electric Equipment & Commercial Harbor Craft

\$27.4M

Port Electric Vehicles & Equipment

\$25.2M

Tenth Avenue Marine Terminal Infrastructure Upgrades

\$18.5M

Freight Efficiency Along Harbor Drive

\$8.6M

National City Marine Terminal Infrastructure Upgrades

\$5.8M

Cruise Ship Terminal Infrastructure Upgrades

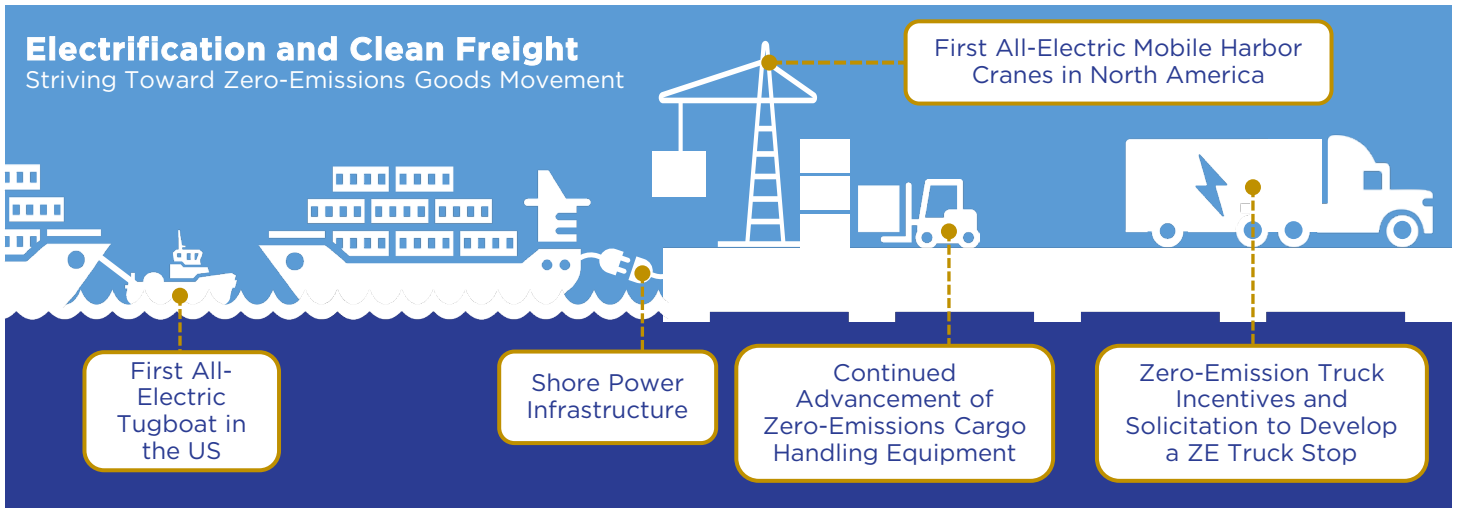
\$1.1M

Clean Trucks Corridor Deployment

Electrification Upgrades

Why Electrify?

Ports are essential to the economy and vital components of the supply chain ecosystem but are also sources of air pollution primarily due to diesel powered engines and equipment. To address growing environmental concerns, the Port of San Diego is undertaking ambitious actions to electrify its operations. Making the transition to electrification can lower overall emissions and operational costs, improve air quality, reduce dependence on carbon-based fuels, and benefit public health.



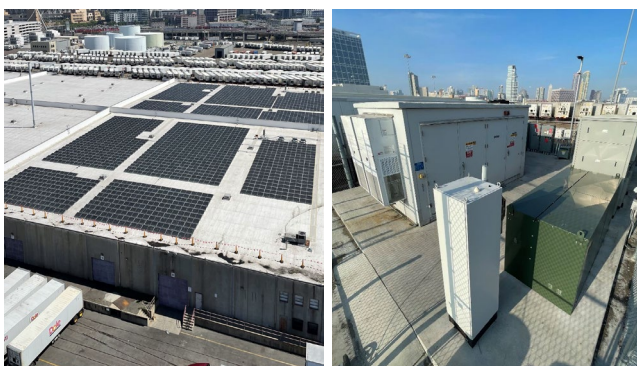
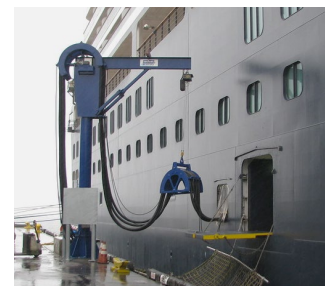
What's been accomplished so far?

TAMT Electrical Upgrades

Modernizing the electrical system at TAMT is fundamental to supporting the transition from diesel-powered to zero-emission technologies supporting electric cargo handling equipment, heavy-duty trucks, and installing additional shore power for ocean-going vessels and commercial harbor craft. The Port has applied for regional, state, and federal funding to continue these efforts.

Shore Power

Shore Power Phase 1 and Phase 2 at National City Marine Terminal will supply electricity to ocean-going vessels and require service upgrades to the electric grid by San Diego Gas & Electric. An additional shore power connection point at B Street Cruise Ship Terminal is also being added to the shore power system for greater flexibility when connecting cruise ships.



TAMT Microgrid

The Port's TAMT Renewable Microgrid project consists of a solar photovoltaic array tied to a battery energy storage system and microgrid controller, augmenting electricity for critical operations on the terminal. The system offers resiliency and dependability should issues arise with the regional electrical grid. The microgrid reduces the cost of electricity by approximately 60 percent per year.



Maritime Clean Air Strategy Highlights 2023-2024

On the Horizon

- 1 Shore Power Enhancement at B Street Cruise Ship Terminal**
Construction will start late 2024 to add an additional charge point.
- 2 Tuna Harbor Wharf Upgrades**
Upgrading facilities by providing a 480V/100A service. Infrastructure coordination and preliminary engineering analysis are underway.
- 3 Harbor Drive 2.0**
A modern truck route for efficient goods movement and enhanced pedestrian, bicycle, and transit connections.
- 4 Port Zero-Emission Fleet & Charging Infrastructure**
Installation of 12 chargers at General Services to support the Port's growing fleet of electric vehicles.
- 5 Zero-Emission Truck Stop**
In partnership with Skycharger LLC, design, develop, and operate a zero-emission truck stop in West National City.
- 6 Bonnet System - Emissions Capture Control System**
Supports emission reductions for vessels not equipped to connect to shore power. Operation in late 2024.
- 7 Shore Power Expansion at National City Marine Terminal**
Phases 1 and 2 are underway with anticipated completion in 2025.



Cruise Ship Terminals



Tenth Avenue Marine Terminal



3



4



National City Marine Terminal

5



6

Sweetwater Channel



7

CORONADO

SAN DIEGO

NATIONAL CITY

CHULA VISTA

Harbor Drive

Harbor Drive

San Diego Bay

Pacific Ocean

Spotlights

Maritime Industrial Impact Fund (MIIF) Expansion

The MIIF supports projects and programs that reduce air pollution and address other environmental burdens experienced by those living near the working waterfront of San Diego Bay. Projects previously receiving MIIF funding include the free electric community shuttle in National City (FRANC) and residential air purifiers in Barrio Logan. With public and stakeholder encouragement, the Port increased funding for the MIIF to 4% of the Port's annual gross maritime industrial revenue. Approximately \$1.5 million was directed into the MIIF for Fiscal Year 2025. The fund's current balance is approximately \$2.2 million. The Board also authorized expanding the program to include maritime electrification efforts such as electric trucks and infrastructure.



Crowley Christens the First Fully Electric Tugboat in the U.S. at the Port of San Diego

The eWolf and its shoreside solar charging station are the result of a partnership between the Port, Crowley Maritime Corporation, the San Diego County Air Pollution Control District, the California Air Resources Board, the U.S. Environmental Protection Agency, and the U.S. Department of Transportation Maritime Administration. The zero-emission tugboat, combined with renewable power, delivers high-power capability, safety, and efficiency while advancing decarbonization, air and noise pollution reduction, and strengthens San Diego region's maritime industry.

2024 Awards



Resilience and Sustainability Merit Award from the San Diego American Planning Association

In June, the Port's Maritime Clean Air Strategy was recognized for setting ambitious air quality goals.



American Public Works Association Project of the Year Award & Honor Award in the Sustainable & Green Category

In April, the Port was recognized for its Tenth Avenue Marine Terminal Renewable Microgrid project in the Sustainable and Green category.

Community Enrichment

Portside Community Academy (Fall 2023 & Spring 2024)



The Portside Community Academy was developed and launched by the Port in 2023 with the goal of providing structured education on maritime-related air quality projects being pursued by the Port. The pilot program was aimed at building deeper connections with portside communities by exploring innovations that are helping improve human health and quality of life.



The academy covered various aspects of the Port’s clean air and electrification projects, focusing on impacts on air quality, public health, and technological advancements in the maritime industry. The program’s purpose is to develop a large team of community ambassadors who can promote awareness about zero-emission technologies and air quality improvements at the Port. A total of 55 graduates have completed the academy, with two courses being held in October 2023 and March 2024. Additional academies are anticipated to be held in Fall 2024 and Spring 2025.

Outreach & Engagement



SDG&E EV Day - October 2023



ZE Truck Showcase / Ride & Drive - October 2023



SDG&E EV Fleet Day - April 2024



Crowley eWolf Christening - June 2024

Maritime Month



Each year in May, the Port is proud to celebrate its maritime industry and honor the thousands of valued employees working along the San Diego Bay waterfront. For this year’s Maritime Month, the Port invited guests to experience its two cargo terminals and waterfront with three free bus tours for 79 attendees.

Partnerships



The California Energy Commission - Ports Collaborative



The California Energy Commission (CEC) - Ports Collaborative is a unique partnership between the CEC and all of the California Ports to implement solutions to energy challenges faced by ports. The Collaborative has met for nearly ten years and has helped commercialize zero-emission equipment, vehicles, and microgrids in port environments.



Harbor Drive 2.0



SANDAG, in partnership with the Port and Caltrans, will be finalizing the design for Harbor Drive 2.0, and position the project for construction funding. Harbor Drive 2.0 will improve Harbor Drive between the Port's two marine terminals by creating a modern truck route for efficient goods movement; enhanced pedestrian, bicycle, and transit connections and safety; and will improve air quality by reducing diesel emissions. Construction is targeted to begin 2028, pending funding availability.





Zero-Emission Truck Stop



In Spring 2024, the Port and Skycharger, LLC formalized a partnership to design, develop, and operate a zero-emission truck stop on Port land in West National City. The project is anticipated to advance several MCAS initiatives and presents an opportunity to reduce barriers such as lack of available charging infrastructure for zero-emission trucks. The proposed Trucking as a Service business model will help alleviate early adoption concerns expressed by the trucking industry. In addition to primarily servicing trucks delivering goods to and from the marine terminals, a charger should be available for community use.

For more on the MCAS:


Questions or comments on the MCAS?
Please email Port staff at:
mcas@portofsandiego.org

FILE NUMBER: 2024-333

DATE: Tuesday, September 10, 2024

SUBJECT: Ferry Landing Associates Restaurant Development

DESCRIPTION: A) Conduct a Public Hearing and Adopt Resolution Authorizing Issuance of Amendment No. 2 of Appealable Coastal Development Permit 97-3 to Ferry Landing Associates LLC for the Ferry Landing Associates Second Restaurant Building Project at the Ferry Landing in Coronado.

B) Adopt an Ordinance Granting an Option to Lease Agreement to Ferry Landing Associates, LLC, which Option includes an Amended and Restated Lease, a Fifth Amendment to Lease, a Memorandum and Quitclaim Deed, and a Parking and Access Easement Agreement, and also Conditionally Approving a 20-year Long-Term Sublease with Island Times, LLC.

EXECUTIVE SUMMARY:

In 1997, the District and Ferry Landing Associates, LLC, a California limited liability company ("FLA"), entered into a 40-year Lease for approximately four acres of land and three acres of water area on the bayfront in Coronado, south of the Ferry Landing Marketplace. ("Current Lease")¹. The leasehold, which is located at 1311 First Street in the City of Coronado ("Property") as shown on Attachment A – Aerial Location Map, includes a restaurant, a small office building, and a vacant restaurant pad.

The Current Lease, which is scheduled to expire on August 31, 2037, requires the development of two restaurant buildings and a small office building. The two restaurants were to be constructed by December 31, 2008. The small office building and one restaurant building, which is currently occupied by Il Fornaio, were completed in 1999; however; the second restaurant was never built. In 2018, FLA received Concept Approval from the Board of Port Commissioners (Board) for the development of a new proposed 7,500 square foot restaurant building on the vacant pad adjacent to Il Fornaio restaurant.

The proposed operator for the new restaurant is Island Times, LLC (Social Syndicate), part of a local restaurant group which operates several community focused concepts such as Rosie O'Grady's and The Rabbit Hole in Normal Heights, La Doña and OB Surf Lodge in Ocean Beach, The Local Pacific Beach, and the Monarch Ocean Pub in Del Mar, the latter of which will be the concept used for the Coronado site. The new restaurant would increase revenue for the District and serve the community of Coronado with an exciting new dining option.

District staff and FLA have agreed on an approach that if approved by the Board, would enable FLA to: (1) develop the vacant restaurant pad with the previously approved 7,500

¹ Lease recorded in the Office of the District Clerk on March 26, 1998 as Document No. 36616, as amended by Amendment No. 1 recorded on April 2, 2002 as Document No. 42938, Amendment No. 2 recorded on August 11, 2005 as Document No. 49282, Amendment No. 3 recorded on July 2, 2008 as Document No. 53657, and Amendment 4 recorded on September 1, 2016 as Document 65563.

square foot restaurant; (2) upon completion of the new restaurant, obtain an additional 12 years of lease term; and (3) provide for the vacant restaurant parcel to be turned over to the District if FLA is unsuccessful in developing the parcel.

The recommended approach includes the following transaction components:

- Enter into an Option to Lease Agreement (“Option”) (see Attachment B – Option Agreement) for the entire current leasehold, that contains four exhibits: (i) An Amended and Restated Lease (“A&R Lease”); (ii) a Fifth Amendment to the Current Lease (“Fifth Amendment”); (iii) a Memorandum and Quitclaim Deed (“Memorandum and Quitclaim”); and (iv) a Parking Easement Agreement (“Parking Easement”);
- Concurrently with the execution of the Option, FLA to deliver to the District executed counterparts of the Fifth Amendment, the Memorandum and Quitclaim, and the Parking Easement;
- If FLA timely completes the pre-development conditions set forth in the Option, FLA would be entitled to enter into the A&R Lease with District;
- If FLA timely develops the new restaurant pursuant to the terms of the A&R Lease, FLA would be entitled to extend the term of the A&R Lease by 12 years through August 31, 2049; and
- If FLA fails to timely satisfy the preconditions in the Option, the Current Lease would remain in effect, the Fifth Amendment and Memorandum and Quitclaim would become effective and remove the vacant restaurant pad and adjacent waterside parcel from the premises under the Current Lease, and the Parking Easement would become effective to provide for the shared use between FLA and the District (or future tenant of the vacant restaurant parcel) of the parking lot and drive aisles located on the Property.

Construction and operation of the proposed approximately 7,500 square foot single story restaurant located on the vacant restaurant pad adjacent to the Il Fornaio was analyzed in a Second Addendum to the Final Environmental Impact Report for the Coronado Boatyard Plan Amendment - The Wharf Development Project adopted by the Board on July 17, 2018 pursuant to Resolution No. 2018-131. In addition, and as further discussed below, construction of the new restaurant will require the issuance of Amendment No. 2 of Appealable Coastal Development Permit 97-3 (Attachment E – Draft CDP Amendment). The Project, as conditioned, is consistent with the certified Port Master Plan (“PMP”) and Chapter 3 and Chapter 8 of the California Coastal Act.

RECOMMENDATION:

A) Conduct a public hearing and adopt a Resolution authorizing issuance of Amendment No. 2 of Appealable Coastal Development Permit 97-3 To Ferry Landing Associates LLC for the Ferry Landing Associates Second Restaurant Building Project at the Ferry Landing In Coronado.

B) Adopt an Ordinance granting an Option to Lease Agreement to Ferry Landing Associates, LLC, which Option includes an Amended and Restated Lease, a Fifth Amendment to Lease, a Memorandum and Quitclaim Deed, and a Parking and Access

Easement Agreement, and also conditionally approving a Long-Term Sublease with Island Times, LLC.

FISCAL IMPACT:

Should the new restaurant open as anticipated in 2027, initial annual percentage rent from the new restaurant to the District is anticipated to be \$384,450. Entering into the Option Agreement will have no direct fiscal impacts to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Current Lease

FLA and the District entered into a 40-year Lease in 1997 for approximately four acres of land and three acres of water area on the bayfront in Coronado, south of the Ferry Landing Marketplace (see Attachment A – Location Map) (“Property”). The Current Lease, which expires on August 31, 2037, requires the development of two restaurant buildings and a small office building. The two restaurants were to be constructed by December 31, 2008. The small office building and one restaurant building, which is currently occupied by Il Fornaio, were completed in 1999; however, despite FLA’s repeated efforts to do so, the second restaurant building has yet-to-be completed. Development of the vacant restaurant parcel would not qualify for a lease term extension pursuant to Board of Port Commissioners Policy No. 355 since it is a requirement under the Current Lease.

Proposed Project

The proposed new restaurant was granted Concept Approval by the Board on July 17, 2018. The proposed restaurant includes construction and operation of an approximately 7,500 square foot single-story restaurant up to 23 feet high, with outdoor seating areas and landscaping improvements. The proposed restaurant building would provide space for one or two restaurants and would accommodate a total of approximately 300 guests, including approximately 190 indoor guests and 110 outdoor guests. Solar panels are proposed for the roof, along with heating, ventilation, and air conditioning units as well as tankless natural gas water heaters. All mechanical equipment would be enclosed within a recessed well. Railing is proposed around the outdoor patio areas, including a low-

profile wall between the restaurant building and the shoreline public walkway. A covered 224 square foot utility and trash area is proposed at the southeastern side of the building and an underground, appropriate size, grease interceptor tank is proposed in the southeastern corner of the site, adjacent to the proposed utility and trash area. Three bio-filtration areas for stormwater are proposed, including two at each entrance of the restaurant building and one between the outdoor seating area and the walkway.

Parking for the project would be provided within the existing 269 spaces in the parking lot on the Property. No changes to the current parking configuration are proposed with the exception of re-stripping to include handicapped-accessible parking stalls. Bicycle racks would be installed at the southwestern portion of the site along the sidewalk and at the three existing concrete viewing decks over the San Diego Bay.

The proposed landscaping includes grasses and drought tolerant plants and palm trees. The palm trees would be located toward the parking lot and low-lying vegetation would be planted toward San Diego Bay. Existing overhead lighting located along the 15-foot-wide shoreline public pathway would be removed and replaced with low-profile bollard lighting, with a correlated color temperature of 2,700 kelvins or less, along both sides of the pathway. The bollards will match the lighting output of the existing overhead lighting to allow for pedestrian and bicycle safety as well as uninterrupted views of the nighttime downtown San Diego skyline.

Construction of the new restaurant shell is expected to take nine months with an additional nine months to complete tenant improvement work for a total construction timelines of 18 months, with an expected groundbreaking in late 2025. Construction would occur in three phases: 1) preliminary earthwork; 2) foundation work; and 3) building construction and exterior site work.

Parcel Bifurcation and Option to Lease

Staff believes that Social Syndicate (as discussed in the Sublease subsection below) would be a good operator for the site and the development would benefit the District by increasing rent and resulting in improvements with an extensive useful life beyond the extended lease term. However, given the multiple unsuccessful attempts to develop the vacant parcel since Current Lease's commencement, staff and FLA have negotiated an approach that would enable FLA to purchase term and develop the vacant parcel while giving the District undisputed site control of the vacant restaurant parcel if FLA is ultimately unsuccessful.

The proposed transactional structure involves granting FLA an Option to Lease ("Option") that includes several preconditions to be satisfied before the District would be obligated to enter into a pre-negotiated Amended and Restated Lease for the Property ("A&R Lease"). These conditions would ensure that FLA has the necessary permits, entitlements, financing, equity commitments, restaurant operator agreement, and construction contract in place prior to entering into the A&R Lease. The proposed Option is attached to this Agenda Sheet as Attachment B, and the A&R Lease is included as Exhibit A to the Option.

Should FLA successfully satisfy the preconditions to executing the A&R Lease, FLA would (i) be granted a new A&R Lease for the Property through August 31, 2037, (ii) upon timely developing the new proposed restaurant, be granted an option to extend the term through August 31, 2049, and (iii) be obligated to pay the term extension fee described below.

Also attached to the Option are (i) a Fifth Amendment to the Current Lease (Exhibit B to Option, "Fifth Amendment"), (ii) a Memorandum and Quitclaim Deed (Exhibit C to Option, "Memorandum and Quitclaim"), and (iii) a Parking and Access Easement (Exhibit D to Option, "Parking Easement"). The Option requires that FLA execute these three documents concurrently with FLA's execution of the Option and deliver them to District, with District obligated to hold them in escrow pending the successful or unsuccessful exercise of the Option. If FLA is unable to timely satisfy the Option's preconditions and executed the A&R Lease, the Current Lease will remain in effect, and the District is entitled to sign and make effective the Fifth Amendment, the Memorandum and Quitclaim, as well as the Parking Easement, and record the latter two with the San Diego County Recorder. The Fifth Amendment and Memorandum and Quitclaim will have the effect of removing the vacant restaurant pad and adjacent water parcel from the Current Lease, and the Parking Easement will govern the shared use, maintenance, operation, and costs of the parking lot and drive aisles located on the Property. The Parking Easement would run with the land and therefor benefit any future tenant of the District who agrees to develop the vacant restaurant pad.

Purchase of Term

Staff analyzed a purchase of 12 years of additional lease term, which was calculated as the difference between (i) the present value of the District's income stream under the existing Lease term extended by 12 years to 2049; and (ii) the present value of the District's income stream under the existing Lease term expiring in 2037, plus the reversionary value of the existing improvements at the expiration of the Current Lease, which would be deferred if the Current Lease term were extended. Based on the foregoing, District staff calculated a purchase of term fee of \$792,000 (net present value), which takes into consideration current interest rates as well as construction and labor costs. In exchange for the additional 12 years of lease term, and to take into account the time value of money, FLA would pay a total extension fee of \$1,000,000 via yearly \$100,000 payments commencing in 2030 through the remainder of the A&R Lease Term. FLA being granted the term extension is conditioned upon FLA successfully exercising its rights under the Option to execute the A&R Lease and thereafter timely developing the new restaurant pursuant to the terms of the A&R Lease.

Amended and Restated Lease

The A&R Lease, the execution of which is conditioned on FLA successfully satisfying the preconditions in the Option, also contains numerous deadlines and penalties in order to incentivize FLA to successfully construct and open the new restaurant. Under the A&R Lease, and subject to specifically enumerated force majeure delays, FLA is required to commence construction of the new restaurant no later than 30 days after the A&R Lease's effective date and to complete construction within 577 days of the effective date after

expending a minimum investment of \$6,400,000. If construction is not timely completed, FLA owes an additional rent payment of \$11,500 per month, which additional rent increases to \$23,000 per month if the new restaurant isn't completed within two years of the aforementioned effective date.

In the event the new restaurant is not timely completed within 2.5 years of the A&R Lease's effective date, then the District has the option to exercise a streamlined remedy of removing the vacant restaurant parcel and adjacent waterside parcel from the leasehold via a Quitclaim Deed attached to the A&R Lease as Exhibit J and effectuating the aforementioned Parking Easement attached to the Option as Exhibit D.

Sublease

FLA's requested a 12-year lease term extension will facilitate a 20-year sublease with Island Times, LLC dba Social Syndicate, a local restaurant group which operates several community focused concepts such as Rosie O'Grady's and The Rabbit Hole in Normal Heights, La Doña and OB Surf Lodge in Ocean Beach, The Local Pacific Beach, and the Monarch Ocean Pub in Del Mar, the latter of which will be the proposed concept for the Coronado site. Staff's preliminary due diligence indicates that the Monarch Ocean Pub concept is a well-run operation and would be a good fit for the site as well as increase revenue to the District. Without an anticipated term extension, Social Syndicate will not commit to the project. It is unlikely that the vacant restaurant parcel could be feasibly developed by a tenant via a subtenant at the cost of over \$6.4 million with only 13 years of term remaining under the Current Lease.

As part of the proposed Board action, staff recommends the Board approve of FLA's sublease with Island Times, LLC ("Sublease")²; provided that such approval is conditioned upon FLA and Island Times executing a Second Amendment to Sublease substantially in the form attached hereto as Attachment D. The proposed Second Amendment contains the District's standard terms and conditions included in consents to subleases as set forth in Section 11.6 of the proposed A&R Lease.

California Environmental Quality Act (CEQA)

In 1989, a larger commercial development project, within which the proposed new restaurant ("Project") site is located, was analyzed pursuant to CEQA in the Final EIR (SCH #88062222; UPD #83356-EIR-143; District Clerk Document No. 24647) for The Wharf Development Project ("Final EIR"). The Final EIR analyzed full-scale redevelopment including up to three full-service restaurants, other food and beverage services shops, retail and management office space, a marina, and an underground parking garage. On December 19, 1989, the Board certified the Final EIR (Resolution No. 89-382; District Clerk Document No. 24647). In 1999, the first restaurant currently dba as the Il Fornaio was constructed. In 2008, an Addendum to the Final EIR was prepared for the proposed construction of a second restaurant ("First Addendum") (District Clerk Document No. 53309) and a CDP amendment was issued (Amendment No.1 to CDP-97-

² Sublease (as amended by First Amendment to Sublease) attached as Attachment C.

3, District Clerk Document No. 53487). However, due to market conditions, the second restaurant was not constructed, and the CDP amendment expired.

In October 2015, Ferry Landing Associates submitted an application for a revised project to construct a one-story building with the option to operate up to two restaurants within. On January 12, 2016, the Project was presented to the Board for preliminary project review at which time the Board authorized staff to commence the environmental review process pursuant to CEQA. A Second Addendum to the Final EIR, dated July 2018, was prepared to analyze changes to The Wharf Development Project, and to document that none of the conditions in CEQA Guidelines Sections 15162 and 15163, triggering preparation of a subsequent or supplemental EIR, occurred. On July 17, 2018, by Resolution No. 2018-131 the Board approved the Second Addendum to the Final EIR (Clerk's Document No. 68850). A CDP amendment is still needed to entitle the Project.

Coastal Development Permit

On October 21, 1997, the Board authorized issuance of an appealable CDP to Port Coronado Associates/Ferry Landing Associates for The Ferry Landing Expansion Project (Attachment F – CDP-97-3). The CDP was issued on November 18, 1997 (CDP-97-3; Clerk's Document No. 36851). The Ferry Landing Expansion Project involved construction of two restaurants with a total of approximately 18,500 square feet of gross floor area, extension of the bicycle path along the waterfront, approximately 6,500 square feet of offices, parking for approximately 255 vehicles, riprap and revetment shoreline protection, and landscaping. These improvements were completed, with the exception that only one restaurant was constructed.

On May 6, 2008, the Board authorized issuance of an amendment to CDP-97-3 (CDP-97-3 Amendment No. 1) to authorize construction of a second single story restaurant of approximately 11,500 square feet, pavement approaches to the restaurant entry/service areas and adjacent landscape improvements. The CDP was issued on May 27, 2008 (Clerk's Document No. 53487). The restaurant was never built, and the CDP amendment has since expired.

The proposed draft Amendment No. 2 of CDP-97-3 (see Attachment E – CDP-97-3 Amendment No. 2) includes construction and operation of the second single-story restaurant with outdoor seating areas and landscaping, lighting and stormwater bio-infiltration improvements.

In accordance with Section 14.d of the District CDP Regulations, the Development Services Director determined that CDP-97-3 Amendment No. 2 is necessary, and that the proposed amendment would be a material change due to the nature and extent of the proposed changes. The District's CDP Regulations require material amendments to be considered by the Board, along with consideration of consistency with the PMP.

The proposed development is located within Planning District 6, Coronado Bayfront, which is delineated on Precise Plan Map Figure 17 of the certified PMP. The PMP land use designation within the limits of the Project is Commercial Recreation. Therefore, since a restaurant is an allowable use within this land use designation, the proposed CDP-97-

3 Amendment No. 2 involving construction of a restaurant, is consistent with the certified PMP.

Pursuant to the District's CDP Regulations, a public hearing is required for all appealable CDPs and material appealable CDP amendments. In accordance with Section 11.d. of the CDP Regulations, on August 28, 2024 notices were mailed to certain property owners and occupants surrounding the project site, City of Coronado Mayor, City of Coronado Manager, California Coastal Commission ("CCC"), and certain interested parties to inform them that a public hearing will be conducted on CDP-97-3 Amendment No. 2. Board action on CDP-97-3 Amendment No. 2 may be appealed to the CCC pursuant to Chapter 7 of Division 20 of the Public Resources Code within 10 working days after the CCC receives a notice of the Board's decision on CDP Amendment No. 2. After the CCC receives the notice of the Board's decision, if a written appeal is not filed within 10 working days, the Executive Director may issue CDP-97-3 Amendment No. 2 immediately.

Conditions are incorporated into the CDP-97-3 Amendment No. 2 to ensure conformance with applicable policies and District's requirements, and applicable mitigation measures from the Second Addendum to the Final EIR's Mitigation, Monitoring and Reporting Program. District staff recommends the Board conduct a public hearing and adopt a resolution to authorize issuance of appealable CDP-97-3 Amendment No. 2 to FLA to allow for construction and operation of a restaurant. A copy of the draft CDP-97-3 Amendment No. 2 is provided as Attachment E to this agenda sheet.

Conclusion

FLA has demonstrated a strong desire to develop the vacant parcel into an exciting new restaurant concept. If approved by the Board, the Option and associated documents would incentivize FLA to successfully complete construction, and a failure to timely do so would permit the District to remove the vacant pad and accompanying waterside parcel from the leasehold under a streamlined procedure to allow the District to select a new developer for the parcel.

Staff believes that FLA successfully developing the restaurant and having it operated by Social Syndicate would benefit the District by introducing an exciting new concept to the District's restaurant portfolio, increasing rent, and resulting in improvements with an extensive useful life beyond the extended term of the A&R Lease.

For these reasons and others set forth in this agenda sheet, staff recommends the Board approve of the Option to Lease substantially in the form attached hereto as Attachment B as well as approve of the Sublease conditioned upon FLA and Island Times executing the Second Amendment to Sublease substantially in the form attached hereto as Attachment D.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet and the attachments as presented to it and approves the same as to form and legality.

Environmental Review:

The proposed Board actions are not a separate project for CEQA purposes but are a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist. (2012) 206 Cal.App.4th 1036.) The previously approved project was analyzed in an Addendum (“Second Addendum”) to the Final EIR for The Wharf Development Project (SCH #88062222; UPD #83356-EIR-143; District Clerk Document No. 24647). On December 19, 1989, by Resolution No. 89-382, the Board certified the Final EIR. On July 17, 2018, by Resolution No. 2018-131 the Board approved the Second Addendum to the Final EIR for The Wharf Development Project dated July 2018 (Clerk’s Document No. 68850). Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no further environmental review is required. Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, the Final EIR and Addenda, the District finds that the proposed Project would not require further environmental review and no supplemental or subsequent CEQA has been triggered.

The proposed Board actions comply with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The Board actions conform with the Coastal Act process for the Project. If the Board authorizes issuance of an amendment to appealable CDP-97-3, District staff would notify CCC staff in accordance with Coastal Act Section 30717. The Executive Director would issue CDP-97-3 Amendment No. 2 after the tenth working day after CCC staff receives notification, unless an appeal is filed with the CCC within that time frame.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Christian Anderson,
Department Manager, Real Estate

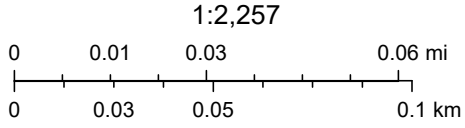
Megan Hamilton
Senior Project Manager, Development Services

Attachment(s):

Attachment A: Aerial Location Map
Attachment B: Option Agreement (with Attachments)
Attachment C: Sublease Agreement (as amended by First Amendment)
Attachment D: Second Amendment to Sublease
Attachment E: Draft Amendment No. 2 to Coastal Development Permit CDP-97-3
Attachment F: Coastal Development Permit CDP-97-3 for The Ferry Landing
Expansion



 Ferry Landing Associates



Maxar

OPTION TO LEASE AGREEMENT

THIS OPTION TO LEASE AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____, 20____ (“**Effective Date**”), by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, (“**District**”), and FERRY LANDING ASSOCIATES, LLC, a California limited liability company (“**Optionee**”).

WITNESSETH:

WHEREAS, District and Optionee previously entered into that certain Lease dated October 21, 1997 and filed in the Office of the District Clerk as Document No. 36616 (the “**1997 Lease**”); and

WHEREAS, following the 1997 Lease, District and Optionee later entered into that certain Agreement for Amendment of Lease Amendment No. 1 dated October 9, 2001 and filed in the Office of the District Clerk as Document No. 42938 (“**First Amendment**”), that certain Agreement for Amendment of Lease Amendment No. 2 dated July 12, 2005 and filed in the Office of the District Clerk as Document No. 49282 (“**Second Amendment**”), that certain Agreement for Amendment of Lease Amendment of Lease No. 3 dated July 2, 2008 and filed in the Office of the District Clerk as Document No. 53657 (“**Third Amendment**”), and that certain Agreement for Amendment of Lease Amendment No. 4 dated September 1, 2016 and filed in the Office of the District Clerk as Document No. 65563 (the “**Fourth Amendment**” and, collectively with the 1997 Lease, the First Amendment, the Second Amendment, and the Third Amendment, the “**Current Lease**”); and

WHEREAS, pursuant to the Current Lease, Optionee leases the property located at 1311 First Street, Coronado, California, which lands are more particularly described and delineated in Exhibit A and Exhibit B of the Current Lease (the “**Premises**”); and

WHEREAS, the Current Lease is scheduled to expire on August 31, 2037; and

WHEREAS, the Current Lease obligates Optionee to construct two restaurants; and

WHEREAS, Optionee fulfilled its obligation to construct one restaurant, which is currently in operations on the Premises and is commonly known as the Il Fornaio Coronado; and

WHEREAS, Optionee has failed to timely fulfill its obligation to construct a second restaurant on the Premises as required by the Current Lease; and

WHEREAS, Optionee, in an effort to successfully construct the second restaurant on the Premises, desires an option to enter into the Amended and Restated Lease for the Premises in the form attached hereto as Exhibit A (“**Amended and Restated Lease**”), which Amended and Restated Lease contains an option to extend the term thereof through August 31, 2049; and

WHEREAS, District is willing to grant Optionee the Option (as defined in Section 1 below) to enter into the Amended and Restated Lease for the Premises only upon the terms and conditions set forth in this Agreement to ensure the successful construction of the second restaurant on the Premises; and

WHEREAS, should Optionee fail to validly and timely exercise the Option in accordance with the terms of this Agreement, District and Optionee have agreed, all as further set forth in this Agreement, that the Current Lease will remain in effect provided that the land area upon which the second

restaurant is to be constructed will be removed from the Premises to allow the District to take control of such land area and separately pursue the development of the same.

AGREEMENT

NOW, THEREFORE, in consideration of the performance and observance of the terms, covenants and conditions hereafter set forth, the parties hereto mutually agree as follows:

1. **GRANT OF OPTION:** Subject to the effectiveness of this Agreement as set forth below in this Section 1 as well as the conditions set forth in this Agreement and full compliance with the terms hereof, District hereby grants Optionee, exercisable during the Term (as defined in Section 2 below), an option to lease the Premises ("**Option**") in accordance with the covenants and conditions set forth in the Amended and Restated Lease. For avoidance of doubt, any termination of this Agreement shall result in the automatic termination of the Option without the need for further action by District or any other party. The effectiveness of this Agreement shall be conditioned upon the following documents (collectively, the "**Escrowed Documents**") being executed (and, in the case of the Memorandum and Quitclaim and the Parking Easement, validly notarized) with original counterparts being delivered to District:
 - a. The Fifth Amendment to the Current Lease in the form attached hereto as Exhibit B ("**Fifth Amendment**"), which, should it become effective, have the effect of removing the Vacant Restaurant Parcel (as defined in the Fifth Amendment) from the Premises subject to the Current Lease, all as further described in the Fifth Amendment;
 - b. The Memorandum of Fifth Amendment and Quitclaim Deed in the form attached hereto as Exhibit C ("**Memorandum and Quitclaim**") to provide record notice of Fifth Amendment and relinquishment of the Vacant Restaurant Parcel from the leasehold under the Current Lease; and
 - c. The Parking Easement Agreement in the form attached hereto as Exhibit D ("**Parking Easement**") to govern and ensure the shared operation, maintenance, use, and costs of the Parking Lot/Driveway Parcel (as defined in the Parking Easement) by each of the Restaurant Parcels (as defined in the Parking Easement), all as further set forth in the Parking Easement.

Optionee acknowledges and agrees that a failure to deliver original executed copies of the Fifth Amendment, the Memorandum and Quitclaim, and the Parking Easement executed by Optionee (and in the case of the Memorandum and Quitclaim and the Parking Easement, validly notarized) to the District on or before the date that is 10 days following the Effective Date will result in the automatic termination of this Agreement without the need for further action by either District or Optionee.

Following Optionee timely and validly exercising the Option and executing the Amended and Restated Lease in accordance with the terms of this Agreement, District agrees to promptly return the Escrowed Documents to Optionee, and thereafter the Escrowed Documents shall be of no further force and/or effect. Contrarily, following any termination of this Agreement pursuant to Section 9 below, District's Executive Director ("**Executive Director**") shall be entitled to take the actions set forth in Section 9 with respect to the Escrowed Documents.

2. **OPTION TERM:** Unless otherwise extended by written agreement by the parties, the term (“**Term**”) of this Option shall commence on the Effective Date and shall expire at 5:00 p.m. on the date that is twelve (12) months after the Effective Date (such later date, the “**Termination Date**”). Notwithstanding any other provision of this Agreement to the contrary, Optionee’s right to exercise the Option and execute the Amended and Restated Lease will terminate and be of no further force and effect without requiring further action of the District and/or Optionee if the conditions set forth in this Agreement are not timely satisfied, and the Option exercised, before the Termination Date.

3. **OPTIONEE’S PROJECT:** Optionee’s project consists of an approximately 7,500 square foot restaurant building with associated landscaping and hardscape (collectively the “**Project**”) as further described in Coastal Development Permit No. _____ issued by the District (the “**CDP**”) and approved by the Board of Port Commissioners (“**Board**”) pursuant to Resolution No. _____.

4. **OPTION AGREEMENT RENT/CURRENT LEASE:** Optionee acknowledges and agrees that the Current Lease shall remain in effect during the Term hereof, during which Optionee shall remain responsible for fulfilling all obligations under the Current Lease (including, but not limited to, the payment of all rent and other amounts due under the Current Lease). Optionee additionally agrees that a default under the Current Lease, beyond any applicable notice and cure period, shall additionally constitute an automatic default under this Agreement.

5. **CONDITIONS PRECEDENT TO EXERCISE OPTION:** Optionee will have no right to exercise the Option unless and until the conditions set forth below in this Section 5 have been timely satisfied. Failure to timely satisfy any of the conditions precedent set forth in this Section 5 shall constitute an automatic default under this Agreement.
 - a. Working Drawings: By no later than 11 months from the Effective Date, Optionee shall submit to District for approval by the Executive Director, six (6) copies of “**Working Drawings**” necessary to commence construction of “Sublessor’s Work” with respect to the Project. “Sublessor’s Work” means the base, shell and core of the Project’s building and commonly known as a “Cold Dark Shell”, as more particularly described in Exhibit E attached hereto. Working Drawings shall be prepared by an architect or engineer, as appropriate, licensed to do business in the State of California, and shall consist of the following:
 - (1) Complete architectural, civil, structural, mechanical, electrical, plumbing, utility layout, landscaping and irrigation, stormwater and site horizontal (coordinate) and vertical control plans included in the civil drawings;
 - (2) Complete specifications, materials, and color list, and engineering calculations for all improvements;
 - (3) Construction contract form;
 - (4) Construction schedule; and
 - (5) A detailed final construction cost estimate of all improvements relating to

Sublessor's Work.

The Working Drawings must be in substantial conformance to the Concept Approval approved by the District as set forth in Resolution No. 2018-132 approved by the Board on July 17, 2018. Should Executive Director not approve or comment on the Working Drawings within thirty (30) days following submittal, each additional day of delay by District shall constitute a delay under Section 13(b). Within thirty (30) days after Executive Director approves or comments on the Working Drawings, Optionee shall complete all corrections and modifications to the Working Drawings to the satisfaction of Executive Director. District approval shall not release Optionee from liability arising out of or related to the Working Drawings.

b. Equity Commitment and Project Financing:

- (1) **EQUITY COMMITMENT.** By no later than 10 months from the Effective Date and concurrently with the financing commitment required pursuant to Section 5(b)(2) below, Optionee shall submit to District written evidence that Optionee has obtained an equity commitment that includes letters executed by one or more of the Optionee's current members that have been previously disclosed to District (or other equity partners subject to District's approval as set forth in the last sentence of this Section 5(b)(1)) committing to provide a combined total of equity for the Project in an amount no less than thirty percent (30%) of the total Project cost. Written evidence of the foregoing equity commitment shall be subject to Executive Director's written approval, such approval not to be unreasonably withheld, conditioned, or delayed. Executive Director agrees to approve any non-currently disclosed equity partners if, in Executive Director's reasonable discretion, such non-currently disclosed equity partner and its principals are (A) reputable (meaning the absence of reputations for dishonesty, criminal conduct, or association with criminal elements – "reputable" does not mean "prestigious", nor does the determination of whether one is reputable involve considerations of personal taste or preference) and (B) possess sufficient business experience and financial means to perform Optionee's obligations under this Agreement and the Amendment and Restated Lease, according to the then-current standards for business experience and financial means that District generally requires of new lessees.
- (2) **PROJECT FINANCING.** By no later than 11 months from the Effective Date and concurrently with the equity commitment required pursuant to Section 5(b)(1) above, Optionee shall submit to the District evidence that Optionee has obtained a written commitment in form and content reasonably acceptable to District, to provide financing to build the Project in accordance with the approved Working Drawings from a lender(s) that constitutes a Financial Institution, as such term is defined in the Amended and Restated Lease. Before Optionee exercises the Option, Optionee must provide evidence reasonably satisfactory to District that such lender(s) are prepared to close the loan subject to delivery of the executed Amended and Restated Lease. District will not be liable to Optionee or any third party for any loss, damage, or injury of any kind arising from District's refusal to amend the Amended and Restated Lease in connection with any lender request to do

so, and Optionee agrees not to bring any action against District in connection therewith.

Should Optionee exercise the Option and execute the Amended and Restated Lease in accordance with the terms of this Agreement, any request for consent to encumber the Premises shall be governed by Section 10 of the Amended and Restated Lease.

- (3) **SOURCE OF FUNDS.** The equity commitment required pursuant to Section 5(b)(1) combined with the financing commitment required pursuant to Section 5(b)(2) shall set forth the sources of all funds required for design and construction of the Project. A summary of the requisite funds for all design and construction costs and the sources thereof shall be included in the submittals required under this Section 5(b).
- c. **Development Permits:** By no later than one month prior to the Termination Date, Optionee shall obtain, at its sole cost and expense, all required construction and development permits required in connection with the Project and deliver to District copies thereof. Said permits shall include, but are not limited to, the building permits issued by the City of Coronado (“**City**”), Army Corps of Engineers (“**ACOE**”) permit (if applicable), and the CDP. Optionee will submit to District a copy of all documents delivered to the City, ACOE, and any other governmental entity other than the District in connection with obtaining such permits.
- d. **Payment and Performance Bonds:** No later than one month prior to the Termination Date, Optionee shall provide to District: (i) a Performance Bond (as defined in Exhibit C to the Amended and Restated Lease) guaranteeing that construction will be timely completed in accordance with the requirements of Section 6 of the Amended and Restated Lease; and (ii) a Payment Bond (as defined in Exhibit C of the Amended and Restated Lease) guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the construction of the Project or for labor done in connection therewith and protecting District from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments. Both the Performance Bond and the Payment Bond shall be in form and substance as required forth in Exhibit C of the Amended and Restated Lease and in each case satisfactory to District in its reasonable discretion.
- e. **Construction Contract:** By no later than one month prior to the Termination Date, Optionee shall submit an executed construction contract or contracts with competent and financially responsible contractors for construction in accordance with the approved Working Drawings, such contractors subject to the Executive Director’s prior written approval (not to be unreasonably withheld, conditioned, or delayed).
- f. **No Defaults:** Optionee is in full compliance with the terms of this Agreement and the Current Lease and no defaults exist under this Agreement or the Current Lease, beyond any applicable notice and cure period.

6. **EXERCISE OF OPTION:** If at any time before the Termination Date or earlier termination of this Agreement, all of the conditions precedent to the exercise of the Option set forth in this Agreement have been timely satisfied, Optionee may convey its intent to exercise the Option by providing District with written notice prior to the Termination Date (or earlier termination of this Agreement). Upon receiving such notice, District shall prepare the Amended and Restated Lease as well as the Continuing Guaranty attached thereto for execution. Promptly upon receipt of the execution versions of the Amended and Restated Lease and Continuing Guaranty, Optionee shall fully execute (or in the case of the Continuing Guaranty, cause the full execution) of the Amended and Restated Lease and the Continuing Guaranty in accordance with reasonable execution instructions provided by District and return to District two counterpart originals of the executed Amended and Restated Lease and of the Continuing Guaranty. If Optionee fails to return such fully executed originals within fourteen (14) calendar days of receipt of the execution versions of the Amended and Restated Lease and the Continuing Guaranty, the Option and this Agreement shall, at the District's option in its sole and absolute discretion, become null and void and of no further force and/or effect upon District providing written notice to Optionee. District agrees to countersign the Amended and Restated Lease within fourteen (14) calendar days of receipt of executed counterparts from Optionee. The Amended and Restated Lease and Continuing Guaranty shall be dated effective as of the date of District's countersignature. In connection with the execution of the Amended and Restated Lease and Continuing Guaranty, Executive Director, in his or her sole and absolute discretion, may arrange for the delivery of the Amended and Restated Lease executed by the District through an escrow holder. Optionee shall pay all costs of the escrow. In the event the escrow fails to close within thirty (30) days following delivery of the Amended and Restated Lease to the escrow holder, the escrow shall be canceled, and each party agrees that it will not seek or be entitled to any money damages, reimbursement, or any other judicial remedy or relief of any kind from the other party because of the failure to close escrow.
7. **INDEMNITY:** Optionee shall, and hereby does, indemnify, protect, defend and hold the District, including, but not limited to, its commissioners, managers, officers, directors, employees, representatives, administrators, and attorneys, and the respective successors and assigns of each of the foregoing, as well as the Premises, free and harmless from and against any and all claims, actions, causes of action, lawsuits including but not limited to third party challenges to the CEQA review and/or determination proceedings, losses, costs, expenses (including, without limitation, attorneys' fees and costs), liabilities, damages, and liens of any type or nature arising out of any act or omission of Optionee or any of the Optionee's representatives in connection with Optionee's performance of its duties and obligations under this Agreement, including, without limitation, any activities of Optionee or Optionee's representatives on or about the Premises, prior to the Optionee's exercise of the Option under this Agreement and any commencement of the Amended and Restated Lease. The foregoing obligations of Optionee under this Section 7 shall survive the Optionee's exercise of the Option, the expiration of the Term or any termination of this Agreement.
8. **RESTRICTIONS ON AGREEMENT TRANSFERS:** Optionee acknowledges that District would not enter into this Agreement except in reliance on Optionee's expertise, reputation, prior experience in developing, constructing, and operating the Premises, and District's knowledge of Optionee. Therefore, any purported transfer or assignment of this Agreement or any rights or duties hereunder, whether by operation of law or otherwise, without the prior written consent of District (which will be granted or rejected in District's sole and absolute

discretion and subject to any and all conditions imposed by the District) will be void and shall absolutely and conclusively terminate Optionee's rights hereunder. Further, with the sole exception of transfers or assignments solely among the Existing Owners (as such term is defined in the Amended and Restated Lease), which shall be permitted, any assignment or transfer of any partnership, corporate or other interest in Optionee or in any partner or member of Optionee, or change in form or ratio of ownership of Optionee (whether Optionee is a corporation, partnership, limited liability company, or other form of business entity) made without District's prior written consent (which will be granted or rejected in the District's sole and absolute discretion and subject to any and all conditions imposed by the District) will be void and shall absolutely and conclusively terminate Optionee's rights hereunder. District may condition any consent on a requirement that Optionee pay to the District an amount equal to the excess, if any, of the net consideration received by Optionee as a result of such transfer or assignment over the sum of the costs and expenses paid or incurred by Optionee prior to said transfer or assignment in performing its obligations and satisfying the conditions precedent under this Agreement. The District shall have the right to examine and audit Optionee's books, records, financial statements and documentation for the purposes of determining the accuracy of such costs and expenses. If the audit discloses a discrepancy of more than five percent (5%) between the costs and expenses as reported by Optionee and the costs and expenses as determined by the audit, the Optionee shall pay the cost of the audit.

9. **TERMINATION OF OPTION:** In the event that Optionee fails to timely exercise the Option in accordance with the terms of this Agreement, then this Agreement (and, in turn, the Option and all of Optionee's other rights hereunder) shall automatically terminate and be of no further force and/or effect without the need for further action by any party. In addition, should Optionee default in the performance of any of Optionee's obligations under this Agreement or the Current Lease (past any applicable notice and cure period), District will have the right, in its sole and absolute discretion, to terminate this Agreement for default upon providing written notice to Optionee, in which case the Option and all of Optionee's other rights hereunder shall terminate and be of no further force and/or effect.

Immediately following any termination of this Agreement, Executive Director shall be entitled to take the following actions in Executive Director's sole and absolute discretion and without the need for further action by the Board or Optionee: (i) to countersign on behalf of the District, and make effective, each of the Fifth Amendment, Memorandum and Quitclaim, and Parking Easement, (ii) to record the Memorandum and Quitclaim as well as the Parking Easement with the San Diego County Recorder's Office to provide record notice of the same. Executive Director's rights with respect to the Escrowed Documents set forth in the previous sentence shall survive any termination of this Agreement, and, following Executive Director taking the actions set forth in the previous sentence, the Current Lease, as amended by the Fifth Amendment to remove the Vacant Restaurant Parcel from the Premises, as well as the Parking Easement, shall govern Optionee's continued occupancy of the remaining Premises.

10. **NOTICES:** Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (a) hand delivery, (b) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, (c) upon email transmission (except that if the date of such transmission is not a business day, then such notice shall be deemed to be given on the first business day following such transmission), or (d) two

(2) business days after being deposited in the United States mail, certified mail, postage prepaid, return receipt required, and addressed as applicable:

All notices to Optionee shall be given or sent by certified mail to:

Ferry Landing Associates, LLC
Attention: Arthur Engel
1311 First Street
Coronado, CA 92118
Email: aeengel8@gmail.com

All notices and payments to the District shall be given or sent by certified mail to:

Assistant Vice President
Business Operations
San Diego Unified Port District
3165 Pacific Highway
P. O. Box 120488
San Diego, CA 92112-0488
Email: agordon@portofsandiego.org

With a copy to:

Christian Anderson, Department Manager
Real Estate Department
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92112-0488
Email: canderson@portofsandiego.org

With a copy to:

Office of the General Counsel
San Diego Unified Port District
Attn: David Jones
3165 Pacific Highway
San Diego, CA 92112-0488
Email: dajones@portofsandiego.org

Any party may designate a different address by giving written notice as set forth in this Section 10.

11. **TIME IS OF THE ESSENCE:** Time is of the essence of all the express conditions contained herein, and failure of Optionee to so perform within the time limits stated shall automatically terminate Optionee's rights hereunder.
12. **PREMISES "AS IS, WITH ALL FAULTS":** Optionee acknowledges and agrees that it is in possession of the Premises under the Current Lease and is fully aware of the conditions of the Premises. Optionee further understands and agrees that the Premises will be leased in an "as is, with all faults" condition and that any and all improvements, grading, filling,

removal of existing improvements, shoreline protection (if applicable), and relocation of utility lines shall be made and performed by Optionee at the sole cost and expense of Optionee.

13. **FORCE MAJEURE:** Notwithstanding anything to the contrary in this Agreement, the dates for completion of the conditions in Section 5 above and the Term will be extended as follows:
- a. one day for each day a condition is not satisfied due to a delay caused by the following events, despite Optionee's diligent and commercially reasonable best efforts to satisfy such condition (each a "**Force Majeure Event**"): riots, natural disasters and other acts of God, including without limitation, fires, earthquakes, floods and hurricanes; labor strikes; delays caused by governmental agencies (i.e., each day of delay beyond forty (40)-days for a governmental entity to make a decision, such 40-day period commencing from the time Optionee is notified by the governmental agency that all materials required by the governmental agency have been submitted); acts of terrorism; and war on United States soil. Under no circumstances will Optionee's failure to obtain the requisite equity commitments and/or financing for the Project be considered a Force Majeure Event, including, without limitation, failure to obtain equity commitments and/or financing due to economic or other conditions beyond Optionee's control.
 - b. one day for each day that the District is late in providing its approval or disapproval of Working Drawings that Optionee submits to District within the time specified for review and approval set forth in Section 5(a).

If two or more of the events described above in (a) and (b) are occurring concurrently, the extensions shall be calculated as running concurrently and not as being cumulative. The combined total of all force majeure extensions pursuant to (a) and (b) above shall not exceed 270 days.

14. **THIRD PARTIES:** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Optionee and the District and their respective permitted successors and assigns. Nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.
15. **ATTORNEY'S FEES:** In the event of any dispute between the parties hereto involving the covenants or conditions contained in this Agreement or arising out of the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including (without limitation) attorneys' fees (including for work performed by in-house attorneys) and costs.
16. **WAIVER OF CLAIMS AND LIMITATION OF REMEDIES:** Optionee acknowledges and agrees that Optionee's right and ability to exercise the Option, execute the Amended and Restated Lease, and construct the Project is subject to various consents and approvals, including, without limitation, environmental review under CEQA and other consents and approvals as set forth in Section 5 above. Optionee accepts the risk that District or the California Coastal Commission may withhold those consents and approvals in their sole and absolute discretion. District will have no liability and Optionee will have no claim, cause

of action, or right of compensation against District if Optionee does not obtain, for any reason whatsoever, any or all of the consents and approvals necessary to exercise the Option or construct the Project. Optionee will have no claim or cause of action in equity (including, without limitation, any action seeking specific performance, injunctive relief, mandamus or other extraordinary writ), or right of compensation for consequential damages against District, and Optionee hereby waives its right to seek to recover such equitable remedies and consequential damages. In any suit or action against District arising from the terms of this Agreement or in connection with the construction of the Project, Optionee will be entitled to seek to recover its legal damages only, and hereby agrees that such legal damages will be limited to Optionee's out of pocket costs and expenses in furtherance of the construction of the Project. In addition, Optionee and District agree that neither party will bring any action, claim, or cause of action against the other for any costs, damages, expenses, obligations, or liabilities for any acts or failure to act by either party arising from or relating to any negotiations, discussions, or actions in connection with the construction of the Project, or negotiation, execution, or termination of this Agreement. The provisions of this Section 16 shall survive the expiration of the Term or earlier termination of this Agreement.

17. **OWNERSHIP OF DEVELOPMENT DOCUMENTS UPON TERMINATION:** If the Term expires or this Agreement otherwise terminates prior to Optionee exercising the Option, then Optionee will deliver, to the extent permissible, or use commercially reasonable efforts to cause to be delivered to District, and to allow District to have an unrestricted right to use, at no cost to District, all materials which have been prepared relating to the construction of the Project and the condition of the Premises, including without limitation all conceptual drawings, scale model, design construction drawings, specifications, tests, inspections, reports (e.g. feasibility, engineering, soils, geology, environmental, grading, street, storm drain, sewer, water, and landscape), studies, surveys, and construction contracts and agreements (collectively "**Development Documents**"), excluding any proprietary or privileged information produced or commissioned by Optionee. Optionee's obligations under this Section 17 shall survive the expiration of the Term or earlier termination of this Agreement.

Prior to entering into any agreements for or relating to the preparation of the Development Documents, Optionee shall submit such agreements to District including, but not limited to, architectural design agreements. Such agreements, including, but not limited to, architectural design agreements, shall include provisions to District's reasonable satisfaction which give District enforceable rights to obtain and use all materials, whether in draft or final form, including without limitation all calculations, data, analyses and other work product prepared in connection therewith to the same extent as Optionee.

18. **DISTRICT CONSENT/APPROVAL:** Unless a different approval standard is expressly indicated, then whenever in this Agreement the consent or approval of the District, the Board, the Executive Director of the District or any of their designees is required, such consent or approval may be given or denied in the sole and absolute discretion of the District, the Board, the Executive Director of the District or any of their designees, as appropriate. Any approval of the Executive Director under this Agreement may be provided by the Executive Director's designee.

19. **COMPUTATION OF TIME PERIODS:** If any date or time period specified in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, such date will automatically be extended until 5:00 p.m., Pacific Time, of the next day which is not a Saturday, Sunday or federal, state or legal holiday.
20. **AMENDMENT TO THIS AGREEMENT:** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties.
21. **NO WAIVER:** The waiver or failure to enforce any provision of this Agreement will not operate as a waiver of such party's right to enforce future breaches of any such provision or any other provision of this Agreement.
22. **APPLICABLE LAW:** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of California. Venue for any legal proceeding shall be in San Diego County, California.
23. **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between District and Optionee as to the subject matter hereof. The Recitals set forth above are incorporated into this Agreement by reference.
24. **OPTIONEE AUTHORITY.** If Optionee is a corporation, partnership, or limited liability company, each individual executing this Agreement and behalf of Optionee hereby represents and warrants that Optionee is a duly formed and existing entity qualified to do business in the state in which the Premises are located and that Optionee has full right and authority to execute and deliver this Agreement and that each person signing on behalf of Optionee is authorized to do so.
25. **PARTIAL INVALIDITY:** If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion will be deemed severed from this Agreement and the remaining parts of this Agreement will remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Agreement.
26. **CAPTIONS:** All captions to, or headings of, the sections or sub-sections of this Agreement are solely for the convenience of the parties, are not a part of this Agreement and will not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.
27. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which combined shall constitute one and the same instrument.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have executed this Option to Lease Agreement as of the day and the year first above written.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Anthony Gordon
Assistant Vice President,
Business Operations

FERRY LANDING ASSOCIATES, LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

EXHIBIT A

Amended and Restated Lease

(attached)

SAN DIEGO UNIFIED PORT DISTRICT

AMENDED AND RESTATED LEASE TO

FERRY LANDING ASSOCIATES, LLC

OF PROPERTY LOCATED AT

1311 FIRST STREET

CORONADO, CALIFORNIA

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AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE ("**Lease**") is entered into as of _____, 20____ (the "**Effective Date**") by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("**Landlord**") and FERRY LANDING ASSOCIATES, LLC, a California limited liability company ("**Tenant**").

RECITALS

WHEREAS, Landlord and Tenant previously entered into that certain Lease dated October 21, 1997 and recorded in the Office of the District Clerk as Document No. 36616 for certain tidelands located in the City of Coronado, California (as amended by that certain Agreement for Amendment of Lease Amendment No. 1 dated October 9, 2001 and recorded in the Office of the District Clerk as Document No. 42938, that certain Agreement for Amendment of Lease Amendment No. 2 dated July 12, 2005 and recorded in the Office of the District Clerk as Document No. 49282, that certain Agreement for Amendment of Lease Amendment No. 3 dated July 2, 2008 and recorded in the Office of the District Clerk as Document No. 53657, and that certain Agreement for Amendment of Lease Amendment No. 4 dated September 1, 2016 and recorded in the Office of the District Clerk as Document No. 65563, the "**Original Lease**"); and

WHEREAS, Tenant's obligations under the Original Lease are guaranteed by Arthur E. Engel ("**Guarantor**") pursuant to that certain Guaranty dated as of June 4, 2008 (the "**Original Guaranty**"); and

WHEREAS, the Original Lease obligated Tenant to construct, on or before December 31, 2008, two restaurant/cocktail lounges on the Premises (as defined in this Lease) – one on Parcel 4 and one on Parcel 3, as such parcels are described on Exhibit A and Exhibit B attached to this Lease; however, Tenant has only successfully completed construction of one restaurant, which is operated and commonly known as the Il Fornaio Coronado on Parcel 3; and

WHEREAS, Tenant contends that such failure to construct the second restaurant was due to various economic conditions and potential subtenant restaurant operators failing to fulfill contractual obligations to Tenant; and

WHEREAS, in order to give Tenant one final opportunity to construct the second restaurant on Parcel 3, Landlord and Tenant entered into that certain Option to Lease Agreement dated _____, 2024 and recorded in the Office of the District Clerk as Document No. _____ (the "**Option Agreement**"), pursuant to which Tenant was required to timely satisfy conditions prior to Landlord being obligated to enter into this Lease; and

WHEREAS, in the event Tenant failed to timely satisfy certain conditions set forth in the Option Agreement as required to obligate Landlord to enter into this Lease, then the Option Agreement provided for Parcels 2 and 3 to be automatically removed from the Original Lease and revert back to Landlord, the Original Lease with its current expiration date of August 31, 2037 to remain in effect, and Landlord and Tenant were to enter into that certain Parking and Access Easement Agreement attached as Exhibit D to the Option Agreement (the "**Parking Easement**") to govern the shared use of Parcel 5 and Parcel 7; and

WHEREAS, Tenant timely satisfied the conditions set forth in the Option Agreement to obligate Landlord to enter into this Lease; and

WHEREAS, this Lease provides Tenant with the Option to Extend, and in return, Tenant is to timely construct the New Restaurant Improvements (as defined in Section 6.1.1) as required by and pursuant to the terms of this Lease; and

WHEREAS, notwithstanding Landlord entering into this Lease, Tenant's failure to timely construct the New Restaurant Improvements pursuant to and in accordance with the terms of this Lease will automatically subject Tenant to increased Rent and, additionally, shall constitute a default hereunder and permit Landlord to remove Parcels 2 and 3 from the Premises as a remedy for such default; and

NOW THEREFORE, for good and valuable consideration, Landlord and Tenant hereby agree as follows:

1. BASIC LEASE PROVISIONS

The following basic lease terms are referred to in other provisions of this Lease and constitute a part of this Lease and are to be read together with and constitute a part of the terms of this Lease.

1.1 Term (See Article 3):

40 years with one Option to Extend as set forth below. For purposes of this Lease, the "Term" shall include the application Option Term following the timely exercise of the Option to Extend in accordance with the terms of this Lease.

1.1.1 Commencement Date: SEPTEMBER 1, 1997

1.1.2 Expiration Date: AUGUST 31, 2037

1.1.3 Option to Extend: ONE OPTION TO EXTEND FOR 12 YEARS

1.2 Premises:

The Premises consist of the real property more particularly described as Parcels 1, 2, 3, 4, 5, and 6 set forth in Exhibit A and depicted in Exhibit B consisting of approximately 172,196 square feet of land area and approximately 118,596 square feet of water area, inclusive of all surface and subsurface areas, located at 1311 First Street in the City of Coronado, California. The Existing Improvements consist of one single story restaurant of approximately 11,700 square feet, 276 seats, bicycle path along the waterfront, approximately 6,500 square feet of two-story office and retail space, a paved parking lot for 269 vehicles, a sound attenuation wall on the south and east side of the premise, revetment shoreline protection, and landscaping.

In addition thereto, Landlord grants an easement to Tenant for its non-exclusive use more particularly described as follows:

Approximately 12,680 square feet of land area also located at 1311 First Street in the City of Coronado, California, more particularly described and delineated as Parcel 7 on said Exhibit A and Exhibit B (the "**Easement Premises**") for subsurface utilities; construction of a public pedestrian/bicycle path and general access purposes only, and which use shall be subordinate to and shall not interfere with Landlord's use of the Easement Premises for public purposes which include, but are not limited to, walkway and bicycle path purposes.

1.3 Permitted Use (See Article 4):

The Premises shall only be used as follows and for no other purpose (the "**Permitted Use**"): (a) a full-service approximately 300 seat restaurant of approximately 11,700 square feet known as of the Effective Date as the Il Fornaio (the "**Existing Restaurant**") on Parcel 4; (b) the construction and operation of the New Restaurant Improvements as defined in Section 6.1.1 below and consisting of a full-service approximately 300 seat restaurant of approximately 7,500 square feet, including a cocktail lounge on Parcel 3; (c) retail area of not more than 2,000 square feet restricted to gift items, sundries, and souvenirs; and office area not to exceed 4,407 square feet on Parcel 6; (d) landscaping; (e) approximately 118,596 square feet of water area located on Parcels 1 and 2; and (f) approximately 258 of parking spaces and drive aisles located on Parcel 5 serving the foregoing uses. .

1.4 Minimum Annual Rent (See Article 5): The Minimum Annual Rent shall be as follows:

The Minimum Annual Rent commencing on the Commencement Date through but not including the Effective Date, shall be as set forth in the Original Lease.

The Minimum Annual Rent commencing on the Effective Date through Completion for the New Restaurant Improvements shall be Three Hundred Thirty-Nine Thousand Dollars (\$339,000), unless sooner adjusted as provided in Section 5.2.

Commencing on the first day of the first month preceding the Completion of the New Restaurant Improvements through August 31, 2027, Minimum Annual Rent shall increase to Five Hundred Fifty-Eight Thousand Dollars (\$558,000). Thereafter, Minimum Annual Rent shall be adjusted as provided in Section 5.2.

If the Effective Date is other than the first day of the month, the Minimum Annual Rent for such month shall be (a) an amount equal to the Minimum Annual Rent as set forth in the Original Lease multiplied by a fraction, the numerator of which is the number of days from the first day of the month through but not including the Effective Date, and the denominator of which is three hundred sixty five (365), plus (b) an amount equal to the Minimum Annual Rent effective as of the Effective Date multiplied by a fraction, the numerator of which is the number of days from and including the Effective Date through and including the last day of such month, and the denominator of which is three hundred sixty five (365).

1.4.1 Minimum Rent CPI Adjustment Dates (See Section 5.2.1):

September 1, 2032

September 1, 2042

1.4.2 Minimum Rent Look Back Adjustment Dates (See Section 5.2.2):

September 1, 2027

September 1, 2037

September 1, 2047

1.5 Percentage Rent Rates (See Article 5):

The Percentage Rent Rates are set forth in Section 5.3.1.

1.6 Option Term Consideration (See Section 5.4):

Should Tenant timely and validly exercise the Option to Extend, then in exchange for Landlord extending the Term by an additional 12 years, Tenant shall make 10 equal payments of \$100,000 in accordance with Section 5.4.

1.7 Insurance (See Article 18):

1.7.1 Commercial General Liability:

Not less than Four Million Dollars (\$4,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be not less than Two Million Dollars (\$2,000,000) unless a Four Million Dollars (\$4,000,000) per location aggregate limit is provided by separate endorsement.

1.7.2 Liquor Liability:

Liquor Liability coverage in the amount of not less than Two Million Dollars (\$2,000,000) shall be obtained per occurrence and aggregate.

1.8 Security Deposit (See Article 28):

None

1.9 Construction of New Restaurant Improvements (See Article 6):

Outside Construction Commencement Date: 30 days from the Effective Date.

Outside Construction Completion Date: 577 days from the Effective Date.

Minimum Construction Cost: \$6,400,000

Tenant Art Investment: No less than \$64,000.

1.10 Notice Addresses (See Article 27):

To Tenant:

Ferry Landing Associates, LLC
dba Ferry Landing Marketplace
1311 First Street
Coronado, CA 92118

To Landlord:

Executive Director
San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488

1.11 Guaranty:

Tenant's performance of all its obligations under this Lease shall be guaranteed by Guarantor, and Tenant shall cause Guarantor to execute and deliver to Landlord, concurrently with Tenant's execution and delivery of this Lease, a Continuing Guaranty in the form and substance of Exhibit E attached hereto.

2. GENERAL DEFINITIONS

Certain initially capitalized terms used in this Lease are more particularly defined or are cross-referenced in the Definitions Addendum attached to this Lease. The definitions set forth in the Definitions Addendum are incorporated herein by this reference.

3. TERM

3.1 Term.

The "**Term**" of this Lease shall be the period commencing on the Commencement Date and ending on the Expiration Date as described in Section 1.1 unless sooner terminated or extended as provided in this Lease.

3.2 Option to Extend.

Provided that at the commencement of the Option Term, Tenant has exercised the applicable Option to Extend in accordance with the terms of this Section 3.2 and the conditions to the valid exercise of the Option to Extend set forth below are satisfied, Tenant shall have the Option to Extend the Term described in Section 1.1.3. The Option Term, if effectuated, shall commence at the expiration of the Initial Term. If the Term is extended pursuant to the Option to Extend, the Expiration Date shall become the last day of the Option Term.

The Option to Extend cannot be validly exercised by Tenant unless (a) Tenant shall not be at the time of exercise delinquent in the payment of Rent beyond the applicable notice and cure period, and (b) Tenant otherwise shall not be at the time of exercise in default hereunder, beyond any applicable notice and cure period.

For avoidance of doubt, in no event may the Option to Extend be exercised prior to the New Restaurant Improvements being Completed, and in the event of a partial termination of this Lease as it relates to Parcels 2 and 3 pursuant to Section 12.2.2, the Option to Extend shall be automatically deemed null and void and of no further force and/or effect.

Provided the Option to Extend can be validly exercised in accordance with the terms of this Section 3.2, Tenant shall deliver unconditional written notice of Tenant's election to exercise the Option to Extend no less than 180 days prior to the expiration of the Initial Term. Time is of the essence for delivery of each notice to exercise the Option to Extend. Should Tenant fail to give Landlord written notice of its election to exercise the Option to Extend in a timely manner as required herein, the Option to Extend shall thereafter be and become null and void and of no further force and effect. Tenant shall have no right to extend the Term beyond the Option to Extend.

Upon the timely exercise of said Option to Extend, and provided that Tenant satisfies the above requirements for exercise of the Option to Extend, the then existing Term of this Lease shall be extended for the Option Term in accordance with all of the terms, covenants, and conditions of this Lease, including the adjustment of Rent as herein provided, and all references herein to the "Term" shall include such Option Term.

Without limitation of the foregoing, no action by Tenant, including without limitation, any investment, improvement, maintenance, repair or alteration in or to the Premises, shall create any right of Tenant, or any obligation of Landlord, to extend the Initial Term of this Lease beyond the Option to Extend expressly set forth in Section 1.1.3 and subject to the terms of this Section 3.2.

3.3 Demolition and Remediation Security Amount.

If a Demolition and Remediation Security Amount has been established pursuant to Section 7.4.2 prior to the expiration of the Initial Term and the Option to Extend exists and is timely and validly

exercised, then, Tenant shall pay monthly as Additional Rent concurrent with the monthly payment of Greater of Rent, an amount required for the Demolition and Remediation Security Amount to grow by three percent (3%) per annum on a compounded basis during the Option Term.

3.4 Prior Agreements.

This Lease amends and restates the Original Lease such that in the event there is any conflict between the terms of the Original Lease and this Lease, the terms of this Lease shall control. Notwithstanding the foregoing, any obligations of Tenant under the Original Lease or any obligations of Guarantor under the Original Guaranty accruing or arising on or prior to the Effective Date, or which are otherwise required to be performed in connection with termination or surrender of the Premises, or which by their terms survive such termination, shall remain enforceable by Landlord.

4. USE

4.1 Permitted Use.

Tenant agrees that the Premises shall be used only and exclusively for the Permitted Use, and Tenant shall not use or permit the Premises to be used for any other uses or purposes whatsoever (including, but not limited to, installation of telecommunications equipment) absent Landlord's express written approval, which approval may be granted, denied, or conditioned in Landlord's sole and absolute discretion. This restriction on use of the Premises absolutely prohibits a change in use absent any such approval. Tenant acknowledges that the only parking it has a right to utilize in connection with the Permitted Use is the parking located on the Premises. Tenant acknowledges and agrees that with respect to any public parking located adjacent or proximate to the Premises, Tenant has only the rights of a member of the public notwithstanding any regular or long-standing use of such parking by Tenant and/or its employees, visitors and patrons.

4.2 Continuous Operations

From and after the Commencement Date, Tenant shall actively and continuously use and operate the entire Premises and Improvements for the Permitted Use, except to the extent unable to do so by reason of a Force Majeure Event and except for temporary interruptions reasonably and directly related to Major Alterations permitted under Section 6.2 (provided an interruption in use and operation related to a Major Alteration shall not exceed one (1) year in the aggregate). Without limitation of the foregoing, at a minimum, (subject to the exceptions in the previous sentence) the Premises shall be continuously open for business, appropriately staffed with personnel, on such days and for such hours as is customary for similar business operations in San Diego County, California. Tenant acknowledges and agrees that said active and continuous use and operation enhances the value of the lands within Landlord's jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area.

4.3 Compliance with Laws.

Tenant agrees that, in all activities on or in connection with the Premises, and in all uses thereof, including without limitation the Permitted Use and any construction of Improvements or the making of any Alterations, it will abide by and comply with, and cause Tenant Parties to abide by and comply with, all applicable Laws at Tenant's sole cost and expense, and Landlord shall not have any obligations or responsibilities to comply with any applicable Laws as to the Premises or any use thereby by Tenant. In particular and without limitation, Tenant shall have the sole and

exclusive obligation and responsibility, at Tenant's sole cost and expense, to comply with the requirements of: (a) the San Diego Unified Port District Code, including without limitation, Article 10 (Stormwater Management and Discharge Control), (b) the ADA, including but not limited to regulations promulgated thereunder, (c) applicable federal, state and local laws and regulations regarding employment and labor practices, including, without limitation, the provisions of Section 6.7 and Article 17 below, (d) any Coastal Development Permit, including ,but not limited to, Coastal Development Permit No. CDP-97-3 (as any of the same have been amended, including [INSERT CDP AMENDMENTS], collectively, "CDP") (including that certain [INSERT EIR REFERENCE] any conditions of approval or mitigation measures or project changes pursuant to the environmental review under the California Environmental Quality Act ("CEQA")) or any other California Coastal Commission ("CCC") regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Improvements including the use or development thereof, and (e) any other development permits or approvals required by Landlord.

In addition, Tenant shall comply with and abide by such guidelines and requirements established by Landlord from time to time pursuant to the terms of the Lease upon written notice by Landlord to Tenant. Without limitation of the foregoing, any failure of Tenant to fully satisfy and fulfill the requirements and conditions under any CDP (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under CEQA) or any other CCC regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Improvements including the use or development thereof beyond the cure period under Section 12.1.3 below, shall constitute a default under this Lease.

4.4 Green/Sustainable Leasing

Among other things, when Tenant is replacing equipment, Tenant shall replace it, if feasible, with the most energy efficient equipment that is California Energy Star rated or the environmental equivalent.

4.5 Waste or Nuisance.

Tenant shall not use, or fail to maintain, the Premises in a manner that constitutes waste or nuisance.

4.6 Reservations.

Landlord reserves the right and power to grant easements and licenses on, over, under and across the Premises to others, and the right and power for Landlord or the grantee to enter the Premises, for purposes such as constructing, installing, maintaining, repairing, replacing and removing utility systems and equipment and public improvements within the Premises. Should Landlord so request, Tenant shall promptly join with Landlord in the execution of such documents as may be requested by Landlord to create or accommodate such grant. Landlord agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with Tenant's business. Further, Tenant shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way.

5. RENT

Tenant agrees to pay Greater Of Rent, Additional Rent, and, if applicable, the Option Term Consideration (collectively "**Rent**") in accordance with this Article 5. All payments of Rent and other sums due Landlord hereunder shall be paid in legal tender of the United States, without notice, invoice, setoff, deduction or demand, except as otherwise expressly provided herein. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the Rent shall

be deemed to be a waiver of any current or preceding breach by Tenant of any provision hereof. No endorsement or statement on any check or any letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease, at law or in equity. Tenant waives all rights that it may have under present or future law to designate the items to which any payments made by Tenant are to be credited. Tenant agrees that Landlord may apply any payments made by Tenant to such items of Rent as Landlord designates, irrespective of any designation or request by Tenant as to the items to which such payments should be credited.

All payments of Rent shall be delivered with statements required in Section 5.3.3 below.

Payments can be made by either check or electronic transfer with remittance information emailed to ARInvoices@portofsandiego.org. Checks must be made payable to the San Diego Unified Port District or Port of San Diego, and mailed to SDUPD General Account Lockbox, PO Box 841615, Los Angeles, CA 90084-1615. Wiring instructions are as follows:

Wells Fargo Bank
 420 Montgomery Street
 MAC: A0112-102
 San Francisco, CA 94104
 Account Title: Port of San Diego
 Account Number: 4944983881
 ACH/Wire Routing Number: 121000248

The designated place of payment and filing may be changed at any time by District upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss and responsibilities for late charges, as herein described, if payments are made by mail.

Landlord may change the designated place of payment or filing at any time upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss and responsibility for Late Charges and interest at the Default Rate for late payments, as hereinafter described.

5.1 Greater Of Rent.

Commencing with the Commencement Date, the "Greater Of Rent" for each Lease Year shall be the greater of (a) the Minimum Annual Rent for such Lease Year as periodically adjusted as provided in Section 5.2, and (b) the cumulative total of the Percentage Rent for such Lease Year as provided in Section 5.3 below.

5.1.1 Monthly Payments of Greater Of Rent.

(a) *Calculation of Payments.* Concurrently with the delivery of each monthly report described in Section 5.3.3(a) below, but in no event later than the twentieth (20th) day of each month during the Term following the Commencement Date, and on or before the twentieth (20th) day following the last day of the month in which this Lease is terminated or expires, Tenant shall pay to Landlord the greater of the following two amounts as and for the Greater Of Rent due with respect to the immediately preceding month:

- i. The total Percentage Rent computed for that portion of the Lease Year ending with and including the last day of the preceding month [Section 5.3.3(a)(ii) below],

less total Percentage Rent and monthly Minimum Annual Rent previously paid for the Lease Year [Section 5.3.3(a)(iii) below], or

ii. One-twelfth (1/12th) of the Minimum Annual Rent, multiplied by the number of full calendar months from the beginning of the Lease Year to and including the preceding month, plus the amount of Minimum Annual Rent due with respect to any initial partial month in the first Lease Year, less the total Percentage Rent and monthly Minimum Annual Rent previously paid for the Lease Year [Section 5.3.3(a)(iii) below].

(b) *Survival*. The terms of this Section 5.1.1 shall survive the expiration or earlier termination of this Lease.

5.2 Minimum Annual Rent.

Minimum Annual Rent from the Commencement Date through August 31, 2027 shall be as described in Section 1.4. Thereafter, Minimum Annual Rent shall be periodically adjusted by the following two (2) adjustments: (a) the “Minimum Rent CPI Adjustments” described in Section 5.2.1, which shall occur on the “Minimum Rent CPI Adjustment Dates” described in Section 1.4.1, and (b) the “Minimum Annual Rent Look Back Adjustments” described in Section 5.2.2, which shall occur on the “Minimum Rent Look Back Adjustment Dates” described in Section 1.4.2. In the event the Minimum Annual Rent is to be adjusted for any Lease Year by more than one (1) of the foregoing adjustment procedures, the Minimum Annual Rent shall be the higher of the amounts calculated in accordance with such procedures”.

5.2.1 Minimum Rent CPI Adjustments.

(a) *CPI Calculations*. Commencing on the first Minimum Rent CPI Adjustment Date and on each Minimum Rent CPI Adjustment Date thereafter, the Minimum Annual Rent payable immediately prior to the relevant Minimum Rent CPI Adjustment Date shall be adjusted by the increase, if any, in the CPI as follows.

The Minimum Annual Rent payable immediately prior to the relevant Minimum Rent CPI Adjustment Date shall be multiplied by a fraction, the numerator of which shall be the CPI for the calendar month which is three (3) months prior to the Minimum Rent CPI Adjustment Date under consideration, and the denominator of which shall be the CPI for the calendar month which is three (3) months prior to (i) the Commencement Date with respect to the first Minimum Rent CPI Adjustment Date, and (ii) the immediately preceding Minimum Rent CPI Adjustment Date with respect to all subsequent Minimum Rent CPI Adjustment Dates. The new Minimum Annual Rent shall be the product so calculated to reflect the increase in the CPI as provided above. In no event shall such new Minimum Annual Rent be less than the Minimum Annual Rent payable immediately preceding said Minimum Rent CPI Adjustment Date.

For purposes of example only, the new Minimum Annual Rent shall be calculated as follows:

$$\text{New Minimum Annual Rent} = \frac{A}{B} \times C; \text{ where}$$

“A” is the CPI for the calendar month which is three (3) months prior to the Minimum Rent CPI Adjustment Date under consideration;

“B” is the CPI for the calendar month which is three (3) months prior to (i) in the case of the first Minimum Rent CPI Adjustment Date, September 1, 2022, and (ii) in the case of all subsequent Minimum Rent CPI Adjustment Dates, the immediately preceding Minimum Rent CPI Adjustment Date; and

“C” is the Minimum Annual Rent payable immediately prior to the relevant Minimum Rent CPI Adjustment Date.

(b) *Substitution of Index.* In the event the CPI is no longer published, the index for the Minimum Rent CPI Adjustment Date shall be the one reported in the U. S. Department of Labor’s comprehensive official index determined by Landlord to be the one most nearly corresponding to the CPI. If the Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by Landlord in the exercise of Landlord’s good faith discretion.

(c) *Retroactive Adjustment.* Notwithstanding the publication dates of the CPI, the Minimum Annual Rent shall be adjusted to be effective on the Minimum Rent CPI Adjustment Dates. Until said Minimum Annual Rent adjustment can be reasonably determined by CPI publication, payments of Rent due shall be calculated utilizing the Minimum Annual Rent payable immediately prior to such Minimum Rent CPI Adjustment Date. Within ten (10) days following calculation of the CPI adjustment, any underpayments of Rent by reason of the delay in the availability of the CPI information shall be paid to the Landlord.

5.2.2 Minimum Annual Rent Look Back Adjustments.

The Minimum Annual Rent shall be subject to adjustment on each Minimum Rent Look Back Adjustment Date set forth in Section 1.4.2 as follows. Within thirty (30) days following each Minimum Rent Look Back Adjustment Date, Landlord shall determine, and provide to Tenant a written statement setting forth the calculation of, the average annual Greater Of Rent that was payable by Tenant (a) during the period from the Commencement Date until the first Minimum Rent Adjustment Date and (b) with respect to all subsequent Minimum Rent Look Back Adjustment Dates, during the period between the applicable Minimum Rent Look Back Adjustment Date and the prior Minimum Rent Adjustment Date. Effective as of the applicable Minimum Rent Look Back Adjustment Date, Minimum Annual Rent shall be adjusted to an amount equal to seventy-five percent (75%) of such average annual Greater Of Rent, provided that in no event shall such new Minimum Annual Rent be less than the Minimum Annual Rent payable for the Lease Year immediately preceding such Minimum Rent Adjustment Date. Immediately following the determination of the new Minimum Annual Rent, any underpayments of Minimum Annual Rent shall be paid to Landlord.

5.3 Percentage Rent.

“**Percentage Rent**” is the product of the applicable percentage (“**Percentage Rent Rate**”) set forth in Section 5.3.1 below multiplied by the Gross Income with respect to the applicable category described in Section 5.3.1 below. Percentage Rent shall be calculated on a monthly basis as provided in this Section 5.3 above and shall be paid in accordance with Section 5.1 above.

5.3.1 Percentage Rent Categories.

Percentage Rents shall be based on the following percentages of the Gross Income from the applicable category, whether collected, uncollected, received, payable or accrued:

(a) With respect to the sale of food and nonalcoholic beverages (including, without limitation, coffee, tea, or milk) sold in conjunction with food: from and after the Effective Date through the date that is ten years following the Effective Date, 3.25%; from and after the date that is ten years following the Effective Date through the end of the Term, 3.50%; provided that for all Gross Income of the New Restaurant Improvements exceeding \$13,018,750, 4% from the Effective Date through the date that is ten years following the Effective Date, and from and after the date that is ten years following the Effective Date through the end of the Term, 5%;

- (b) 5% from sale of nonalcoholic beverages (including, without limitation, coffee, tea or milk) not served in conjunction with food for consumption on the Premises;
- (c) 5% from the sale of alcoholic beverages for consumption on the Premises;
- (d) 3% from the sale of packaged alcoholic and nonalcoholic beverages for consumption off of the Premises;
- (e) 5% from the sale of merchandise including, but not limited to, gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind;
- (f) 15% from the sale of parking services (including valet services) or rental of parking spaces;
- (g) 0.5% from the sale of any and all California State Lottery tickets;
- (h) 10% from the rental of office space to tourism/visitor-serving tenants and maritime related tenants;
- (i) 5% from sale of merchandise and/or services through coin-operated vending or service machines or devices, including telephones, that are owned, rented, or leased by Tenant or Subtenant;
- (j) 25% from commissions and other compensation received for the right to install and operate coin-operated vending or service machines or devices, including telephones that are not owned, rented, or leased by Tenant or Subtenant;
- (k) 50% from any and all Landlord permitted telecommunications uses which shall include, but are not limited to, rooftop wireless antennas, antennas attached to a building façade, microwave antennas, paging antennas and cell phone equipment, excluding telecommunications uses that exclusively serve the uses on the Premises;
- (l) 10% from sale of business services wherever provided on the Premises including, without limitation, the sale of internet access or other telecommunication services (including, without limitation, sale of internet access or other telecommunication services in connection with the rental of guest rooms and conference and banquet facilities, unless such internet access or other telecommunication services are not separately charged and are incorporated within the rental charge of the relevant guest room, conference room or banquet facility);
- (m) 10% relating to any commissions, "mark-ups," income, fees and commissions that Tenant receives as compensation for handling and/or selling tickets sold for activities or events occurring outside Landlord's jurisdiction and in which neither Tenant nor any affiliated Person has a direct or indirect ownership interest (for example, admission tickets to the San Diego Zoo Safari Park located in the City of Escondido);
- (n) 10% from any and all activities, operations, and enterprises permitted under the terms of the Lease and not otherwise addressed within the foregoing provisions;
- (o) 20% from any and all services or uses not permitted under the terms of the Lease and not otherwise addressed within the foregoing provisions.

5.3.2 Gross Income.

(a) *Definition.* "**Gross Income**" shall include all Revenue without any deductions or exclusions except as provided in Section 5.3.2(b) below resulting from, directly or indirectly, or connected to or generated from, the occupancy or use of the Premises, or any

business conducted on or in connection with the Premises in any manner, whether conducted by a Tenant Party, whether for cash or credit, whether collected or uncollected, received, payable or accrued and from whatever source derived, including, but not limited to any type of sales (whether such sales occur with respect to the Premises or elsewhere) arising from Tenant's customers receiving services, products or benefits on or from (a) the Premises, (b) any property within Landlord's jurisdiction (unless such Revenue is the subject of a separate lease with Landlord), or (c) in connection with any vessel going to or from the Premises while in San Diego Bay (including, without limitation, any vessel traversing or utilizing San Diego Bay in connection with commercial operations). Without limitation of the foregoing, Gross Income shall be construed to include, without limitation, the entire amount of the actual sales price (including all finance charges by Tenant or a Tenant Party), of all sales, rentals, leases and licenses or for other transfer of merchandise or services, and other receipts whatsoever, including, without limitation, agency sales and all mail, catalogue, computer, facsimile, telephone, telecommunication, electronic and other orders filled, transmitted or received through any media. Gross Income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, whether or not the amount of such excise tax is stated as a separate charge.

(b) *Exclusions.* Refunds for goods returned shall be deducted from current Gross Income upon their return. Bad debt losses shall not be deducted from Gross Income. Gross Income shall not include any of the following:

- i. sales of United States postage;
- ii. any sales or transient occupancy tax payable by Tenant or a Tenant Party to any government agency as a direct result of operations under this Lease, provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained; or
- iii. gratuities, provided the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that Tenant or a Tenant Party has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer.

5.3.3 Reports of Gross Income.

(a) *Monthly Reports.* On or before the twentieth (20th) day of each month following the Commencement Date, and on or before the twentieth (20th) day following the last day of the month in which this Lease is terminated or expires, Tenant shall deliver to Landlord, in a form prescribed by Landlord, a detailed cumulative report of Gross Income for that portion of the Lease Year which ends with and includes the last day of the previous calendar month. Each report shall be signed by Tenant or an authorized representative of Tenant under penalty of perjury and shall include the following:

- i. The total Gross Income for said portion of the Lease Year, itemized as to each of the Percentage Rent categories for which a separate Percentage Rent Rate (or per unit charge, if applicable) is established.
- ii. The related itemized amounts of Percentage Rent computed, as herein provided, and the total thereof.
- iii. The total Minimum Annual Rent and Percentage Rent previously paid by Tenant for the Lease Year within which the preceding month falls.

iv. A detailed calculation of the Greater Of Rent due for the preceding calendar month determined in accordance with the terms of Section 5.1.1(a).

(b) *Record Keeping.* Tenant shall, at all times during the Term of this Lease, keep or cause to be kept, accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuit of the rights granted herein (whether conducted by or on behalf of Tenant or a Tenant Party). The records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoices, or other pertinent supporting documents. Financial statements (a balance sheet and income/expense statement), based upon the double entry books of account, shall be prepared periodically but not less often than annually. All sales and other financial transactions shall be recorded by means of a comprehensive system which includes sufficient business processes to ensure that all Gross Income is clearly and accurately recorded and documented by reports and other original source documents. The system shall provide reporting and distinction of all sales and other income and Revenue categories and shall generate an audit trail of all transactions. Any recordation system for sales or other income and Revenue transactions shall be subject to the written approval of the Landlord. Contracts, bills, invoices, sales, receipts or other similar-type documents evidencing transactions between any parties doing business under this Lease (including each Tenant Party) shall in no event identify Rent due to Landlord as a separate charge, fee or tax. In addition to the above, in the event of admission or cover charges, Tenant shall also issue preprinted serially numbered tickets for each such admission or cover charge. Further, in the event of the rental of vehicles or vessels, Tenant shall issue or cause to be issued preprinted serially numbered rental agreements for each such rental transaction. Tenant shall keep or cause to be kept a sequential record of said tickets and agreements, both issued and unissued, and shall retain all voids. The terms of this Section 5.3.3(b) shall survive the expiration or earlier termination of this Lease.

(c) *Maintenance of Records; Audit.* All of Tenant's books of account, records, financial statements, and documentation related to this Lease or to business operations conducted within or from the Premises, shall be kept either at the Premises or at such other locations in San Diego County as are reasonably acceptable to Landlord. Without limitation of the foregoing, if there is any Tenant Party occupying or operating from any portion of the Premises, the books and records also shall include any occupancy, licensing, permit or operating agreements pertaining to such Tenant Party, as well as the books of account, records, financial statements, and documentation, relating to the operations of such Tenant Party. Upon at least forty-eight (48) hours prior notice to Tenant, Landlord shall have the right to examine and audit said books, records, financial statements, and documentation (the "**Tenant Records**"), including, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the monthly statements of Gross Income submitted, and the accuracy of the Rent paid to the Landlord. Landlord's audit rights shall apply to the current Lease Year and all prior Lease Years and Tenant waives the right to assert any statute of limitations in connection with any audit or any underpayment disclosed pursuant to such audit. In the event that the business operations conducted within or from the Premises are part of a larger business operation, and any part of the Tenant Records herein is prepared only for the larger operation, and not solely for the business operations of the Premises, then Landlord shall also have the right to examine and audit that part of said books, records, financial statements, and documentation of the larger business operation. If Tenant assigns its interest under this Lease, Tenant shall deliver to the Transferee the originals (or complete copies) of the Tenant Records which will be retained by Transferee and available to audit on the same terms as under this Section 5.3.3(c).

(d) *Failure to Maintain Records.* Tenant's failure to keep or cause to be kept Tenant Records and make them available for inspection by Landlord is a default under this Lease.

Landlord shall have the discretion to require the installation of any additional accounting methods or controls he or she may deem necessary, subject to prior written notice. In the event the Tenant does not make available the original Tenant Records at the Premises or within the limits of San Diego County in a location reasonably acceptable to Landlord, and if Landlord in its sole discretion consents in writing to such original Tenant Records to be maintained elsewhere, Tenant agrees to pay all travel and other expenses incurred by Landlord Parties in conducting an audit at the location where the Tenant Records are maintained.

(e) *Underpayment/Overpayment.* If the audit conducted by Landlord under Section 5.3.3(c) above reveals an underpayment or an overpayment of the Rent due, Tenant shall pay to Landlord the amount of the underpayment within thirty (30) days following written notice to Tenant, or Landlord will refund the amount of the overpayment within thirty (30) days following the determination of such overpayment (or, at Landlord's option, Landlord will credit the overpayment against the installment of Greater Of Rent first coming due after such thirty (30) day period). If the audit reveals a discrepancy of three percent (3%) or more between the Rent due as reported by Tenant and the Rent due as determined by the audit, and/or Tenant has failed to maintain (or failed to cause to be maintained) complete and accurate Tenant Records as described in this Section 5.3 above, then Tenant shall also pay the cost of the audit within thirty (30) days after written notice from Landlord.

5.4 Option Term Consideration.

As consideration for Landlord's grant of the Option to Extend, if said Option to Extend is timely and validly exercised by Tenant in accordance with the terms of Section 3.2, Tenant shall make ten (10) annual payments of \$100,000 (each payment, a "**Consideration Payment**") for a total amount of One Million Dollars (\$1,000,000) (collectively, the "**Option Term Consideration**"). In such case, the first Consideration Payment by Tenant shall be paid on or before September 30, 2039, and thereafter each annual Consideration Payment shall be paid by Tenant on or before September 30th of each successive calendar year until the Option Term Consideration is paid in full.

5.5 Late Charges.

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease. Accordingly, in the event Tenant is delinquent in rendering to Landlord an accounting of Rent due or in remitting the Rent due on the date due in accordance with the provisions of this Lease, Tenant shall pay, in addition to the unpaid Rent, five percent (5%) of the Rent due. If Rent is still unpaid at the end of ten (10) days after the date due, Tenant shall pay an additional five percent (5%) (collectively, "**Late Charges**"). The parties hereby agree that said Late Charges are Additional Rent and are not interest and that the Late Charges apply whether or not Tenant receives notice of its failure to pay Rent, and that said Late Charges are appropriate to compensate Landlord for loss resulting from rent delinquency including, without limitation, lost opportunities and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late submittal of an accounting of Rent due and/or late payment of Rent be less than One Hundred Dollars (\$100). Acceptance of such Late Charges and any portion of the late payment by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights and remedies. In addition to the application of a Late Charge, if Tenant fails to pay any Rent when due, the unpaid amount shall accrue interest at the Default Rate from the date due until paid and such interest shall itself be Additional Rent.

5.6 Net Lease.

Tenant acknowledges that the Rent will be absolutely net of any costs or expenses to Landlord relating to Premises or any Improvements and acknowledges and agrees that Landlord shall not be responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises or any Improvements or the New Restaurant Improvements during the Term, whether foreseen or unforeseen and whether or not within the contemplation of the parties at the commencement of the Term, except as shall be otherwise expressly provided in this Lease. Without limitation of the foregoing, Landlord shall not be required to construct, install, provide or arrange for any utilities, roadway, docks, tide walls, drainage or other improvements of any nature on, in, under or above the Premises or any other location.

5.7 Reimbursement.

If under the terms of this Lease an amount expended by Landlord is to be reimbursed by Tenant pursuant to the "Reimbursement Procedure" then Tenant shall reimburse Landlord for the subject amount within fifteen (15) days of Tenant's receipt of an invoice or statement from Landlord for the subject amount and, if applicable, copies of any applicable third party invoices, work description and/or other reasonable evidence of the work performed for or by, and costs incurred by, Landlord. Any amounts owed to Landlord pursuant to the Reimbursement Procedure shall constitute Additional Rent and shall accrue interest at the Default Rate from the date due until paid if not paid within the time period permitted under the Reimbursement Procedure.

6. CONSTRUCTION AND ALTERATION OF NEW RESTAURANT IMPROVEMENTS

6.1 New Restaurant Improvements.

6.1.1 Commencement and Completion.

Subject to the terms of Section 6.4, immediately following the Effective Date, but on or before the Outside Construction Commencement Date described in Section 1.9, Tenant shall commence the construction of and diligently proceed to Completion and Complete the New Restaurant Improvements, on or before the Outside Construction Completion Date. The New Restaurant Improvements shall consist of an approximately 7,500 square feet single story restaurant up to approximately 23 feet high, with outdoor seating areas and landscaping improvements, with total capacity to accommodate approximately 300 guests (190 indoors and 110 outdoors) hereto (the "**New Restaurant Improvements**") all in accordance with and as further set forth and described on Exhibit C attached. Once Tenant commences the construction of the New Restaurant Improvements (or any portion thereof), Tenant shall prosecute the same to Completion without interruption, except as expressly excused by the provisions of Section 6.4.

6.1.2 Additional Rent; Default.

Without limiting the generality of the foregoing, Landlord and Tenant each acknowledges and agrees that based upon the circumstances now existing, known and unknown, which known circumstances include, but are not limited to, Landlord's status as a steward of public lands for the benefit of California residents and the expected revenues and economic impact from the New Restaurant Improvements becoming operations, it would be impractical or extremely difficult to establish Landlord's damages by reason of any Tenant failure to Complete the New Restaurant Improvements by the Outside Construction Completion Date. Accordingly, Landlord and Tenant agree that in the event Tenant fails to Complete the New Restaurant Improvements by the Outside Construction Completion Date, unless expressly excused by the provisions of Section 6.4, Tenant shall be required to pay, along with Monthly Rent, an Additional Rent payment prorated on a per diem basis for each day of delay until such date as Tenant Completes the New Restaurant

Improvements, which Additional Rent per diem amount shall be calculated based on the rate of \$11,500 per month up to and until the date that is two years from the Effective Date, at which time such Additional Rent per diem amount shall be calculated based on the rate of \$23,000 per month, in each case without the need for further action by Landlord and regardless of whether Tenant's failure to comply with the terms of this Section 6.1.2 constitutes a default.

Tenant acknowledges and agrees (i) to the validity of this Section 6.1.2 under California Civil Code Section 1671 and/or other applicable law (including the reasonableness of the aforementioned Additional Rent under the circumstances existing as of the Effective Date of this Lease) and (ii) that Tenant has read and understands the provisions of this Section 6.1.2 and by its initials below agrees to be bound by the terms of this Section 6.1.2.

____ Tenant's Initials

6.1.3 Restaurant Improvement Plans/Construction Requirements.

The New Restaurant Improvements shall be constructed in accordance, in all material respects, with the plans and specifications, including but not limited to working drawings, described in Exhibit C attached hereto (the "**Plans**"). Changes to the Plans must be approved by Landlord in writing, with Landlord having sole and absolute discretion to approve, deny, or condition any changes that would (a) require a discretionary permit or approval from any government agency, (b) involve structural modifications, (c) affect in any material way the building systems or the portions of the New Restaurant Improvements generally accessible to the public, or (d) trigger any stormwater construction BMP permit or permanent structural BMP permit or alterations to existing permanent structural BMPs. Any other changes to the Plans must be approved by Landlord's Executive Director or his/her designee, with such approval not to be unreasonably withheld, conditioned, or delayed. Any approved changes to Plans, shall be considered a part of the "**Plans**". Said Plans are by this reference made a part hereof. In the event of any inconsistency between the Plans and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

In constructing the New Restaurant Improvements, Tenant shall also comply with all Construction Requirements and all Laws, including, without limitation, the PMP requirements, mitigation measures or conditions of approval under the terms of any of the governmental approvals of the New Restaurant Improvements, including the CDPs or the use or development thereof and any conditions of approval or mitigation measures or project changes pursuant to any environmental review under CEQA, including as set forth Section 4.3. In addition, in connection with the construction or Alteration of the New Restaurant Improvements, Tenant shall comply with Section 6.7 regarding prevailing wage requirements.

6.1.4 Investment Requirements for New Restaurant Improvements.

Tenant shall expend, prior to the Outside Construction Completion Date (subject to extension in accordance with Section 6.4), not less than the Minimum Construction Cost described in Section 1.9 for labor and materials for the construction of the New Restaurant Improvements, as well as reasonable contractor (but not developer) profit and overhead (collectively, the "**Construction Costs**"). The Term of this Lease has been given in consideration for such investment and expenditure, which is not a portion of the Rent obligations to be paid under this Lease.

6.2 Alterations.

6.2.1 Major Alterations.

The term "**Major Alterations**" means all Alterations other than Minor Alterations (as such term is defined in Section 6.2.2 below). Tenant shall comply with all Laws, at its sole cost and expense, including without limitation, obtaining any governmental permits and approvals required for the Major Alterations. Tenant may not make any Major Alterations without the prior written consent of Landlord in each instance, which consent may be granted or withheld in Landlord's sole discretion. Landlord may condition its approval of a Major Alteration on compliance with the Laws and Tenant obtaining insurance coverages in addition to those required under Section 17.4 if such additional coverage is customarily obtained in connection with work similar in scope to the Major Alteration. All Major Alterations shall be in accordance with plans and specifications, including but not limited to working drawings (collectively, "**Alteration Plans**") submitted to and approved in writing by Landlord prior to the commencement of the Major Alterations. Following approval by Landlord, any changes in the Alteration Plans are subject to Landlord's approval, in Landlord's sole discretion. Provided Landlord approves the Alteration Plans, if Tenant elects to proceed with the Major Alterations, Tenant must construct and complete all of the Major Alterations set forth in the Alteration Plans in one (1) integrated construction project with all due diligence.

6.2.2 Minor Alterations.

The term "**Minor Alterations**" means Alterations that satisfy all of the following requirements: (a) they are made solely to the interior of the Improvements; (b) no discretionary permit or approval is required from any government agency to perform the Alteration and no CEQA review is needed in connection with the permits that are to be issued in connection with the Alteration; (c) they do not require or involve structural modifications or affect in any material way the building systems within the Improvements or the portions of the Improvements generally accessible to the public; (d) they do not trigger any stormwater construction BMP permit or permanent structural BMP permit or alterations to existing permanent structural BMPs; (e) they are consistent with the Permitted Use; and (f) following Completion of the Alterations, the Premises and Improvements have a fair market value, quality, and utility of the Premises and Improvements immediately prior to the commencement of the Alterations. Tenant may make Minor Alterations without Landlord's written consent provided that Tenant gives Landlord at least thirty (30) days' prior written notice of the Minor Alterations, which notice describes the Minor Alterations in sufficient detail in order for Landlord to confirm that such Minor Alterations satisfy the requirements of this Section 6.2.2 and within such thirty (30) day period Landlord does not object to Tenant's determination that the subject Alterations are Minor Alterations.

6.2.3 Diligent Construction; Continuous Operations.

Once construction of any Alteration is commenced, Tenant shall diligently prosecute construction of the Alterations to Completion. Tenant shall continue to operate the Premises and Improvements for the Permitted Use during the course of construction of the Major Alterations to the greatest extent feasible.

6.2.4 Construction Requirements.

In constructing any Alterations, Tenant shall comply with all Construction Requirements and all Laws, including, without limitation, any PMP requirements, mitigation measures or conditions of approval under the terms of any of the governmental approvals of the New Restaurant Improvements or the applicable Alterations, including any CDP applicable to the Premises or the use or development thereof and any conditions of approval or mitigation measures or project changes pursuant to any environmental review under CEQA.

6.3 Cost Reporting.

With respect to the New Restaurant Improvements and any Major Alterations, within sixty (60) days following Completion of the New Restaurant Improvements or Completion of the Major Alterations, as applicable, Tenant shall furnish Landlord with an itemized statement of the Construction Costs incurred and paid by Tenant. The statement shall be sworn to and signed, under penalty of perjury, by Tenant or its authorized representative. Tenant shall maintain true, accurate, and complete records to support said itemized statement. Such records shall include, but are not limited to a general ledger, vendor invoices, cancelled checks, construction loan documentation, agreements with third-party contractors, and contractor progress payment billings. Additionally, should Tenant perform any construction with its own personnel, Tenant shall substantiate the actual work performed by maintaining the following records: a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates. Books and records herein required shall be maintained and made available either at the Premises or at such other location in San Diego County, California as is agreeable to Landlord. Further, Landlord shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof, and the accuracy of the aforesaid statement. In the event Tenant does not make available the original books and records at the Premises or within the limits of San Diego County, Tenant agrees to pay all expenses incurred by Landlord Parties in conducting an audit at the location where said books and records are maintained in accordance with Section 5.3.3.

6.4 Force Majeure Event.

"Force Majeure Event" means actual delay in Tenant's construction or interference with Tenant's ability to operate actually caused by and only caused by: (a) a strike or labor dispute other than a strike or dispute which would have been avoided had Tenant complied with Laws and any agreements it has entered into with the striking union or parties; (b) inclement weather (that causes a suspension of work) in excess of the ten (10) year average for the area within Landlord's jurisdiction during the month or months when work was suspended; (c) explosions, an earthquake or other natural disaster resulting in suspension of work; (d) inability to procure or general shortage of labor, equipment, materials, or supplies in the open market, or failure of transportation (but, in each case, not attributable to a mere increase in price or Tenant's acts or failure to act); (e) acts of a public enemy, insurrections, riots, mob violence, sabotage, acts of terrorism, and malicious mischief; (f) casualty or Condemnation causing material damage to previously constructed Improvements; or (g) delays in the issuance of any governmental approvals or authorizations from government agencies other than Landlord necessary to proceed with development or operation of the New Restaurant Improvements (provided that Tenant has timely and properly filed all applications, submitted all required documents and fees and taken all other actions necessary to obtain such governmental approvals or authorizations and that Tenant is not responsible in any way for the delay in the issuance of such governmental approvals or authorizations). In order to extend the time for commencement of construction or Completion of the New Restaurant Improvements for Force Majeure Event or claim an excuse of failure to operate, Tenant must notify Landlord in writing within twenty (20) days of the commencement of any Force Majeure Event and describe in such notice the Force Majeure Event creating delay or interference, why such delay or interference is occurring, the expected duration of such delay or interference and the best efforts Tenant is taking to minimize the period of delay or interference. Any period of applicable Force Majeure Event shall be added to the times for the commencement of construction and Completion of construction established for the New Restaurant Improvements in Section 6.1 above; provided, however, in no event shall the period of excused delay exceed 365 days in the aggregate. Tenant covenants to make best efforts to minimize and otherwise overcome the impact on Tenant's construction schedule or operation caused by any Force

Majeure Event and, in addition to Tenant's initial notice described above, on Landlord's request from time to time, shall provide Landlord with a report on the status of the Force Majeure Event, its expected duration, Tenant's construction schedule and Tenant's best efforts to minimize and otherwise overcome the impact on Tenant's construction schedule or operation caused by any Force Majeure Event. Under no circumstances will Tenant's failure to obtain the requisite equity, financing, or other financial commitment for the New Restaurant Improvements be considered a Force Majeure Event, including, without limitation, failure to obtain equity commitments, financing due to economic or other conditions beyond Tenant's control.

6.5 Signs and Flags.

All signs visible from outside the New Restaurant Improvements must be expressly approved by Landlord prior to installation. All signage in the Landlord's jurisdiction is subject to San Diego Unified Port District Code Section No. 8.30, BPC Policy No. 770 and Tenant Signage Guidelines. If Landlord hereafter adopts any other ordinance or policy governing signage, Tenant shall also comply with such ordinance or policy subject to any grandfathering terms thereof. Tenant agrees that no banners, balloons, inflatables, pennants, flags, signs, digital displays, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Premises in a manner or location clearly visible from outside the Premises without Landlord's prior written consent.

6.6 Tenant Percent for Art.

Tenant shall allocate and expend no less than the Tenant Art Investment amount set forth in Section 1.9 in connection with the New Restaurant Improvements and any future Major Alterations. If Tenant elects to make an in-lieu contribution, such in-lieu contribution shall be paid by Tenant to Landlord prior to Completion of the New Restaurant Improvements. Tenant acknowledges and agrees that any requests for proposed Alterations during the Term of the Lease may be conditioned on the payment of additional commissions or purchases of artwork and/or in-lieu contributions.

6.7 Prevailing Wage.

6.7.1 The Parties acknowledge and agree that:

(a) Landlord makes no representation concerning the applicability of any wage laws, including, but not limited to California Labor Code §§ 1720 through 1815, et seq. ("**PWL**"). To the extent Tenant intends to perform any construction, alteration, demolition, installation or repair work ("**Construction**") on the Premises, Tenant warrants and acknowledges that: (i) Landlord is not paying for or subsidizing, in whole or in part, any such Construction; and (ii) Tenant shall make its own determination regarding the applicability of any PWL to such Construction. Landlord is not responsible for Tenant's failure to comply with any applicable provisions of the PWL. Tenant assumes any and all risk in connection with the application of PWL to any Construction performed on the Premises on behalf of Tenant; and

(b) Tenant's violations of PWL beyond the notice and cure periods set forth in Section 12.1.3 shall constitute a default under this Lease.

6.8 Historical Designation.

Neither Tenant nor Landlord shall designate, cause anyone to designate, submit or support any application to designate, the Premises or any Improvements as a federal, state or local historical landmark or as a historical resource. The terms of this Section 6.7.1(a) shall survive the expiration or earlier termination of this Lease.

7. TITLE TO AND REMOVAL OF ALTERATIONS AND IMPROVEMENTS

7.1 Title.

All Improvements which may be installed or placed in, on, over or under the Premises, from time to time by Tenant as permitted by the terms of this Lease or with Landlord's prior written consent, (a) shall be so installed or constructed at the sole cost of Tenant, (b) shall remain Tenant's property during the Term, and (c) at the expiration or earlier termination of the Term, those Improvements which are to remain pursuant to Section 7.2. shall automatically become the property of Landlord without additional compensation from Landlord; provided that, subject to Section 7.3 below, Tenant's trade fixtures (fixtures relating uniquely to Tenant and which are removable without non-repairable damage to the other Improvements), furnishings and moveable equipment shall remain the property of Tenant and shall be removed by Tenant as provided in Section 7.3. Upon Landlord's request, following the Expiration Date or earlier termination of this Lease, Tenant covenants and agrees to execute and deliver (at no cost or expense to Landlord) a quitclaim deed as provided in Article 23 to confirm Landlord's ownership of the Improvements which are to remain pursuant to Section 7.2, which covenant shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, if title to artwork in fulfillment of the tenant percent for art requirement created in compliance with Section 6.6 is governed by a separate agreement between Tenant and the artist, such agreement shall govern over this Lease relative to the title to the artwork following the expiration or termination of this Lease.

7.2 Removal of Improvements.

At any time during the Term of this Lease, Landlord may notify Tenant in writing of what Improvements Landlord requires (in its sole discretion) to be removed from the Premises at the end of the Term (such election is referred to herein as the "**Landlord End of Term Election**"). If Landlord has not provided the Landlord End of Term Election by the end of the Term, then Landlord shall be deemed to have elected for all Improvements to remain and be surrendered with the Premises as part thereof, and title to such Improvements shall vest in Landlord as described in Section 7.1 and Article 23 (but Tenant shall remain responsible for any remedial work that may be required by Section 21.3); provided that notwithstanding the foregoing, at any time during the last twelve (12) months of the Term, Tenant may request in writing from Landlord a Landlord End of Term Election, and if Landlord does not provide a Landlord End of Term Election within ninety (90) days of receiving such written request, then Landlord shall have been deemed to have elected for all Improvements to remain upon and be surrendered with the Premises as part thereof in accordance with the terms of this Section 7.2. If Landlord shall elect to have Tenant remove any or all of the Improvements and/ or Tenant is required to perform remedial work pursuant to Section 21.3, (a) the Term of this Lease shall be extended as provided in Section 7.5, (b) to the greatest extent possible, Tenant shall obtain all permits required to perform such work in advance of the end of the Term and, if not possible, as promptly as possible after the end of the Term (meaning prior to extension pursuant to Section 7.5), and (c) subject to terms of Section 7.5 requiring such work to commence sooner, as promptly as possible after the end of the Term (meaning prior to extension of the Term pursuant to Section 7.5), remove such Improvements and perform and complete any remedial work that may be required by Section 21.3. Tenant acknowledges that demolition of Improvements and razing the Premises and/or the remediation work pursuant to Section 21.3 may require Tenant to obtain permits, certain of which may be discretionary. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to remove) caused by such removal, and, unless such requirement is waived by Landlord, Tenant shall surrender the portion of the Premises to be demolished to Landlord in a razed and buildable condition. For this purpose, a "**buildable condition**" means the removal of any subsurface Improvements (including

foundations and pilings, pipelines and conduits, and public and private utilities unless otherwise agreed to by Landlord), any Hazardous Materials pursuant to Section 21.3, demolition of the relevant Improvements and removal of any debris resulting from demolition and leaving the areas affected by the demolition in a smooth graded condition with soils compacted pursuant to specifications and in compliance with a stormwater site stabilization plan acceptable to Landlord in its sole discretion so that such areas are suitable for subsequent construction of improvements thereon. In addition, and without limitation of Landlord's other remedies, if any Improvements are not in full compliance with Article 6 or Article 15, Landlord may require, at Tenant's sole cost and expense, that such Improvements be modified to a state and condition which complies with Article 6 and Article 15 as determined by Landlord. If Tenant fails to complete such removal and remediation and/or to repair any damage caused by the removal of any Improvements or to perform modifications required pursuant to the preceding sentence within the period allowed under Section 7.5, Landlord may do so and may charge the cost thereof to Tenant pursuant to the Reimbursement Procedure, together with Additional Rent for estimated administrative costs in the amount of ten percent (10%) of such cost, and interest on all such sums at the Default Rate from the date incurred until paid. Nothing contained in this Section 7.2 shall be interpreted to limit Tenant's obligations under Section 21.3.

7.3 Removal of Personal Property.

Except as provided below, all of Tenant's personal property including machines, appliances and equipment and trade fixtures (even though not personal property), shall be removed from the Premises by Tenant by the Expiration Date or earlier termination of this Lease. Notwithstanding the foregoing, unless Landlord expressly elects at least ninety (90) days prior to the Expiration Date or, in the case of sooner termination of this Lease, within ten (10) days after the termination, to require Tenant to remove any artworks that constitute personal property that were provided to comply with Law or Landlord's own requirements but which are not governed by a separate agreement between Tenant and the artist relating to the removal of the artwork as the end of the Lease Term, shall not be removed and remain located on the Premises. If requested by Landlord, Tenant shall deliver to Landlord Tenant's signed bill of sale in a form reasonably acceptable to Landlord for such left in place personal property. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such bill of sale in the name and on behalf of Tenant if Tenant shall fail to do so after Landlord's request. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to remove) caused by the removal of such personal property. If such personal property required to be removed is not removed by Tenant in accordance with this Section 7.3, the same may be considered abandoned and, at the option of Landlord, shall thereupon become the property of Landlord, without cost to Landlord and without any payment to Tenant, except that Landlord shall have the right to have such personal property removed and to repair any and all damage occasioned by their removal, all at the expense of Tenant pursuant to the Reimbursement Procedure.

7.4 Security for Cost of Demolition and Remediation Work.

7.4.1 Demolition and Remediation Report.

Within one hundred and eighty (180) days of the receipt of the Landlord End of Term Election, (and provided the Landlord End of Term Election is given to Tenant on or prior to the date that is twelve (12) months before the end of the Term), but no sooner than six (6) years before the end of Lease Term, Tenant, at its own cost and expense, shall obtain and deliver to Landlord a report prepared by a contractor licensed in the State of California with expertise in demolition and remediation, which report details and estimates the current cost and time period

for completion of (a) the removal and demolition work if then required to be completed by Tenant under Section 7.2 and (b) any remedial work that may be required by Section 21.3 ("**Demolition and Remediation Report**"). The contractor licensed in the State of California with expertise in demolition and remediation selected by Tenant is referred to herein as the "**Demolition and Remediation Contractor**" and the time period for completion of the removal and demolition work as if then required by Section 7.2 and any remedial work that may be required by Section 21.3 is referred to herein as the "**Removal Period**".

7.4.2 Demolition and Remediation Security Funding.

The terms of this Section 7.4.2 will have no application and may be disregarded if both of the following have occurred: (a) Landlord has either provided a Landlord End of Term Election requiring all of the Improvements to remain in place or Landlord has not provided a Landlord End of Term Election on or prior to the date that is twelve (12) months before the end of the Term; and (b) any required Demolition and Remediation Report and any reports required under the terms of Article 21 establishes that there is no known condition requiring remedial work. For the purpose of funding the cost of the demolition and remediation work that may be required under Section 7.2 and Section 21.3, then commencing in the month following the receipt of the Demolition and Remediation Report and continuing on the same day Greater of Rent for each month thereafter is due until such day of the last calendar month prior to the end of the Term (the "**Demolition and Remediation Security Funding Period**"), Tenant shall deposit with Landlord, or at Landlord's election, into an escrow account (with an escrow holder, and pursuant to escrow instructions, acceptable to Landlord in its sole discretion) a level sinking fund monthly dollar amount which will fully fund the Demolition and Remediation Security Amount by the end of the Demolition and Remediation Security Funding Period. The "**Demolition and Remediation Security Amount**" shall be the Estimated Demolition and Remediation Cost annually compounded at three percent (3%) over the Demolition and Remediation Security Funding Period. The "**Estimated Demolition and Remediation Cost**" shall be the total of (i) the demolition and remediation cost amount estimated by the Demolition and Remediation Report, and (ii) the product of (x) the number of months in the Removal Period and (y) the monthly Greater of Rent at the time the first monthly deposit is to be made. The determination of the monthly deposit amount shall be calculated by dividing the Estimated Demolition and Remediation Amount by the number of months in the Demolition and Remediation Security Funding Period. If the Demolition and Remediation Security Amount is held in escrow, any interest earned on the Demolition and Remediation Security Amount shall be added to the escrow fund, but shall not be treated as a credit against the Demolition and Remediation Security Amount deposits required to be made by Tenant pursuant to this Section 7.4.2. If Landlord holds the Demolition and Remediation Security Amount, Landlord shall not be required to keep the Demolition and Remediation Security Amount in trust, segregate it or keep it separate from Landlord's general funds, and Tenant shall not be entitled to payment of interest on the Demolition and Remediation Security Amount but such interest, if any, shall be applied toward the Demolition and Remediation Security Amount. In lieu of deposit of cash funds as required above, Tenant may propose a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to Landlord in Landlord's sole discretion. In no event shall Tenant's obligations under Section 7.2 or Section 21.3 or to pay Rent during the Removal Period be limited to the amount of the Demolition and Remediation Security Amount.

(a) *Update.* If a Landlord End of Term Election requiring Tenant to remove any or all of the Improvements is provided to Tenant on or prior to the date that is twenty-four (24) months before the end of the Term and/or Tenant is required to perform remedial work pursuant to Section 21.3, at least twelve (12) months prior to the expiration of the Term Tenant shall deliver to Landlord a report prepared by a Demolition and Remediation Contractor, which report updates any prior Demolition and Remediation Report for the purpose of providing a current estimate of

the projected cost at the end of the Term of the demolition and remediation work required by Section 7.2 ("**Demolition and Remediation Report Update**"). If the current balance of the Demolition and Remediation Security Amount is less than the cost projected in the Demolition and Remediation Report Update, then, within thirty (30) days after delivering the Demolition and Remediation Report Update to Landlord, Tenant shall deposit in the escrow account or with Landlord, as applicable, additional funds so that the total Demolition and Remediation Security Amount is no less than the estimated cost of the demolition and remediation work as set forth in the Demolition and Remediation Report Update. If the current balance of the Demolition and Remediation Security Amount is more than the cost projected in the Demolition and Remediation Report Update, then, within sixty (60) days after Landlord's receipt of the Demolition and Remediation Report Update, Landlord shall refund the Tenant, as applicable, funds so that the total Demolition and Remediation Security Amount is no more than the estimated cost of the demolition and remediation work as set forth in the Demolition and Remediation Report Update.

(b) *Disbursement To Tenant.* If the Landlord End of Term Election is for Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3, then Landlord will release (or authorize the escrow holder to release, as applicable) the Demolition and Remediation Security Amount to fund the cost of the demolition and remediation work pursuant to customary construction draw procedures, including a ten percent (10%) retainage which will be paid upon completion of such work as evidenced by a certificate of completion from the Demolition and Remediation Contractor and a copy of final lien releases in statutory form from the Demolition and Remediation Contractor and all of its subcontractors. However, Tenant shall remain responsible for the actual costs of the demolition and remediation work in excess of the Demolition and Remediation Security Amount. If the Landlord End of Term Election is for Tenant to remove any or all of the Improvements and Landlord decides to keep any or all of the Improvements, Landlord will release to Tenant (or authorize the escrow holder to release, as applicable) the unused portion of the Demolition and Remediation Security Amount.

(c) *Disbursement to Landlord.* If Tenant fails to perform the demolition and remediation work as and when required by the terms of Section 7.2, if Landlord elects to enforce Tenant's obligation, then in addition to all other remedies Landlord may have as a result of such failure, without limitation of Tenant's cost responsibility for the same, Landlord shall have the right to apply the Demolition and Remediation Security Amount to pay for the cost of performing the demolition and remediation work on Tenant's behalf or, if Landlord determines not to perform the demolition and remediation work and not to enforce Tenant's obligation, and Tenant's failure has continued following the notice and cure period set forth in Section 12.1.3, then Landlord may retain the Demolition and Remediation Security Amount as liquidated damages for Tenant's failure to perform the demolition and remediation work.

(d) *Landlord Security Interest.* Tenant grants to Landlord a security interest in the Demolition and Remediation Security Amount and shall execute such documents as Landlord may request in order to perfect such security interest.

(e) *Demolition and Remediation Security Funding Tolling.* Landlord shall have the right, at its sole discretion, to toll the Demolition and Remediation Security funding within the last five years of the term of the Lease in order to consider a plan of redevelopment submitted by Tenant, upon delivery of a written notice to Tenant.

7.4.3 Effect of Funding on Removal and Remediation Obligations

Notwithstanding anything to the contrary stated in this Lease, while Landlord is required to send a Landlord End of Term Election on or prior to the date that is twelve (12) months before

the end of the Term in order to trigger Tenant's obligation to fund the Demolition and Remediation Security Amount in accordance with Section 7.4.2, Landlord's failure to send a Landlord End of Term Election on or prior to the date that is twelve (12) months before the end of the Term shall in no way affect any of the following: (a) Landlord's ability to send a Landlord End of Term Election within the last twelve (12) months of the Term pursuant to the terms of Section 7.2 that requires Tenant to remove any or all of the Improvements; (b) Tenant's obligation to remove any or all of the Improvements pursuant to a Landlord End of Term Election received in accordance with the terms of Section 7.2; and/or (c) any of Tenant's obligations under Section 21.3.

7.5 Removal Extension.

If the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3, then subject to the terms of this Section 7.5, solely for the purpose of completing such work and during such extension, the Term of the Lease shall be extended until the earlier of (a) six (6) months, and (b) the completion of such work as evidenced by a certificate of completion from the Demolition and Remediation Contractor and copy of final lien releases in statutory form from the Demolition and Remediation Contractor and all of its subcontractors. The period of such extension is referred to herein as the "Removal Extension". During the Removal Extension, the Premises and Improvements shall not be used by Tenant for any purpose other than the performance of the demolition and/or remediation work unless permitted by Landlord in writing in its sole discretion. During the Removal Extension, Tenant shall continue to pay the full Rent to Landlord in accordance with this Lease. If Tenant's removal and remediation work is not completed within the Removal Extension, the terms of Article 26 regarding Rent payable during holdover shall apply. Without relieving Tenant from its obligations under this Lease respecting the condition of the Premises at the end of the Term, all of the Tenant's obligations under this Lease (including Tenant's indemnification and insurance obligations but excluding any obligation to be open or operate) and Tenant's right to enter onto the Premises and perform the demolition and remediation work shall continue in full force and effect during the Removal Extension. Notwithstanding the foregoing, if the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3 and any Demolition and Remediation Report indicates that the Removal Period is estimated to be greater than six (6) months, then Tenant shall commence such work sufficiently prior to the end of the Term (prior to extension as provided in this Section) so that such work is anticipated to be completed no later than six (6) months after the end of the Term (prior to the Removal Extension) (e.g., if the estimated Removal Period is ten (10) months, Tenant shall commence such work at least four (4) months prior to the end of the Term (prior to extension pursuant to this Section 7.5).

7.6 Survival.

The terms of this Article 7 shall survive the expiration or termination of this Lease.

8. ENTITLEMENTS

8.1 Entitlement Costs.

If any discretionary approval, including without limitation environmental analysis under CEQA, the PMP, a Port Master Plan Amendment ("**PMPA**"), a CDP and/or a Coastal Act exclusion, are necessary in Landlord's sole and absolute determination in connection with any New Restaurant Improvements, Alterations, demolition or remediation work or other projects undertaken by Tenant on or at the Premises (collectively, the "**Discretionary Project**"), Tenant agrees to enter into agreements with the third party consultants preparing the reports and other materials required to

process the Discretionary Project making Tenant directly responsible for the costs of such services and to reimburse Landlord pursuant to the Reimbursement Procedure for all costs and expenses incurred by Landlord in obtaining the necessary approval for the Discretionary Project, including but not limited to, the preparation and certification of any required CEQA document by the Landlord, the preparation and approval of the PMPA by the Landlord and the CCC, the preparation and approval or issuance of a CDP by the Landlord or, if appealed, the CCC, or the Coastal Act exclusion by the Landlord and any other costs and expenses arising out of the entitlement process in Landlord's sole and absolute determination. If Tenant fails to reimburse Landlord for such costs pursuant to the Reimbursement Procedure, in addition to any other remedies Landlord may have, Landlord may thereafter discontinue the processing of the Discretionary Project and Tenant shall be responsible for any costs and expenses incurred by Landlord related to such discontinuance as Additional Rent and such failure shall be a default of Tenant. Nothing herein shall obligate Landlord to seek, process or obtain any approvals or entitlements for the benefit of Tenant and Landlord makes no warranty or representation to Tenant that Tenant will obtain the entitlements and approvals required for Tenant's Discretionary Project.

8.2 Entitlements Indemnity.

Without limitation of Tenant's other obligations under this Lease, Tenant agrees at its sole cost and expense and with counsel approved by Landlord in Landlord's sole discretion to indemnify, defend and hold harmless the Landlord Parties from any claims, demands, actions, causes of action, suits and Related Costs, arising out of Landlord's approval(s) of the Discretionary Project including without limitation any third party challenges to the approval of the Discretionary Project and any CEQA review, CCC review for a PMPA or appealable CDP or Coastal Act exclusion. The Landlord may, in its sole and absolute discretion, participate in the defense of any claims, demands, actions and causes of action, suits and Tenant shall reimburse the Landlord for all reasonable costs of defense incurred by the Landlord, including, without limitation reimbursement for attorneys' fees, experts' fees and other costs. The Landlord's participation shall not relieve the Tenant of any of its obligations under this Paragraph. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease.

8.3 Reservation of Discretion.

Tenant acknowledges and agrees that, notwithstanding the terms and conditions of this Lease, Landlord reserves its discretion to approve or disapprove all actions, which require by Law the exercise of discretion, including without limitation all legislative and quasi-judicial actions and which Landlord cannot lawfully be committed to by contract (collectively, "**Discretionary Action**") and that nothing in this Lease will be construed as circumventing or limiting Landlord's discretion with respect to environmental review required by CEQA, approval of a PMPA, CDP, CDP exclusion, or other permits and entitlements, the exercise of eminent domain, code enforcement and the making of findings and determinations required by Law. Tenant acknowledges and agrees that any and all Discretionary Actions may be approved or denied by the Landlord, in its sole and absolute determination, and accepts the risk that the Landlord will deny any and all Discretionary Actions, and hereby waives any claims, demands, actions, causes of action, suits against the Landlord for said denial.

9. LIENS

9.1 No Right to Bind Landlord.

Neither Tenant, nor any Tenant Party, shall have any power or authority to do any act or thing, or to make any contract or agreement which will bind Landlord in any way whatsoever, and Landlord

shall have no responsibility to Tenant, Tenant Party or other Person who performs, causes to perform, engages in or participates in any construction of any Improvements, Alterations or any other work on the Premises at the request of Tenant or Tenant Party or other Persons. Landlord shall not be required to take action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

9.2 Notice of Non-Responsibility.

Tenant shall give written notice to all contractors, subcontractors and materialmen of Landlord's non-responsibility in connection with any Improvements or Alterations or other work on the Premises, and Tenant shall immediately provide Landlord with true copies of such notices not less than fifteen (15) days prior to the commencement of any work on the Premises.

9.3 Mechanic's Liens.

Subject to Section 9.4, Tenant shall timely pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Premises. Tenant will keep the Premises free and clear of all mechanic's liens and other liens on account of work done for or at the Premises. Tenant shall indemnify, defend, release and save Landlord free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for or at the Premises and all Related Costs.

9.4 Contest of Lien.

If Tenant in good faith wishes to contest any claim of lien, Tenant shall be entitled to do so, provided that Tenant first records a surety bond sufficient to release the lien.

9.5 Landlord's Right to Pay.

If Tenant shall be in default in paying any charge for which a lien claim has been filed, and if Tenant shall not have recorded a surety bond as required under Section 9.4 above, Landlord may, but shall not be so obliged to, pay said lien claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord together with interest on the full amount thereof at the Default Rate from the dates of Landlord's payments until paid.

9.6 Notice of Liens.

Should any claims of lien be filed against the Premises or any action affecting the title to the Premises be commenced, the party receiving notice of such lien or action shall give the other party written notice thereof within five (5) business days of receipt.

9.7 Right of Entry/ Notices of Non-Responsibility.

Nothing herein shall imply any consent on the part of Landlord to subject Landlord's estate to liability under any mechanic's or other lien. Without limiting Tenant's responsibilities under Section 9.2 above, Landlord and the Landlord Parties shall have the right to enter upon and inspect the Premises at all times, upon not less than 24 hours prior written (which may be sent via email) or telephonic notice to Tenant (provided that no prior notice shall be required in the case of emergency or for incidental entries) and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in any such lien, give Landlord written notice of its intention to

commence such work in sufficient time (which in no event shall be less than the statutory period for posting notices of non-responsibility prior to the commencement of work) to give Landlord adequate opportunity to post and record such notices.

10. LEASE ENCUMBRANCE

10.1 Restrictions on Encumbrance.

10.1.1 Landlord's Consent.

Tenant shall not encumber or hypothecate this Lease, Tenant's leasehold interest, or the Improvements thereon, or any part thereof or interest therein (such encumbrance or hypothecation being referred to herein as a "**Financing Transaction**"), without Landlord's prior written consent to the Financing Transaction in each instance, which consent, subject to the terms of Section 10.1.2, shall not be unreasonably withheld. Tenant shall submit its request for consent to the Financing Transaction in writing to Landlord, together with the required minimum documentation required pursuant to BPC Policy No. 355, or any other BPC policy then in effect governing Landlord's consent to a Financing Transaction. Within ten (10) days of receiving Tenant's request, Landlord may request from Tenant additional information regarding the lender and/or the proposed financing. Landlord shall provide its response to Tenant's request for approval of the Financing Transaction within forty-five (45) days following Landlord's receipt of Tenant's request and all information requested by Landlord from Tenant. As a condition of approval, Tenant shall provide to Landlord a copy of the final loan documents for the Financing Transaction which conform to the terms set forth in the loan application or commitment delivered pursuant to Section 10.1.2(e) below, when such documents are available. Tenant shall reimburse Landlord pursuant to the Reimbursement Procedure for all Landlord's costs and expenses associated with its review of the Financing Transaction. Said costs shall include, without limitation, Landlord's legal fees (whether with in-house or outside counsel or both) and disbursements relating to or arising out of Landlord's review of any such Financing Transaction, regardless of whether such Financing Transaction is consummated or approved, and Landlord's transaction processing fees charged by Landlord for Landlord's analysis and processing of Tenant's request.

10.1.2 Conditions.

Landlord's consent to any Financing Transaction may be conditioned upon, among other things, the following conditions and/or requirements, all of which Tenant acknowledges are reasonable given the context and terms and conditions of this Lease:

- (a) the lender shall be a Financial Institution;
- (b) a Lease amendment shall be executed to reflect updated or additional lease provisions for the purpose of conforming this Lease to Landlord's then standard leasing terms, practices, and policies;
- (c) the maximum loan proceeds secured by the encumbrance shall not be in excess of the greater of (i) seventy five percent (75%) of the then fair market value of the Improvements (or the as-completed value if the subject loan is being used to finance the cost of an Alteration) as determined by a third party appraisal approved by Landlord (which may be the Permitted Lender's appraisal if so approved by Landlord), or (ii) the amount required to repay the outstanding principal balance of the existing financing that encumbers the leasehold under a Permitted Encumbrance previously consented to by Landlord;

(d) the loan secured by the encumbrance shall have a payment term that provides for the full repayment of the loan prior to the Expiration Date of the then current Term of this Lease; and

(e) Tenant shall have provided to Landlord pursuant to Section 10.1.1: (i) the Financing Transaction term sheet, application or commitment, (ii) a recent appraisal supporting the Financing Transaction, (iii) financial statements of Tenant for not less than the past two (2) years, (iv) the draft and final loan documents and (v) such other documents, information and materials relating to the Financing Transaction as Landlord may request.

10.2 Definition of "Permitted Lender" and "Permitted Encumbrance".

The term "**Permitted Lender**" as hereinafter used in this Lease means the lender under the Financing Transaction holding a mortgage, deed of trust or other similar security interest constituting a first lien on Tenant's interest in this Lease which has been consented to in writing by Landlord as provided above ("**Permitted Encumbrance**").

10.3 Rights of Permitted Lender.

10.3.1 Voluntary Lease Surrender.

If Tenant owes the Permitted Lender any amounts under the Permitted Encumbrance, Landlord will not accept the voluntary surrender, cancellation, or termination of this Lease by Tenant before the Term expires unless the Permitted Lender provides prior written consent. Nothing in this Section 10.3.1 shall impair Landlord's right to terminate this Lease as a result of Tenant's default or by reason of Landlord's other rights to terminate as set forth in this Lease, subject to the Permitted Lender's notice and cure rights pursuant to Section 10.3.2 below, if applicable.

10.3.2 Right to Cure/New Lease.

(a) *Notice of Default.* So long as the loan secured by the Permitted Encumbrance remains unsatisfied, Landlord hereby agrees to give the Permitted Lender a copy of any written notice of any default which Landlord has given to Tenant, whereupon the Permitted Lender shall have the right, but not the obligation, to prevent any termination of this Lease by Landlord as a result of such default by curing such default within (i) twenty (20) days of receipt of such notice for any default in the payment of Rent, or (ii) subject to the terms of this Section 10.3.2, within forty-five (45) days of receipt of such notice for any other default under this Lease.

(b) *Possession Required.* If such default as specified in part (ii) of Section 10.3.2(a) cannot be cured until the Permitted Lender has obtained possession of the Premises through foreclosure or otherwise, and if the Permitted Lender has delivered to Landlord within the forty-five (45) day cure period specified above Permitted Lender's written commitment (in form acceptable to Landlord in its sole discretion) to use commercially reasonable efforts to cure such default with due diligence upon obtaining possession of the Premises through foreclosure or otherwise, then the Permitted Lender shall have such additional time (but in no event to exceed 180 days from the date of obtaining possession of the Premises) as is reasonably necessary to cure such default; provided, however, that the Permitted Lender: (a) unless judicially stayed, commences the judicial or other foreclosure of the Permitted Encumbrance within forty-five (45) days from receipt of written notice of the occurrence of any event which constitutes, or which would constitute, upon the expiration of an applicable cure period, a default under this Lease; (b) prosecutes said foreclosure with due diligence; and (c) cures, during said period, all monetary events of default and, during the period of said stay and/or foreclosure, continues to

pay and perform during said period of stay and/or foreclosure all other monetary obligations of Tenant in a timely manner, including, without limitation, payment of all Rent, taxes, assessments, utility charges, insurance premiums and all other amounts required to be paid by Tenant under this Lease. Notwithstanding anything herein to the contrary, nothing herein shall require a Permitted Lender who has taken possession of the Premises to cure any non-monetary default that, by its nature, is not capable of being cured by the Permitted Lender, such as a Bankruptcy Event (an "**Incurable Default**"), and such Incurable Default shall be deemed to be waived following the Permitted Lender's taking possession of the Premises and provided that Permitted Lender has timely cured all monetary defaults and, following taking possession all other non-monetary defaults that are of a continuing nature. In no event shall Tenant's waste or failure to maintain be an Incurable Default.

(c) *No Termination by Landlord.* Landlord will not terminate this Lease by reason of a default by Tenant provided that the Permitted Lender (i) has cured and continues to cure all defaults under the Lease in the payment of Rent in a timely manner as provided in Section 10.3.2(a)(i) above, and (ii) has cured all other defaults in a timely manner as provided in Sections 10.3.2(a)(ii) and 10.3.2(b) above, other than any Incurable Default.

(d) *New Lease.* In the event of a termination of this Lease by reason of a surrender, cancellation, or termination by Tenant (subject to and in accordance with Section 10.3.1), or as a result of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other Law affecting creditors rights, or as a result of a termination of this Lease by Landlord in violation of Section 10.3.2(c) above, then Landlord shall deliver notice to Permitted Lender that the Lease has been terminated. The notice shall include a statement of all amounts that would be due under this Lease but for the termination, and all other defaults then known to Landlord. The Permitted Lender shall then have the option, to be exercised within thirty (30) days following receipt of such notice of termination to enter into a new lease ("**New Lease**") with Landlord, on the following terms and conditions:

i. The New Lease shall commence as of the date of the termination of this Lease and shall be for the remainder of the Term, and at the Rent, terms, covenants and conditions as this Lease (but excluding any right to extend the Term).

ii. Upon execution of the New Lease, the Permitted Lender as tenant shall pay any and all sums that would at the time of execution thereof be due under this Lease, but for termination, and shall pay all expenses, costs, attorneys' fees, court costs, and disbursements incurred by Landlord in connection with any default and termination, recovery of possession of the Premises, and the execution, preparation and delivery of the New Lease.

iii. Upon execution of the New Lease, the Permitted Lender as tenant shall cure all other defaults under this Lease, which have not yet been cured (other than any Incurable Default), with due diligence in a timely manner in accordance with the cure periods under the Lease assuming such cure periods commence with the execution of the New Lease and without additional notice (provided that Landlord has already provided such notice of such event of Default to Permitted Lender).

iv. Nothing herein shall be construed to require Landlord to deliver possession of the Premises to Permitted Lender. Upon execution and delivery of the New Lease, Permitted Lender may take any and all appropriate action as may be necessary to remove parties in possession from the Premises.

Should the Permitted Lender fail to accept said offer for such New Lease in writing within said thirty (30) day period, or, having so accepted said offer, should it fail promptly to

execute the New Lease or satisfy the requirements of (ii) and (iii) above in a timely manner, then the termination of this Lease shall be effective as to the Permitted Lender and the Permitted Lender shall have no further rights hereunder.

10.3.3 Loan Default.

If a Permitted Encumbrance is in default at any time, and the Permitted Lender is complying with the cure requirements described in Section 10.3.2 above, the Permitted Lender shall, as provided by law, have the right, without Landlord's prior consent, to:

- (a) Accept an Assignment of this Lease in lieu of foreclosure; or
- (b) Cause a foreclosure sale to be held pursuant to either judicial proceedings or power of sale as provided in its Permitted Encumbrance. Provided, however, no Assignment to the successful bidder (a "**Foreclosure Purchaser**") other than the Permitted Lender or a designee of the Permitted Lender who is **Controlled** by or is under common Control with the Permitted Lender shall be effective without Landlord's prior written consent in accordance with Section 10.4 below.

10.3.4 Assume Lease Obligations.

Before the Permitted Lender, or any Foreclosure Purchaser, acquires the leasehold interest, it shall, as an express condition precedent, agree in writing to be bound by all provisions of, and assume each and every obligation of Tenant, under this Lease. A Permitted Lender that has: (a) acquired the leasehold interest and assumed the Tenant's obligations, or (b) entered into a New Lease pursuant to Section 10.3.2(d) above, shall be released from all obligations under this Lease first arising after it assigns the leasehold interest to an assignee consented to by Landlord, in accordance with Section 10.4.

10.4 Landlord's Consent to Assignment or Transfer.

10.4.1 Landlord's Consent to Assignment.

Landlord's prior written consent pursuant to Article 11 shall be required for the following: (a) an Assignment of this Lease to a Foreclosure Purchaser other than the Permitted Lender or a designee of the Permitted Lender who is **Controlled** by or is under common Control with the Permitted Lender, or (b) an Assignment of this Lease or Sublease of all or substantially all of the Premises by the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender should the Permitted Lender or such designee become the tenant by reason of: (i) being the successful bidder upon said foreclosure, or (ii) an Assignment in lieu of foreclosure, or (iii) a New Lease entered into pursuant to Section 10.3.2(d) above.

10.4.2 Notice of Foreclosure Sale.

Permitted Lender shall include a statement in any notice of foreclosure sale covering the requirements under Section 10.4.1 for Landlord's consent to an Assignment upon said foreclosure.

10.4.3 Assignment of Security Interest.

(a) *Consent.* Neither Permitted Lender nor assignees or any subsequent holder of Permitted Lender's security interest in the Premises shall assign or transfer its security interest in the Premises in whole or in part without Landlord's prior written consent, in each instance. Such consent shall not be unreasonably withheld. Although such holder shall be

required to obtain Landlord's express written consent, Landlord shall not withhold such consent (and such assignee or holder will for all purposes of this Lease be deemed to be a Permitted Lender) if the Assignment is to one of the following entities and a copy of the Assignment, in a form acceptable to Landlord, is furnished to Landlord:

- i. A Financial Institution in good legal standing under the laws of its jurisdiction of incorporation having a tangible net worth exceeding One Billion Dollars (\$1,000,000,000) (which sum shall be adjusted to Constant Dollars on each anniversary of the Effective Date); or
- ii. The United States of America or any state thereof, or any agency thereof;
or
- iii. An assignee by operation of law; e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender.

10.5 Landlord's Participation in Refinance Proceeds.

Upon each Financing Transaction other than construction financing of the New Restaurant Improvements, Tenant shall pay to Landlord a fee (the "**Financing Participation Fee**") concurrent with the closing of such Financing Transaction in an amount equal to two and one-half percent (2.5%) of the **Net Proceeds** of such transaction. Prior to Landlord's consent to any Financing Transaction, Tenant shall deliver to Landlord a written statement showing the calculation of the Financing Participation Fee owed to Landlord from Tenant based on the terms of the Financing Transaction. The statement of the calculation of the Financing Participation Fee shall contain such detail as may be reasonably requested by Landlord to verify the calculation of the Financing Participation Fee. The Financing Participation Fee due Landlord shall be payable in full to Landlord concurrent with the completion of the Financing Transaction. When owed, the Financing Participation Fee shall constitute Additional Rent.

For the purposes of this Section 10.5, the term "Net Proceeds" shall mean with respect to a Financing Transaction, the difference between (a) the loan amount and (b) the total of (i) the outstanding indebtedness secured by the Premises being paid off by the Financing Transaction, (ii) proceeds (if any) that reimburse the Tenant for documented equity investment, or (iii) any portion of the debt under the Financing Transaction to be expended on improving the Premises or any District-owned land or water, less any reasonable costs or fees of the Financing Transaction payable by Tenant to Permitted Lender.

11. ASSIGNMENT/SUBLEASE

11.1 Consent Required.

Subject to the terms of Section 11.8, no Assignment, Sublease or Change in Entity (collectively, "**Transfer**") shall be made or permitted without in each instance the prior written consent of Landlord, which consent shall not be unreasonably withheld. It is mutually agreed that Landlord is a government agency holding title to the Premises in trust for the citizens of California and acting as a prudent steward of the Premises and that the personal qualifications of the parties Controlling Tenant are a part of the consideration for granting this Lease. As such, a Change in Entity is as relevant to Landlord as an Assignment of this Lease. Notwithstanding anything herein to the contrary, no Transfer is allowed prior to the date that the New Restaurant Improvements are Completed and open for business.

11.2 Request for Consent.

If a Transfer is proposed, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (a) the proposed effective date of the Transfer, which shall not be less than sixty (60) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (b) with respect to a Sublease, a completed Sublease Questionnaire form [Form 317 or 320 depending on the term of the Sublease] including, among other information, a description of the portion of the Premises which is proposed to be Subleased, (c) all of the terms of the proposed Transfer, the name and address of the proposed transferee with respect to an Assignment or Sublease ("Transferee"), if the Transfer is a result of a Change in Entity, a complete description of the direct and indirect ownership and Control of Tenant just before and just after the Transfer and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer and the agreements incidental or related to such Transfer, (d) a statement of any current litigation or litigation which was resolved within the prior five (5) years affecting the proposed Transferee or persons or entities acquiring an interest resulting in a Change in Entity of Tenant or a Tenant Parent, (e) current financial statements of the proposed Transferee certified by a reputable, certified public accountant (which shall be audited if that is the customary practice of the Transferee), and (d) such other information as Landlord may require. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease upon written notice thereof to Tenant. Whether or not Landlord shall grant consent, Tenant shall pay Landlord's legal and other fees incurred by Landlord pursuant to the Reimbursement Procedure, regardless of whether such transaction is consummated. Any Transfer shall be subject to the terms and provisions of this Lease. Notwithstanding anything to the contrary in this Lease, if Tenant claims that Landlord has unreasonably withheld or delayed its consent under this Article 11 or otherwise has breached or acted unreasonably under this Article 11, Tenant's sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any successor statute, and all other remedies. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

11.3 Consent Factors.

If Landlord consents to any Transfer, Tenant may within one hundred eighty (180) days after the date of delivery of the Transfer Notice, enter into such Transfer of Tenant's interest in the Premises or portion thereof, upon the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord, provided that if there are any material changes to the financial condition of the Transferee or any other material changes to any proposed Transfer terms specified in the Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 11.

Without limitation of Landlord's right to withhold its consent for other reasonable reasons, the parties hereby agree that it shall be reasonable under this Lease and under any applicable Law for Landlord to withhold consent to any proposed Transfer where Landlord determines in its reasonable discretion that one or more of the following apply (it being understood that for the purposes of this Section 11.3 and 11.5.1 in the case of a Change in Entity, references to "Transferee" shall mean Tenant following the Change in Entity):

11.3.1 Insufficient Experience.

The Transferee is not experienced in the ownership or management of similar projects, or the proposed Transferee lacks sufficient business reputation and experience to operate a successful business of the type and quality contemplated under this Lease;

11.3.2 Inconsistent Use.

The Transferee's proposed use of the Premises following the proposed Transfer will not be for the Permitted Use or the quality of the use is not of the quality contemplated under this Lease;

11.3.3 New Restaurant Improvements Incomplete.

The Transfer is to occur prior to the date the New Restaurant Improvements are Completed;

11.3.4 Reputation.

The Transferee (a) is not reputable (a reputation for dishonesty, criminal conduct or association with criminal elements), (b) is of a character or reputation or engaged in a business which is not consistent with the quality or reputation of the operations at the Premises, or may reflect adversely on the quality or reputation of the business conducted from the Premises or (c) has a history of, or a reputation for, either discriminatory employment practices which violate any Laws or non-compliance with Environmental Laws;

11.3.5 Financial Stability.

The Transferee is not a party of sufficient financial worth and financial stability in light of the Tenant obligations under this Lease;

11.3.6 Default.

At the time of request or Transfer, Tenant is in default under this Lease or any other lease between Landlord and Tenant or an entity that is Controlled by or under common Control with Tenant or which Controls Tenant is in default (after applicable notice and cure periods) of its lease with Landlord.

11.3.7 Other Grounds.

Any other reasonable grounds considering the unique nature and interests of the Landlord including the fact that Landlord holds the Premises in trust for the people of the State of California and Landlord's duty of care in administering a valuable public resource.

Tenant acknowledges and agrees that each of the grounds set forth in Section 11.3 above in the event of proposed Transfer is a reasonable restriction on Transfer for purposes of California Civil Code Section 1951.4. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

11.4 Effect of Transfer.

If Landlord consents to a Transfer, (a) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (b) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (c) Tenant shall deliver to Landlord, within ten (10) days after execution, an original executed copy of all documentation pertaining to the Transfer, and any document evidencing a Transfer shall be in form acceptable to Landlord, and

(d) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from liability under Articles 19, 21, and/or 22.

11.5 Conditions.

11.5.1 Transfer.

In the event Landlord consents to any Transfer (other than for a Sublease for less than twenty-five percent (25%) of the floor area of the Improvements computed in the aggregate for one or a series of transactions), then at Landlord's election said consent shall be conditioned upon the following: (a) the Transferee (other than a Subtenant under a Sublease of less than all or substantially all of the Premises) shall agree to be bound by all provisions, and assume each and every obligation, under this Lease (including those obligations arising or pertaining to periods prior to the effective date of the Transfer), or in the case of a Subtenant under a Sublease of less than all or substantially all of the Premises, such Subtenant shall execute a document acceptable to Landlord acknowledging that all rights of the Subtenant are subject to all terms and conditions of this Lease as the same relate to the space subject to the Sublease; (b) if requested by Landlord, a Lease amendment shall be executed to reflect updated or additional lease provisions for the purpose of conforming this Lease to Landlord's then standard leasing terms, practices, and policies; (c) Transferee shall comply with other conditions and qualifications determined by the BPC; and (d) in the case of a Sublease, the Subtenant shall execute an attornment agreement as provided in Section 11.6 below. Without limiting the generality of clause (a) above, the Transferee shall be obligated for the payment to Landlord of any underpayment of Rent determined to be due under Section 5.3.3(e) above, together with the cost of the audit if applicable, notwithstanding that such underpayment of Rent, and related audit, pertains to a period of time prior to the effective date of the Transfer.

11.6 Subtenant Attornment.

Every Sublease hereunder is subject to the express condition, and by accepting a Sublease hereunder each Subtenant shall be conclusively deemed to have agreed, that if this Lease terminates or if Landlord succeeds to Tenant's estate in the Premises, the Subtenant shall, at the option of Landlord, attorn to and recognize Landlord as the Subtenant's landlord under the Sublease, provided that Landlord shall not (a) be liable for any act or omission or negligence of Tenant, (b) be subject to any counterclaim, offset or defense which theretofore accrued to such Subtenant against Tenant, (c) be bound by any payment of Rent or other sums of money for more than one (1) month in advance or any security deposit (unless actually received by Landlord), (d) be obligated to perform any work in the sublet space, (v) in the event of a casualty, be obligated to repair or restore Improvements, (vi) in the event of a partial Taking, be obligated to repair or restore Improvements, (vii) be obligated to make any payment to such Subtenant, or (viii) be bound by any obligations that Landlord lacks the capacity to perform. Any Subtenant shall promptly execute and deliver any instrument Landlord may reasonably request to evidence such attornment. Upon early termination of this Lease, Tenant shall pay over to Landlord all sums held by Tenant for the benefit of Subtenants or as security under the provisions of the existing Subleases.

11.7 Sublease Rent Requirements.

Subject to the terms of any Permitted Encumbrance, each Sublease shall require the Subtenant thereunder to make all payments of Rent and other sums of money to Landlord during the existence of a default hereunder and following written notice of the same from Landlord, and Landlord shall apply said payments made to all Rent that is due and payable to Landlord pursuant

to this Lease, and any remaining amounts will be held and applied to future Rent payable under this Lease.

11.8 Reporting of Sublease Information.

If Tenant has entered into any Subleases, then within thirty (30) days of request from Landlord and within sixty (60) days after the end of each calendar year, Tenant shall submit to Landlord a rent roll in the form of Exhibit G attached hereto containing the information described therein for each Sublease then in effect, along with a site plan showing locations of any Subleases.

11.9 Permitted Lender and Foreclosure Purchasers.

The foregoing provisions of this Article 11 shall not apply to the following Transfers, which are governed by Sections 10.3 and 10.4: (a) a Transfer to a Permitted Lender or a designee of the Permitted Lender who is Controlled by or is who is under common Control with the Permitted Lender pursuant to the foreclosure of the Permitted Encumbrance or an Assignment in lieu of foreclosure or (b) a Transfer to a Foreclosure Purchaser.

11.10 Landlord Participation Fee.

Upon each (i) Assignment of this Lease pursuant to this Article 11 to a Third Party (as defined below), and (ii) a sale of substantially all of the assets of Tenant (whether through one transaction or a series of transactions) to a Third Party or a Change in Entity of Tenant, and (iii) upon each Sublease of all or substantially all of the Premises to a Third Party (any of the transactions in clauses (i), (ii), or (iii) a "**Fee Generating Transaction**"), Tenant shall pay to Landlord a fee (the "**Assignment Participation Fee**") in an amount equal to 2.5% of the Gross Proceeds of such transaction. Prior to Landlord's consent to any transaction subject to an Assignment Participation Fee, Tenant shall deliver to Landlord a written statement showing the calculation of the Assignment Participation Fee owed to Landlord from Tenant based on the terms of the transaction. The statement of the calculation of the Assignment Participation Fee shall contain such detail as may be reasonably requested by Landlord to verify the calculation of the Assignment Participation Fee. The Assignment Participation Fee due to the Landlord shall be payable in full to Landlord concurrent with the completion of the transaction and shall be a joint and several obligation of the transferee and transferor. When owed, the Assignment Participation Fee shall constitute Additional Rent.

For the purposes of this Section 11.10, the term "**Third Party**" shall mean: any Person other than (i) Guarantor or an entity who is directly or indirectly Controlled by the Guarantor; (ii) a Permitted Lender; or (iii) an assignee of a Permitted Lender (whether the Permitted Lender acquires the leasehold interest under this Lease by foreclosure or deed-in-lieu of foreclosure or pursuant to a new lease), or provided, however, that if the Gross Proceeds paid by the assignee exceed the Aggregate Debt Amount (as defined below), then such assignee of the Permitted Lender shall be a Third Party and the Assignment Participation Fee shall be payable solely with respect to the portion of the Gross Proceeds that exceed the Aggregate Debt Amount. The term "**Aggregate Debt Amount**" shall mean the aggregate amount of the outstanding principal, interest and other amounts secured by the applicable Permitted Encumbrance at the time of acquisition by the Permitted Lender of the leasehold interest in the Premises.

For the purposes of this Section 11.10, for a Fee Generating Transaction, the term "**Gross Proceeds**" shall mean the purchase price or other consideration paid (either in cash or by an assumption of debt or other consideration and, if paid over time, the present value of the total consideration using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%)) to the Tenant and/or holders of direct or indirect interests in Tenant in connection with the subject transaction less the sum of (x) any prorations, brokerage

fees, closing costs or other customary deductions to the purchase price for which the seller is responsible and (y) if the Third Party is the assignee of a Permitted Lender, the Aggregate Debt Amount. Landlord acknowledges and agrees that in the case of a Sublease of all or substantially all of the Premises to a Third Party, which Third Party is to operate one or all of the restaurants located on the Premises, Gross Proceeds shall not include regular market-based rent and other payments due from the Subtenant Third Party pursuant to the terms of the applicable Sublease (as opposed to a one time or multiple payment premium by the Subtenant in exchange for the right to enter into the Sublease) so long as such Sublease (and the regular market-based rent and other payments thereunder) is not a subterfuge to avoid Tenant's obligations under this Section 11.10.

Upon the request of Landlord from time to time (which request shall be no more frequent than once per year), Tenant shall provide Landlord with a schedule listing the names and mailing address of all holders of direct or indirect (at all levels) interests in Tenant other than holders of interests traded on a recognized public exchange. In the event that such shareholder, partner, member or other interest holder is a trust, Tenant shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust.

12. DEFAULTS AND REMEDIES

12.1 Defaults.

In addition to any terms hereof expressly providing for a default hereunder, the occurrence of any one (1) or more of the following events shall constitute a default by Tenant hereunder:

12.1.1 Abandonment of the Premises.

"Abandonment" is herein defined to include, but is not limited to, any absence by Tenant from the Premises for ten (10) consecutive days or longer (except as such timeframe may be extended in accordance with Section 6.4).

12.1.2 Failure to Pay

Failure by Tenant to pay, when due, any Rent, other payment, and/or charge herein, is where such failure continues for a period of ten (10) days after the date due.

12.1.3 Failure to Perform.

Failure by Tenant to perform any express or implied covenants or conditions in this Lease (other than as provided in the other subsections in this Section 12.1), should such failure continue for thirty (30) days after written notice thereof is given to Tenant; provided that if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of ninety (90) days after written notice thereof from Landlord to Tenant.

12.1.4 Bankruptcy Event.

The occurrence of a Bankruptcy Event.

12.1.5 Specified Defaults.

The occurrence of any event expressly stated to constitute a default under the Lease.

12.1.6 Health Rating.

If the use of the Premises involves the sale and/or preparation of food, a failure to maintain with respect to the Premises (or a portion thereof) a health department rating of "A" (or such other highest health department rating as is available), which failure continues for more than 30 days after the change in rating from the health department.

12.2 Remedies.

Upon any default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

12.2.1 Termination of Lease.

Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall immediately surrender the Premises to Landlord. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss Tenant proves reasonably could have been avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves reasonably could be avoided; plus

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering possession of the Premises, expenses of reletting (including necessary repair, renovation and alteration of the Premises), reasonable attorneys' fees, and any other reasonable costs; plus

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

AS USED IN SUBPARAGRAPHS (A) AND (B) ABOVE, THE "WORTH AT THE TIME OF AWARD" IS COMPUTED BY ALLOWING INTEREST AT THE DEFAULT RATE. AS USED IN SUBPARAGRAPH (C) ABOVE, THE "WORTH AT THE TIME OF AWARD" IS COMPUTED BY DISCOUNTING SUCH AMOUNT AT THE DISCOUNT RATE OF THE FEDERAL RESERVE BANK OF SAN FRANCISCO AT THE TIME OF AWARD PLUS ONE PERCENT (1%).

Failure by Landlord to enforce one or more of the remedies herein provided upon a default shall not be deemed or construed to constitute a waiver of such default. Tenant hereby waives for Tenant and for all those claiming under Tenant all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

12.2.2 Partial Termination of Lease.

(a) Tenant acknowledges and agrees that in connection with the execution of the Option Agreement, Landlord holds a fully executed but ineffective copy of the Parking Easement. In the event of a New Restaurant Default (as defined below), then (i) this Lease as it

relates to Parcels 2 and 3 shall terminate; (ii) Landlord will provide to Tenant, and Tenant agrees to sign, notarize, and deliver back to Landlord, within 14 days of receipt, an original Quitclaim Deed in the form attached hereto as Exhibit J, relinquishing all of Tenant's right and interest in Parcels 2 and 3, and upon such delivery, Landlord shall be permitted to terminate this Lease only as it relates to Parcels 2 and 3 by countersigning, dating, making effective, and recording with the San Diego County Recorder, such Quitclaim Deed; (iii) Landlord shall be permitted to revise the references to the Original Lease in the Parking Easement to this Lease (or alternatively, to revise the Parking Easement accordingly and have Tenant sign, notarize, and deliver back to Landlord, within 14 days of receipt, an original of the revised Parking Easement), and Landlord shall be permitted to countersign (if applicable) and record the Parking Easement with the San Diego County Recorder; and (iv) Tenant shall surrender Parcels 2 and 3 to Landlord in accordance with the terms of this Lease. Upon termination of this Lease as it relates to Parcels 2 and 3, the Parking Easement will govern the shared use of Parcel 5 and Parcel 7 between Landlord and Tenant and their successors and/or assigns. In the event that Landlord elects to terminate this Lease as it relates to Parcels 2 and 3: (A) Landlord shall be entitled to the assignment of plans related to the New Restaurant Improvements in accordance with Section 12.2.7; (B) except for Additional Rent owed pursuant to the following subclause (C) and/or attorneys' fees recoverable under Section 29.12, Landlord will not be entitled to recover those amounts set forth in Section 12.2.1(a) through (e) with respect to Parcels 2 and 3; (C) upon Tenant surrendering Parcels 2 and 3 in accordance with the terms of this Section 12.2, the Additional Rent under Section 6.1.2 shall automatically terminate (provided that Tenant shall remain liable for all such Additional Rent owing as of such termination as set forth in Section 12.2.2(c) below); and (D) Minimum Annual Rent will be \$339,976 (as adjusted or as may be adjusted pursuant to Section 5.2).

(b) Landlord and Tenant agree that the specific remedy under this Section 12.2.2 shall only be available to Landlord in the event of a Tenant default in the following circumstances (each a "**New Restaurant Default**"): (i) a default under Section 12.1.3 to (A) commence construction of the New Restaurant Improvements on or before the Outside Construction Commencement Date in accordance with Section 6.1.1, or (B) Complete the New Restaurant Improvements in accordance with the terms of this Lease (including the requirement to expend the Minimum Construction Costs in accordance with Section 6.1.4) on or before the date that is 913 days from the Effective Date (subject to an extension in accordance with Section 6.4); or (ii) a default under Section 12.1.2 to timely pay any Additional Rent owed under Section 6.1.2 as and when due.

(c) Landlord and Tenant further agree that in event of a New Restaurant Default by Tenant, Landlord's sole and exclusive remedy shall be as set forth in this Section 12.2.2, except as follows: (i) any unpaid Additional Rent owed under Section 6.1.2 shall be fully due and payable within 60 days of the termination of this Lease in accordance with this Section 12.2.2 with respect to Parcels 2 and 3; and (ii) in the event that following a New Restaurant Default, Tenant either (A) fails to timely comply with the procedures set forth in this Section 12.2.2 or (B) defaults in the payment of any unpaid Additional Rent owed under this Section 12.2.2(c), then Landlord shall have the right to enforce any and all remedies at law and in equity, including, but not limited to, all those set forth in Section 12.2.1 (and notwithstanding Tenant later complying with the terms of this Section 12.2.2).

(d) Following any termination of this Lease with respect to Parcels 2 and 3 under this Section 12.2.2, Tenant shall have no obligations with respect to Parcel 2 and/or Parcel 3 except for the following: (i) except for Tenant's obligations to construct a restaurant/cocktail lounge on Parcel 3 and to pay any Additional Rent under Section 6.1.2, Tenant shall continue to remain obligated under the terms of the Lease for all obligations and/or liability with respect to Parcel 2 and/or Parcel 3 accruing or arising prior to such termination; and (ii) Tenant shall remain

obligated for all obligations that by their terms survive any expiration or earlier termination of the Lease or surrender of the Premises.

(e) Tenant hereby waives for Tenant and for all those claiming under Tenant all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of Parcels 2 and 3 after any termination of this Lease with respect to Parcels 2 and 3.

12.2.3 Continue Lease in Effect.

Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due if Tenant has the right to sublet or assign this Lease, subject only to reasonable limitations).

12.2.4 Perform Acts on Behalf of Tenant.

Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate.

12.2.5 Increased Security Deposit.

Require Tenant to deposit a Security Deposit with an amount equal to three (3) months of the Minimum Annual Rent (which remedy may be exercised on more than one occasion with further increases in the Security Deposit on any subsequent default or any failure of Tenant to cure the default at issue within the time period set forth in Section 12.1.3).

12.2.6 Payment by Tenant.

Upon any default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses and staff time) in: (a) obtaining possession of the Premises; (b) removing and storing Tenant's or any other occupant's property; (c) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant; (d) performing Tenant's obligations which Tenant failed to perform; and (5) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default.

12.2.7 Assignment of Plans and Other Matters.

If this Lease is terminated or Landlord otherwise takes possession of the Premises by reason of Tenant's default, Tenant hereby agrees that, if Landlord so requests, (a) Tenant, at Tenant's sole cost and expense, shall assign and transfer to Landlord all of Tenant's right, title and interest in and to all plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, free and clear of liens and claims by third parties, in connection with and (b) Tenant shall execute and deliver to Landlord, within five (5) business days of Landlord's request, in a form provided by and acceptable to Landlord, an instrument confirming the Assignment and transfer of such property and interests to Landlord and shall, within such five (5) business day period, deliver the originals of such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises to Landlord. Tenant agrees to reasonably cooperate

with Landlord at no cost or expense to Landlord in seeking any consent from the preparer of any plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, to the extent assignable, to this Assignment which may be required for Landlord to rely on such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises.

13. BANKRUPTCY

13.1 Bankruptcy Event.

Upon occurrence of a Bankruptcy Event, Landlord shall have all rights and remedies available pursuant to Article 12. After the commencement of a Bankruptcy case: (a) the Tenant shall perform all post-petition obligations of Tenant under this Lease; and (b) if Landlord is entitled to damages (including unpaid Rent) from and after any order for relief pursuant to the terms of this Lease, then all such damages shall be entitled to administrative expense priority pursuant to the Bankruptcy Code. Tenant acknowledges that this Lease is a lease of nonresidential real property and therefore Tenant, as the debtor in possession, or the trustee shall not seek or request any extension of time to assume or reject this Lease or to perform any obligations of this Lease which arise from or after the order of relief.

13.2 Assignment/Assumption.

Any Person to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of Assignment, and any such assignee shall upon request by Landlord execute and deliver to Landlord an instrument confirming such assumption in a form acceptable to Landlord. If the Tenant desires to assume and assign this Lease under the Bankruptcy Code to any Person who shall have made a bona fide offer, then the Tenant shall give Landlord written notice of such proposed Assignment (which notice shall set forth the name and address of such Person, all of the terms and conditions of such offer, and the adequate assurance to be provided Landlord to assure such Person's future performance under this Lease) prior to the date Tenant shall make application to the appropriate court for authority and approval to enter into such Assignment and assumption. Landlord shall thereupon have the prior right and option, to be exercised by notice to the Tenant given at any time prior to the effective date of such proposed Assignment, to accept an Assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the Assignment of this Lease. If the Tenant fails to assume or assume and assign this Lease in accordance with the requirements of the Bankruptcy Code within the period provided by the Bankruptcy Code or allowed by the Bankruptcy Court, then the Lease shall be deemed rejected and the Landlord shall have all rights and remedies available to it pursuant to Section 12.2. At any time during the Term, upon not less than five (5) days' prior written notice, Tenant shall provide Landlord with audited financial statements for Tenant for not less than the past two (2) years. Such statements are to be certified by an authorized representative of Tenant to be true, correct and complete, prepared in accordance with generally accepted accounting principles and audited by any independent certified public accountant.

13.3 Adequate Assurances.

In the event Tenant or proposed assignee under Section 13.2 proposes under the Bankruptcy Code to cure any default under this Lease or to assume or assign this Lease and is obliged to provide adequate assurance to Landlord that (a) a default shall be cured, (b) Landlord shall be

compensated for its damages arising from any breach of this Lease and (c) future performance of Tenant's obligations under this Lease shall occur, then such adequate assurances shall include all of the following, as designated by Landlord in its sole and absolute discretion:

- (a) Those acts specified in the Bankruptcy Code or other applicable laws as included within the meaning of "adequate assurance";
- (b) A prompt cash payment to compensate Landlord for any monetary defaults or actual damages arising directly from a breach of this Lease;
- (c) A cash deposit in an amount at least equal to the then-current amount of the Security Deposit; and
- (d) The assumption or Assignment of all of Tenant's interest and obligations under this Lease.

14. EMINENT DOMAIN

14.1 Eminent Domain.

If all or any portion of the Premises shall be condemned pursuant to exercise of the power of eminent domain or acquired under an actual threat of the exercise of such power (collectively, "**Condemnation**"), the rights and obligations of Landlord and Tenant with respect thereto shall be as set forth in this Article 14. Nothing in this Article 14 shall be interpreted to prevent Landlord from exercising its power of eminent domain as to Tenant's leasehold interest and/or Premises.

14.2 Notice of Condemnation.

If either party hereto receives notice of any Condemnation or intended Condemnation (including, without limitation, service of process), within five (5) business days of receipt, the party in receipt thereof shall deliver to the other party an exact copy of such notice of or relating to any intended Condemnation and the date such notice was received.

14.3 Representation of Interest.

Landlord and Tenant shall each have the right to represent its respective interests in such proceeding or negotiation with respect to a Condemnation or intended Condemnation and to make full proof of its claims. Landlord and Tenant each agrees to execute and deliver to the other any instrument which may be required to effectuate or facilitate the provisions of this Article 14.

14.4 Early Termination.

In the event of a Condemnation of all of the Premises or such portion of the Premises so that Tenant cannot reasonably and economically use the remainder of the Premises for the purposes permitted under this Lease (as reasonably determined by Tenant and approved by Landlord in its sole discretion), this Lease shall terminate as of the date of such Condemnation. A termination of this Lease pursuant to this section shall act to relieve Tenant from any further liability under this Lease except as to obligations accruing or arising on or prior to termination or which are otherwise required to be performed in connection with such termination or surrender of the Premises or which otherwise expressly survive termination. Tenant shall deliver the Premises to Landlord in the condition required for the surrender of the Premises under this Lease.

14.5 Partial Condemnation.

If only a portion of the Premises is subject to Condemnation and this Lease is not terminated pursuant to Section 14.4 above, then this Lease shall continue in full force and effect upon the

same terms and conditions as set forth herein, and the Minimum Annual Rent shall be reduced in proportion to the reduction in the value of the Premises after the Condemnation as compared to the value of the Premises immediately prior to the Condemnation (as reasonably determined by Landlord and approved by Tenant in its reasonable discretion).

14.6 Temporary Condemnation.

If any portion of the Premises, including the entirety thereof, is subject to a temporary Condemnation, then this Lease shall continue in full force and effect and there shall be no adjustment or abatement in Rent during the term of such temporary Condemnation. Any portion of an award, settlement or other compensation or damages which may be given for such temporary Condemnation attributable to the Term shall be the property of Tenant and any portion attributable to any period following the expiration of the Term shall be the property of Landlord. As used herein, a "temporary Condemnation" shall mean any taking which is not intended by the condemning authority to be permanent at the time such Condemnation initially occurs.

14.7 Award.

14.7.1 Leasehold Award.

In the event of any Condemnation of all or any portion of the Premises (other than a temporary Condemnation), Landlord shall be entitled to any and all awards and/or settlements or other compensation or damages which may be given for (a) any "bonus value" respecting this Lease (i.e., the excess value of the leasehold arising from the fact that the scheduled rent is less than the market rent for the Premises), and (b) the land (and water, if applicable) comprising the Premises and any Existing Improvements. Any and all other awards and/or settlements or other compensation or damages (collectively, "**Leasehold Award**") for Improvements constructed by Tenant and the leasehold estate created by this Lease (excluding any bonus value thereof) shall be paid as follows:

(a) Provided this Lease is not terminated pursuant to Section 14.4 above, the Leasehold Award shall be payable in trust to any Permitted Lender that is a Financial Institution, if any, and shall be disbursed for the payment of the costs of repairing and restoring the remaining portion of the Premises to substantially its value, condition and character prior to such Condemnation to the extent the same may be feasible. If there is no Permitted Lender that is a Financial Institution or if there is but the Permitted Lender declines to act as a trustee for the disbursement of funds as provided above, then such Leasehold Award shall be payable in trust to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, and shall be disbursed by such trustee as provided above. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal loan disbursement procedures (e.g. upon receipt of appropriate mechanics lien releases, invoices, etc.) so long as such disbursement procedures are reasonably acceptable to Landlord and ensure that the Leasehold Award is applied to the costs of repairing and restoring the Premises.

(b) If this Lease is terminated pursuant to Section 14.4, or if there are excess proceeds available after completion of the repair and restoration of the Premises as provided above, then any portion of the Leasehold Award not used for the repair and restoration of the remaining portion of the Premises pursuant to subparagraph (a) above, or used to place the Premises in the condition required for the surrender of same to Landlord, shall be divided between Landlord and Tenant, with Landlord to receive a sum computed by multiplying such excess funds awarded with respect to such Improvement by a fraction, the numerator of which shall be the number of years (or portion thereof) of the Term that have, at the time of such Condemnation,

expired, and the denominator of which shall be the total number of years in the full Term. The remaining amount shall be paid to Tenant, subject to the Permitted Lender's rights under subparagraph (c) below.

(c) Any portion of the Leasehold Award relating to Improvements and not used as described in subparagraph (a) and (b) and which is payable to Tenant pursuant to subparagraph (b) shall be paid to the Permitted Lender to be applied against its Permitted Encumbrance to the extent such payment is required to be made by Tenant pursuant to the terms of the Permitted Encumbrance held by the Permitted Lender.

(d) Any remaining portion of the Leasehold Award after payment as described above shall be paid to Tenant. Notwithstanding the foregoing sentence, with respect to any Leasehold Award received in connection with any Condemnation for street widening or the installation of utilities, public sidewalks or walkways which occurs at any time following the Commencement Date, and provided such Condemnation does not result in material physical damage to then existing buildings or driveways, parkway access or access ways serving the Improvements, Landlord instead of Tenant, shall be entitled to receive, in addition to any award otherwise payable to Landlord pursuant to this Article, all of that portion of the Leasehold Award distributed to Tenant pursuant to this subparagraph (d).

(e) In addition to any other amounts to which Tenant is entitled as set forth above, Tenant shall be entitled to pursue any rights and remedies it may have against such condemning authority for: (i) any of Tenant's personal property; (ii) compensation pursuant to the provisions of California Government Code Section 7262 et seq.; (iii) compensation for loss of good will pursuant to California Code of Civil Procedure Section 1263.510 et seq.; and (iv) any other personal rights and remedies to which the occupant and user of the condemned portion of the Leased Premises may be entitled under law. Said amounts shall not be deemed a part of an "award" as provided above.

(f) Nothing in this Section 14 shall be construed to allow the Tenant to prosecute any claim against the condemning authority or Landlord which would diminish or otherwise adversely affect the Leasehold Award or Landlord's rights herein.

14.7.2 Default.

Anything in this Article to the contrary notwithstanding, Tenant shall not be entitled to any funds, awards, rights, benefits or entitlement of any kind arising from or out of a Condemnation, except so far as is designated for damage to Tenant's personal property, if the same occurs during the period Tenant is in default under this Lease or after Landlord has exercised any remedy referred to in Section 12.2 above by reason of Tenant's default. Tenant shall be entitled to any award allocated by a court of competent jurisdiction to Tenant's personal property.

15. MAINTENANCE AND REPAIR

15.1 Maintenance and Repair.

The Premises and all Improvements, both inside and outside, shall be put and kept free of deferred maintenance and in good operating condition by Tenant at Tenant's sole cost and expense. Tenant, at its sole cost and expense, shall be fully responsible for all care, maintenance, and repair of the Premises and all Improvements as necessary to keep the Improvements free of deferred maintenance and in good operating condition except for reasonable wear and tear and damage from casualty or Condemnation which results in a permissible termination by Tenant of this Lease in accordance with the terms hereof. Tenant acknowledges that over the Term of this Lease, that in order to adhere to these maintenance and repair standards, certain repairs and

replacements will be required and that regular reinvestment should be anticipated. Without limitation of the foregoing, Tenant shall perform all maintenance and make all repairs and replacements, ordinary as well as extraordinary, structural or otherwise, which may be necessary or required so that all times the Premises and the Improvements (together with all equipment, trade fixtures, mechanical and utility systems, paving, landscaping, installations and appurtenances) shall be free of deferred maintenance and in good operating condition, satisfactory to Landlord in its sole discretion except for reasonable wear and tear which does not adversely affect the appearance and condition of the Premises or Improvements. Further, Tenant shall provide containers for the collection of trash and garbage outside the Improvements, which may require Landlord's approval, and keep the Premises in a clean, safe, healthy and sanitary condition, free and clear of rubbish, litter, and any fire hazards. Tenant's maintenance shall include, without limitation, all preventive maintenance, painting and replacements necessary to maintain and preserve the Premises and Improvements, and compliance with the Best Management Practices ("**BMPs**") set forth in the Jurisdictional Runoff Management Program incorporated by reference in Article 10 of the San Diego Unified Port District Code.

Prior to Tenant performing any non-routine repairs or replacements (i.e., those not occurring with an expected or known frequency in the normal course of business) to the exterior, the structure or building systems or which will substantially interfere with the typical operation of the Improvements, or affect the portions of the Improvements generally accessible to the public such as the lobby area of a hotel, plans and specifications must first be submitted to Landlord and receive Landlord's written approval, pursuant to the procedures provided in Article 6 herein as if such repairs or replacements were Alterations.

Tenant waives all rights to make repairs at the expense of Landlord, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of the California Civil Code.

15.2 Condition in Compliance with Laws.

Tenant, at its sole cost and expense, shall keep the Premises and Improvements (together with all equipment, trade fixtures, mechanical and utility systems, paving, installations and appurtenances) in full compliance with all applicable Laws and the requirements of any insurer providing insurance for the Premises or any part thereof.

15.3 Performance by Landlord.

15.3.1 Inspection and Correction.

Landlord always shall have the right but not the duty or obligation to enter, view, inspect, determine the condition of, and protect its interests in the Premises and Improvements upon not less than 24 hours prior written or telephonic notice to Tenant; provided that no prior notice shall be required in the case of emergency or for incidental entries, viewings, or visits of the Premises or Improvements. In connection with the foregoing, Landlord shall use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements. If Landlord determines that the Premises or Improvements are not in the condition required pursuant to the terms of this Lease, Landlord shall deliver written notice to Tenant detailing the items to be corrected (any such notice, an "**Inspection Report**") and Tenant shall commence the necessary maintenance, alteration, repair and replacement work necessary to remedy the issues set forth in Landlord's notice within ten (10) days after written notice from Landlord or as soon thereafter as reasonably possible but in no event longer than one hundred and eighty (180) days after written notice from Landlord, or immediately in the case of an emergency, and diligently pursue such work to completion. Further, if at any time Landlord determines the Premises or Improvements are not in the condition required pursuant to the terms

of this Lease, and Tenant either (a) fails to provide adequate assurances to address said conditions within ten (10) business days after Landlord's notice, or (b) reasonably believes that Tenant will not have addressed the same prior to the expiration of any applicable cure period, Landlord may require Tenant to file and pay for a performance bond for necessary maintenance, alteration, repair and replacement work necessary to remedy the issues set forth in Landlord's notice. The amount of said bond shall be adequate, in Landlord's opinion, to correct all unsatisfactory conditions.

15.3.2 Landlord Repair Rights.

At Landlord's option, if Tenant fails to commence to perform the necessary maintenance, alteration, repair and replacement work within ten (10) days of Landlord's written demand therefor and thereafter diligently prosecute such work to completion (except in the event of an emergency in which case no such notice shall be required), Landlord may, but need not, perform such maintenance, alteration, repair or replacement work, and Tenant shall pay Landlord the actual cost thereof, together with interest thereon at the Default Rate from the date incurred until paid and an administrative fee in the amount of ten percent (10%) of the cost of such work, pursuant to the Reimbursement Procedure. Such payments shall constitute Additional Rent under this Lease and shall be paid monthly as billed by Landlord or in a lump sum payment, as directed by Landlord. If requested by Landlord, Tenant shall pay to Landlord the entire estimated cost of such work in advance, but such payment shall not relieve Tenant from the obligation to pay any excess costs that may be actually incurred by Landlord. For all maintenance, alteration, repair and replacement work undertaken by Landlord, Tenant hereby indemnifies and shall defend, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, and hold the Landlord Parties harmless from any and all liability, Related Costs, demands, damages, expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), arising directly or indirectly out of such work or the performance thereof, unless the same is the result of the gross negligence or willful misconduct of Landlord. Landlord shall have no obligation to repair or maintain any portion of the Premises. The rights of Landlord under this Section shall not create any obligations or increase any obligations of Landlord elsewhere in this Lease, nor shall the exercise of such rights, or the failure to exercise same, limit any other rights or remedies of Landlord. Tenant shall provide Landlord Parties access to the Premises for the purposes set forth in this Section 15.3.

15.4 Restaurant Audit

Landlord has agreed to this Lease in part based upon Tenant's assurance that it will keep and maintain the Improvements (both the Existing Improvements and the New Restaurant Improvements, once completed) of the Leased Premises in good condition and repair at all times during the term of this Lease. Commencing on the ten (10) year anniversary of the Effective Date and every five (5) years thereafter for the remainder of the Term, Tenant shall perform a maintenance audit in accordance with the following provisions (the "**Audit Process**"):

Tenant shall, at Tenant's cost, engage a reasonably qualified contractor or engineer (with experience in the development and/or maintenance of restaurants), to be approved by Landlord in its reasonable discretion, to provide Tenant with a written audit report that identifies in reasonable detail (a) any repair and maintenance items which the auditor reasonably determines must be completed immediately in order to cause the restaurant related Improvements to be in the condition required by this Lease ("**Required Work**"), (b) any repair and maintenance items which the auditor reasonably determines must be completed within a specified period of time in order for such marina portion to remain in such condition for at least five (5) years after the date of such audit report, and (c) any other repairs or maintenance items which the auditor suggests

could improve the restaurants operations.

Following completion of the audit report, Tenant shall promptly provide a copy to Landlord and within thirty (30) days of providing such copy, Tenant shall thereafter cause to be performed any work identified as Required Work in such report (unless Landlord waives such requirement) on a schedule consistent with such report's recommendations. If Tenant fails to perform such work, then Landlord may, but need not, perform such maintenance, alteration, repair or replacement work as per Section 15.3 of this Lease, at Tenant's sole cost and expense.

, Landlord may additionally invoke such Audit Process in the event Tenant requests a transfer of Tenant's interest in this Lease which requires Landlord's consent pursuant to Section 11. above as a condition to any Landlord approval of such request (in additional to any other conditions required by Landlord and/or this Lease).

15.5 Records.

Tenant shall, at all times during the Term, keep or cause to be kept, accurate and complete records of maintenance conducted at the Premises. The records must be supported by source documents of original entry such as invoices, receipts, work orders, construction contracts, service contracts or other pertinent supporting documents. All of Tenant's maintenance records relating to the Premises shall be kept either at the Premises or at such other locations in San Diego County, California as are acceptable to Landlord. Landlord shall have the right at any time to examine such maintenance records without restriction and, at Landlord's request, Tenant shall provide Landlord with copies thereof at Tenant's expense for the purpose of determining the accuracy thereof.

16. TAXES AND PROPERTY EXPENSES

16.1 Taxes.

This Lease may result in a taxable possessory interest and be subject to the payment of property and other taxes. Tenant shall pay, prior to delinquency, all **Tax Expenses** attributable to any time period during the Term now or hereafter assessed against, or relating in any way to the Tenant, this Lease, the Premises, the Improvements, or the use or occupancy thereof by Tenant and Tenant Parties. Tenant shall promptly following written request therefor from Landlord, provide Landlord with evidence of the payment of Tax Expenses. "Tax Expenses" shall include, without limitation, all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent, including gross receipts or sales taxes applicable to Tenant's receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used by Tenant in connection with the Premises) and any taxes and assessments relating to the business or other activities of Tenant upon or in connection with the Premises. Tax Expenses also shall include, without limitation:

(a) Any tax on Landlord's receipt of Rent, right to Rent or other income from the Premises;

(b) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, possessory interest tax or use tax or other Tax Expenses, and any assessments, taxes, fees, levies and charges that may be imposed by government agencies for

services such as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of Tax Expenses for purposes of this Lease; and

(c) Any assessment, tax, fee, levy, or charge, which is levied or assessed based upon the area of the Premises or the Improvements or the Rent payable hereunder, including, without limitation, any gross income tax upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof.

Tenant agrees to cooperate with Landlord in connection with, and to not object to, the formation of a special maintenance district or infrastructure repair district that includes the Premises and other neighboring properties, the purpose of which is to fund the costs of the maintenance, repair and replacement of public property and/or improvements that benefit the Premises, or are related to the use and enjoyment of the Premises by Tenant, its Subtenants and/or their customers or invitees. All assessments levied by any such maintenance district shall constitute Tax Expenses.

16.2 Property Expenses.

Without limitation of Tenant's other obligations under this Lease, Tenant agrees to pay all Property Expenses. As used herein, "Property Expenses" include, without limitation, all costs and expenses of any nature incurred or payable, or arising in connection with, the ownership, management, maintenance, construction, repair, replacement, restoration or operation of the Premises and/or the Improvements, including, without limitation, any amounts paid for: (a) the cost of supplying any utilities, the cost of operating, maintaining, repairing, renovating and managing any utility systems, mechanical systems, communications systems, sanitary and storm drainage systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (b) the cost of licenses, certificates, permits and inspections; (c) the cost of any insurance carried or required to be carried by Tenant with respect to the Premises and/or the Improvements including without limitation any premiums and deductibles; (d) the cost of landscaping, supplies, tools, equipment and materials, and all fees, charges and other costs incurred in connection with the management, operation, repair and maintenance of the Premises and/or the Improvements; (v) payments under any easement, license, permit, operating agreement, declaration, or covenant or instrument pertaining to the Premises; and (vi) the cost of any Improvements, capital repairs, capital alterations, or capital equipment, required by any government agency or otherwise required under this Lease.

17. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION AND OFAC

17.1 Nondiscrimination.

Tenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the ADA; and any other applicable Laws now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such Laws, including without limitation the ADA, Tenant shall be solely responsible for such compliance and

required programs, and there shall be no allocation of any such responsibility between Landlord and Tenant. Each Subtenant shall comply with the requirements of this Article 17.

17.2 Compliance with Employment and Labor Requirements.

Tenant shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other Laws now existing or hereinafter enacted, regarding employment and labor practices. Tenant shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

17.3 OFAC Compliance.

Tenant represents and warrants that (a) Tenant and each Person owning an interest in Tenant is not now, and shall not during the term of this Lease become, a Person with whom Landlord or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "**USA Patriot Act**") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("Prohibited Persons") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and/or on any other similar list pursuant to any authorizing statute, executive order or regulation, nor a Person (also, a "Prohibited Person") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person, (c) no Prohibited Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (d) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and (e) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

17.4 Diversity, Equity, and Inclusion

Tenant shall, within ninety (90) days of the Effective Date, provide a written statement of Tenant's commitment to non-discrimination, diversity, equity, and inclusion in the workplace. In addition, Tenant shall provide a brief description of plans to implement good faith efforts, based on the nature of Tenant's business operations, to recruit contractors, consultants, and employees, and/or applicants for employment (collectively, "**Tenants Hires**") in a non-discriminatory manner.

In addition, following the two (2) year anniversary of the Effective Date, Tenant shall, within ninety (90) days of receiving a written request from Landlord, provide a written report describing Tenant's actions and outcomes in furtherance of its commitment to non-discrimination, diversity, equity, and inclusion (provided that Landlord may only request such written report once every three (3) years following an initial request hereunder). Tenant's report shall not identify individual Tenant Hires by name.

18. INSURANCE

18.1 Insurance.

Tenant shall maintain insurance acceptable to Landlord in full force and effect throughout the Term.

18.2 Forms of Coverage.

The policies for said insurance shall, as a minimum, provide the following:

18.2.1 Commercial General Liability.

"**Occurrence**" form Commercial General Liability covering the Premises, operations, and contractual liability assumed by Tenant in this Lease in the amount of not less than as set forth in Section 1.6. Tenant's indemnification obligations under this Lease shall in no event be limited by the terms or qualifications to the contractual liability coverage under such insurance.

18.2.2 Liquor Liability.

If alcoholic beverages are served or sold on the Premises, Liquor Liability coverage in the amount of not less than as set forth in Section 1.6 shall be obtained. If no alcoholic beverages are served or sold on the Premises, the proof of insurance shall so state.

18.2.3 All Risk and Builder's Risk Property Coverage.

All Risk Property Coverage, including flood and debris cleanup provisions, in an amount not less than the full 100% replacement value of all Improvements, together with business interruption and extra expense coverage, including a provision for the continuation of Rent payments for 24 months, a vandalism and malicious mischief endorsement, earthquake sprinkler leakage coverage, boiler and machinery coverage and, if so required by Landlord, earthquake coverage. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of Landlord. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to Landlord and Tenant to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged Improvements and applied to Tenant's Rent obligations hereunder, as applicable. However, if there is a Permitted Lender that is a Financial Institution, then all proceeds from such policies of insurance (other than from the business interruption and extra expense coverage) shall be payable in trust, with safeguards reasonably acceptable to Landlord, to such Permitted Lender to be disbursed for the repair and restoration of the Improvements (or, if there is no Permitted Lender that is a Financial Institution, or if there is, but the Permitted Lender declines to hold and disburse such proceeds, to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, which proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the parties, or if the parties fail to agree, then in the bank's regular passbook savings account). All interest shall be added to the trust funds to be disbursed with the principal. All such proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of Landlord so as to ensure the application of such proceeds in compliance with this Lease.

During the construction of the New Restaurant Improvements or any subsequent Alterations or restoration work, builder's risk completed value form insurance covering the perils insured under the ISO special causes of loss form, including collapse, water damage, transit and flood and earthquake coverage, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) and covering the full insurable value (exclusive of the cost of noninsurable items) of all equipment, supplies and materials at any off-site storage location used with respect to the New Restaurant Improvements, Alterations, restoration work, or in transit. The coverage shall be endorsed with a Loss Payee endorsement in favor of Landlord. The insurance proceeds shall be paid and disbursed in the same manner as set forth in this Section 18.2.3 above.

18.2.4 Worker's Compensation.

Workers' compensation insurance covering all persons employed by Tenant at the Premises and with respect to whom death or bodily injury claims could be asserted against Tenant, Landlord or the Premises, with statutorily required limits, and employer's liability insurance with minimum limits of not less than One Million Dollars (\$1,000,000) for each accident/employee/disease. Workers' compensation insurance shall include a waiver of subrogation in favor of Landlord Parties.

18.2.5 Automobile Liability.

Business automobile liability insurance covering liability arising out of vehicles used on or about the Premises by Tenant or its employees (including owned, non-owned, leased, rented and/or hired vehicles) insuring against liability for bodily injury, death and property damage in an amount not less than One Million Dollars (\$1,000,000) each accident limit.

18.2.6 UST Insurance Obligations.

In the event underground storage tanks are located on the Premises, Tenant is required to comply with all Laws applicable to underground storage tanks, including, without limitation, United States Code, Title 42, Chapter 82, Subchapter IX, 40 CFR Part 280, 40 CFR Part 281 and 40 CFR Parts 282.50 – 282.105, and Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Tenant is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Tenant shall provide Landlord with a certified copy of its Certification of Financial Responsibility. If Tenant's program for financial responsibility requires insurance, then Tenant's policy(ies) shall name the Landlord Parties as additional insureds, and all other terms of Section 18.3 below, shall apply. Should Tenant change its financial assurance mechanisms, Tenant shall immediately provide Landlord with a certified copy of its revised Certification of Financial Responsibility.

18.2.7 Contractor's Pollution Liability Coverage.

If the Landlord determines, in its sole and absolute discretion, that Tenant performs or contracts for any work which involves a Hazardous Materials Activity or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher. The Landlord Parties shall also be named as an additional insured on any such policy. Immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, Tenant shall provide notice of the same to Landlord.

18.3 General Requirements.

18.3.1 Certificates and Other Requirements.

All required insurance shall be in force the first day of the Term and shall be maintained continuously in force throughout the Term. In addition, the cost of all required insurance shall be borne by Tenant. During the entire Term, Tenant shall provide Landlord with insurance certificates, in a form acceptable to Landlord, issued by the insurer evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this

Article ("**Certificates**"). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the forgoing, Landlord reserves the right to require complete, certified copies of all required policies at any time.

18.3.2 Additional Insureds and Other Requirements.

All liability insurance policies shall name or be endorsed to name the Landlord Parties as additional insureds and protect the Landlord Parties against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be suspended or voided, except after Landlord has been furnished with thirty (30) days' prior written notice. To the extent the policy is blanket endorsed or is specifically endorsed to provide the same, all insurance policies shall also provide that the subject policy shall not be cancelled without thirty (30) days' prior written notice to Landlord. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess or contributory to any insurance issued in the name of Landlord. Further, all insurance companies must be satisfactory to Landlord.

18.3.3 Deductibles.

Any deductibles or self-insured retentions must be declared and acceptable to Landlord. If the deductibles or self-insured retentions are unacceptable to Landlord, then Tenant shall have the option to either: (a) reduce or eliminate such deductibles or self-insured retentions as respects the Landlord Parties; or, (b) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

18.3.4 Updates.

Landlord shall retain the right at any time to review the coverage, form, amount and type of insurance required herein. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for the Landlord Parties and/or members of the public using the Premises or using services connected with Tenant's use or occupancy of the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form, amount and type to provide adequate protection. Landlord's requirements shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

18.3.5 New Certificates.

If Landlord changes the insurance requirements as provided in Section 18.3.4 above, Landlord shall notify Tenant in writing of such changes. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates with Landlord issued by the insurer evidencing acceptable insurance policies incorporating such changes within thirty (30) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates evidencing acceptable insurance policies with Landlord, incorporating such changes, within ninety (90) days of receipt of such notice. In the event Tenant fails to deposit insurance Certificates as required herein, and such failure is not cured within ten (10) days following written notice thereof to Tenant, this Lease shall be in default without further notice to or cure right by Tenant, and Landlord shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish Landlord with renewals or binders in a timely manner, Landlord may (but shall not be required to), procure said insurance on Tenant's behalf and charge Tenant

the cost thereof, which amount shall be payable by Tenant to Landlord pursuant to the Reimbursement Procedure.

18.3.6 Default.

If Tenant fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, and such failure is not cured within ten (10) days following written notice thereof to Tenant, Landlord has the right to declare this Lease in default without further notice to Tenant, and Landlord shall be entitled to exercise all legal remedies.

18.3.7 No Limit on Liability.

The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease.

18.3.8 Compliance with Insurance Requirements.

Tenant agrees not to use the Premises in any manner that will result in the cancellation of any insurance Landlord may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjacent premises, notwithstanding that such use may be included within the Permitted Use. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises and represents to Landlord that Tenant will confirm that it is in compliance with such requirements at all times.

18.4 Waiver of Subrogation.

Tenant hereby releases the Landlord Parties from any and all liability or responsibility to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise for any loss or damage to the Premises, any Improvements, or any of Tenant's personal property or business caused by or arising from a fire or any other event that is covered by the insurance required to be carried pursuant to this Lease or is actually carried, even if such fire or other event shall have been caused by the fault or negligence of any of the Landlord Parties. Each Subtenant similarly releases the Landlord Parties. Tenant, and any Subtenant, shall also obtain an endorsement waiving the insurance company's subrogation rights against the Landlord Parties for any insurance policies required by the terms of this Lease. Tenant and Subtenant shall also defend and indemnify the Landlord Parties in the manner specified in Section 19.1 in the event any Person asserts such a claim.

18.5 Subtenants to Maintain Insurance.

All Subtenants shall maintain insurance in the amounts required under Section 18.2, which shall comply with the requirements of Section 18.3; provided; however, Subtenants shall not be required to maintain the All Risk Property Coverage pursuant to Section 18.2.3, but shall be required to maintain (a) business interruption and extra expense coverage, including a provision for the continuation of rent payments for 24 months, and (b) Property Insurance covering all furniture, personal property, business and trade fixtures, equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Subtenant's business personal property on the Premises. In addition, all Subleases shall provide that the Subtenant releases the Landlord Parties pursuant to the requirements of Section 18.4.

19. INDEMNITY

19.1 Indemnity.

Tenant hereby indemnifies and shall defend the Landlord Parties, at Tenant's sole cost and expense and with counsel reasonably acceptable to Landlord, and hold the Landlord Parties harmless from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (a) the performance by Tenant of its obligations under this Lease, (b) the construction of any Improvements or Alterations, (c) any breach by Tenant of its obligations under this Lease, (d) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Premises, (v) the use, occupancy, possession or operation of the Premises by any Tenant Party, or any acts or omissions of any Tenant Party, except only claims or litigation arising through the sole negligence or sole willful misconduct of Landlord (but subject to Section 18.4). Landlord, at its election, may conduct its own defense with its own counsel independent from Tenant's counsel (and in that event Tenant will select its own counsel) and the costs incurred by Landlord in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to immediate payment once incurred. The terms of this Article 19 shall survive the expiration or earlier termination of this Lease. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease or otherwise.

20. DAMAGE OR DESTRUCTION

20.1 Casualty.

In the event of any damage to or destruction of any Improvements, whether or not from a risk coverable by the insurance described in Article 17, Tenant shall promptly repair and restore such Improvements, in a manner approved in writing by Landlord, so that after such restoration and repair, the Improvements are at least as valuable and usable as immediately prior to such damage or destruction. Tenant shall be entitled to have any insurance policy proceeds held in trust with the Permitted Lender or other trustee selected pursuant to Section 18.2.3 disbursed as progress payments as the work of repair, restoration or replacement progresses, to be used solely for paying for such work; and upon completion of such work free and clear of liens, if required by the terms of the Permitted Encumbrance any remaining balance of any insurance proceeds shall be paid first to the Permitted Lender to the Permitted Encumbrance, and thereafter, if the Permitted Lender permits or requires by the terms of the Permitted Encumbrance, to Tenant. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal disbursement procedures (e.g. upon receipt of appropriate mechanic's lien releases, invoices, etc.) so long as such disbursement procedures are reasonably satisfactory to Landlord and ensure that the proceeds of insurance are applied to the costs of repairing or replacing the Improvements. To the extent that the insurance proceeds are insufficient to pay for the costs of repairing the damaged Improvements, Tenant shall pay such deficiency to the trustee for application to the restoration costs on or before the earlier to occur of (a) sixty (60) days from the date of such damage or destruction, or (b) the date the insurer first makes available such insurance proceeds for repair, restoration or replacement. In the event Tenant or the Permitted Lender fails to commence to repair, restore or replace the damaged Improvements (including without limitation, engaging architects and engineers to prepare plans and specifications for the restoration), or pursue any permits necessary to repair, restore or replace the damaged Improvements, within ninety (90) days of such damage or destruction or to diligently prosecute such work to completion, Tenant shall be deemed to be in default hereunder upon written notice

thereof from Landlord to Tenant and, in addition to any other remedies, Landlord shall be entitled to receive and retain such insurance proceeds to apply them to the repair, restoration and replacement of the Improvements. The provisions of Article 6 and Article 7 shall apply to all work performed pursuant to this Article. Notwithstanding the foregoing, if Tenant and the Permitted Lender are not able to obtain sufficient insurance proceeds (in the case of an insured casualty) or construction funds (in the case of an uninsured casualty) to commence repair, restoration or replacement of the damaged Improvements within ninety (90) days of such damage or destruction, and in the case of an insured casualty, Tenant and the Permitted Lender have used their best efforts to so obtain such insurance proceeds, or in the case of an uninsured casualty, Tenant and the Permitted Lender have used their best efforts to obtain sufficient construction funds, then Tenant and the Permitted Lender shall have such additional time as is necessary to obtain such insurance proceeds or construction funds (but in no event to exceed one hundred eighty (180) days from the date of such damage or destruction) in which to commence to repair, restore or replace the damaged Improvements.

20.2 Casualty During the Last Part of Term.

Notwithstanding Section 20.1 to the contrary, if there is damage or destruction to the Improvements during the last five (5) years of the Term (including all exercised options) and the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements as determined by the Demolition and Remediation Report, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (a) Tenant shall, within ninety (90) days after the date of the casualty, give Landlord written notice of its election to terminate ("**Notice of Election to Terminate**"); and (b) Tenant shall, at the election of Landlord (which election shall be communicated in writing to Tenant ("**Demolition Notice**") within thirty (30) days of Landlord's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed Improvements and any other Improvements that Landlord may designate in the Demolition Notice and, if applicable, remediate the Premises, and shall complete said demolition, removal and remediation and shall vacate the Premises within ninety (90) days of Landlord's delivery of the Demolition Notice (which vacation date shall fix the termination date of this Lease). Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's personal property that would be retained by Tenant at the end of the Term) paid as a result of the damage or destruction giving rise to the termination, shall be distributed in accordance with the following order of priority: first, to the payment of the costs to raze and remove the Improvements as required above, second, to repayment of any outstanding Permitted Encumbrance, if required by the terms thereof; and third, to Landlord all remaining insurance proceeds.

20.3 No Rental Abatement.

Tenant shall not be entitled to any abatement or reduction in the Rent during any period of time that any Improvements are in need of repair, restoration or replacement or are under construction for such repairs, restoration or replacements or any other period of time during the Term of this Lease.

20.4 Waiver of Statutory Provisions.

The provisions of this Lease, including this Article 20, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or Improvements, or any other portion thereof, and any California statute or regulation, now or hereafter in effect, regarding the rights or obligations of a tenant concerning damage or destruction following a casualty event are waived and shall have no application to this

Lease or any damage or destruction to all or any part of the Premises or Improvements as a result of a casualty event.

21. HAZARDOUS MATERIALS

21.1 Hazardous Materials.

21.1.1 Tenant Use of Hazardous Materials.

Tenant shall not cause or permit any Hazardous Material, or products or materials which include any hazardous substance as a component to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Premises or Improvements (collectively and individually, a "**Hazardous Materials Activity**") by Tenant or its agents, whether by a Tenant Party or any other Person unless expressly approved, at Landlord's sole discretion, in writing by Landlord after submittal by Tenant of Material Safety Data Sheets ("**MSDS**") or other information requested by Landlord regarding the Hazardous Material. Approval by Landlord of any Hazardous Materials Activity shall not create or impose any liability or obligation on Landlord with respect to such Hazardous Material or Hazardous Materials Activity and Tenant assumes all liability and obligations related thereto. All Hazardous Materials Activity shall be in strict compliance with all applicable Laws and other requirements in effect during the Term, including, without limitation, Laws and requirements that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment ("**Environmental Laws**") and shall comply at all times with all Environmental Laws.

21.1.2 Notice of Release or Investigation.

If Tenant becomes aware of (a) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Premises or (b) any notice, inquiry, investigation, proceeding, or claim by any government agency or other Person regarding the presence of any Hazardous Material on, in, under, from or about the Premises (collectively "**Inquiry**"), Tenant shall immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, provide verbal notice of the same to Landlord, and give Landlord written notice of the release or Inquiry within twenty-four (24) hours after Tenant learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Landlord copies of any notices of inquiry or investigation, claims, notices of violation, reports, warning or other writings received by Tenant that concern the release or Inquiry. Tenant shall provide Landlord with advance written notice of meetings scheduled with any federal, state or local government agency (such as, but not limited to, the United States Environmental Protection Agency, the Regional Water Quality Control Board, Department of Toxic Substances Control or Air Resources Board) ("**government agency**") that may be relevant to or potentially impact the Premises at least ten (10) full business days prior to such meeting or as soon as reasonably possible if the government agency schedules the meeting for less than ten (10) business days from the date the meeting is proposed. Landlord shall be entitled to have its representatives attend and participate in any and all such meetings. If the government agency brings up the Premises in any other scheduled meeting, Tenant shall suggest that a separate meeting should be scheduled so that Landlord can participate.

21.1.3 Landlord Right to Inspect and Data.

If Hazardous Materials Activity has occurred during the Term or is ongoing, Landlord or its designated representatives, at Landlord's sole discretion, may, but is in no way obligated to, enter upon the Premises and make any inspections, tests or measurements Landlord deems necessary or desirable to determine if a release or discharge of Hazardous Materials has

occurred. Landlord shall furnish Tenant a minimum of 24 hours' notice prior to conducting any inspections or tests, unless, in Landlord's sole judgment, circumstances require otherwise. Landlord shall use commercially reasonable efforts to conduct such tests in a manner so as to minimize any inconvenience and disruption to Tenant's operations as is reasonably practicable. If Landlord reasonably suspects a possible release of Hazardous Materials or a use of Hazardous Materials in violation of Environmental Law, then Landlord, at Landlord's sole discretion, may require Tenant, at Tenant's sole expense, to have additional investigation for such Hazardous Materials conducted by an environmental consultant or engineering firm designated by Landlord. Such tests may include, without limitation, the Premises and any area outside the Premises that Landlord reasonably believes may have been contaminated by a release or discharge at or from the Premises, including but not limited to soil, subsoil media, surface water, sediments, and groundwater. Tenant shall provide Landlord, as soon as reasonable after they become available to Tenant, access to all information reports and data obtained, generated or learned as a result of sampling or testing activities on the Premises, including raw and verified lab data and consultant reports. Landlord shall be permitted to have representatives present during any sampling or testing on or at the Premises or outside of the Premises, and may obtain split samples, if requested, copies of the results of on-site testing and visual inspections, and complete access to all samples and tests taken or conducted as a result of any investigations of the Premises. Access to any consultant reports issued by or on behalf of Tenant concerning the Premises shall be furnished to Landlord as soon as reasonable after the reports are finalized. Any environmental reports issued by or on behalf of Tenant regarding the Premises or Hazardous Material Activities related thereto shall first be generated in draft form and furnished to Landlord for review and comment. No such report will be made final until Landlord has had reasonable opportunity to review the draft and to identify any factual inaccuracies therein. Landlord's failure to inspect, test or take other actions pursuant to this Section 21.1.3 shall in no way relieve Tenant of any responsibility for a release of a Hazardous Material.

21.1.4 Clean-up Obligations.

If Hazardous Materials Activity, Tenant Hazardous Material, or Pre-Existing Hazardous Material has resulted or does result in contamination of the Premises and/or the Improvements, any adjacent or nearby property, the San Diego Bay or any soil, subsoil media, surface water, sediments, or groundwater, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to investigate, remove or remediate such Hazardous Materials in compliance with all Environmental Laws and in a manner and with results satisfactory to Landlord in Landlord's good faith discretion ("**Environmental Cleanup**"). Tenant shall provide notice to Landlord prior to performing any removal or remedial action. In the event that an Environmental Cleanup conducted by or required of Tenant interferes with the current or future use of the Premises or other property of Landlord, Tenant shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the clean-up activities and Landlord's request to alter the Environmental Cleanup because of the interference), upon notice from Landlord, as necessary to prevent and/or eliminate such interference. Tenant shall not propose, and Landlord is under no obligation to agree to, any covenant or use restriction or other institutional controls as part of any removal or remediation required as a result of this Section 21.1.4. Unless otherwise agreed in writing by Landlord, an Environmental Cleanup required under this Section shall avoid and not include the use of restrictive covenants or other institutional controls. To the extent Landlord incurs any costs or expenses in performing Tenant's obligation to conduct an Environmental Cleanup which is Tenant's obligation under this Lease or under Environmental Law, Tenant shall reimburse Landlord for all such costs and expenses in accordance with the Reimbursement Procedure. This provision does not limit the indemnification obligation set forth in Section 21.2 and 19.1.

21.1.5 Clean-up Extending Beyond Lease Term.

Should any Environmental Cleanup of Hazardous Materials for which Tenant is responsible not be completed prior to the expiration or sooner termination of this Lease, then: (a) Tenant shall deposit with Landlord (or if the parties agree in their sole discretion, into a third-party escrow) an amount of money equal to the balance of the estimated costs of the Environmental Cleanup for disbursement for such Environmental Cleanup costs, and (b) if the nature of the contamination or Environmental Cleanup required of Tenant is of such a nature as to make any portion of the Premises untenable or unleaseable, then Tenant shall be liable to Landlord as a holdover Tenant until the Environmental Cleanup has been sufficiently completed to render the Premises in full compliance with all Environmental Laws and to make the Premises suitable, in Landlord's good faith determination, for lease to third parties. The estimated cost of the Environmental Cleanup shall require the reasonable approval of the Landlord. Landlord shall release funds from such deposit from time to time to pay for such Environmental Cleanup costs incurred with Landlord's approval. To the extent Landlord estimates, at any time, that the funds remaining on deposit may not be sufficient to cover all remaining anticipated Environmental Cleanup costs, then Tenant shall deposit, within thirty (30) days of Landlord's written demand therefor, such additional funds with Landlord as Landlord may estimate at such time may be required to complete the Environmental Cleanup.

21.1.6 Financial Security.

If Landlord determines, in its reasonable discretion, that Tenant does not have insurance or other financial resources sufficient to enable Tenant to fulfill its obligations under this Article 21 whether or not accrued, liquidated, conditional, or contingent, then Tenant shall, at the request of Landlord, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Landlord as is appropriate to assure that Tenant will be able to perform its duties and obligations hereunder.

21.2 Hazardous Materials Indemnification.

Tenant hereby assumes for itself and shall indemnify and defend Landlord Parties, at Tenant's sole cost and expense and with counsel reasonably selected by Landlord, and hold the Landlord Parties harmless from any and all claims, demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, (judicial or administrative), judgments, and all Related Costs (whether or not based upon personal injury, negligence, strict liability, property damage, or contamination of, or adverse effects upon, the environment (including waters, sediment, and/or natural resources), including any loss of or damage to Landlord's real or personal property, and claims for cost recovery and contribution), which occur or arise during or after the Term relating to, or resulting from, any Hazardous Materials Activity, Tenant Hazardous Material or any Pre-Existing Hazardous Material or any breach by Tenant under this Article 21. Tenant's obligations under Article 21 (including the indemnification of Landlord by Tenant under this section) include, without limitation, any Environmental Cleanup required by this Lease, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Lease or any federal, state or local governmental agency because of Hazardous Materials present in the air, soil, subsoil media, surface water, sediments or ground water above, on, or under the Premises consistent with Tenant's obligations set forth in this Lease. The obligations apply whether or not the concentrations of any such Hazardous Material are material, the concentrations exceed state or federal maximum contaminant or action levels, or any government agency has issued a clean-up or other order. Landlord shall have a direct right of action against Tenant even if no third party

has asserted a claim. Furthermore, Landlord shall have the right to assign said indemnity and Environmental Cleanup requirements under Article 21. This indemnification and Environmental Cleanup requirements under Article 21 includes, but is not necessarily limited to:

- (a) Losses attributable to diminution in the value of the Premises;
- (b) Losses of rental or other income from the Premises;
- (c) Loss of or damage to natural resources;
- (d) Loss or restriction of use of rentable space(s) in the Premises;
- (e) Adverse effect on the marketing of any space(s) in the Premises;
- (f) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement or cost recovery or contribution actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses); and
- (g) All Related Costs (including, without limitation, reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Landlord in undertaking any assessment or remediation of the Premises that is not fully resolved by Tenant by the time this Lease terminates or expires.

21.3 Termination of Lease.

Upon the expiration or earlier termination of the Term, Tenant shall: (a) cause all Tenant Hazardous Material and Pre-Existing Hazardous Material to be removed from the Premises and disposed of in accordance with all applicable provisions of Environmental Law; (b) remove any underground or aboveground storage tanks or other containers installed or used by Tenant, or its predecessors, to store any Hazardous Material on the Premises, and repair any damage to the Premises caused by such removal; (c) cause any soil, subsoil media, surface waters, sediments, groundwater or other portion of the Premises which has become contaminated by any Hazardous Material to be decontaminated, detoxified, or otherwise cleaned-up in accordance with the applicable requirements of any relevant government authorities; and (d) surrender possession of the Premises to Landlord free of any Tenant Hazardous Material and Pre-Existing Hazardous Material.

21.4 Storage Tanks.

21.4.1 Storage Tanks.

No underground storage tanks ("**USTs**") or aboveground storage tanks ("**ASTs**") shall be permitted to be installed on or under the Premises without the prior written consent of Landlord in its sole and absolute discretion. In the event Tenant obtains such approval to install a UST or a AST on or under the Premises, Tenant shall be responsible for complying with all Laws pertaining to such UST or AST, including tank monitoring of such UST or AST as required by the County of San Diego Hazardous Material Management Division ("**HMMD**") or any other responsible agency. Tenant further agrees to take sole responsibility for reporting unauthorized releases from UST to HMMD and Landlord within twenty-four (24) hours after becoming aware of such unauthorized release. Tenant will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material or any required Environmental Cleanup including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. Tenant shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST or an AST. Tenant further agrees to be responsible for maintenance and repair of the USTs and ASTs;

obtaining tank permits; filing a business plan with HMMD or other responsible agency; and for paying for all regulatory agency fees relating to USTs and ASTs.

21.4.2 Records.

Tenant agrees to keep complete and accurate records regarding USTs and ASTs on the Premises for at least the prior three year period including, but not limited to, records relating to permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs and ASTs, and any unauthorized releases of Hazardous Materials. Tenant also agrees to make such records available for Landlord or responsible agency inspection. Tenant further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Tenant and any operator of USTs or ASTs.

21.4.3 Aboveground Storage Tanks.

In the event Tenant obtains such approval to install an AST, Tenant shall be responsible for complying with all Laws pertaining to such AST. Tenant shall, in accordance with this Lease and applicable Laws, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith. In addition, Tenant shall maintain and repair said tanks to conform and comply with all other applicable Laws for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing the San Diego Regional Water Quality Control Board ("**SDRWQCB**"), Landlord, and/or responsible agency, to conduct periodic inspections. Tenant also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by Law.

21.5 Environmental Covenants.

21.5.1 Regulated Waste Removal.

Tenant hereby acknowledges that excavation of soils, including sediment, from the Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "**Regulated Waste Removal**"). Landlord takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Tenant hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless the Landlord Parties from and against any and all claims (including under negligence or strict liability), liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

21.5.2 Residual Hazardous Materials.

Landlord shall have no liability or responsibility for ensuring that Tenant's workers, including without limitation those conducting testing, construction and maintenance activities on the Premises, are protected from residual contaminants in 29 Code of Federal Regulations ("**CFR**"). Tenant shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and

transient visitors. Tenant hereby waives any claim, or potential claim, it may have to recover any damages, losses, Related Costs related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless the Landlord Parties from and against any and all such Related Costs, claims (including under negligence or strict liability), liabilities, losses and damages, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

21.5.3 Covenant Not To Sue and Release of Landlord.

Tenant hereby RELEASES the Landlord Parties from, COVENANTS NOT TO SUE the Landlord Parties for, and agrees not to seek to have any regulatory agency or third party impose liability upon or seek damages or costs from Landlord for or related to, any contamination or violation of Environmental Laws existing at or arising from the Premises and ASSUMES FOR ITSELF (as between Tenant and Landlord Parties) all obligations, requirements and liabilities of Tenant under Article 21, including for claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of Tenant under Article 21, With respect to all releases made by Tenant under or pursuant to this Article 21, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the provision of California Civil Code § 1542 set forth in Article 22 below.

21.6 Survival.

The terms of this Article 21 shall survive the expiration or earlier termination of this Lease.

22. "AS-IS" LEASE AND WAIVERS

22.1 Tenant's Acknowledgment.

Tenant acknowledges that prior to entering into this Lease, Landlord has provided the disclosure required under California Health and Safety Code § 25359.7, as set forth in the Environmental Disclosure Addendum attached to this Lease as Exhibit I, which is incorporated herein by reference, and has given Tenant sufficient opportunity to consider, inspect and review, to Tenant's complete satisfaction: (a) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Premises; (b) the physical condition of the Premises, including, without limitation, the condition and value of any Improvements and the soils, subsoil media, sediments, surface waters and groundwaters at or under the Premises; (c) the risk of climate change and the possible adverse consequences thereof, including, without limitation, rises in sea level and possible damage to and destruction of the Premises; (d) the development potential of the Premises including without limitation on the preceding clause (c), the effect of all Laws, including, without limitation, those concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (e) the financial prospects of the Premises and local market conditions; (f) Tenant's determination of the feasibility of Tenant's intended use and enjoyment of the Premises; (g) the presence of any Pre-Existing Hazardous Material and any other contamination of the Premises, including the contamination of any Improvements, soils, subsoil media, groundwater and San Diego Bay water and sediment; and (h) all other facts, circumstances, and conditions affecting, concerning or relating to the Premises. The land use; the environmental, biological, physical and legal condition of the Premises; the risks associated with possible climate change; the feasibility of Tenant's intended use and enjoyment of the Premises; and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Premises"; and, without limitation on any other provision of this Lease, Tenant expressly assumes the risk that adverse conditions affecting the Premises have not been revealed by Tenant's investigations.

22.2 Only Landlord's Express Written Agreements Binding.

Tenant acknowledges and agrees that no Person acting on behalf of Landlord is authorized to make, and that except as expressly set forth in this Lease, neither Landlord nor anyone acting for or on behalf of Landlord has made, any representation, warranty, statement, guaranty or promise to Tenant, or to anyone acting for or on behalf of Tenant, concerning the Condition of the Premises or any other aspect of the Premises. Tenant further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any Person for or acting on behalf of Landlord which is not expressly set forth in this Lease will be valid or binding on Landlord.

22.3 As-Is Lease.

Tenant further acknowledges and agrees that Tenant's execution of this Lease shall constitute Tenant's representation, warranty and agreement that the Condition of the Premises has been independently verified by Tenant to its full satisfaction, and that, except to the extent of the express covenants of Landlord set forth in this Lease, Tenant will be leasing the Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Tenant's representatives; and that **TENANT IS LEASING THE PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE TENANT'S EXECUTION OF THIS LEASE.** Without limiting the scope or generality of the foregoing, Tenant expressly assumes the risk that the Premises do not or will not comply with any Laws now or hereafter in effect.

22.4 Waivers, Disclaimers and Indemnity.

22.4.1 Waiver and Disclaimer.

Tenant hereby fully and forever waives, and Landlord hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

22.4.2 Landlord's Materials.

Tenant further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Tenant has received or may hereafter receive from Landlord Parties or its agents or consultants (collectively the "Landlord's Materials") have been furnished without warranty of any kind and on the express condition that Tenant will make its own independent verification of the accuracy, reliability and completeness of such Landlord's Materials and that Tenant will not rely thereon. Accordingly, subject to terms of Section 22.4.3 below, Tenant agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Landlord Parties or any of the persons or entities who prepared or furnished any of the Landlord's Materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such Landlord's Materials and Tenant hereby fully and forever releases, acquits and discharges Landlord Parties and each Person furnishing such Landlord's Materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

22.4.3 Release and Waiver.

(a) *Release.* Except to the extent of **Claims** (as defined below) against Landlord arising from any breach by Landlord of its covenants and obligations expressly provided in this Lease, Tenant, on behalf of Tenant, each Tenant Party and their respective successors and assigns, hereby fully and forever releases, acquits and discharges Landlord of and from, and hereby fully, and forever waives and agrees not to assert or seek to have any third party or regulatory agency assert, any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, Related Costs, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "**Claims**"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that any Tenant Party or any of Tenant's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (i) any act or omission of Landlord (or any Person acting for or on behalf of Landlord or for whose conduct Landlord may be liable), whether or not such act be the active, passive or sole negligence of Landlord, in connection with prior ownership, maintenance, operation or use of the Premises; (ii) any condition of environmental contamination or pollution at the Premises (including, without limitation, any Pre-Existing Hazardous Material or other contamination or pollution of any soils, subsoil media, sediments, surface waters or ground waters at the Premises and any cleanup or abatement order effecting the Premises); (iii) to the extent not already included in clause (ii) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Premises or into any soils, subsoil media, sediments, surface waters or groundwaters at or under the Premises); (iv) the violation of, or noncompliance with, any Environmental Law or other applicable Law now or hereafter in effect, however and whenever occurring; (v) the condition of the soil at the Premises; (vi) the Condition of the Premises, including, without limitation, the condition of any Improvements including, without limitation, the structural integrity and seismic compliance of such Improvements; (vii) any matters which would be shown on an accurate ALTA land survey of the Premises (including, without limitation, all existing easements and encroachments, if any); (viii) all applicable Laws now or hereafter in effect; (ix) matters which would be apparent from a visual inspection of the Premises; or (x) to the extent not already covered by any of the foregoing clauses (i) through (ix) above, the use, maintenance, development, construction, ownership or operation of the Premises by Landlord or any predecessor(s)-in-interest in the Premises of Landlord.

(b) *Waiver of Civil Code Section 1542.* With respect to all releases made by Tenant under or pursuant to Article 21 and this Article 22, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR THE RELEASED PARTY.”

TENANT: _____

22.4.4 Survival.

The terms of this Article 22 shall survive the expiration or earlier termination of this Lease.

23. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION

Subject to the terms of this Article 23 and Article 7, upon the expiration or earlier termination of the Lease, all Improvements, excluding trade fixtures, shall become the property of Landlord and a part of the realty and shall be surrendered to Landlord. In order to confirm such transfer of ownership, at Landlord's request following the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord a Tenant-executed quitclaim deed in recordable form conveying the Improvements to Landlord free and clear of any mechanic's or materialmen's liens and other encumbrances. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such deed in the name and on behalf of Tenant and to record same in the official records of San Diego County, California. This power of attorney is irrevocable and coupled with an interest.

24. PEACEABLE SURRENDER

Upon expiration of this Lease or earlier termination thereof, Tenant shall peaceably surrender the Premises to Landlord in a broom clean condition with all refuse removed and in as good condition and repair as the Premises were at the Completion of the New Restaurant Improvements except for reasonable wear and tear, damage from casualty or Condemnation as permitted by this Lease, and except for as the Premises may have been rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease. Notwithstanding the foregoing, Tenant shall leave or remove such Improvements as directed by Landlord pursuant to Section 7.2, and surrender the Premises in the condition required under Section 7.2. If Tenant fails to surrender the Premises at the expiration of this Lease or the earlier termination or cancellation thereof in the condition required under this Lease, in addition to Landlord's other remedies, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding tenant claims based on Tenant's failure to surrender or Landlord's failure to deliver the Premises.

25. WAIVER

No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently. Any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment. The Landlord shall have the power and authority to waive any requirement of Tenant under this Lease except as such authority may be limited by the Port Act or BPC from time to time; provided, however, Landlord may elect to obtain approval of the BPC as a condition to exercising this authority.

26. HOLDOVER

This Lease shall terminate without further notice at expiration of the Term. Any holding over by Tenant after either expiration or termination without Landlord's written consent shall be a tenancy-at-sufferance upon all of the provisions of this Lease, except those pertaining to the Term, and except that Minimum Annual Rent shall be 150% of the Minimum Annual Rent in effect prior to the expiration or termination. If Tenant, with Landlord's consent, remains in possession

of the Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. All provisions of this Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and Tenant shall continue to pay all Rent required by this Lease. Notwithstanding anything herein to the contrary, in no event may the Term of this Lease, together with any holdover period, exceed sixty-six (66) years.

27. NOTICES

All notices provided for by this Lease or by Law to be given or served upon Landlord or Tenant shall be addressed as provided in Section 1.9 (as such address may have been changed by subsequent notice given to the other party) and shall be in writing and (a) personally served upon Landlord or Tenant, or any Person hereafter authorized by either party in writing to receive such notice, (b) delivered via reputable over-night courier service, or (c) delivered by U.S. postal service certified letter.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

28. SECURITY DEPOSIT

28.1 Amount of Security Deposit.

Any security deposit to be provided by Tenant in accordance with the terms of this Lease shall be held by Landlord and used for the purpose of remedying Tenant's defaults under this Lease. If there shall be any default under this Lease, beyond any applicable notice and/or cure periods, then Landlord shall have the right, but shall not be obligated, to use, apply or retain all or any portion of the security deposit for the payment of any (a) rent or any other sum applicable to such event, or (b) amount Landlord may spend or become obligated to spend, or for the compensation of Landlord for any losses incurred, by reason of such event (including any damage or deficiency arising in connection with the reletting of the Premises). If any portion of the security deposit (in whatever form) is so used or applied, then within three (3) business days after Landlord gives written notice to Tenant of such use or application, Tenant shall increase the Letter of Credit (as defined below) (or deliver to Landlord additional funds, in the case of a cash security deposit) in an amount sufficient to restore the security deposit to the original security deposit amount, and Tenant's failure to do so shall constitute a default under this Lease if such failure is not cured within the notice and cure period set forth in Section 12.1.2 above. Tenant waives any and all rights, Tenant may have under Section 1950.7 of the California Civil Code, any successor statute, and all similar provisions of Law, now or hereafter in effect. Tenant agrees that (i) any statutory time frames for the return of a security deposit are superseded by the express period identified in this Article 28, and (ii) Landlord may claim from the security deposit any and all sums expressly identified in this Article 28, and any additional sums reasonably necessary to compensate Landlord for any and all losses or damages caused by Tenant's default of this Lease, including, but not limited to, all damages or Rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code. Landlord shall not be required to keep the security deposit in trust, segregate it or keep it separate from Landlord's general funds, and Tenant shall not be entitled to interest on the security deposit.

28.2 Letter of Credit.

Except as provided below, the security deposit shall be in the form of an Irrevocable Stand-By Letter of Credit ("**Letter of Credit**") drawn on a bank having a branch located in San Diego County and having a Moody's Long Term Letter of Credit rating of single A or higher and a Moody's Long Term Deposit rating of single A or higher. The principal sum shall be made payable to Landlord or order. Each Letter of Credit provided during the Term shall be valid for a minimum of twelve (12) months from date of issuance. Provided, however, when the remaining Term is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the Expiration Date of this Lease. If a Letter of Credit is not valid for the entire remaining Term plus three (3) months beyond, then such Letter of Credit shall be extended or renewed at least ninety (90) days prior to its expiration.

All or any portion of the principal sum of the Letter of Credit shall be available unconditionally to Landlord for the purposes and uses provided herein. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the Landlord, in its sole discretion, and if not so acceptable, may be rejected. The Letter of Credit and Drawing Certificate shall not be acceptable if it requires Landlord to send written notice of default or request or demand payment from Tenant after default, prior to Landlord drawing on any funds under the Letter of Credit.

28.3 Cash Alternative.

Notwithstanding the above, if said security deposit or the cumulative total amount of security deposits required by Landlord under this Lease does not exceed Twenty-Five Thousand Dollars (\$25,000), Tenant may elect to provide said security deposit in the form of cash.

28.4 Adjustments.

In the event Tenant defaults in any of its obligations under this Lease past any applicable notice and cure period, Landlord may, in its sole and absolute discretion, require a security deposit not exceed three (3) times the average of the monthly Greater Of Rent payments during prior the year (or partial year) prior to Landlord implementing a security deposit requirement. In the event a security deposit is required, Tenant shall submit the additional security deposit within 60 days of notification of the same.

28.5 Maintain Through Term.

Tenant shall maintain the required security deposit continuously throughout the Term. The security deposit or the remaining portion thereof not used or applied by Landlord, shall be rebated, released, assigned, surrendered, or endorsed to Tenant or order, as applicable, within ninety (90) days following the expiration or earlier termination of this Lease.

29. GENERAL PROVISIONS

29.1 Terms; Captions.

The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.2 Binding Effect.

Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs,

successors or assigns, provided this clause shall not permit any Assignment by Tenant contrary to the provisions of Article 11 of this Lease.

29.3 No Merger.

If both Landlord's and Tenant's estates in the Premises become vested in the same owner (other than by termination of this Lease following a default hereunder, subject to the rights of a Permitted Lender pursuant to Section 10.3 above), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of any Permitted Lender.

29.4 Recording.

Upon a written request from Tenant, Landlord and Tenant shall execute a Memorandum of Lease in the form of Exhibit F attached hereto (the "**Memorandum of Lease**"). At Tenant's option, Tenant shall cause the Memorandum of Lease to be recorded at Tenant's sole cost and Tenant shall be solely responsible for any transfer taxes or fees required to be paid in connection with the recording of the Memorandum of Lease.

29.5 Transfer of Landlord's Interest.

Tenant acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, Landlord has the right to transfer all or any portion of its interest in the Premises and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer. Each landlord hereunder shall be liable only for those obligations arising during its period of ownership and shall be released from further obligations upon any transfer. The liability of Landlord and any transferee of Landlord shall be limited to their respective interests in the Premises, as the case may be, and Landlord and such transferee shall be without personal liability under this Lease, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.

29.6 Time of Essence.

Time is of the essence with respect to this Lease and each of its provisions.

29.7 Partial Invalidity.

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by Law.

29.8 Entire Agreement.

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter hereof. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of

this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. However, Tenant acknowledges and agrees that other documents may restrict Tenant's use of the Premises or impose other obligations not specifically referenced in this Lease including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

29.9 Joint and Several.

If there is more than one Person constituting Tenant (a) the obligations imposed upon such persons or entities under this Lease shall be joint and several and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of such persons and entities with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

29.10 Tenant's Authority.

If Tenant is a corporation, partnership or limited liability company, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises is located and that Tenant has full right and authority to execute and deliver this Lease and that each Person signing on behalf of Tenant is authorized to do so.

29.11 Financial and Other Information Supplied by Tenant.

Tenant represents and warrants that any financial or other information supplied by Tenant to Landlord regarding Tenant or any Guarantor prior to entering into the Lease or during the Term or regarding any Transfer, or to Tenant's actual knowledge, regarding any Transferee, is true and accurate and not misleading in any material respect. The breach of this warranty shall be a default of this Lease by Tenant.

29.12 Attorneys' Fees.

Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Landlord under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

29.13 Transaction Costs.

To the extent Tenant requests any approval, consent or other action by Landlord (including, without limitation, in connection with any proposed Alterations, Financing Transaction or Transfer), Tenant shall pay or reimburse Landlord, upon written demand therefor, all of Landlord's attorneys' fees and other third party costs incurred by Landlord relating to Landlord's review, together with Landlord's then current processing or cost recovery fee for similar transactions consistent with any schedule of such fees then utilized by Landlord. Landlord will provide Tenant with a copy of any such fee schedule following written request therefor from Tenant. Such costs and fees shall be payable to Landlord whether or not Landlord grants such approval or consent, or undertakes the action requested by Tenant.

29.14 Governing Law.

Venue for any legal proceeding shall be in San Diego County, California. This Lease shall be construed and enforced in accordance with the Laws of the State of California.

29.15 Brokers.

Landlord and Tenant each hereby warrant to each other that neither has retained or employed any real estate broker or agent in connection with the negotiation of this Lease. Tenant shall be solely responsible for the payment of any fee or commission due to any broker and agrees to indemnify and defend and hold Landlord harmless from any and all claims, demands, losses, liabilities, lawsuits and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing by Landlord.

29.16 Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

29.17 Drafting Presumption; Review Standard.

The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against the drafting party. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Lease, any approval or consent to be given by Landlord may be given or withheld in Landlord's sole discretion. For purposes of interpreting the environmental indemnity, cleanup, and restoration provisions of this Lease, where such provisions in the Original Lease are expressed differently in this Lease, the parties agree that such environmental provisions of this Lease shall not be construed to have a narrower or more limited interpretation than the analogous provisions of the Original Lease.

29.18 Estoppel Statement.

At any time and from time to time upon not less than fifteen (15) business days' notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord an estoppel statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rent has been paid, and stating whether or not Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying such default of which Tenant may have knowledge, and any other information regarding the Lease or Tenant's performance requested by Landlord. At any time and from time to time upon not less than fifteen (15) business days' notice by Tenant or a Permitted Lender, Landlord shall execute, acknowledge and deliver to such Permitted Lender an estoppel statement in the Form of Landlord's Estoppel Statement attached hereto as Exhibit H.

29.19 Certified Access Specialist.

For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a

Certified Access Specialist (“**CASp**”) (defined in California Civil Code Section 55.52(a)(3)). Pursuant to Section 1938 of the California Civil Code, Landlord hereby provides the following notification to Tenant: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the premises." If Tenant requests to perform a CASp inspection of the Premises, Tenant shall, at its sole cost, retain a CASp approved by Landlord (provided that Landlord may designate the CASp, at Landlord's option) to perform the inspection of the Premises at a time agreed upon by the parties. Tenant shall provide Landlord with a copy of any report or certificate issued by the CASp (the "CASp Report") and Tenant shall, at its sole cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CASp Report, which modifications will be completed in accordance with terms of this Lease, including, but not limited to, Section 6.2 hereof. Tenant agrees to keep the information in the CASp Report confidential except as necessary for the Tenant to complete such modifications.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, LANDLORD AND TENANT HAVE EXECUTED THIS LEASE AS OF THE EFFECTIVE DATE.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Adam Meyer
Director, Real Estate

**FERRY LANDING ASSOCIATES, LLC,
a California limited liability company**

By: _____]
Signature

NAME: _____

Its: _____

By: _____
Signature

NAME: _____

Its: _____

By: _____
Signature

DEFINITIONS

This Definitions Addendum constitutes a part of that certain Lease (the "**Lease**") entered into as of the Effective Date by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("**Landlord**") and FERRY LANDING ASSOCIATES, LLC, a California limited liability company ("**Tenant**") and by reference to the same in the Lease, the following definitions are incorporated into and constitute a part of the Lease.

DEFINITIONS ADDENDUM	
ADA:	the Americans with Disabilities Act, 42 U.S.C. §12101 (et seq.) and the regulations promulgated thereunder, as the same may be amended from time to time.
ADDITIONAL RENT:	all sums of money other than Minimum Annual Rent and Percentage Rent required to be paid by Tenant to Landlord under this Lease.
AFFILIATE:	any managing member or general partner of the subject Person (as the case may be), or any Person that Controls, is directly or indirectly Controlled by, or is under common ownership or Control with the subject Person.
AGGREGATE DEBT AMOUNT:	defined in Section 11.10.
ALTERATIONS:	any alterations, additions, installations, removals, demolitions, improvements or other physical changes to the Premises or any Improvements thereon following the Completion of the New Restaurant Improvements, including the alteration, addition, installation or removal of machines, equipment, appliances or fixtures.
ALTERATION PLANS:	defined in Section 6.2.
ASSIGNMENT:	any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of Tenant's interest in this Lease (including without limitation any easements), the leasehold estate created hereby, or the Premises, whether by operation of law or otherwise.
ASSIGNMENT PARTICIPATION FEE:	defined in Section 11.10.
ASTS:	defined in Section 21.4.1.
BANKRUPTCY CODE:	Title 11 of the United States Code, as amended.
BANKRUPTCY EVENT:	the occurrence with respect to Tenant, any Guarantor or any other Person liable for Tenant's obligations hereunder (including without limitation any general partner of Tenant) of any of the following: (a) such Person becoming insolvent, as that term is defined in the Bankruptcy Code; (b) appointment of a receiver or custodian for any property of such Person, or the institution of a foreclosure or attachment action upon any property of such Person; (c) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code or any insolvency laws;

DEFINITIONS ADDENDUM

	(d) filing of an involuntary petition against such Person as the subject debtor under the Bankruptcy Code or any insolvency laws, which either (1) is not dismissed within sixty (60) days after filing, or (2) results in the issuance of an order for relief against the debtor; (e) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors; or (f) an admission by Tenant or Guarantor of its inability to pay debts as they become due.
BMP:	defined in Section 15.1.
BPC:	Board of Port Commissioners of the San Diego Unified Port District.
BUILDABLE CONDITION:	defined in Section 7.2
CASP:	defined in Section 29.19.
CCC:	defined in Section 4.3.
CDP:	defined in Section 4.3.
CEQA:	defined in Section 4.3.
CERTIFICATES:	defined in Section 18.3.1.
CFR:	defined in Section 21.5.2.
CHANGE IN ENTITY:	includes, whether through one transaction or a series of transactions:
(I)	with respect to a corporation whose stock is not publicly traded through a nationally recognized exchange, partnership, association, limited liability company, or other entity (other than a corporation whose stock is traded through a nationally recognized exchange) any one or more of the following resulting in a change in Control of the subject entity: (A) the withdrawal, admittance or change, voluntary, involuntary or by operation of law or otherwise, of one or more of the partners, members or other principals or participants unless due to death or disability of the shareholders, partners and/or members, or (B) the assignment, hypothecation, pledge, encumbrance, transfer or sale, whether voluntary or involuntary or by operation of law or otherwise, of any stock, partnership, membership or equity interests (other than (i) to immediate family members by reason of gift or death, or (ii) to a family trust for the benefit of immediate family members), or (C) the dissolution, merger, consolidation or other reorganization of such corporation, partnership, association, limited liability company or other entity;
(ii)	with respect to a corporation whose stock is publicly held and traded through a nationally recognized exchange, the transfer or sale, voluntary or involuntary, of all or substantially all of the assets or stock of the corporation to a third party. Any event or transaction that would constitute a Change in Entity of a Tenant Parent, also shall constitute a Change in Entity of Tenant.
Claims:	defined in Section 22.4.3(a).
COMMENCEMENT DATE:	defined in Section 1.1.1

DEFINITIONS ADDENDUM	
COMPLETION AND COMPLETE:	shall mean that Tenant has obtained and delivered to Landlord a final certificate of occupancy for substantially all of the New Restaurant Improvements or Alterations, as applicable, from the appropriate governing authority. So long as Tenant is not contesting any liens in accordance with Section 9.4 (in which case the following information shall be provided as soon as practicable), then within (60) days of Completion, Tenant shall provide to Landlord (i) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, the New Restaurant Improvements or Alterations, as applicable, have been completed in accordance, in all material respects, with the Plans, and (ii) a copy of final lien releases in statutory form from all of Tenant's contractors and all subcontractors.
CONDEMNATION:	defined in Section 14.2.
CONDITION OF THE PREMISES:	defined in Section 22.1.
CONSTANT DOLLARS:	shall mean that the referenced dollar amount shall be adjusted on each anniversary of the Effective Date by an amount equal to the percentage increase in the CPI from the Effective Date to the most recent anniversary of the Effective Date preceding the date the Constant Dollar equivalent is to be calculated.
CONSTRUCTION COSTS:	defined in Section 6.1.4.
CONSTRUCTION REQUIREMENTS:	those requirements, conditions and procedures regulating the installation, construction, modification and repair of the Improvements (including the Existing Improvements and the New Restaurant Improvements) and Alterations as described in <u>Exhibit D</u> attached to this Lease.
CONTROL, CONTROLLED AND CONTROLLING:	shall be deemed to be either or both (i) the ownership of more than fifty percent (50%) of the stock or other voting interest of the subject entity or the ownership of beneficial interests in the subject entity, or (ii) the power to direct the management of the subject entity with respect to major decisions of the subject entity, whether through voting interests or by way of agreement.
CPI:	Consumer Price Index for All Urban Consumers for all items in Los Angeles, Long Beach, and Anaheim, CA. Items based on the period 1982 - 84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics, as the same may be substituted pursuant to Section 5.2.1(a).
DEFAULT RATE:	an annual rate equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.

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DEMOLITION AND REMEDIATION CONTRACTOR:	defined in Section 7.4.1.
DEMOLITION AND REMEDIATION REPORT:	defined in Section 7.4.1.
DEMOLITION AND REMEDIATION REPORT UPDATE:	defined in Section 7.4.2(a).
DEMOLITION AND REMEDIATION SECURITY AMOUNT:	defined in Section 7.4.2.
DEMOLITION AND REMEDIATION SECURITY FUNDING PERIOD:	defined in Section 7.4.2.
DEMOLITION NOTICE:	defined in Section 20.2.
DISCRETIONARY ACTION:	defined in Section 8.3.
DISCRETIONARY PROJECT:	defined in Section 8.1.
ENVIRONMENTAL CLEANUP:	defined in Section 21.1.4.
ENVIRONMENTAL LAWS:	defined in Section 21.1.1.
ESTIMATED DEMOLITION AND REMEDIATION COST:	defined in Section 7.4.2.
EXISTING IMPROVEMENTS:	shall mean any improvements (including utilities, storm drains and park ways) located upon the land (and water, if applicable) described in Section 1.2 that are in existence and located on, in, over or under the Premises as of the Effective Date, whether constructed by Landlord, a prior tenant or another third party. Landlord and Tenant acknowledge that the Existing Improvements (if any) are identified in the Basic Lease Provisions.
EXPIRATION DATE:	defined in Section 1.1.2 but if the Term has been validly extended pursuant to the Option to Extend, the Expiration Date shall be the last day of the Option Term.
FINANCIAL INSTITUTION:	shall mean (i) an insurance company qualified to do business in the state of California; or (ii) a U.S. federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof (e.g., the California State Teachers' Retirement System); or (iv) a real estate investment trust; or (v) any lender or investment fund whose regular on-going business includes real property secured

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	financing for commercial or industrial properties, or (vi) a combination of two or more of the preceding entities.
FINANCING PARTICIPATION FEE:	defined in Section 10.5.
FINANCING TRANSACTION:	defined in Section 10.1.1.
FORCE MAJEURE EVENT:	defined in Section 6.4.
FORECLOSURE PURCHASER:	defined in Section 10.3.3.
GOVERNMENT AGENCY:	defined in Section 21.1.2.
GREATER OF RENT:	defined in Section 5.1.
GROSS INCOME:	defined in Section 5.3.2(a).
GROSS PROCEEDS:	defined in Section 11.10.
HAZARDOUS MATERIAL:	shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a "Hazardous Material" or "Hazardous Substance" within the meaning of any applicable Law (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 25316 and anything that may result in contamination or pollution as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Law relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Law, Hazardous Material as defined herein includes any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any Environmental Laws.
HAZARDOUS MATERIALS ACTIVITY:	defined in Section 21.1.1.
IMPROVEMENTS:	those buildings, structures and other improvements (including vaults, utilities and other underground improvements) now (including any Existing Improvements, if applicable) or hereafter (including the New Restaurant Improvements and/or Alterations) located on, in, over or under the Premises.
INCURABLE DEFAULT:	defined in Section 10.3.2(b)
INITIAL TERM:	The "Initial Term" of this Lease is the Term prior to the timely and valid exercise of the Option to Extend.
INQUIRY:	defined in Section 21.1.2.
LANDLORD:	The San Diego Unified Port District, and where applicable the Landlord acting through the BPC.
LANDLORD END OF TERM ELECTION:	defined in Section 7.2.
LANDLORD PARTIES:	Landlord, its officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, successors and assigns.

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LATE CHARGES:	defined in Section 5.4.
LAWS:	All present and future California state, federal and local laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, including, without limitation, the ADA, and any law of like import, and all rules, regulations and government orders with respect thereto, including without limitation any of the foregoing relating to Hazardous Materials, environmental matters (including, but not limited to, Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, the Clean Water Act, Oil Pollution Act, the Toxic Substances Control Act and comparable and supplemental California laws), public health and safety matters and landmarks protection, as any of the same now exist or may hereafter be adopted or amended. Said Laws shall include, but are not limited to the Laws enacted by the San Diego Unified Port District Act, such as Article 10 of the San Diego Unified Port District Code; any applicable ordinances of the city in which the Premises are located, including the building code thereof, and any governmental permits and approvals, including, without limitation, any California Coastal Development Permit, applicable to the Premises or the use or development thereof.
LEASE YEAR:	a period of twelve (12) consecutive months commencing on the Commencement Date, and each successive twelve (12) month period thereafter during the Term; provided, however, that if the Commencement Date is not the first day of a month, then the first Lease Year shall be from the Commencement Date until the last day of the month in which the first anniversary of the Lease Commencement Date occurs and the second Lease Year shall commence on the first day of the month immediately following the first anniversary of the Commencement Date.
LEASEHOLD AWARD:	defined in Section 14.7.1.
LETTER OF CREDIT:	defined in Section 28.2.
MAJOR ALTERATIONS:	defined in Section 6.2.1.
MEMORANDUM OF LEASE:	defined in <u>Exhibit F</u> .
MINIMUM ANNUAL RENT:	defined in Section 1.4 above, as adjusted pursuant to Section 5.2.
MINIMUM CONSTRUCTION COST:	defined in Section 1.9.
MINIMUM RENT CPI ADJUSTMENT DATE:	defined in Section 1.4.1
MINIMUM RENT LOOK BACK ADJUSTMENT DATES:	defined in Section 1.4.2
MINOR ALTERATIONS:	defined in Section 6.2.2.
MSDS:	defined in Section 21.1.1.
NET PROCEEDS:	defined in Section 10.5.

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NEW LEASE:	defined in Section 10.3.2(d)
NEW RESTAURANT IMPROVEMENTS:	shall mean the New Restaurant Improvements to be developed by Tenant and described by the Plans referred to in <u>Exhibit C</u> to this Lease (as opposed to both Existing Improvements existing as of the Effective Date and subsequent Alterations).
NOTICE OF ELECTION TO TERMINATE:	defined in Section 20.2.
OFAC:	defined in Section 17.3.
OPTION TERM:	the extension of the Term through August 31, 2049 pursuant to a properly exercised Option to Extend.
OPTION TERM CONSIDERATION:	defined in Section 1.6.
OPTION TO EXTEND:	the extension period described in Section 1.1.3.
OUTSIDE CONSTRUCTION COMMENCEMENT DATE:	defined in Section 1.9.
OUTSIDE CONSTRUCTION COMPLETION DATE:	defined in Section 1.9.
PERCENTAGE RENT:	defined in Section 5.3.
PERCENTAGE RENT RATE:	defined in Section 5.3.
PERMITTED ENCUMBRANCE:	defined in Section 10.2.
PERMITTED LENDER:	defined in Section 10.2.
PERMITTED USE:	defined in Section 1.3.
PERSON:	any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.
PLANS:	defined in Section 6.1.
PMP:	defined in Section 1.3.
PMPA:	defined in Section 8.1.
PRE-EXISTING HAZARDOUS MATERIAL:	any Hazardous Material located on or under the Premises as of September 1, 1997, whether known or unknown, to the extent such Hazardous Material was re-suspended, released, redeposited, discharged, emitted, exacerbated by, requires investigation or remediation as a result of, or otherwise arises out of or results from, the use, occupancy, possession, or operation of the Premises subsequent to September 1, 1997, including to the extent such Hazardous Material has come to be located on any other property.

It shall be Tenant's obligation to prove that any Hazardous Material located the Premises as of September 1, 1997, has not been suspended, released, deposited, discharged, emitted, exacerbated by, does not require investigation or remediation as a result of, and/or does not otherwise arise out of or result from,

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	the use, occupancy, possession, or operation of the Premises subsequent to September 1, 1997.
PREMISES:	defined in Section 1.2.
PRIMARY USE:	defined in Section 1.3.
PROHIBITED PERSON:	defined in Section 17.3.
PROHIBITED PERSONS:	defined in Section 17.3.
PROPERTY EXPENSES:	defined in Section 16.2.
PWL:	defined in Section 6.7.1.
REGULATED WASTE REMOVAL:	defined in Section 21.5.1.
REIMBURSEMENT PROCEDURE:	defined in Section 5.7.
RELATED COSTS:	any costs, damages (of all kinds including punitive damage, diminution in value and loss of use), claims, liabilities, expenses (including reasonable attorneys', consultants' and experts' fees), losses, fines, penalties and court costs related to the subject matter of the Related Costs and amounts paid in settlement of any claims or actions related to the subject matter of the Related Costs.
REMOVAL EXTENSION:	defined in Section 7.5.
REMOVAL PERIOD:	defined in Section 7.4.1.
RENT:	defined in Article 5.
REVENUE:	shall mean all income, receipts, proceeds, amounts, money, cash, assets, property or other things of value, whether collected, uncollected, received, payable or accrued.
SUBLEASE:	any sublease (or sub-sublease or other level of sublease), and any occupancy, franchise, license, operating agreement, concession agreement or management agreement or other right to use applicable to this Lease or the Premises or any part thereof.
SUBTENANT:	any subtenant (or sub-subtenant or other level of subtenant), occupant, franchisee, licensee, operator, concessionaire or manager under any Sublease.
TAX EXPENSES:	shall have the meaning as defined in Section 16.1.
TENANT:	defined in the Preamble of this Lease.
TENANT ART INVESTMENT:	means 1% of the estimated Construction Costs of the New Restaurant Improvements and of any Major Alterations. .
TENANT HAZARDOUS MATERIAL:	any Hazardous Material (i) brought onto the Premises during the Term of this Lease by any Person, (ii) brought onto the Premises or any other property by Tenant or Tenant Party, or (iii) generated, re-suspended, released, deposited, discharged, emitted, or exacerbated by any of the same listed in (i) or (ii) hereof, including to the extent such Hazardous Material has come to be located on any other property.
TENANT PARENT:	a Person which Controls, directly or indirectly, Tenant.

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TENANT PARTY:	Tenant, its agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns and its Subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of those Subtenants.
TENANT RECORDS:	defined in Section 5.3.3(c).
TENANT RELATED PARTY:	(i) a corporation or other business entity into or with which Tenant shall be merged or consolidated (such as a "successor corporation"), or to which substantially all of the assets of Tenant may be transferred or sold; or (ii) a corporation or other business entity (a "related corporation") which shall Control, be Controlled by or be under common Control with Tenant.
TERM:	defined in Section 1.1.
THIRD PARTY:	defined in Section 11.10.
TRANSFER:	defined in Section 11.1.
TRANSFER NOTICE:	defined in Section 11.2.
TRANSFeree:	defined in Section 11.2 and 11.3.
USA PATRIOT ACT:	defined in Section 17.3.
USTs:	defined in Section 21.4.1.

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

(attached)

EXHIBIT "A"
LEGAL DESCRIPTION

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1: WATER AREA

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED "SDUPD-029" AS SHOWN ON RECORD OF SURVEY MAP NO. 16668, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON JULY 25, 2000; THENCE ALONG A TIE-LINE ONLY SOUTH 21°07'34" WEST A DISTANCE OF 100.64 FEET TO A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 60, AS SAID ORDINARY HIGH WATER MARK IS DELINEATED ON THE ABOVE DESCRIBED MISCELLANEOUS MAP 564; THENCE ALONG SAID ORDINARY HIGHWATER MARK SOUTH 26°57'01" WEST A DISTANCE OF 217.53' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 61; THENCE NORTH 63°06'55" WEST A DISTANCE OF 558.87' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 62, ALSO BEING THE **POINT OF BEGINNING** OF PARCEL 6; THENCE SOUTH 26°56'57" WEST A DISTANCE OF 165.42' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 63; THENCE LEAVING SAID ORDINARY HIGH WATER MARK NORTH 63°04'33" WEST A DISTANCE OF 45.04' FEET TO A POINT HEREINAFTER KNOWN AS **POINT A**; THENCE LEAVING SAID POINT A THENCE NORTH 26°56'39" EAST A DISTANCE OF 458.24' FEET TO THE **POINT OF BEGINNING** OF PARCEL 1; THENCE NORTH 26°56'39" EAST 207.94 FEET; THENCE SOUTH 58°24'02" EAST A DISTANCE OF 410.80 FEET; THENCE SOUTH 31°42'55" WEST A DISTANCE OF 195.38 FEET TO A POINT HEREINAFTER KNOWN AS **POINT B**; THENCE LEAVING SAID POINT B SOUTH 31°42'55" WEST A DISTANCE OF 74.15 FEET TO A POINT HEREINAFTER KNOWN AS **POINT C**; THENCE LEAVING SAID POINT C NORTH 56°46'14" WEST A DISTANCE OF 88.65 FEET; THENCE NORTH 19°03'52" EAST A DISTANCE OF 56.54 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75°06'03" AN ARC DISTANCE OF 32.77 FEET; THENCE NORTH 56°02'11" WEST A DISTANCE OF 98.74 FEET; THENCE NORTH 49°31'45" WEST A DISTANCE OF 49.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°46'12" AN ARC DISTANCE OF 38.73 FEET; THENCE SOUTH 41°42'03" WEST A DISTANCE OF 35.00 FEET; THENCE NORTH

68°16'22" WEST A DISTANCE OF 60.00 FEET; THENCE NORTH 21°43'38" EAST A DISTANCE OF 18.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°33'30" AN ARC DISTANCE OF 35.59 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 87,751 SQUARE FEET OR 2.01 ACRES, MORE OR LESS.

PARCEL 2: WATER AREA

COMMENCING AT POINT B OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCEL 2; THENCE ALONG THE SOUTHEASTERLY LINE OF PARCEL 1 NORTH 31°42'55" EAST A DISTANCE OF 195.38 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE SOUTH 58°24'02" EAST A DISTANCE OF 195.17 FEET; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 152.57 FEET TO THE BEGINNING OF A NON-TANGENT 35 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 70°23'55" EAST; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°51'30" AN ARC DISTANCE OF 26.79 FEET; THENCE NORTH 63°27'35" WEST A DISTANCE OF 148.84 FEET TO THE BEGINNING OF A TANGENT 38 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°49'30" AN ARC DISTANCE OF 56.26 FEET TO THE **POINT OF BEGINNING** OF PARCEL 2.

SAID PARCEL CONTAINS 30,845 SQUARE FEET OR 0.708 ACRES, MORE OR LESS.

PARCEL 3: LAND AREA

COMMENCING AT POINT C OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCELS 3 AND 4; THENCE NORTH 31°42'55" EAST A DISTANCE OF 74.15 FEET TO THE BEGINNING OF A TANGENT 38.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°49'30" AN ARC DISTANCE OF 56.26 FEET; THENCE SOUTH 63°27'35" EAST A DISTANCE OF 148.84 FEET TO THE BEGINNING OF A TANGENT 35.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°51'30" A DISTANCE OF 26.79 FEET; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 118.58 FEET; THENCE NORTH 62°00'30" WEST A DISTANCE OF 25.26 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°39'51" AN ARC DISTANCE OF 2.57 FEET; THENCE NORTH 66°00'04" WEST A DISTANCE OF 21.50 FEET; THENCE SOUTH 16°54'59" WEST A DISTANCE OF 10.09 FEET TO THE BEGINNING OF A TANGENT 1.82 FOOT RADIUS

72°49'46" WEST A DISTANCE OF 15.09 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°35'22" A DISTANCE OF 3.13 FEET; THENCE NORTH 16°45'36" EAST A DISTANCE OF 16.33 FEET; THENCE NORTH 73°15'43" WEST A DISTANCE OF 124.89 FEET; THENCE SOUTH 17°05'16" WEST A DISTANCE OF 16.90 FEET TO THE BEGINNING OF A TANGENT 3.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 87°41'05" AN ARC DISTANCE OF 4.59 FEET; THENCE NORTH 75°13'39" WEST A DISTANCE OF 27.41 FEET TO THE BEGINNING OF A TANGENT 28.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°23'11" A DISTANCE OF 6.54 FEET; THENCE NORTH 26°56'39" EAST 168.73 FEET TO A NON-TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE TO SAID CURVE BEARS NORTH 30°10'08" EAST; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°33'30" AN ARC DISTANCE OF 35.59 FEET; THENCE SOUTH 21°43'38" WEST A DISTANCE OF 18.00 FEET; THENCE SOUTH 68°16'22" EAST A DISTANCE OF 60.00 FEET; THENCE NORTH 41°42'03" EAST A DISTANCE OF 35.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°46'12" AN ARC DISTANCE OF 38.73 FEET; THENCE SOUTH 49°31'45" EAST A DISTANCE OF 49.00 FEET; THENCE SOUTH 56°02'11" EAST A DISTANCE OF 98.74 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75°06'03" AN ARC DISTANCE OF 32.77 FEET; THENCE SOUTH 19°03'52" WEST A DISTANCE OF 56.54 FEET; THENCE SOUTH 56°46'14" EAST A DISTANCE OF 88.65 FEET TO THE **POINT OF BEGINNING** OF PARCELS 3 AND 4

SAID PARCEL CONTAINS 40588.82 SQUARE FEET OR 0.932 ACRES, MORE OR LESS.

PARCEL 5: PARKING AREA

COMMENCING AT A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 60 AS DESCRIBED IN SAID MISCELLANEOUS MAP NO. 564; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 37.69 FEET TO THE **POINT OF BEGINNING** OF PARCEL 5; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 179.84 FEET; THENCE NORTH 63°06'55" WEST A DISTANCE OF 444.73 FEET; THENCE NORTH 27°14'48" EAST A DISTANCE OF 17.78 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°17'10" AN ARC DISTANCE OF 3.15 FEET; THENCE NORTH 63°02'22" WEST A DISTANCE OF 14.50 FEET; THENCE NORTH 26°49'41" EAST A DISTANCE OF 85.16 FEET; THENCE SOUTH 63°09'41" EAST A DISTANCE OF 12.99 FEET TO THE BEGINNING OF A TANGENT 1.50 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH

A CENTRAL ANGLE OF $76^{\circ}15'07''$ AN ARC DISTANCE OF 2.00 FEET; TO THE BEGINNING OF A COMPOUND 16.75 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $118^{\circ}44'49''$ AN ARC DISTANCE OF 34.71 FEET TO THE BEGINNING OF A COMPOUND 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $84^{\circ}38'59''$ A DISTANCE OF 2.95 FEET; THENCE SOUTH $17^{\circ}11'25''$ WEST A DISTANCE OF 16.10 FEET; THENCE NORTH $73^{\circ}07'04''$ WEST A DISTANCE OF 75.93 FEET; THENCE NORTH $18^{\circ}01'03''$ EAST A DISTANCE OF 17.71 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $88^{\circ}12'33''$ AN ARC DISTANCE OF 3.08 FEET TO THE BEGINNING OF A COMPOUND 20.50 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $84^{\circ}24'11''$ AN ARC DISTANCE OF 30.20 FEET TO THE BEGINNING OF A COMPOUND 2.50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $85^{\circ}43'24''$ AN ARC DISTANCE OF 3.74 FEET; THENCE SOUTH $60^{\circ}19'05''$ EAST A DISTANCE OF 15.86 FEET; THENCE SOUTH $30^{\circ}24'29''$ WEST A DISTANCE OF 8.27 FEET; THENCE SOUTH $58^{\circ}37'04''$ EAST A DISTANCE OF 17.94 FEET; THENCE SOUTH $30^{\circ}39'31''$ WEST A DISTANCE OF 8.53 FEET; THENCE NORTH $59^{\circ}04'34''$ WEST A DISTANCE OF 5.41 FEET; THENCE SOUTH $30^{\circ}47'23''$ WEST A DISTANCE OF 16.83 FEET; THENCE SOUTH $58^{\circ}31'09''$ EAST A DISTANCE OF 5.36 FEET; THENCE SOUTH $30^{\circ}53'35''$ WEST A DISTANCE OF 34.00 FEET; THENCE NORTH $59^{\circ}34'22''$ WEST A DISTANCE OF 18.00 FEET; THENCE SOUTH $31^{\circ}11'22''$ WEST A DISTANCE OF 16.61 FEET; THENCE NORTH $60^{\circ}01'01''$ WEST A DISTANCE OF 7.31 FEET; THENCE SOUTH $26^{\circ}56'57''$ WEST A DISTANCE OF 171.46 FEET; THENCE NORTH $63^{\circ}04'33''$ WEST A DISTANCE OF 45.04 FEET TO A SAID **POINT A**; THENCE LEAVING SAID **POINT A** NORTH $26^{\circ}56'39''$ EAST A DISTANCE OF 289.51 FEET TO THE BEGINNING OF A NON-TANGENT 28.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL LINE TO SAID CURVE BEARS SOUTH $28^{\circ}09'32''$ WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $13^{\circ}23'11''$ AN ARC DISTANCE OF 6.54 FEET; THENCE SOUTH $75^{\circ}13'39''$ EAST A DISTANCE OF 27.41 FEET TO THE BEGINNING OF A TANGENT 3.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID ARC THROUGH A CENTRAL ANGLE OF $87^{\circ}41'04''$ AN ARC DISTANCE OF 4.59 FEET; THENCE NORTH $17^{\circ}05'16''$ EAST A DISTANCE OF 16.90 FEET; THENCE SOUTH $73^{\circ}15'43''$ EAST A DISTANCE OF 124.89 FEET; THENCE SOUTH $16^{\circ}45'36''$ WEST A DISTANCE OF 16.33 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $89^{\circ}35'22''$ AN ARC DISTANCE OF 3.13 FEET; THENCE SOUTH $72^{\circ}49'46''$ EAST A DISTANCE OF 15.09 FEET; THENCE SOUTH $71^{\circ}47'27''$ EAST A DISTANCE OF 6.80 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $78^{\circ}08'29''$ AN ARC DISTANCE OF 2.73 FEET; THENCE NORTH $30^{\circ}04'04''$ EAST A DISTANCE OF 16.03 FEET; THENCE SOUTH $59^{\circ}43'08''$ EAST A DISTANCE OF

69.08 FEET; THENCE SOUTH 30°03'40" WEST A DISTANCE OF 15.90 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE A CENTRAL ANGLE OF 90°31'09" AN ARC DISTANCE OF 3.16 FEET; THENCE SOUTH 60°27'29" EAST A DISTANCE OF 20.56 FEET TO THE BEGINNING OF A TANGENT 1.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°42'52" AN ARC DISTANCE OF 1.55 FEET; THENCE NORTH 30°49'39" EAST A DISTANCE OF 16.77 FEET; THENCE SOUTH 59°21'04" EAST A DISTANCE OF 59.52 FEET; THENCE SOUTH 30°04'06" WEST A DISTANCE OF 16.01 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°53'58" AN ARC DISTANCE OF 3.14 FEET; THENCE SOUTH 59°49'52" EAST A DISTANCE OF 12.68 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°20'30" AN ARC DISTANCE OF 3.12 FEET; THENCE NORTH 30°49'38" EAST A DISTANCE OF 15.94 FEET; THENCE SOUTH 59°29'18" EAST A DISTANCE OF 64.74 FEET; THENCE SOUTH 73°23'11" EAST A DISTANCE OF 43.00 FEET; THENCE SOUTH 16°02'04" WEST A DISTANCE OF 16.04 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°28'17" AN ARC DISTANCE OF 3.12 FEET; THENCE SOUTH 73°26'13" EAST A DISTANCE OF 18.75 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°45'38" A DISTANCE OF 3.13 FEET; THENCE NORTH 16°48'09" EAST A DISTANCE OF 16.19 FEET; THENCE SOUTH 73°38'32" EAST A DISTANCE OF 67.98 FEET; THENCE SOUTH 15°33'44" WEST A DISTANCE OF 16.47 FEET TO THE BEGINNING OF A TANGENT 1.81 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 178°38'44" AN ARC DISTANCE OF 5.66 FEET; THENCE NORTH 16°54'59" EAST A DISTANCE OF 10.09 FEET; THENCE SOUTH 66°00'04" EAST A DISTANCE OF 21.50 FEET TO THE BEGINNING OF A NON-TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, A RADIAL LINE TO SAID CURVE BEARS NORTH 78°20'39" WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°39'51" AN ARC DISTANCE OF 2.57 FEET; THENCE SOUTH 62°00'30" EAST A DISTANCE OF 25.26 FEET TO THE **POINT OF BEGINNING** OF PARCEL 5.

SAID PARCEL CONTAINS 98005 SQUARE FEET OR 2.250 ACRES, MORE OR LESS.

PARCEL 6: LAND AREA

BEGINNING AT A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 62 AS DESCRIBED IN SAID MISCELLANEOUS MAP NO. 564, HEREINAFTER KNOW AS THE **POINT OF BEGINNING** OF PARCEL 6; THENCE LEAVING SAID

ORDINARY HIGH WATER MARK NORTH 26°56'57" EAST A DISTANCE OF 6.04 FEET; THENCE SOUTH 60°01'01" EAST A DISTANCE OF 7.31 FEET; THENCE NORTH 31°11'22" EAST A DISTANCE OF 16.61 FEET; THENCE SOUTH 59°34'22" EAST A DISTANCE OF 18.00 FEET; THENCE NORTH 30°53'35" EAST A DISTANCE OF 34.00 FEET; THENCE NORTH 58°31'09" WEST A DISTANCE OF 5.36 FEET; THENCE NORTH 30°47'23" EAST A DISTANCE OF 16.83 FEET; THENCE SOUTH 59°04'34" EAST A DISTANCE OF 5.41 FEET; THENCE NORTH 30°39'31" EAST A DISTANCE OF 8.53 FEET; THENCE NORTH 58°37'04" WEST A DISTANCE OF 17.94 FEET; THENCE NORTH 30°24'29" EAST A DISTANCE OF 8.27 FEET; THENCE NORTH 60°19'05" WEST A DISTANCE OF 15.86 FEET TO THE BEGINNING OF A TANGENT 2.50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°43'24" AN ARC DISTANCE OF 3.74 FEET TO THE BEGINNING OF A COMPOUND 20.50 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°24'11" AN ARC DISTANCE OF 30.20 FEET TO THE BEGINNING OF A COMPOUND 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°12'33" AN ARC DISTANCE OF 3.08 FEET; THENCE SOUTH 18°01'03" WEST A DISTANCE OF 17.71 FEET; THENCE SOUTH 73°07'04" EAST A DISTANCE OF 75.93 FEET; THENCE NORTH 17°11'25" EAST A DISTANCE OF 16.10 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°38'59" AN ARC DISTANCE OF 2.95 FEET TO THE BEGINNING OF A COMPOUND 16.75 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 118°44'49" AN ARC DISTANCE OF 34.71 FEET TO THE BEGINNING OF A COMPOUND 1.50 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 76°15'07" AN ARC DISTANCE OF 2.00 FEET; THENCE NORTH 63°09'41" WEST A DISTANCE OF 12.99 FEET; THENCE SOUTH 26°49'41" WEST A DISTANCE OF 85.16 FEET; THENCE SOUTH 63°02'22" EAST A DISTANCE OF 14.50 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°17'10" A DISTANCE OF 3.15 FEET; THENCE SOUTH 27°14'48" WEST A DISTANCE OF 17.78 FEET TO A POINT ON THE SAID ORDINARY HIGH WATER MARK; THENCE ALONG SAID ORDINARY HIGH WATER MARK NORTH 63°06'55" WEST A DISTANCE OF 114.14 FEET TO ORDINARY HIGH WATER MARK STATION 62 AND THE **POINT OF BEGINNING** OF PARCEL 6.

SAID PARCEL CONTAINS 9,030 SQUARE FEET OR 0.207 ACRES, MORE OR LESS.

PARCEL 7: PUBLIC ACCESS EASEMENT AREA

BEGINNING AT POINT A OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCEL 7; THENCE NORTH 63°04'33" WEST A DISTANCE OF 30.00 FEET; THENCE NORTH 26°56'39" EAST A DISTANCE OF 299.42 FEET; THENCE SOUTH 85°34'34" EAST A DISTANCE OF 32.48 FEET; THENCE SOUTH 26°56'39" WEST A DISTANCE OF 311.84 FEET TO THE **POINT OF BEGINNING** OF PARCEL 7.

SAID PARCEL CONTAINS 9,169 SQUARE FEET OR 0.210 ACRES, MORE OR LESS.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS' ACT.


 07-12-2024
GARY L. HUS DATE
LS 7019








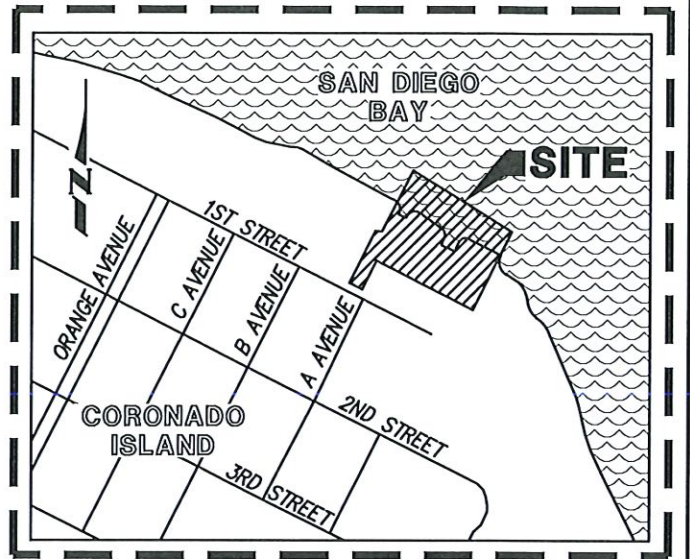
EXHIBIT B

DEPICTION OF PREMISES

(attached)

LEGEND

-  INDICATES LAND LEASE PARCEL
-  INDICATES WATER LEASE PARCEL
-  INDICATES ORDINARY HIGH WATER MARK (OHWM) STATION PER R.O.S. 16818.
-  INDICATES 3" DIAMETER BRASS DISK GPS POINT MARKED "SDUPD-029" AS SHOWN ON ROS No. 16668
- P.O.C.** INDICATES POINT OF COMMENCEMENT
- P.O.B.** INDICATES POINT OF BEGINNING
-  INDICATES 15' WIDE UTILITY/PUBLIC ACCESS EASEMENT



VICINITY MAP
NO SCALE

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6, EPOCH 1991.35 GRID BEARING BETWEEN FIRST ORDER G.P.S. POINT NO. 30 AND FIRST ORDER G.P.S. POINT NO. 29 AS SHOWN HEREON PER ROS 16668.

NORTH 67°18'04" WEST GRID

DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY BY 1/1.00001987. QUOTED BEARINGS FROM REFERENCE DEEDS/MAPS MAY OR MAY NOT BE IN TERMS OF SAID SYSTEM.



PROJECT DESIGN CONSULTANTS

a BOWMAN company
Planning | Landscape Architecture | Engineering | Survey

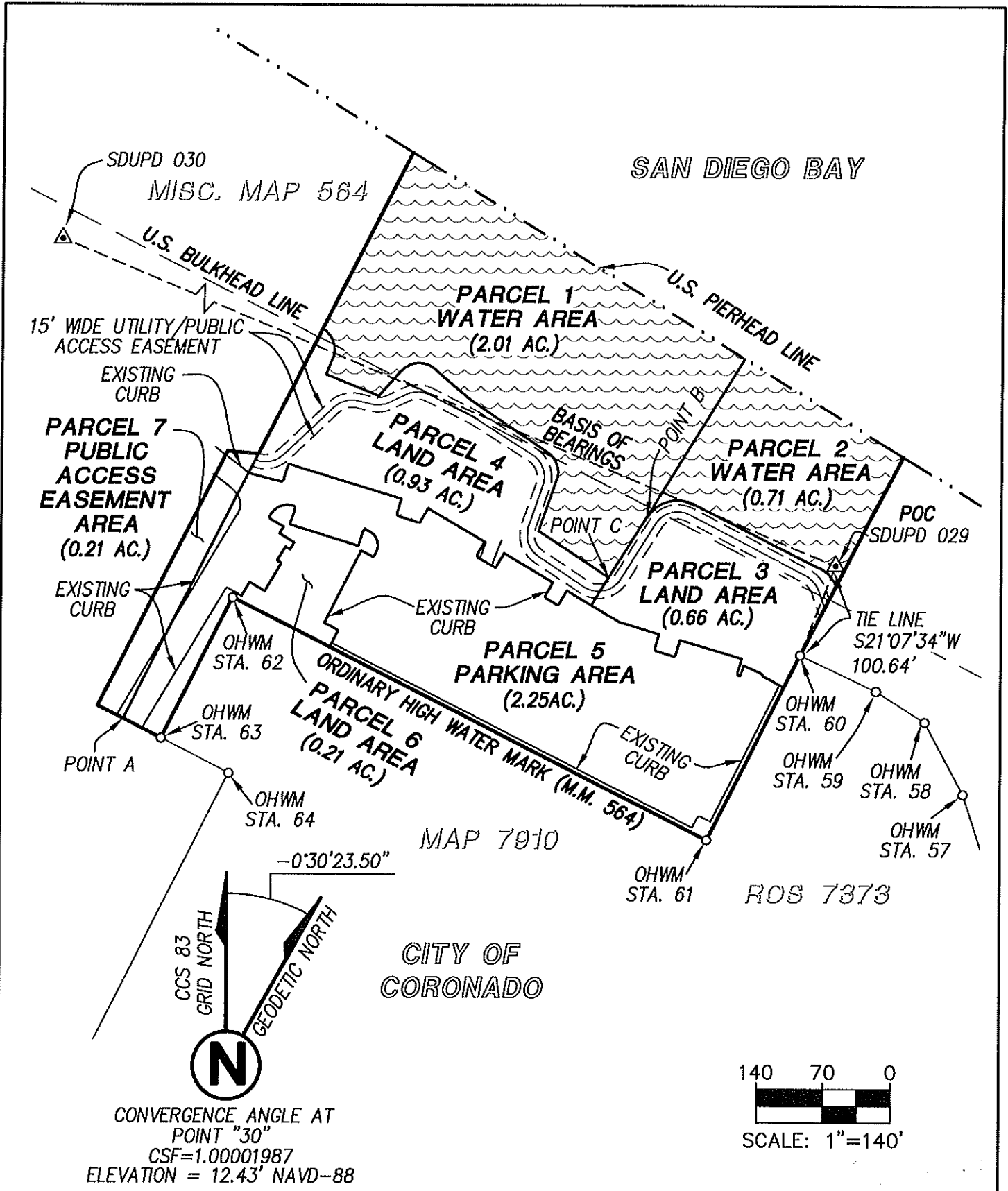
701 B Street, Suite 800 San Diego, CA 92101
619.235.6471 Tel 619.234.0349 Fax

Gary L. Hus 07-12-2024
GARY L. HUS DATE
L.S. 7019

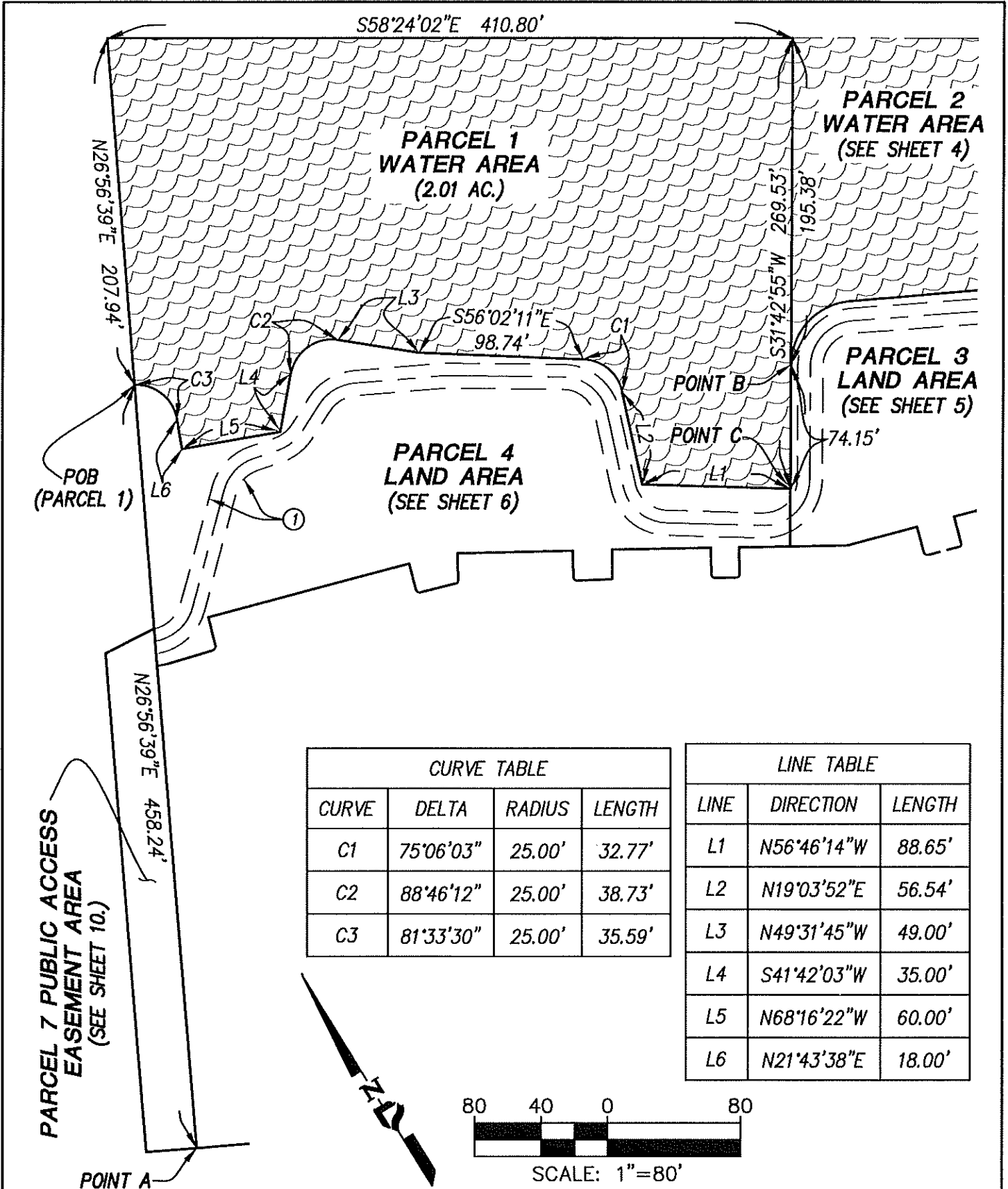
DRAWN KP
CHECKED MM
REVIEWED GLH
DATE:

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE
SCALE
REF.
DRAWING NO.
SHEET 1 OF 10
003-041

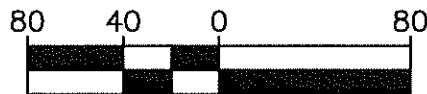


DRAWN <u> KP </u> CHECKED <u> MM </u> REVIEWED <u> GLH </u>	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND LEASE WITHIN CORPORATE LIMITS OF CORONADO - SAN DIEGO FERRY LANDING ASSOCIATES, LLC	DATE <u> 6/19/2024 </u> SCALE <u> 1" = 140' </u> REF. _____
		DRAWING NO. SHEET 2 OF 10 003-041



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	75°06'03"	25.00'	32.77'
C2	88°46'12"	25.00'	38.73'
C3	81°33'30"	25.00'	35.59'

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N56°46'14"W	88.65'
L2	N19°03'52"E	56.54'
L3	N49°31'45"W	49.00'
L4	S41°42'03"W	35.00'
L5	N68°16'22"W	60.00'
L6	N21°43'38"E	18.00'



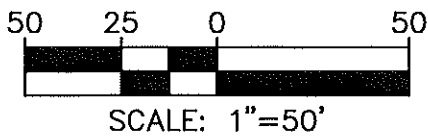
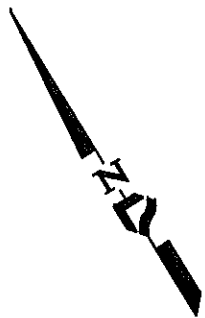
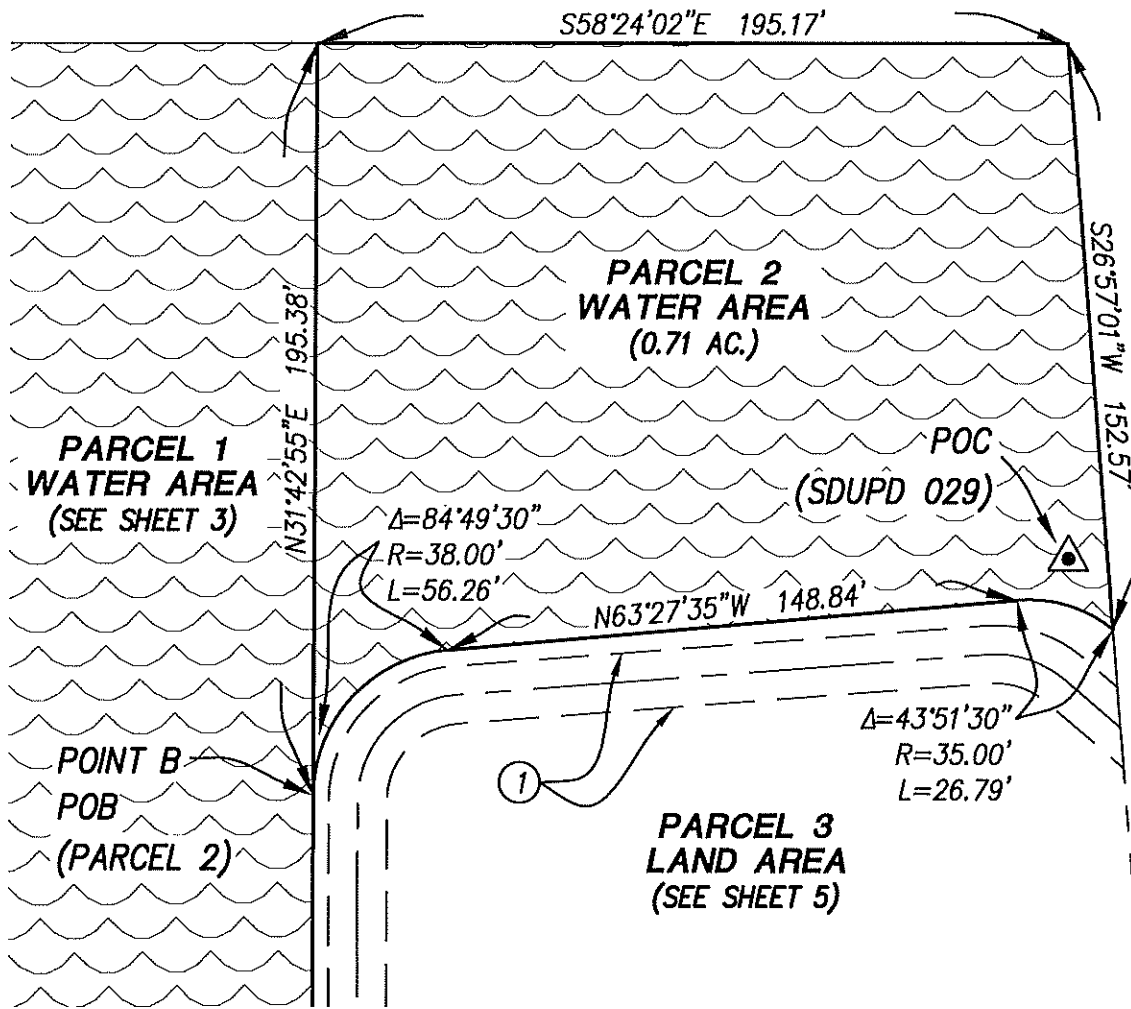
SCALE: 1"=80'

DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 80'
 REF.

DRAWING NO.
SHEET 3 OF 10
003-041

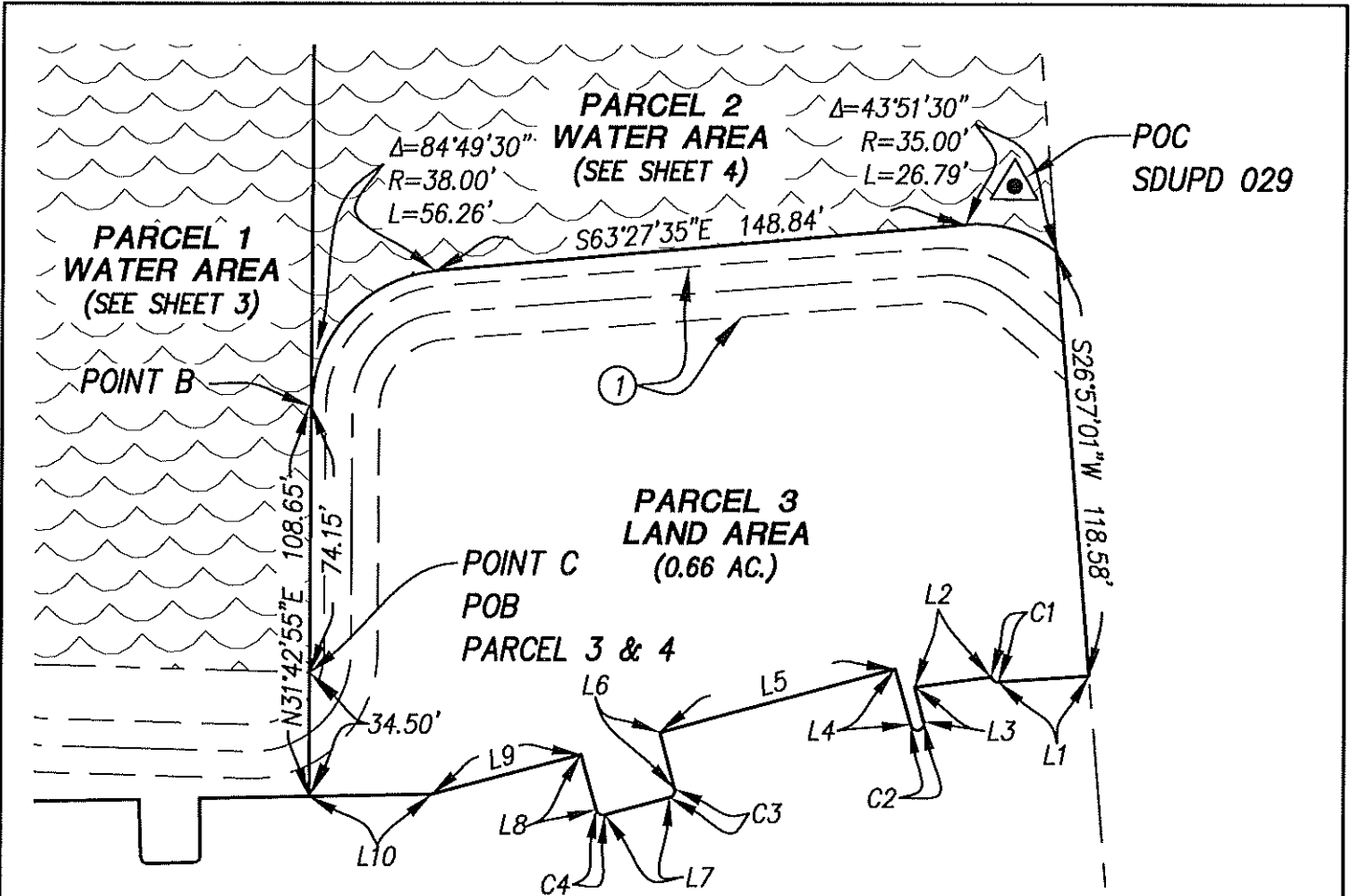


DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

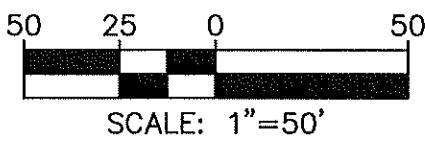
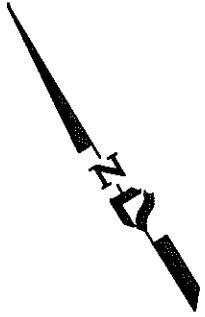
DATE 02/06/2023
 SCALE 1" = 50'
 REF.

DRAWING NO.
SHEET 4 OF 10
003-041



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	73°39'51"	2.00'	2.57'
C2	178°38'44"	1.82'	5.66'
C3	89°45'38"	2.00'	3.13'
C4	89°28'17"	2.00'	3.12'

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N62°00'30"W	25.26'
L2	N66°00'04"W	21.50'
L3	S16°54'59"W	10.09'
L4	N15°33'44"E	16.47'
L5	N73°38'32"W	67.98'
L6	S16°48'09"W	16.19'
L7	N73°26'13"W	18.75'
L8	N16°02'04"E	16.04'
L9	N73°23'11"W	43.00'
L10	N59°29'18"W	34.48'



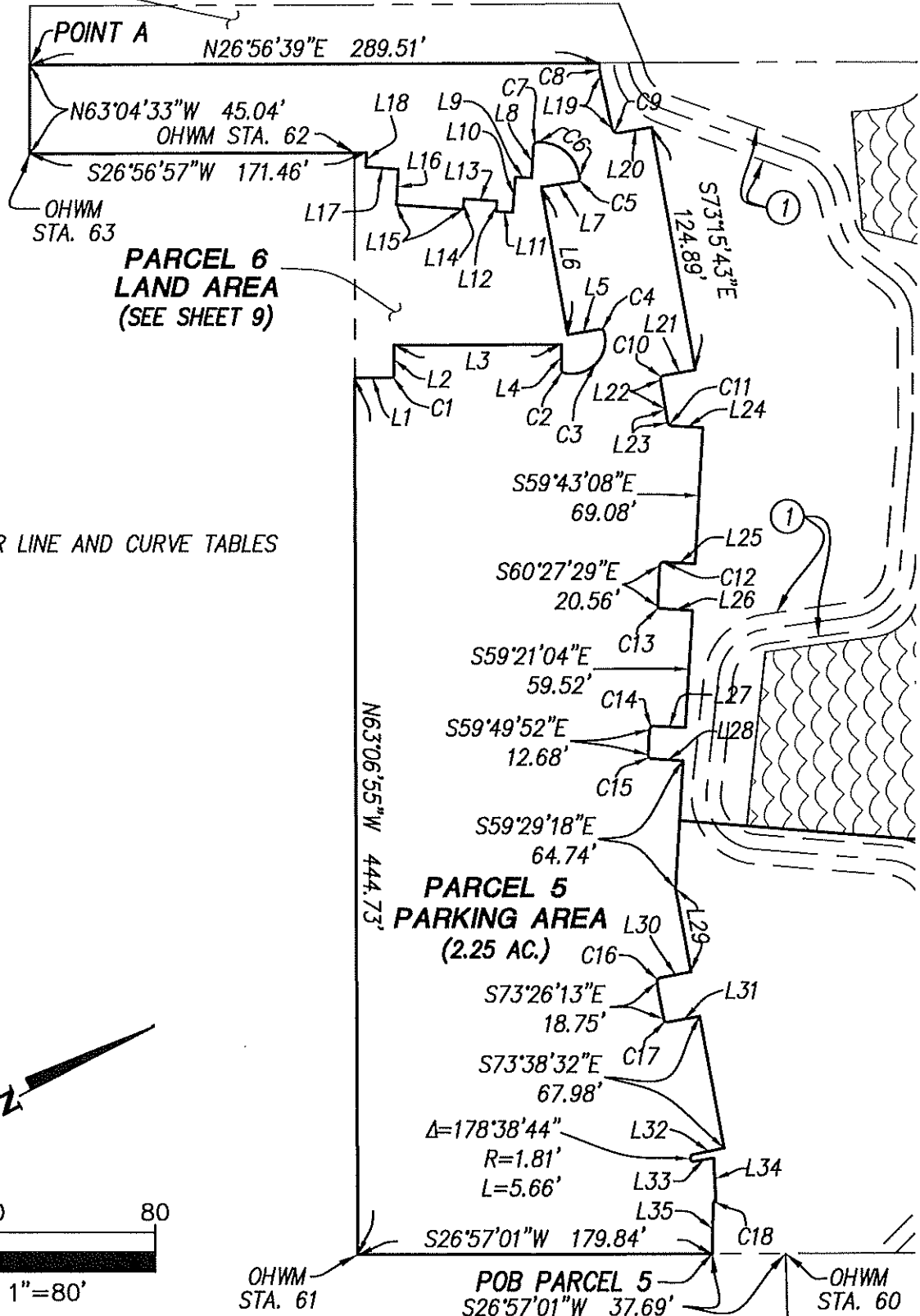
DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 50'
 REF.

DRAWING NO.
SHEET 5 OF 10
003-041

**PARCEL 7
PUBLIC
ACCESS
EASEMENT
AREA
(SEE SHEET 10)**



DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 80'
 REF.

**DRAWING NO.
 SHEET 7 OF 10
 003-041**

LINE AND CURVE TABLES FOR PARCEL 5, SHEET 7

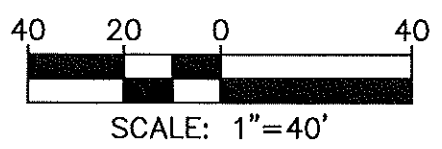
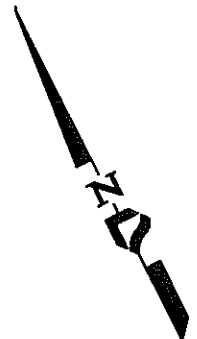
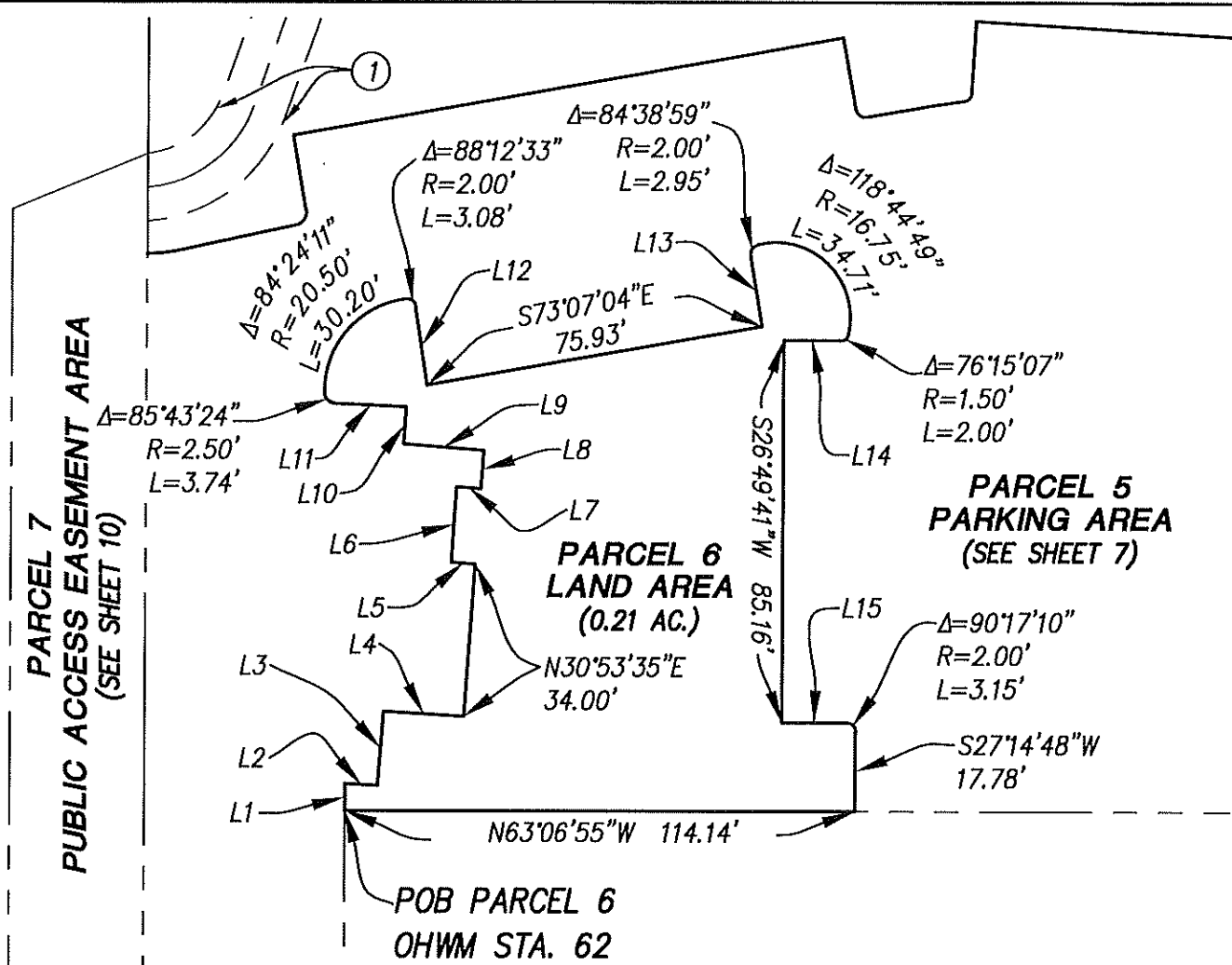
CURVE TABLE				LINE TABLE			LINE TABLE		
CURVE	DELTA	RADIUS	LENGTH	LINE	DIRECTION	LENGTH	LINE	DIRECTION	LENGTH
C1	90°17'10"	2.00'	3.15'	L1	N27°14'48"E	17.78'	L19	S75°13'39"E	27.41'
C2	76°15'07"	1.50'	2.00'	L2	N63°02'22"W	14.50'	L20	N17°05'16"E	16.90'
C3	118°44'49"	16.75'	34.71'	L3	N26°49'41"E	85.16'	L21	S16°45'36"W	16.33'
C4	84°38'59"	2.00'	2.95'	L4	S63°09'41"E	12.99'	L22	S72°49'46"E	15.09'
C5	88°12'33"	2.00'	3.08'	L5	S17°11'25"W	16.10'	L23	S71°47'27"E	6.80'
C6	84°24'11"	20.50'	30.20'	L6	N73°07'04"W	75.93'	L24	N30°04'04"E	16.03'
C7	85°43'24"	2.50'	3.74'	L7	N18°01'03"E	17.71'	L25	S30°03'40"W	15.90'
C8	13°23'11"	28.00'	6.54'	L8	S60°19'05"E	15.86'	L26	N30°49'39"E	16.77'
C9	87°41'04"	3.00'	4.59'	L9	S30°24'29"W	8.27'	L27	S30°04'06"W	16.01'
C10	89°35'22"	2.00'	3.13'	L10	S58°37'04"E	17.94'	L28	N30°49'38"E	15.94'
C11	78°08'29"	2.00'	2.73'	L11	S30°39'31"W	8.53'	L29	S73°23'11"E	43.00'
C12	90°31'09"	2.00'	3.16'	L12	N59°04'34"W	5.41'	L30	S16°02'04"W	16.04'
C13	88°42'52"	1.00'	1.55'	L13	S30°47'23"W	16.83'	L31	N16°48'09"E	16.19'
C14	89°53'58"	2.00'	3.14'	L14	S58°31'09"E	5.36'	L32	S15°33'44"W	16.47'
C15	89°20'30"	2.00'	3.12'	L15	S30°53'35"W	34.00'	L33	N16°54'59"E	10.09'
C16	89°28'17"	2.00'	3.12'	L16	N59°34'22"W	18.00'	L34	S66°00'04"E	21.50'
C17	89°45'38"	2.00'	3.13'	L17	S31°11'22"W	16.61'	L35	S62°00'30"E	25.26'
C18	73°39'51"	2.00'	2.57'	L18	N60°01'01"W	7.31'			

DRAWN KP
CHECKED MM
REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
SCALE 1" = 80'
REF.

DRAWING NO.
SHEET 8 OF 10
003-041



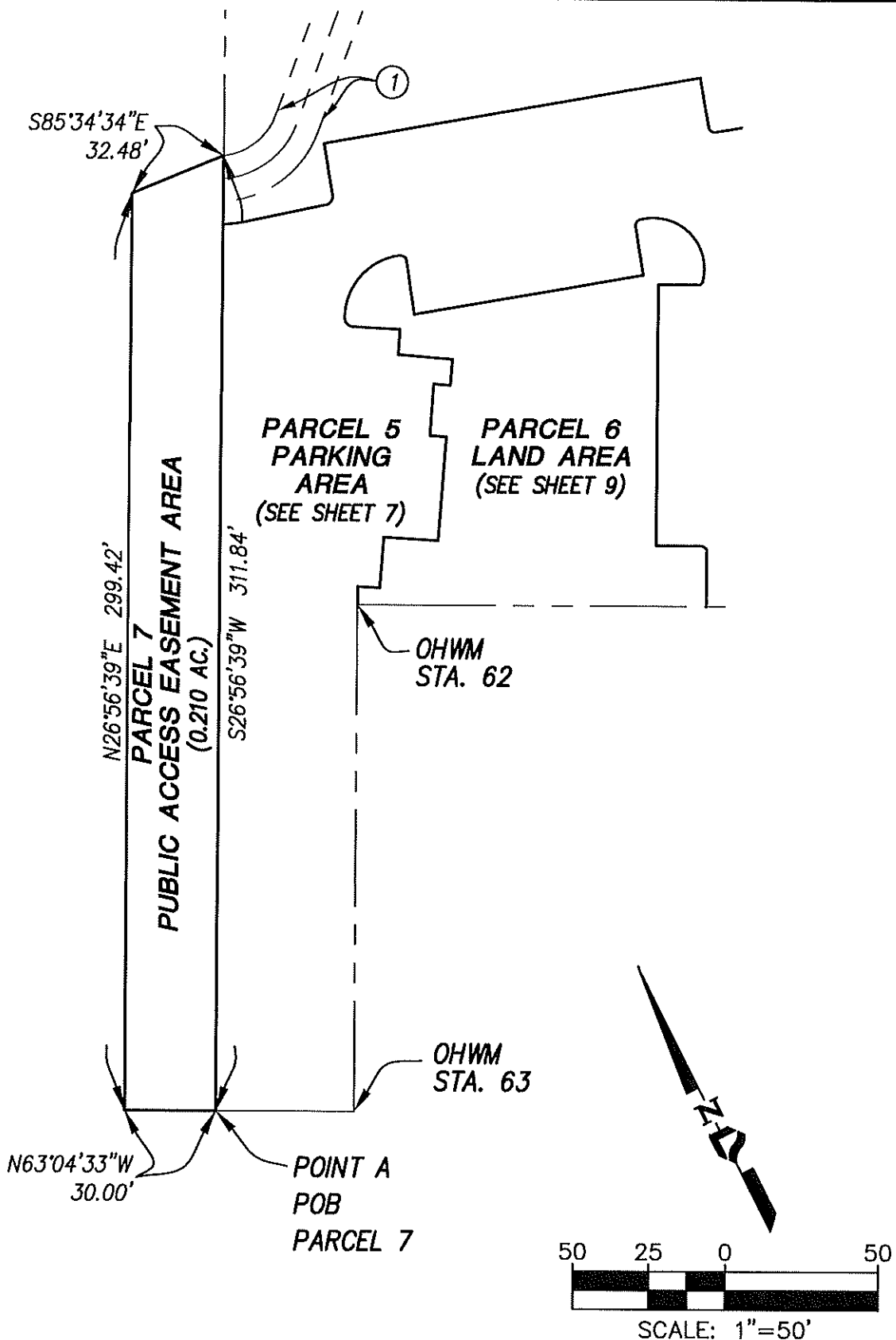
LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N26°56'57"E	6.04'
L2	S60°01'01"E	7.31'
L3	N31°11'22"E	16.61'
L4	S59°34'22"E	18.00'
L5	N58°31'09"W	5.36'
L6	N30°47'23"E	16.83'
L7	S59°04'34"E	5.41'
L8	N30°39'31"E	8.53'

LINE TABLE		
LINE	DIRECTION	LENGTH
L9	N58°37'04"W	17.94'
L10	N30°24'29"E	8.27'
L11	N60°19'05"W	15.86'
L12	S18°01'03"W	17.71'
L13	N17°11'25"E	16.10'
L14	N63°09'41"W	12.99'
L15	S63°02'22"E	14.50'

DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 40'
 REF. _____
DRAWING NO.
SHEET 9 OF 10
003-041



DRAWN	KP
CHECKED	MM
REVIEWED	GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE	02/06/2023
SCALE	1" = 50'
REF.	
DRAWING NO. SHEET 10 OF 10 003-041	

EXHIBIT C
NEW RESTAURANT IMPROVEMENT PLANS

NOTE TO DRAFTER: INSERT THE FOLLOWING INFORMATION:

Preparer:

Project:

Job No.:

Approval Date:

Number of pages attached:

EXHIBIT D
CONSTRUCTION REQUIREMENTS

1. **GENERALLY.** TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT D, GENERAL CONSTRUCTION RELATED RULES AND REQUIREMENTS AS LANDLORD MAY ADOPT OR REQUIRE FROM TIME TO TIME FOR CONSTRUCTION BY TENANTS, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE PREMISES ("**CONSTRUCTION WORK**").

2. **Contractors.** Landlord shall have the right to approve the general contractor for Construction Work (other than Minor Alterations). All contractors and subcontractors performing any Construction Work must be licensed in the State of California.

3. **Architects and Engineers.** All architects and engineers must have an active license to practice in the State of California.

4. **Contractors, Architects and Engineers Agreements.** Landlord shall have the right to approve the architectural, engineering and construction contracts for all the Improvements (other than Minor Alterations). All such contracts shall provide, in form and content reasonably satisfactory to Landlord, (i) for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder (ii) that if this Lease is terminated Landlord may, at its election, use any plans and specifications created by such architect, engineer or contractor for the contemplated Improvements at the Premises.

5. **Construction Barricades.** Tenant shall install a construction barricade around the area of Construction Work (other than Minor Alterations) and erect such other protective measures as may be reasonably required by Landlord.

6. **Dust and Trash Control.** Tenant shall take commercially reasonable steps to minimize dust resulting from any Construction Work and shall promptly dispose of all trash generated from the Construction Work.

7. **Performance and Payment Bonds.** Tenant (or, at the option to Landlord, the general contractor on Tenant's behalf) shall furnish Landlord with the following separate corporate surety bonds not less than ten (10) days prior to the commencement of any Construction Work with a hard cost reasonably estimated by Tenant to be greater than Five Hundred Thousand Dollars (\$500,000) (as such amount is increased on each anniversary of the Effective Date by the percentage increase in the CPI from the Effective Date):

7.1 A corporate surety performance bond ("**Performance Bond**") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the projected cost of such Construction Work. The Performance Bond and its issuer shall be in all material respects satisfactory to Landlord. The Performance Bond shall name Tenant (or, at Landlord's option, the applicable general contractor) as principal and Landlord as obligee (or co-obligee), assuring full completion by Tenant of such Construction Work.

7.2 A corporate surety Payment Bond, issued by a surety company licensed to transact business as such in the State of California, with Tenant (or, at Landlord's option, the applicable general contractor) as principal and Landlord as obligee (or co-obligee), in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with such Construction Work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the Construction Work or for labor done

thereon and protecting Landlord from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments ("**Payment Bond**").

7.3 The Payment Bond and Performance Bond shall be in form and content satisfactory to Landlord.

8. Financial Assurances. At least ten (10) days prior to commencing any Construction Work (other than Minor Alterations), Tenant shall deliver to Landlord evidence reasonably demonstrating to Landlord that Tenant has obtained or retains financial resources and capabilities in an amount sufficient to complete the Construction Work.

9. Construction Schedule. Tenant shall, at least ten (10) days prior to date on which Tenant intends to commence construction of any Construction Work (other than Minor Alterations), deliver to Landlord a construction schedule. Tenant shall use commercially reasonable efforts, subject to Force Majeure Events, to perform the Construction Work in accordance with the construction schedule.

10. Contractor Insurance. All contractors and subcontractors performing Construction Work shall obtain and thereafter maintain so long as such Construction Work is occurring, at least the minimum insurance coverages set forth below, which insurance coverages may be modified by Landlord from time to time in its sole and absolute discretion:

- (i) Workers' compensation and employer's liability insurance:
 - (a) Workers' compensation insurance as required by any applicable law or regulation.
 - (b) Employer's liability insurance in the amount of \$1,000,000 each accident/employee/disease.
- (ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
 - (a) Required coverages:
 - (1) Premises and Operation;
 - (2) Products and Completed Operations;
 - (3) Contractual Liability;
 - (4) Broad Form Property Damage (including Completed Operations);
 - (5) Explosion, Collapse and Underground Hazards; and
 - (6) Personal Injury Liability.
 - (b) Minimum limits of liability:
 - (1) \$2,000,000 each occurrence (for bodily injury and property damage);
 - (2) \$2,000,000 for Personal Injury Liability;
 - (3) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and
 - (4) \$5,000,000 general aggregate applying separately to this Project.

(iii) **Automobile Liability Insurance:** Automobile liability insurance including coverage for owned, leased, rented, hired, and/or non-owned automobiles. The limits of liability shall not be less than \$1,000,000 for each accident limit for bodily injury, death and property damage.

(iv) **Umbrella/Excess Liability Insurance:** The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

(v) **Contractor's Pollution Liability Coverage:** If Landlord determines, in its sole and absolute discretion, that Tenant performs or contracts for any work which involves a Hazardous Materials Activity or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher.

Landlord Parties shall be named as an additional insured on the forgoing insurance, and such insurance shall provide that the same shall not be canceled or reduced in amount or coverage below the requirements of this Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Landlord. The foregoing insurance shall include a waiver of subrogation in favor of Landlord Parties.

11. **Notice of Completion.** Within ten (10) days after Completion of any Construction Work (other than Minor Alterations), Tenant shall record a Notice of Completion in the office of the San Diego County Recorder and furnish a copy thereof to Landlord upon such recordation.

12. **Lien Releases.** Within sixty (60) days after Completion, Tenant shall deliver to Landlord unconditional final lien waivers from all contractors and materialmen.

13. **Copy of Record Set of Plans and Certificate of Completion.** At the conclusion of any Construction Work (other than Minor Alterations), deliver to Landlord (i) a set of "as-built drawings", (ii) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, the Construction Work has been Completed in accordance, in all material respects, with the approved plans therefor, and (iii) a copy of the certificate of completion issued by the applicable government agency.

14. **Conflict.** In the event of conflict between the terms of these Construction Requirements and terms of the Lease, the terms of the Lease shall control.

EXHIBIT E

CONTINUING GUARANTY

This Continuing Guaranty ("**Guaranty**") dated _____, 20____, is made by Arthur E. Engel, an individual ("**Guarantor**"), whose business address is P.O. Box 13308, San Diego, CA 92170-3308, in favor of the San Diego Unified Port District, a public corporation ("**District**").

RECITALS

WHEREAS, District and Ferry Landing Associates, LLC, a California limited liability company ("**Tenant**"), previously entered into that certain Lease dated October 21, 1997 and filed in the Office of the District Clerk as Document No. 36616 for certain tidelands located in the City of Coronado, California (as amended by that certain Agreement for Amendment of Lease Amendment No. 1 dated October 9, 2001 and recorded in the Office of the District Clerk as Document No. 49238, that certain Agreement for Amendment of Lease Amendment No. 2 dated July 12, 2005 and recorded in the Office of the District Clerk as Document No. 49282, that certain Agreement for Amendment of Lease Amendment No. 3 dated July 2, 2008 and recorded in the Office of the District Clerk as Document No. 53657, and that certain Agreement for Amendment of Lease Amendment No. 4 dated September 1, 2026 and recorded in the Office of the District Clerk as Document No. 65563, the "**Original Lease**"); and

WHEREAS, Tenant's obligations under the Original Lease are guaranteed by Guarantor pursuant to that certain Guaranty dated as of June 4, 2008 (the "**Original Guaranty**");

WHEREAS, District and Tenant have agreed to enter into that certain Amended and Restated Lease dated as of the same date of this Guaranty (the "**Restated Lease**"); and

WHEREAS, the Restated Lease amends and restates the Original Lease in its entirety; and

WHEREAS, Guarantor has agreed to guaranty all of Tenant's obligations under the Restated Lease pursuant to the terms of this Guaranty.

AGREEMENT

For value received, and in consideration of, and in order to induce the District to enter into the Restated Lease, Guarantor, hereby agrees as follows:

1. The foregoing recitals are hereby incorporated by reference. Terms capitalized but not otherwise defined in this Guaranty shall have the meanings ascribed to them in the Restated Lease.

2. Guarantor unconditionally and absolutely guarantees to District the full and prompt payment and performance of all obligations of Tenant which Tenant presently or hereafter may have under the Restated Lease (collectively, the "**Obligations**").

3. The obligations of Guarantor hereunder are independent of the Obligations. A separate action may be brought or prosecuted against Guarantor, whether the action is brought or prosecuted against Tenant or whether Tenant is joined in the action.

4. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

5. The provisions of the Restated Lease may be changed by written agreement between District and Tenant at any time, without the consent of or without notice to the Guarantor. Guarantor, shall guaranty the Obligations, as changed from time to time. Assignment of the Restated Lease (as permitted by the Restated Lease) shall not affect this Guaranty. District's failure or delay in the enforcement of any of its rights also shall not affect this Guaranty. If some or all of the Obligations are discharged or modified pursuant to any bankruptcy or similar proceedings (including, without limitation, by reason of the disaffirmance or rejection of the Restated Lease), each of Guarantor's obligations hereunder will continue in full force and effect as if some or all of the Obligations had not been so discharged or modified. The liability of Guarantor hereunder shall in no way be affected by the release or discharge of Tenant or any other guarantor of the Restated Lease or any disability or other defense of Tenant. If Tenant defaults under the Restated Lease, District can proceed immediately against the Guarantor, Tenant, or both, or District can enforce against Guarantor, Tenant, or both, any rights that District has under the Restated Lease or pursuant to applicable laws. If the Restated Lease terminates and District has any rights it can enforce against Tenant after termination, District can enforce those rights against Guarantor, without giving prior notice to Tenant, Guarantor, or both, or without making any demand on either of them.

6. Guarantor waives the right to require District to: (a) proceed against Tenant; (b) proceed against or exhaust any security that District holds from Tenant; or (c) pursue any other remedy in District's power. Guarantors waives any defense by reason of any disability of Tenant, and waive any other defense based on the termination of Tenant's ability from any cause. Guarantor further waives all rights and defenses that are or may become available to Guarantor, including without limitation any rights and defenses set forth in Sections 2787 through 2856, inclusive, of the California Civil Code.

7. Until all Obligations under the Restated Lease have been discharged in full, Guarantor has no right of subrogation against Tenant. Guarantors waives: (a) its rights to enforce any remedies that District now has, or later may have, against Tenant; (b) any right to participate in any security now or later held by District; (c) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; and (d) all notices of the existence, creation, or incurrence of new or additional Obligations.

8. If District is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay District all costs incurred, including but not limited to reasonable attorneys' fees. District has the right to prosecute any individual Guarantor for the full amount for said costs.

9. Guarantor's obligations under this Guaranty shall be binding, jointly and severally, on any successor of Guarantor, individually or collectively. As used herein, a successor of Guarantor shall mean any assignee, transferee, personal representative, heir, or other Person succeeding lawfully, and pursuant to the provisions of said Restated Lease, to the rights or obligations of Guarantors, individually or collectively. Also as used herein, District shall mean District's successors and assigns, if any.

10. Nothing in this Guaranty shall have any effect whatsoever on any of Guarantor's obligations arising under the Original Guaranty (as defined in the Restated Lease).

11. Venue for any legal proceeding shall be in San Diego County, California. This Guaranty shall be construed and enforced in accordance with the laws of the State of California.

12. This Guaranty may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Any facsimile or copies of original signatures or signatures delivered electronically (such as .pdf, .tif, or other electronic files or via DocuSign) shall be considered and treated as if they were original signatures.

[SIGNATURE PAGES FOLLOWS]

In witness thereof, Guarantor has entered into this Guaranty as of the date written below.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Anthony Gordon
Director, Real Estate

GUARANTOR:

Arthur E. Engel

EXHIBIT F

MEMORANDUM OF LEASE

RECORDING REQUESTED BY:

(Above Space for Recorder's Use Only)

MEMORANDUM OF LEASE

This Memorandum of Lease, hereinafter "Memorandum," is dated _____, 20__, between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, Landlord, and FERRY LANDING ASSOCIATES, LLC , a California limited liability company, Tenant, concerning that certain real property described in Exhibit A and depicted in Exhibit B, attached hereto and by this reference made a part hereof (the "Leased Premises").

For good and adequate consideration, Landlord leases the Leased Premises to Tenant, and Tenant hires them from Landlord, for the term and on the provisions contained in that certain Lease of even date herewith by and between Landlord and Tenant (the "Lease"), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Landlord in each instance, all as more specifically set forth in said Lease, **and** subject to the terms of the Article 23 of the Lease, Landlord conveys to Tenant and Tenant accepts from Landlord, all of Landlord's right, title and interest in and to the Existing Improvements, which said Lease is incorporated in this Memorandum by this reference.

The term of the Lease is Forty (40) years, beginning September 1, 1997, and ending August 31, 2037, with one Option to Extend through August 31, 2049.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease provisions. In the event of conflict between the terms of this Memorandum and terms of the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of the date first set forth above.

APPROVED AS TO FORM AND LEGALITY
DISTRICT
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT

By: _____
Assistant/Deputy

By: _____
Anthony Gordon
Director, Real Estate

**FERRY LANDING ASSOCIATES, LLC,
a California limited liability company**

By: _____
Signature

NAME: _____

Its: _____

By: _____
Signature

NAME: _____

Its: _____

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

EXHIBIT B TO MEMORANDUM OF LEASE

DEPICTION OF PREMISES

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- Individual
- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**

Top of thumb here

Signer's Name _____

- Individual
- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**

Top of thumb here

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person whose name is
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document
and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- Individual
- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name _____

- Individual
- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

EXHIBIT H
FORM OF LANDLORD'S ESTOPPEL STATEMENT

*Name
Address

Ladies and Gentlemen:

This Landlord Estoppel Statement ("Statement") is issued by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (hereinafter referred to as "Landlord"), as landlord under that certain lease dated _____, covering a portion of those lands conveyed to Landlord by that certain act of the Legislature of the State of California entitled "San Diego Unified Port District Act", Stats. 1962, 1st Ex. Sess., c. 67, as amended, between Landlord and _____ (hereinafter referred to as "Tenant"), as tenant, a copy of which lease is on file in the Office of the Clerk of Landlord bearing Document No. _____ (the "Lease").

To the actual knowledge of Landlord (without any duty of investigation or inquiry), Landlord hereby acknowledges and confirms to Recipient (as defined below) the following:

1. The Lease is currently in full force and effect and has not been modified in whole or in part [* , except as provided by that *(those) certain amendment(s)* described and dated as follows: * copies of which amendment(s)* is/are* on file in the Office of the Clerk of Landlord bearing Document No.(s)]*.
2. The Lease is for a term of * (*) years, commencing * and ending *.
3. As of the date of this Statement, Tenant is not, to the actual knowledge of Landlord (without any duty of investigation or inquiry), in default or in breach under the provisions of the Lease.
4. Landlord has no actual knowledge (without any duty of investigation or inquiry) of any other assignment or hypothecation of said leasehold estate, or any pledge or assignment of rents with respect to said premises *[except any security interest therein created in favor of * for a loan in the amount of * Dollars (\$*) as consented to by Landlord in an Administrative Approval or Resolution No. *, a copy of which is attached hereto and by reference incorporated herein]*. *[NOTE TO DRAFTER: Modify language if encumbrance has not yet been approved.]*
5. All rent, and any other charges payable by Tenant pursuant to the lease (referred to collectively hereinafter as "Rent") has been paid through and including *; provided, however, there may be Rent still due and owing which will be discovered at the time of audit by Landlord and, to that extent, Landlord cannot represent that all Rent has been paid.

6. This Statement is given by Landlord with the understanding that the statements herein made may be relied upon only by * (the "Recipient") and only for the purpose of estopping Landlord from asserting contrary facts against Tenant which Tenant also has no knowledge of.

Executed this _____ day of _____, 20____.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Tony Gordon
Director, Real Estate

EXHIBIT I

[TO BE COMPLETED]

ENVIRONMENTAL DISCLOSURE ADDENDUM: 1311 FIRST STREET, CORONADO CALIFORNIA (THE "PREMISES")

CALIFORNIA HEALTH AND SAFETY CODE SECTION 25359.7 REQUIRES ANY OWNER OF NONRESIDENTIAL REAL PROPERTY WHO KNOWS, OR HAS REASONABLE CAUSE TO BELIEVE, THAT ANY RELEASE OF HAZARDOUS SUBSTANCE HAS COME TO BE LOCATED ON OR BENEATH THAT REAL PROPERTY TO GIVE WRITTEN NOTICE OF THAT CONDITION TO THE LESSEE OF THE REAL PROPERTY. LANDLORD IS PROVIDING THE FOLLOWING INFORMATION CONCERNING THE PRESENCE OF HAZARDOUS SUBSTANCES ON AND UNDER THE PREMISES TO PROSPECTIVE TENANT ("TENANT"). THIS IS A SUMMARY OF INFORMATION ONLY, IS NOT INTENDED, NOR SHALL IT BE DEEMED OR CONSTRUED, AS A REPRESENTATION OR WARRANTY OF ANY KIND BY LANDLORD AND HAS BEEN PREPARED FOR TENANT'S CONVENIENCE TO FACILITATE TENANT'S INDEPENDENT DUE DILIGENCE EVALUATION WITH RESPECT TO THE RELEASES OF HAZARDOUS SUBSTANCES AT AND BENEATH THE PREMISES.

[TO ADD SPECIFIC INFORMATION, INCLUDING REFERENCES TO ANY REGULATORY REPORTS/DATABASES AND CONTAMINANT INFORMATION IF AVAILABLE (EXAMPLE: ACCORDING TO ENVIRONMENTAL REPORTS SUBMITTED TO THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD ("SDRWQCB"), WHICH HAS ISSUED AN INVESTIGATIVE ORDER THAT INCLUDES THE PREMISES (INVESTIGATIVE ORDER ____), VARIOUS HAZARDOUS SUBSTANCES HAVE COME TO BE LOCATED ON OR BENEATH THE PREMISES, INCLUDING [LIST CONTAMINANTS] ENVIRONMENTAL REPORTS DESCRIBING WITH MORE SPECIFICS THE ENVIRONMENTAL CONDITIONS AT THE PREMISES CAN BE PROVIDED BY LANDLORD UPON REQUEST OR MAY BE ACCESSED AT THE SDRWQCB GEOTRACKER WEBSITE IDENTIFIED AS [ADD WEBSITE]]]

LESSEE ACKNOWLEDGEMENT AND CONSENT: BY EXECUTION OF THIS LEASE, LESSEE (A) ACKNOWLEDGES ITS RECEIPT OF THE FOREGOING NOTICE GIVEN PURSUANT TO SECTION 25359.7 OF THE CALIFORNIA HEALTH AND SAFETY CODE; (B) ACKNOWLEDGES AND AGREES THAT LANDLORD SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE ACCURACY OF ANY OF THE INFORMATION CONTAINED IN THE REPORTS PREPARED BY AND FOR THIRD PARTIES; AND (C) ACKNOWLEDGES THAT LANDLORD HAS COMPLIED WITH ITS OBLIGATIONS UNDER SECTION 25359.7 OF THE HEALTH AND SAFETY CODE.

EXHIBIT J

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

San Diego Unified Port District
Attn: Adam Meyer
Director, Real Estate
3165 Pacific Highway
San Diego, CA 92101

(Above Space for Recorder's Use Only)

QUITCLAIM DEED

This Quitclaim Deed ("**Quitclaim**") is dated as of _____, 20__ (the "**Effective Date**") between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("**Landlord**"), and FERRY LANDING ASSOCIATES, LLC, a California limited liability company ("**Tenant**"), concerning that certain real property legally described on Exhibit A and delineated on Exhibit B attached hereto and by this reference made a part hereof ("**Premises**").

Reference is hereby made to that certain Amended and Restated Lease between Landlord and Tenant dated as of _____. 20__ and recorded in the Office of the District Clerk as Document No. _____ (the "**Lease**").

For good and adequate consideration, the sufficiency of which is hereby acknowledged, Landlord and Tenant agree as of the Effective Date as follows: (i) Parcels 2 and 3, as legally described on Exhibit A and delineated on Exhibit B attached hereto, are no longer included in the Premises subject to the Lease; and (ii) Tenant hereby remises, releases, and relinquishes to Landlord all of Tenant's right, title, and interest in Parcels 2 and 3 as well as all improvements thereon granted by the Lease; and (iii) except as otherwise set forth in the Lease, Tenant has no further obligations with respect to Parcels 2 and 3.

The purpose of this Quitclaim is to provide constructive notice and make clear that as of the Effective Date, Parcels 2 and 3 have been removed from, and are no longer included in, the Premises under the Lease.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Quitclaim Deed as of the Effective Date.

APPROVED AS TO FORM AND LEGALITY:

SAN DIEGO UNIFIED PORT DISTRICT

GENERAL COUNSEL

By: _____
David Jones
Deputy General Counsel

By: _____
Adam Meyer
Director, Real Estate

FERRY LANDING ASSOCIATES, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit A

Legal Description of Premises

(to be attached)

Exhibit B

Plat Map of Premises

(to be attached)

EXHIBIT B

Fifth Amendment to Current Lease

(attached)

FIFTH AMENDMENT TO LEASE

THIS FIFTH AMENDMENT TO LEASE (“**Fifth Amendment**”) is entered into as of _____, 20__ (the “**Effective Date**”), by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“**Lessor**”), and FERRY LANDING ASSOCIATES, LLC, a California limited liability company (“**Lessee**”). Lessor and Lessee may each be referred to in this Fifth Amendment as a “**Party**” or collectively as the “**Parties**”.

RECITALS:

WHEREAS, Lessor and Lessee previously entered into that certain Lease dated October 21, 1997 and recorded in the Office of the District Clerk as Document No. 36616 for certain tidelands located in the City of Coronado, California (as amended by that certain Agreement for Amendment of Lease Amendment No. 1 dated October 9, 2001 and recorded in the Office of the District Clerk as Document No. 42938, that certain Agreement for Amendment of Lease Amendment No. 2 dated July 12, 2005 and recorded in the Office of the District Clerk as Document No. 49282, that certain Agreement for Amendment of Lease Amendment No. 3 dated July 2, 2008 and recorded in the Office of the District Clerk as Document No. 53657, and that certain Agreement for Amendment of Lease Amendment No. 4 dated September 1, 2016 and recorded in the Office of the District Clerk as Document No. 65563, the “**Lease**”); and

WHEREAS, Lessee’s obligations under the Lease are guaranteed by Arthur E. Engel (“**Guarantor**”) pursuant to that certain Guaranty dated as of June 4, 2008 (the “**Guaranty**”); and

WHEREAS, the Lease obligated Lessee to construct, on or before December 31, 2008, two restaurant/cocktail lounges on the Premises (as defined in this Lease) – one on Parcel 3 and one on Parcel 4, as such parcels are described on Exhibit A and Exhibit B attached to this Fifth Amendment; however, Lessee has only successfully completed construction of one restaurant, which is operated and commonly known as the Il Fornaio Coronado on Parcel 4; and

WHEREAS, Lessee contends that such failure to construct the second restaurant was due to various economic conditions and potential subtenant restaurant operators failing to fulfill contractual obligations to Lessee; and

WHEREAS, in order to give Lessee a final opportunity to construct the second restaurant on Parcel 3, Lessor and Lessee entered into that certain Option to Lease Agreement dated _____, 2024 and recorded in the Office of the District Clerk as Document No. _____ (the “**Option Agreement**”), pursuant to which Lessee was required to timely satisfy conditions prior to Lessor being obligated to enter the Amendment and Restated Lease attached as Exhibit A to the Option Agreement; and

WHEREAS, initially, the Option Agreement obligated the parties to execute, but not make effective, this Fifth Amendment, which was attached to the Option Agreement as Exhibit B; and

WHEREAS, in the event that Lessee failed to timely satisfy the conditions set forth in the Option Agreement, Lessor was entitled to date and make effective, without the need for further action or approvals from any party, including Lessee, this Fifth Amendment to remove Parcels 2 and 3 from the Lease and pursuant to the terms hereof; and

WHEREAS, Lessee failed to timely satisfy the conditions set forth in the Option Agreement, and as a result, Lessor has dated and made effective this Fifth Amendment.

AGREEMENT

NOW THEREFORE, for valuable consideration, the Lease is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants, and conditions of said Lease shall remain in full force and effect:

1. Leased Premises.

a. Definition. The “Leased Premises” as such term is defined in and set forth on page one of the Lease is amended and restated as follows:

Parcels 4, 5, 6, and 7 comprising approximately 3.6 acres, or 156,792.8 square feet, of land, and Parcel 1 comprising 2.01 acres, or 87,751 square feet, of water area, located at 1311 First Street in the City of Coronado, California, all as legally described on Exhibit A and delineated on Exhibit B.

b. Exhibits. Exhibits “A” and “B” attached to the Original Lease are hereby deleted and replaced with Exhibit A and Exhibit B attached to this Fifth Amendment.

c. Nonexclusive Easement. Lessee acknowledges and agrees that Parcel 7 of the Leased Premises constitutes a nonexclusive easement to Lessee only for purposes of subsurface utilities, a public pedestrian/bicycle path, and general public access purposes, and which shall be subordinate to and shall not interfere with Lessor’s use of Parcel 7 for public purposes.

d. Removal of Parcels 2 and 3. Lessee acknowledges and agrees that this Fifth Amendment removes Parcels 2 and 3 from the Leased Premises, and, except as explicitly provided in this Fifth Amendment, Lessee has no further rights (lease or otherwise) to Parcels 2 and 3 other than those afforded to members of the public.

2. Rent.

a. Minimum Annual Rent. Lessee acknowledges and agrees that as of the Effective Date, the minimum annual rent due under the Lease equals \$339,976. Minimum annual rent shall be subject to adjustment as set forth in the Lease, as amended pursuant to this Fifth Amendment.

b. Rent Reviews. Paragraph 2(c) and Paragraph 2(d) are hereby deleted and replaced in their entirety as follows:

(c) The minimum annual rent shall be subject to adjustment on the following dates (each an “**Adjustment Date**”): September 1, 2032. Within thirty (30) days following each Adjustment Date, Lessor shall determine, and provide to Lessee a written statement setting forth, the annual average percentage rents payable by Lessee for each of the five years prior to such Adjustment Date. Minimum annual rent shall be adjusted to an amount equal to 75% of such average annual percentage rents, provided that in no event shall such new minimum annual rent be less than the minimum annual rent payable for the time period immediately preceding such Adjustment Date. Immediately following the determination of the new minimum annual rent, any underpayments of minimum annual rent shall be paid to Lessor.

(d) The percentage rent for the sale of food shall be as follows: 3.25% through August 31, 2032, 3.50% from September 1, 2032 through August 31, 2037. All other percentage rates shall remain as set forth in the Lease as adjusted pursuant to any previous rent reviews.

c. Removal of Paragraph 2(j). Paragraph 2(j) of the Lease is hereby deleted and replaced in its entirety as set forth below, and Lessee acknowledges and agrees that no credit as originally contemplated by Paragraph 2(j) is due or shall be due from Lessor:

(j) [INTENTIONALLY OMITTED].

d. Removal of Paragraph 2(k). Paragraph 2(k) of the Lease is hereby deleted and replaced in its entirety as set forth below, and Lessee acknowledges and agrees that no credit as originally contemplated by Paragraph 2(k) is due or shall be due from Lessor:

(k) [INTENTIONALLY OMITTED].

3. **Use.** Paragraph 3 of the Lease is hereby deleted and replaced in its entirety with the following:

3. **USE:** Lessee agrees that the Leased Premises shall be used only and exclusively for the following purposes: (a) the operation of a restaurant/cocktail lounge containing no more than 275 seats; (b) bakery, delicatessen, and fish market sales; (c) retail sales are of no more than 2,000 square feet restricted to gift items, sundries, and souvenirs; (d) office uses not to exceed 4,407 square feet; and (e) a nonexclusive easement on Parcel 7 for the uses described in the definition of the Leased Premises. Any water area of the Leased Premises may be used for navigational purposes only. This restriction on use of the Leased Premises absolutely prohibits a change in use without the Lessor's prior written consent, which consent may be granted, withheld, or conditioned in Lessor's sole and absolute discretion.

4. **Construction of Improvements.**

a. Removal of Paragraph 4(a). Paragraph 4(a) of the Lease is hereby deleted and replaced in its entirety as set forth below:

(a) [INTENTIONALLY OMITTED].

b. Removal of Paragraph 4(b). Paragraph 4(b) of the Lease is hereby deleted and replaced in its entirety as set forth below:

(b) [INTENTIONALLY OMITTED].

c. Removal of Paragraph 4(c). Paragraph 4(c) of the Lease is hereby deleted and replaced in its entirety as set forth below:

(c) [INTENTIONALLY OMITTED].

5. **Term Unaffected.** For avoidance of doubt, the term of the Lease shall be

unaffected by this Fifth Amendment, and unless the Lease is sooner terminated, the Lease shall expire on August 31, 2037.

6. **Parking and Access Easement.** Lessee acknowledges and agrees that the Leased Premises are subject to the terms of that certain Parking and Access Easement dated _____, _____ and recorded with the San Diego County Recorder as Document No. _____ ("**Parking Easement**"), and that a failure by Lessee to comply with the terms of the Parking Easement constitutes a default under the terms of this Lease.

7. **Parcels 2 and 3 Surviving Obligations.** Notwithstanding the removal of Parcels 2 and 3 from the Leased Premises as of the Effective Date, Lessee's shall have the following continuing obligations with respect to Parcel 2 and Parcel 3 (collectively, the "**Surviving Obligations**"): (a) except for Lessee's obligations to construct a restaurant/cocktail lounge on Parcel 3, Lessee shall continue to remain obligated under the terms of the Lease for all obligations and/or liability accruing or arising prior to the Effective Date and the effectiveness of this Fifth Amendment, including, but not limited to, Lessee's responsibilities under Paragraph 21 of the Lease; (b) Lessee shall remain obligated for all obligations that by their terms survive any expiration or earlier termination of the Lease or surrender of the Leased Premises; and (c) Lessee's obligations under Paragraph 43 and 44. Guarantor's obligations under the Guaranty shall include the Surviving Obligations.

8. **Representations and Warranties.** Each Party, on behalf of itself, represents, warrants and agrees with the others as follows:

a. It has received independent legal advice from its counsel with respect to the advisability of making the agreements provided for herein, and with respect to the advisability of executing this Fifth Amendment;

b. It has not relied upon any statement, representation, or promise of the other Party or of any of the attorneys or any other representatives of such other Party in executing this Fifth Amendment or making the agreements provided for herein, except for such representations and promises as set forth in this Fifth Amendment;

c. No Party shall be deemed to be the drafter of the Lease (as amended by this Fifth Amendment), or of any particular provision or provisions, and no part of the Lease (as amended by this Fifth Amendment) shall be construed against any Party on the basis that the particular Party is the drafter of any part of the Lease (as amended by this Fifth Amendment); and

d. It understands the contents hereof, and this Fifth Amendment is executed voluntarily with full knowledge of its significance.

9. **Lessee's Authority.** If Lessee is a corporation, partnership, or limited liability company, each individual executing this Fifth Amendment on behalf of Lessee hereby represents and warrants that Lessee is a duly formed and existing entity qualified to do business in the state in which the leased premises are located and that Lessee has full right and authority to execute and deliver this Fifth Amendment and that each person signing on behalf of Lessee is authorized to do so.

10. **Binding Effect.** Each of the provisions of this Fifth Amendment shall extend to and shall, as the case may require, bind or inure to the benefit not only of Lessor and of Lessee,

but also of their respective heirs, successors or assigns.

11. **Time Essence.** Time is of the essence with respect to this Fifth Amendment and each of its provisions.

12. **Governing Law.** Venue for any legal proceeding shall be in San Diego County, California. This Fifth Amendment shall be construed and enforced in accordance with the laws of the State of California.

13. **Recitals.** The recitals first set forth above and the Exhibits attached hereto are hereby incorporated into the terms of this Fifth Amendment.

14. **Counterparts.** This Fifth Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Any facsimile or copies of original signatures or signatures delivered electronically (such as .pdf, .tif, or other electronic files or via DocuSign) shall be considered and treated as if they were original signatures.

[SIGNATURE PAGE FOLLOWS]

In WITNESS WHEREOF, Lessor and Lessee have executed this Fifth Amendment to Lease as of the Effective Date.

APPROVED AS TO FORM AND LEGALITY:

SAN DIEGO UNIFIED PORT DISTRICT

GENERAL COUNSEL

By: _____
David Jones
Deputy General Counsel

By: _____
Adam Meyer
Director, Real Estate

FERRY LANDING ASSOCIATES, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

Arthur E. Engel, as guarantor under that certain Guaranty dated as of June 4, 2008 (the "**Guaranty**"), hereby consents to the foregoing Fifth Amendment to Lease and acknowledges and agrees that the Guaranty remains in full force and effect with regard to the Lease as amended by this Fifth Amendment.

Arthur E. Engel

Exhibit A

Legal Description of Parcels

EXHIBIT "A"
LEGAL DESCRIPTION

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1: WATER AREA

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED "SDUPD-029" AS SHOWN ON RECORD OF SURVEY MAP NO. 16668, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON JULY 25, 2000; THENCE ALONG A TIE-LINE ONLY SOUTH 21°07'34" WEST A DISTANCE OF 100.64 FEET TO A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 60, AS SAID ORDINARY HIGH WATER MARK IS DELINEATED ON THE ABOVE DESCRIBED MISCELLANEOUS MAP 564; THENCE ALONG SAID ORDINARY HIGHWATER MARK SOUTH 26°57'01" WEST A DISTANCE OF 217.53' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 61; THENCE NORTH 63°06'55" WEST A DISTANCE OF 558.87' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 62, ALSO BEING THE **POINT OF BEGINNING** OF PARCEL 6; THENCE SOUTH 26°56'57" WEST A DISTANCE OF 165.42' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 63; THENCE LEAVING SAID ORDINARY HIGH WATER MARK NORTH 63°04'33" WEST A DISTANCE OF 45.04' FEET TO A POINT HEREINAFTER KNOWN AS **POINT A**; THENCE LEAVING SAID POINT A THENCE NORTH 26°56'39" EAST A DISTANCE OF 458.24' FEET TO THE **POINT OF BEGINNING** OF PARCEL 1; THENCE NORTH 26°56'39" EAST 207.94 FEET; THENCE SOUTH 58°24'02" EAST A DISTANCE OF 410.80 FEET; THENCE SOUTH 31°42'55" WEST A DISTANCE OF 195.38 FEET TO A POINT HEREINAFTER KNOWN AS **POINT B**; THENCE LEAVING SAID POINT B SOUTH 31°42'55" WEST A DISTANCE OF 74.15 FEET TO A POINT HEREINAFTER KNOWN AS **POINT C**; THENCE LEAVING SAID POINT C NORTH 56°46'14" WEST A DISTANCE OF 88.65 FEET; THENCE NORTH 19°03'52" EAST A DISTANCE OF 56.54 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75°06'03" AN ARC DISTANCE OF 32.77 FEET; THENCE NORTH 56°02'11" WEST A DISTANCE OF 98.74 FEET; THENCE NORTH 49°31'45" WEST A DISTANCE OF 49.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°46'12" AN ARC DISTANCE OF 38.73 FEET; THENCE SOUTH 41°42'03" WEST A DISTANCE OF 35.00 FEET; THENCE NORTH

68°16'22" WEST A DISTANCE OF 60.00 FEET; THENCE NORTH 21°43'38" EAST A DISTANCE OF 18.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°33'30" AN ARC DISTANCE OF 35.59 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 87,751 SQUARE FEET OR 2.01 ACRES, MORE OR LESS.

PARCEL 2: WATER AREA

COMMENCING AT POINT B OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCEL 2; THENCE ALONG THE SOUTHEASTERLY LINE OF PARCEL 1 NORTH 31°42'55" EAST A DISTANCE OF 195.38 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE SOUTH 58°24'02" EAST A DISTANCE OF 195.17 FEET; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 152.57 FEET TO THE BEGINNING OF A NON-TANGENT 35 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 70°23'55" EAST; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°51'30" AN ARC DISTANCE OF 26.79 FEET; THENCE NORTH 63°27'35" WEST A DISTANCE OF 148.84 FEET TO THE BEGINNING OF A TANGENT 38 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°49'30" AN ARC DISTANCE OF 56.26 FEET TO THE **POINT OF BEGINNING** OF PARCEL 2.

SAID PARCEL CONTAINS 30,845 SQUARE FEET OR 0.708 ACRES, MORE OR LESS.

PARCEL 3: LAND AREA

COMMENCING AT POINT C OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCELS 3 AND 4; THENCE NORTH 31°42'55" EAST A DISTANCE OF 74.15 FEET TO THE BEGINNING OF A TANGENT 38.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°49'30" AN ARC DISTANCE OF 56.26 FEET; THENCE SOUTH 63°27'35" EAST A DISTANCE OF 148.84 FEET TO THE BEGINNING OF A TANGENT 35.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°51'30" A DISTANCE OF 26.79 FEET; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 118.58 FEET; THENCE NORTH 62°00'30" WEST A DISTANCE OF 25.26 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°39'51" AN ARC DISTANCE OF 2.57 FEET; THENCE NORTH 66°00'04" WEST A DISTANCE OF 21.50 FEET; THENCE SOUTH 16°54'59" WEST A DISTANCE OF 10.09 FEET TO THE BEGINNING OF A TANGENT 1.82 FOOT RADIUS

72°49'46" WEST A DISTANCE OF 15.09 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°35'22" A DISTANCE OF 3.13 FEET; THENCE NORTH 16°45'36" EAST A DISTANCE OF 16.33 FEET; THENCE NORTH 73°15'43" WEST A DISTANCE OF 124.89 FEET; THENCE SOUTH 17°05'16" WEST A DISTANCE OF 16.90 FEET TO THE BEGINNING OF A TANGENT 3.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 87°41'05" AN ARC DISTANCE OF 4.59 FEET; THENCE NORTH 75°13'39" WEST A DISTANCE OF 27.41 FEET TO THE BEGINNING OF A TANGENT 28.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°23'11" A DISTANCE OF 6.54 FEET; THENCE NORTH 26°56'39" EAST 168.73 FEET TO A NON-TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE TO SAID CURVE BEARS NORTH 30°10'08" EAST; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°33'30" AN ARC DISTANCE OF 35.59 FEET; THENCE SOUTH 21°43'38" WEST A DISTANCE OF 18.00 FEET; THENCE SOUTH 68°16'22" EAST A DISTANCE OF 60.00 FEET; THENCE NORTH 41°42'03" EAST A DISTANCE OF 35.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°46'12" AN ARC DISTANCE OF 38.73 FEET; THENCE SOUTH 49°31'45" EAST A DISTANCE OF 49.00 FEET; THENCE SOUTH 56°02'11" EAST A DISTANCE OF 98.74 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75°06'03" AN ARC DISTANCE OF 32.77 FEET; THENCE SOUTH 19°03'52" WEST A DISTANCE OF 56.54 FEET; THENCE SOUTH 56°46'14" EAST A DISTANCE OF 88.65 FEET TO THE **POINT OF BEGINNING** OF PARCELS 3 AND 4

SAID PARCEL CONTAINS 40588.82 SQUARE FEET OR 0.932 ACRES, MORE OR LESS.

PARCEL 5: PARKING AREA

COMMENCING AT A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 60 AS DESCRIBED IN SAID MISCELLANEOUS MAP NO. 564; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 37.69 FEET TO THE **POINT OF BEGINNING** OF PARCEL 5; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 179.84 FEET; THENCE NORTH 63°06'55" WEST A DISTANCE OF 444.73 FEET; THENCE NORTH 27°14'48" EAST A DISTANCE OF 17.78 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°17'10" AN ARC DISTANCE OF 3.15 FEET; THENCE NORTH 63°02'22" WEST A DISTANCE OF 14.50 FEET; THENCE NORTH 26°49'41" EAST A DISTANCE OF 85.16 FEET; THENCE SOUTH 63°09'41" EAST A DISTANCE OF 12.99 FEET TO THE BEGINNING OF A TANGENT 1.50 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH

A CENTRAL ANGLE OF $76^{\circ}15'07''$ AN ARC DISTANCE OF 2.00 FEET; TO THE BEGINNING OF A COMPOUND 16.75 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $118^{\circ}44'49''$ AN ARC DISTANCE OF 34.71 FEET TO THE BEGINNING OF A COMPOUND 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $84^{\circ}38'59''$ A DISTANCE OF 2.95 FEET; THENCE SOUTH $17^{\circ}11'25''$ WEST A DISTANCE OF 16.10 FEET; THENCE NORTH $73^{\circ}07'04''$ WEST A DISTANCE OF 75.93 FEET; THENCE NORTH $18^{\circ}01'03''$ EAST A DISTANCE OF 17.71 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $88^{\circ}12'33''$ AN ARC DISTANCE OF 3.08 FEET TO THE BEGINNING OF A COMPOUND 20.50 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $84^{\circ}24'11''$ AN ARC DISTANCE OF 30.20 FEET TO THE BEGINNING OF A COMPOUND 2.50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $85^{\circ}43'24''$ AN ARC DISTANCE OF 3.74 FEET; THENCE SOUTH $60^{\circ}19'05''$ EAST A DISTANCE OF 15.86 FEET; THENCE SOUTH $30^{\circ}24'29''$ WEST A DISTANCE OF 8.27 FEET; THENCE SOUTH $58^{\circ}37'04''$ EAST A DISTANCE OF 17.94 FEET; THENCE SOUTH $30^{\circ}39'31''$ WEST A DISTANCE OF 8.53 FEET; THENCE NORTH $59^{\circ}04'34''$ WEST A DISTANCE OF 5.41 FEET; THENCE SOUTH $30^{\circ}47'23''$ WEST A DISTANCE OF 16.83 FEET; THENCE SOUTH $58^{\circ}31'09''$ EAST A DISTANCE OF 5.36 FEET; THENCE SOUTH $30^{\circ}53'35''$ WEST A DISTANCE OF 34.00 FEET; THENCE NORTH $59^{\circ}34'22''$ WEST A DISTANCE OF 18.00 FEET; THENCE SOUTH $31^{\circ}11'22''$ WEST A DISTANCE OF 16.61 FEET; THENCE NORTH $60^{\circ}01'01''$ WEST A DISTANCE OF 7.31 FEET; THENCE SOUTH $26^{\circ}56'57''$ WEST A DISTANCE OF 171.46 FEET; THENCE NORTH $63^{\circ}04'33''$ WEST A DISTANCE OF 45.04 FEET TO A SAID **POINT A**; THENCE LEAVING SAID **POINT A** NORTH $26^{\circ}56'39''$ EAST A DISTANCE OF 289.51 FEET TO THE BEGINNING OF A NON-TANGENT 28.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL LINE TO SAID CURVE BEARS SOUTH $28^{\circ}09'32''$ WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $13^{\circ}23'11''$ AN ARC DISTANCE OF 6.54 FEET; THENCE SOUTH $75^{\circ}13'39''$ EAST A DISTANCE OF 27.41 FEET TO THE BEGINNING OF A TANGENT 3.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID ARC THROUGH A CENTRAL ANGLE OF $87^{\circ}41'04''$ AN ARC DISTANCE OF 4.59 FEET; THENCE NORTH $17^{\circ}05'16''$ EAST A DISTANCE OF 16.90 FEET; THENCE SOUTH $73^{\circ}15'43''$ EAST A DISTANCE OF 124.89 FEET; THENCE SOUTH $16^{\circ}45'36''$ WEST A DISTANCE OF 16.33 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $89^{\circ}35'22''$ AN ARC DISTANCE OF 3.13 FEET; THENCE SOUTH $72^{\circ}49'46''$ EAST A DISTANCE OF 15.09 FEET; THENCE SOUTH $71^{\circ}47'27''$ EAST A DISTANCE OF 6.80 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $78^{\circ}08'29''$ AN ARC DISTANCE OF 2.73 FEET; THENCE NORTH $30^{\circ}04'04''$ EAST A DISTANCE OF 16.03 FEET; THENCE SOUTH $59^{\circ}43'08''$ EAST A DISTANCE OF

69.08 FEET; THENCE SOUTH 30°03'40" WEST A DISTANCE OF 15.90 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE A CENTRAL ANGLE OF 90°31'09" AN ARC DISTANCE OF 3.16 FEET; THENCE SOUTH 60°27'29" EAST A DISTANCE OF 20.56 FEET TO THE BEGINNING OF A TANGENT 1.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°42'52" AN ARC DISTANCE OF 1.55 FEET; THENCE NORTH 30°49'39" EAST A DISTANCE OF 16.77 FEET; THENCE SOUTH 59°21'04" EAST A DISTANCE OF 59.52 FEET; THENCE SOUTH 30°04'06" WEST A DISTANCE OF 16.01 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°53'58" AN ARC DISTANCE OF 3.14 FEET; THENCE SOUTH 59°49'52" EAST A DISTANCE OF 12.68 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°20'30" AN ARC DISTANCE OF 3.12 FEET; THENCE NORTH 30°49'38" EAST A DISTANCE OF 15.94 FEET; THENCE SOUTH 59°29'18" EAST A DISTANCE OF 64.74 FEET; THENCE SOUTH 73°23'11" EAST A DISTANCE OF 43.00 FEET; THENCE SOUTH 16°02'04" WEST A DISTANCE OF 16.04 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°28'17" AN ARC DISTANCE OF 3.12 FEET; THENCE SOUTH 73°26'13" EAST A DISTANCE OF 18.75 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°45'38" A DISTANCE OF 3.13 FEET; THENCE NORTH 16°48'09" EAST A DISTANCE OF 16.19 FEET; THENCE SOUTH 73°38'32" EAST A DISTANCE OF 67.98 FEET; THENCE SOUTH 15°33'44" WEST A DISTANCE OF 16.47 FEET TO THE BEGINNING OF A TANGENT 1.81 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 178°38'44" AN ARC DISTANCE OF 5.66 FEET; THENCE NORTH 16°54'59" EAST A DISTANCE OF 10.09 FEET; THENCE SOUTH 66°00'04" EAST A DISTANCE OF 21.50 FEET TO THE BEGINNING OF A NON-TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, A RADIAL LINE TO SAID CURVE BEARS NORTH 78°20'39" WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°39'51" AN ARC DISTANCE OF 2.57 FEET; THENCE SOUTH 62°00'30" EAST A DISTANCE OF 25.26 FEET TO THE **POINT OF BEGINNING** OF PARCEL 5.

SAID PARCEL CONTAINS 98005 SQUARE FEET OR 2.250 ACRES, MORE OR LESS.

PARCEL 6: LAND AREA

BEGINNING AT A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 62 AS DESCRIBED IN SAID MISCELLANEOUS MAP NO. 564, HEREINAFTER KNOW AS THE **POINT OF BEGINNING** OF PARCEL 6; THENCE LEAVING SAID

ORDINARY HIGH WATER MARK NORTH 26°56'57" EAST A DISTANCE OF 6.04 FEET; THENCE SOUTH 60°01'01" EAST A DISTANCE OF 7.31 FEET; THENCE NORTH 31°11'22" EAST A DISTANCE OF 16.61 FEET; THENCE SOUTH 59°34'22" EAST A DISTANCE OF 18.00 FEET; THENCE NORTH 30°53'35" EAST A DISTANCE OF 34.00 FEET; THENCE NORTH 58°31'09" WEST A DISTANCE OF 5.36 FEET; THENCE NORTH 30°47'23" EAST A DISTANCE OF 16.83 FEET; THENCE SOUTH 59°04'34" EAST A DISTANCE OF 5.41 FEET; THENCE NORTH 30°39'31" EAST A DISTANCE OF 8.53 FEET; THENCE NORTH 58°37'04" WEST A DISTANCE OF 17.94 FEET; THENCE NORTH 30°24'29" EAST A DISTANCE OF 8.27 FEET; THENCE NORTH 60°19'05" WEST A DISTANCE OF 15.86 FEET TO THE BEGINNING OF A TANGENT 2.50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°43'24" AN ARC DISTANCE OF 3.74 FEET TO THE BEGINNING OF A COMPOUND 20.50 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°24'11" AN ARC DISTANCE OF 30.20 FEET TO THE BEGINNING OF A COMPOUND 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°12'33" AN ARC DISTANCE OF 3.08 FEET; THENCE SOUTH 18°01'03" WEST A DISTANCE OF 17.71 FEET; THENCE SOUTH 73°07'04" EAST A DISTANCE OF 75.93 FEET; THENCE NORTH 17°11'25" EAST A DISTANCE OF 16.10 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°38'59" AN ARC DISTANCE OF 2.95 FEET TO THE BEGINNING OF A COMPOUND 16.75 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 118°44'49" AN ARC DISTANCE OF 34.71 FEET TO THE BEGINNING OF A COMPOUND 1.50 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 76°15'07" AN ARC DISTANCE OF 2.00 FEET; THENCE NORTH 63°09'41" WEST A DISTANCE OF 12.99 FEET; THENCE SOUTH 26°49'41" WEST A DISTANCE OF 85.16 FEET; THENCE SOUTH 63°02'22" EAST A DISTANCE OF 14.50 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°17'10" A DISTANCE OF 3.15 FEET; THENCE SOUTH 27°14'48" WEST A DISTANCE OF 17.78 FEET TO A POINT ON THE SAID ORDINARY HIGH WATER MARK; THENCE ALONG SAID ORDINARY HIGH WATER MARK NORTH 63°06'55" WEST A DISTANCE OF 114.14 FEET TO ORDINARY HIGH WATER MARK STATION 62 AND THE **POINT OF BEGINNING** OF PARCEL 6.

SAID PARCEL CONTAINS 9,030 SQUARE FEET OR 0.207 ACRES, MORE OR LESS.

PARCEL 7: PUBLIC ACCESS EASEMENT AREA

BEGINNING AT POINT A OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCEL 7; THENCE NORTH 63°04'33" WEST A DISTANCE OF 30.00 FEET; THENCE NORTH 26°56'39" EAST A DISTANCE OF 299.42 FEET; THENCE SOUTH 85°34'34" EAST A DISTANCE OF 32.48 FEET; THENCE SOUTH 26°56'39" WEST A DISTANCE OF 311.84 FEET TO THE **POINT OF BEGINNING** OF PARCEL 7.

SAID PARCEL CONTAINS 9,169 SQUARE FEET OR 0.210 ACRES, MORE OR LESS.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS' ACT.







 07-12-2024
GARY L. HUS DATE
LS 7019

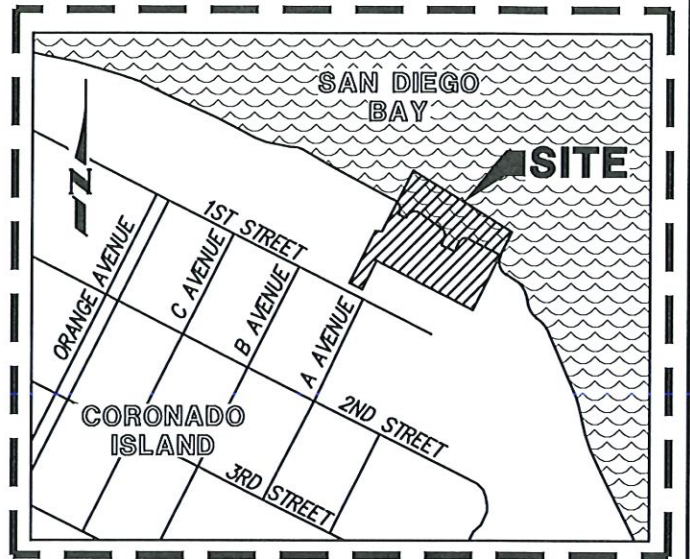


Exhibit B

Plat Map of Parcels

LEGEND

-  INDICATES LAND LEASE PARCEL
-  INDICATES WATER LEASE PARCEL
-  INDICATES ORDINARY HIGH WATER MARK (OHWM) STATION PER R.O.S. 16818.
-  INDICATES 3" DIAMETER BRASS DISK GPS POINT MARKED "SDUPD-029" AS SHOWN ON ROS No. 16668
- P.O.C.** INDICATES POINT OF COMMENCEMENT
- P.O.B.** INDICATES POINT OF BEGINNING
-  INDICATES 15' WIDE UTILITY/PUBLIC ACCESS EASEMENT



VICINITY MAP
NO SCALE

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6, EPOCH 1991.35 GRID BEARING BETWEEN FIRST ORDER G.P.S. POINT NO. 30 AND FIRST ORDER G.P.S. POINT NO. 29 AS SHOWN HEREON PER ROS 16668.

NORTH 67°18'04" WEST GRID

DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY BY 1/1.00001987. QUOTED BEARINGS FROM REFERENCE DEEDS/MAPS MAY OR MAY NOT BE IN TERMS OF SAID SYSTEM.

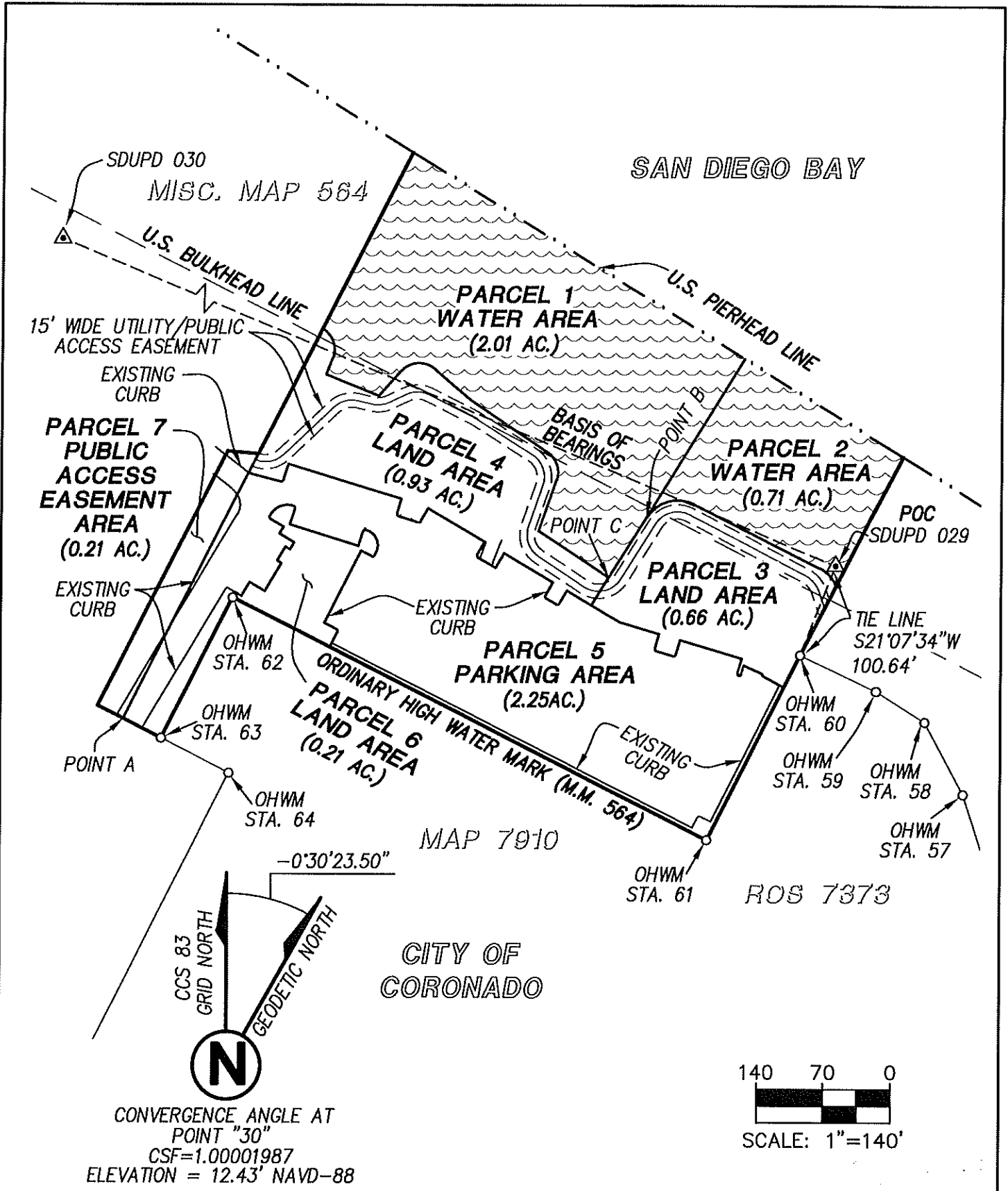


PROJECT DESIGN CONSULTANTS

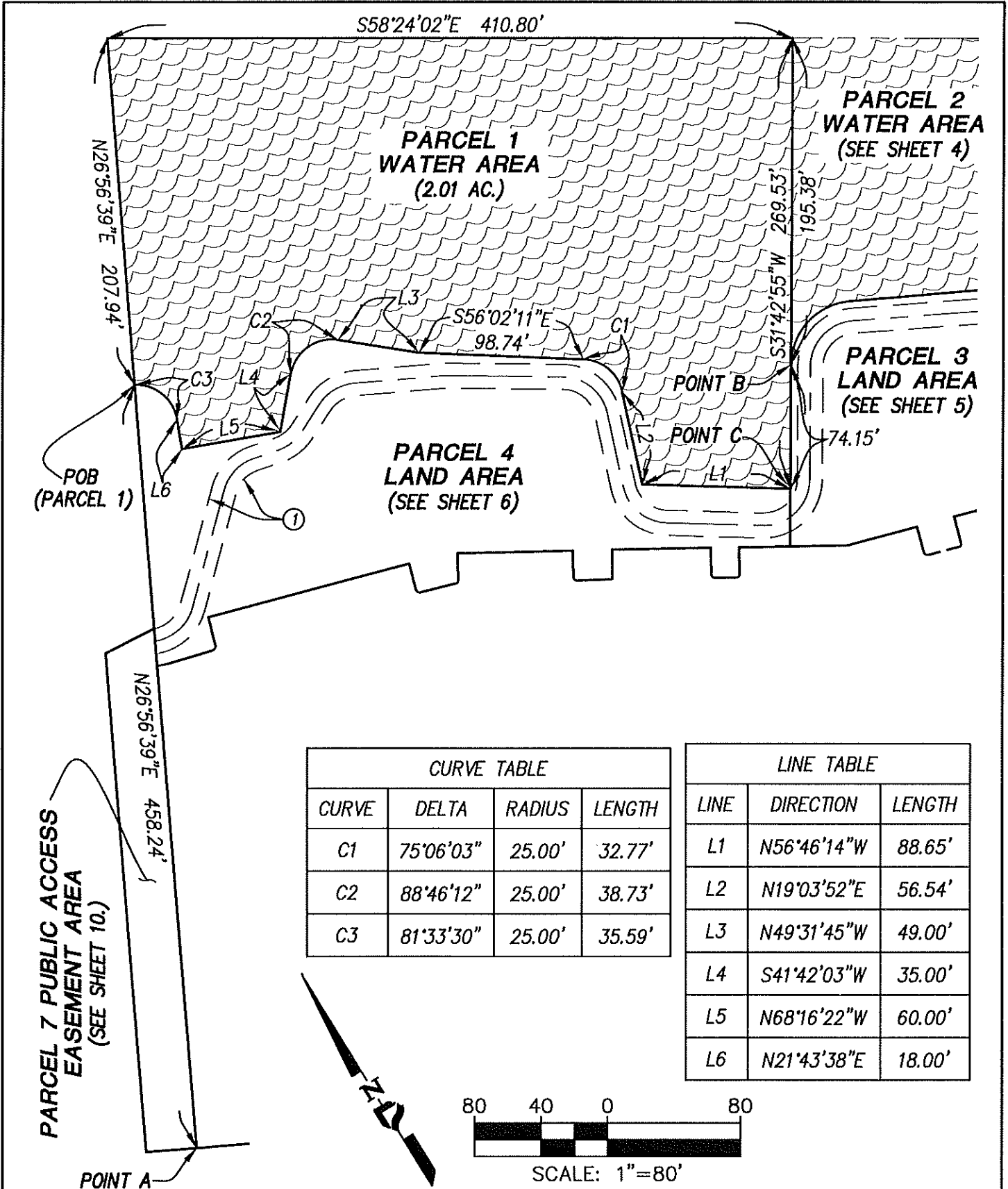
a BOWMAN company
 Planning | Landscape Architecture | Engineering | Survey
 701 B Street, Suite 800 San Diego, CA 92101
 619.235.6471 Tel 619.234.0349 Fax

Gary L. Hus 07-12-2024
 GARY L. HUS DATE
 L.S. 7019

DRAWN <u> KP </u> CHECKED <u> MM </u> REVIEWED <u> GLH </u> DATE: _____ _____	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND LEASE WITHIN CORPORATE LIMITS OF CORONADO - SAN DIEGO FERRY LANDING ASSOCIATES, LLC	DATE _____ SCALE _____ REF. _____ DRAWING NO. SHEET 1 OF 10 003-041
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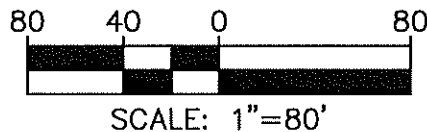


DRAWN <u> KP </u> CHECKED <u> MM </u> REVIEWED <u> GLH </u>	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND LEASE WITHIN CORPORATE LIMITS OF CORONADO - SAN DIEGO FERRY LANDING ASSOCIATES, LLC	DATE <u> 6/19/2024 </u> SCALE <u> 1" = 140' </u> REF. _____
		DRAWING NO. SHEET 2 OF 10 003-041



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	75°06'03"	25.00'	32.77'
C2	88°46'12"	25.00'	38.73'
C3	81°33'30"	25.00'	35.59'

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N56°46'14"W	88.65'
L2	N19°03'52"E	56.54'
L3	N49°31'45"W	49.00'
L4	S41°42'03"W	35.00'
L5	N68°16'22"W	60.00'
L6	N21°43'38"E	18.00'

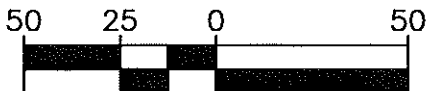
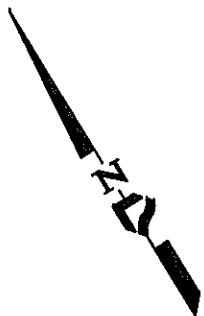
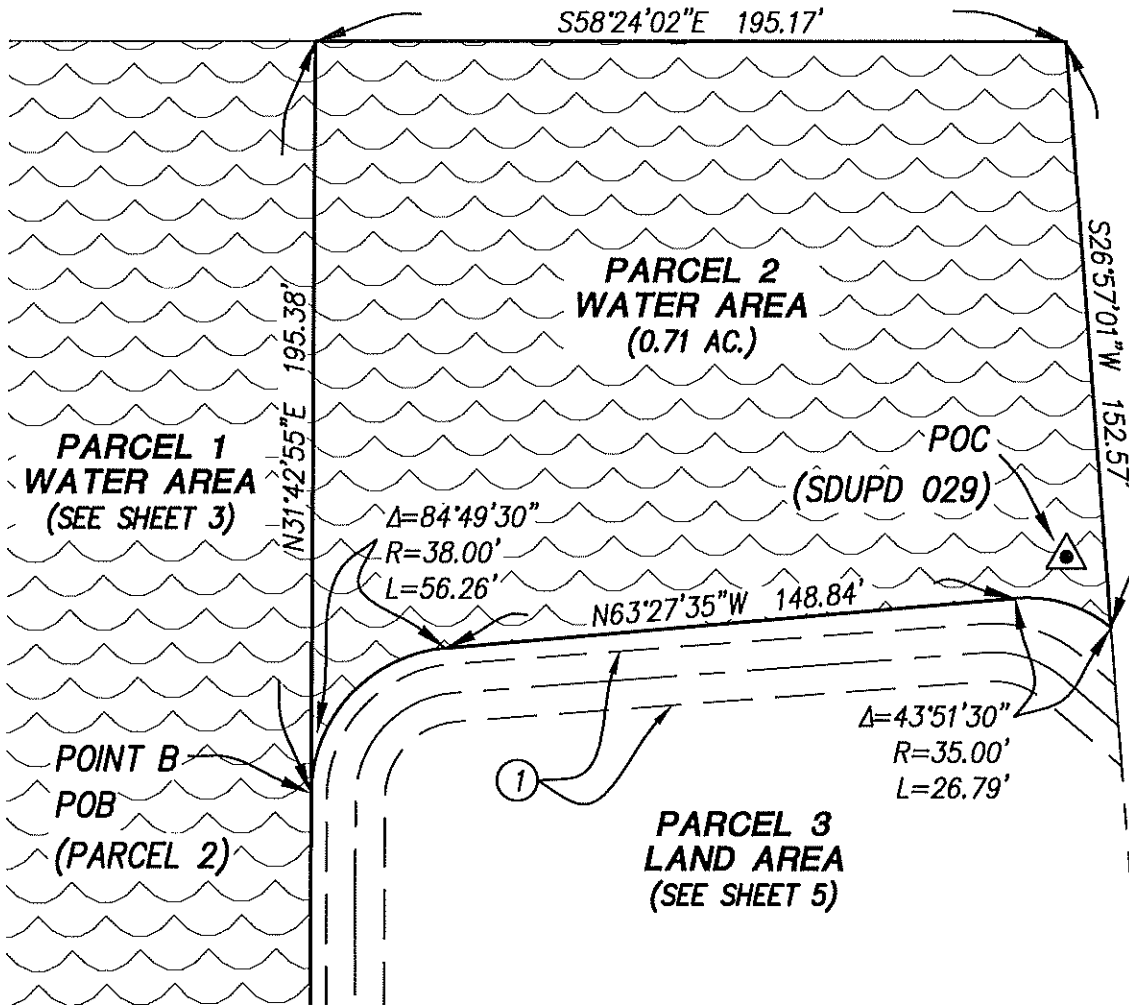


DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 80'
 REF.

DRAWING NO.
SHEET 3 OF 10
003-041



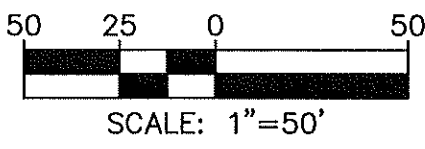
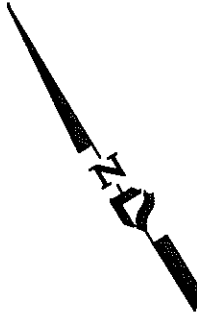
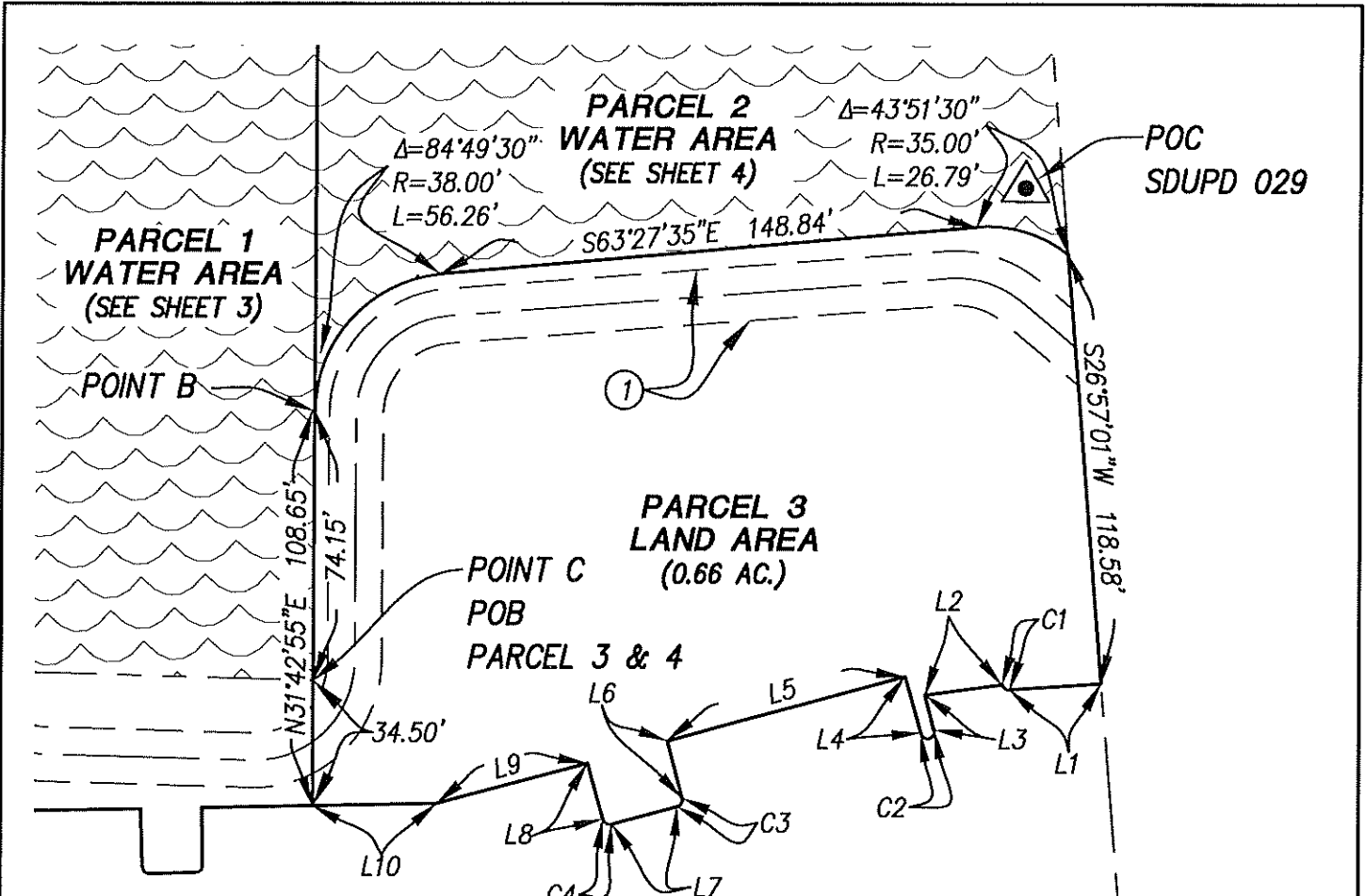
SCALE: 1"=50'

DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 50'
 REF.

DRAWING NO.
SHEET 4 OF 10
003-041



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	73°39'51"	2.00'	2.57'
C2	178°38'44"	1.82'	5.66'
C3	89°45'38"	2.00'	3.13'
C4	89°28'17"	2.00'	3.12'

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N62°00'30"W	25.26'
L2	N66°00'04"W	21.50'
L3	S16°54'59"W	10.09'
L4	N15°33'44"E	16.47'
L5	N73°38'32"W	67.98'
L6	S16°48'09"W	16.19'
L7	N73°26'13"W	18.75'
L8	N16°02'04"E	16.04'
L9	N73°23'11"W	43.00'
L10	N59°29'18"W	34.48'

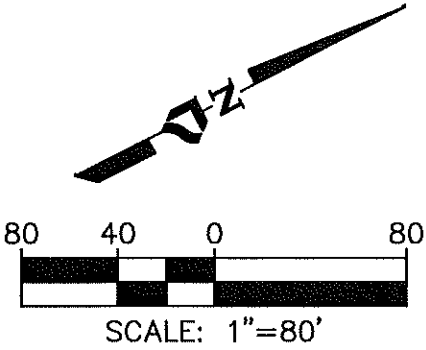
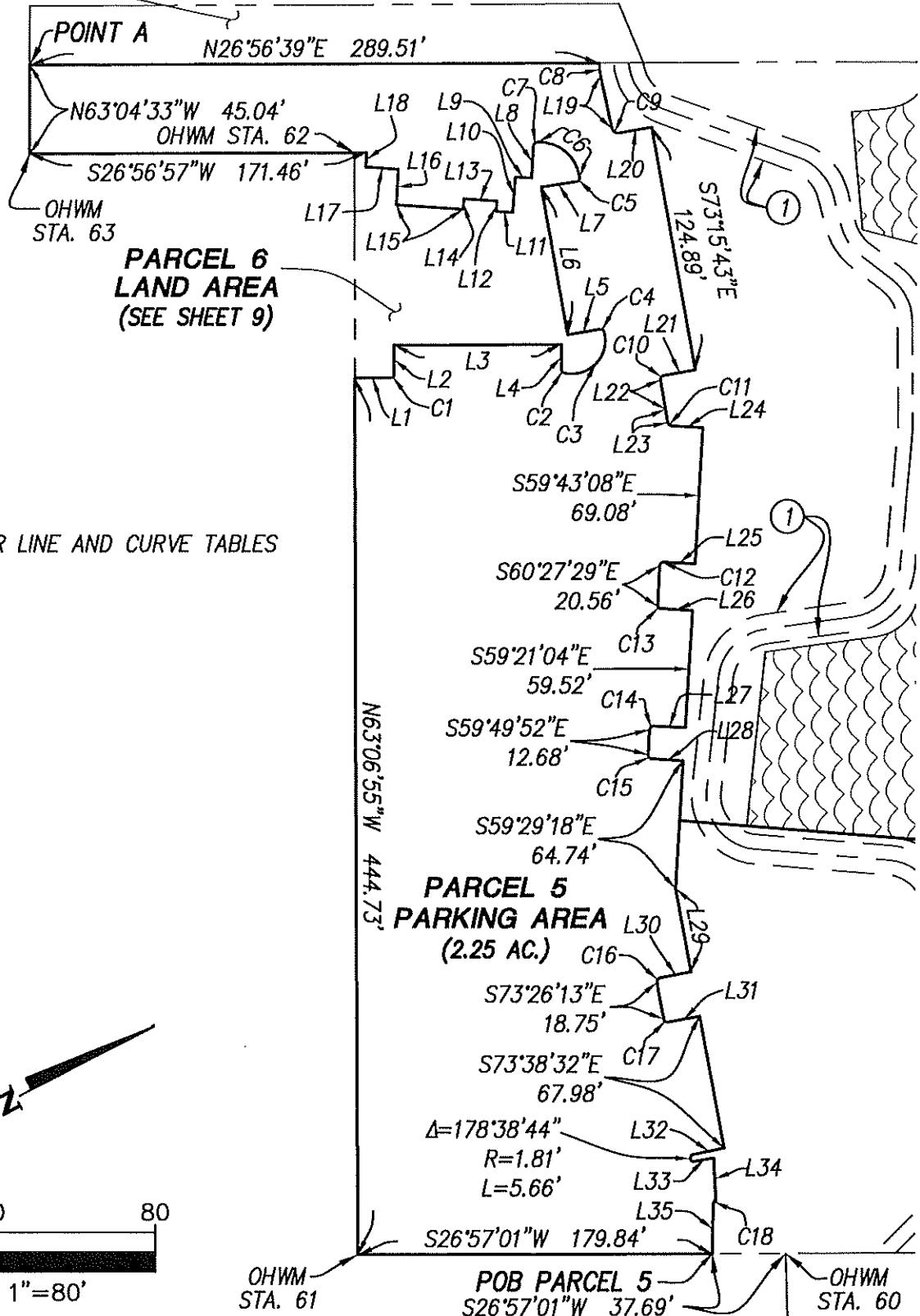
DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 50'
 REF.

DRAWING NO.
SHEET 5 OF 10
003-041

**PARCEL 7
PUBLIC
ACCESS
EASEMENT
AREA
(SEE SHEET 10)**



DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 80'
 REF.

**DRAWING NO.
 SHEET 7 OF 10
 003-041**

LINE AND CURVE TABLES FOR PARCEL 5, SHEET 7

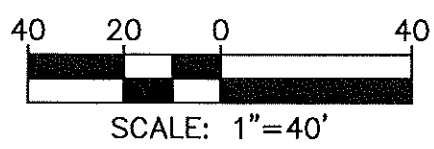
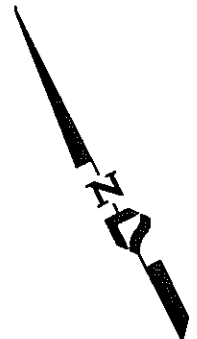
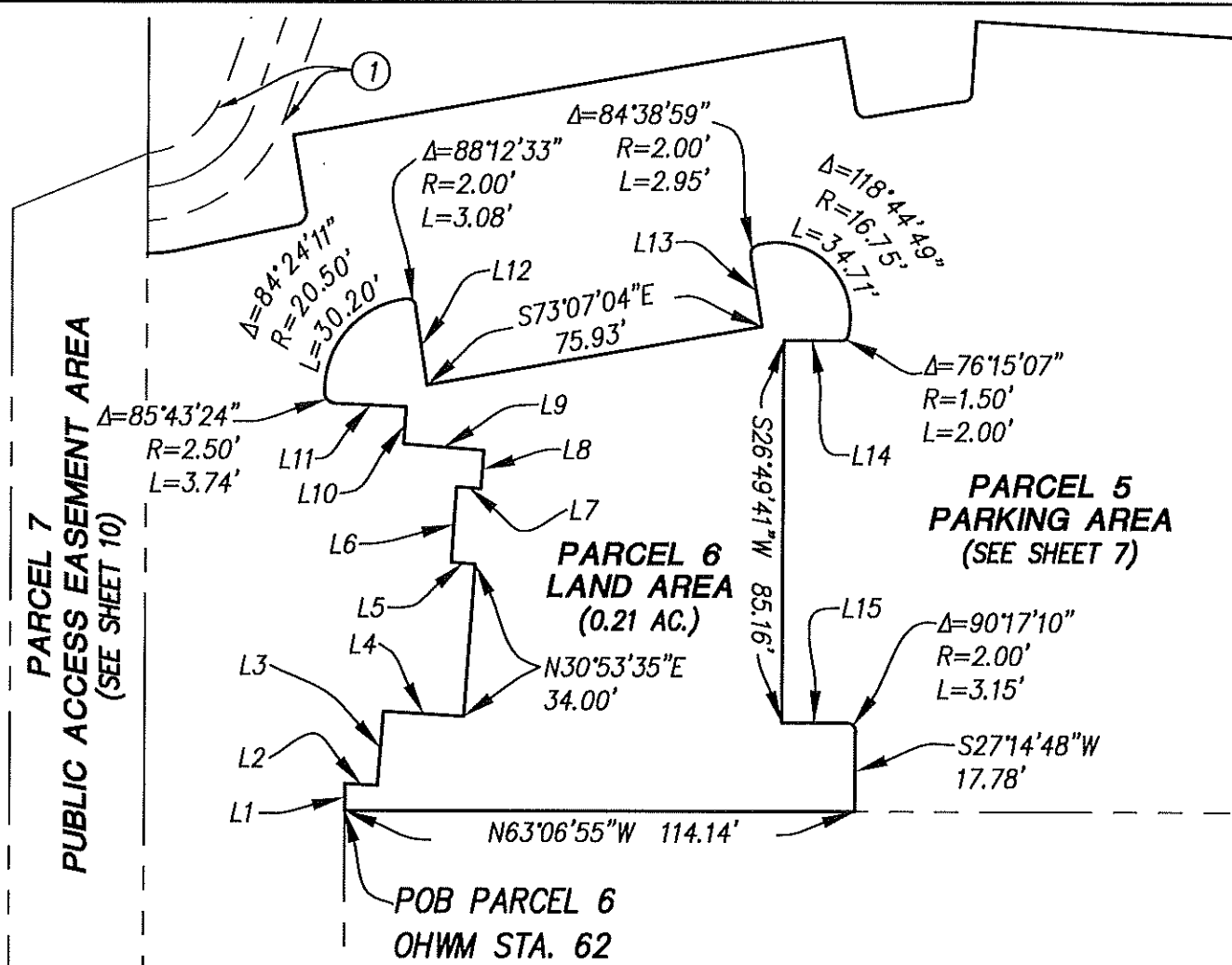
CURVE TABLE				LINE TABLE			LINE TABLE		
CURVE	DELTA	RADIUS	LENGTH	LINE	DIRECTION	LENGTH	LINE	DIRECTION	LENGTH
C1	90°17'10"	2.00'	3.15'	L1	N27°14'48"E	17.78'	L19	S75°13'39"E	27.41'
C2	76°15'07"	1.50'	2.00'	L2	N63°02'22"W	14.50'	L20	N17°05'16"E	16.90'
C3	118°44'49"	16.75'	34.71'	L3	N26°49'41"E	85.16'	L21	S16°45'36"W	16.33'
C4	84°38'59"	2.00'	2.95'	L4	S63°09'41"E	12.99'	L22	S72°49'46"E	15.09'
C5	88°12'33"	2.00'	3.08'	L5	S17°11'25"W	16.10'	L23	S71°47'27"E	6.80'
C6	84°24'11"	20.50'	30.20'	L6	N73°07'04"W	75.93'	L24	N30°04'04"E	16.03'
C7	85°43'24"	2.50'	3.74'	L7	N18°01'03"E	17.71'	L25	S30°03'40"W	15.90'
C8	13°23'11"	28.00'	6.54'	L8	S60°19'05"E	15.86'	L26	N30°49'39"E	16.77'
C9	87°41'04"	3.00'	4.59'	L9	S30°24'29"W	8.27'	L27	S30°04'06"W	16.01'
C10	89°35'22"	2.00'	3.13'	L10	S58°37'04"E	17.94'	L28	N30°49'38"E	15.94'
C11	78°08'29"	2.00'	2.73'	L11	S30°39'31"W	8.53'	L29	S73°23'11"E	43.00'
C12	90°31'09"	2.00'	3.16'	L12	N59°04'34"W	5.41'	L30	S16°02'04"W	16.04'
C13	88°42'52"	1.00'	1.55'	L13	S30°47'23"W	16.83'	L31	N16°48'09"E	16.19'
C14	89°53'58"	2.00'	3.14'	L14	S58°31'09"E	5.36'	L32	S15°33'44"W	16.47'
C15	89°20'30"	2.00'	3.12'	L15	S30°53'35"W	34.00'	L33	N16°54'59"E	10.09'
C16	89°28'17"	2.00'	3.12'	L16	N59°34'22"W	18.00'	L34	S66°00'04"E	21.50'
C17	89°45'38"	2.00'	3.13'	L17	S31°11'22"W	16.61'	L35	S62°00'30"E	25.26'
C18	73°39'51"	2.00'	2.57'	L18	N60°01'01"W	7.31'			

DRAWN KP
CHECKED MM
REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
SCALE 1" = 80'
REF.

DRAWING NO.
SHEET 8 OF 10
003-041



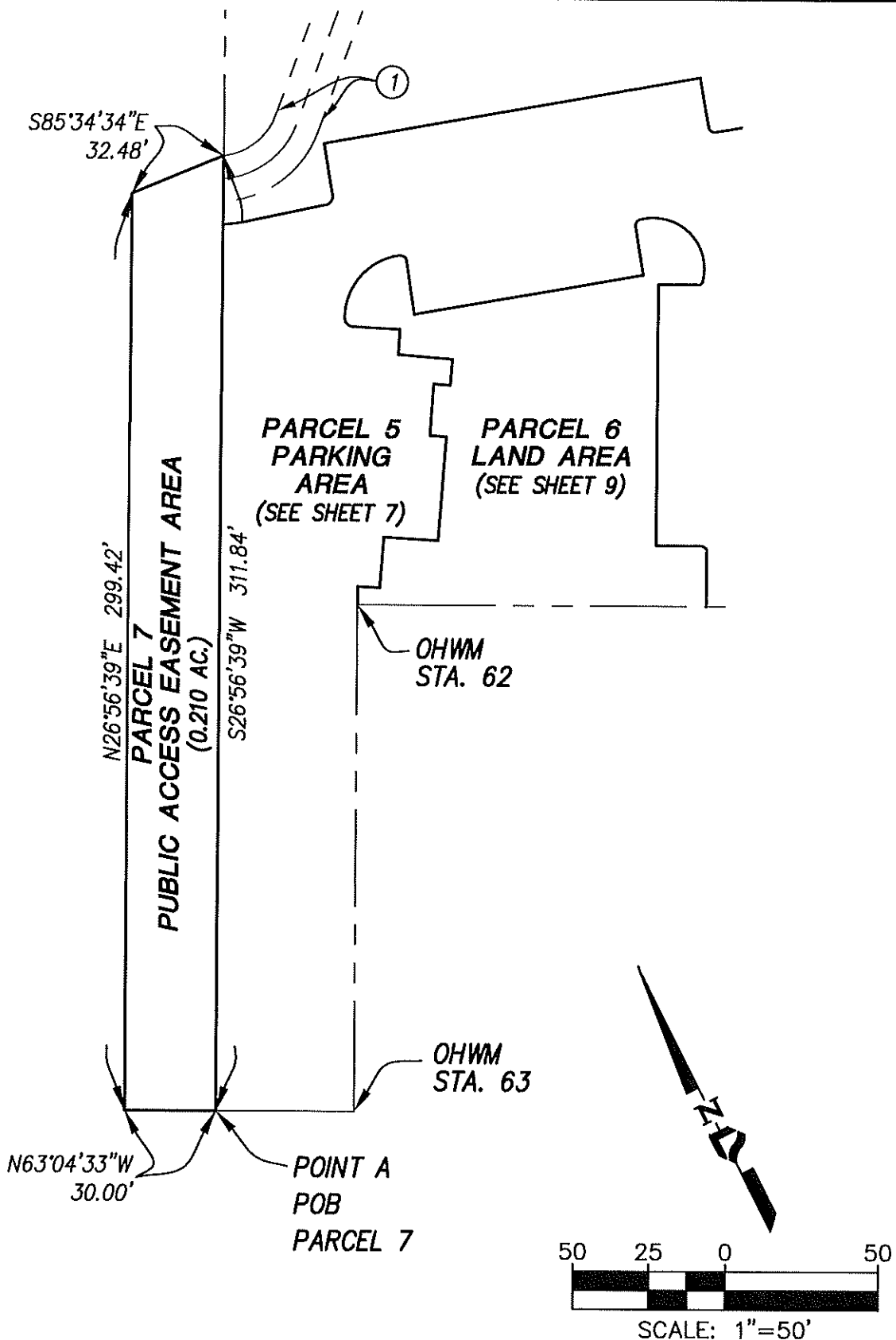
LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N26°56'57"E	6.04'
L2	S60°01'01"E	7.31'
L3	N31°11'22"E	16.61'
L4	S59°34'22"E	18.00'
L5	N58°31'09"W	5.36'
L6	N30°47'23"E	16.83'
L7	S59°04'34"E	5.41'
L8	N30°39'31"E	8.53'

LINE TABLE		
LINE	DIRECTION	LENGTH
L9	N58°37'04"W	17.94'
L10	N30°24'29"E	8.27'
L11	N60°19'05"W	15.86'
L12	S18°01'03"W	17.71'
L13	N17°11'25"E	16.10'
L14	N63°09'41"W	12.99'
L15	S63°02'22"E	14.50'

DRAWN KP
 CHECKED MM
 REVIEWED GLH

**SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
 FERRY LANDING ASSOCIATES, LLC**

DATE 02/06/2023
 SCALE 1" = 40'
 REF.
**DRAWING NO.
 SHEET 9 OF 10
 003-041**



DRAWN	KP
CHECKED	MM
REVIEWED	GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE	02/06/2023
SCALE	1" = 50'
REF.	
DRAWING NO. SHEET 10 OF 10 003-041	

EXHIBIT C

Memorandum and Quitclaim Deed

(attached)

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

San Diego Unified Port District
Attn: Adam Meyer
Director, Real Estate
3165 Pacific Highway
San Diego, CA 92101

(Above Space for Recorder's Use Only)

MEMORANDUM OF FIFTH AMENDMENT AND QUITCLAIM DEED

This Memorandum of Fifth Amendment and Quitclaim Deed ("**Memorandum**") is dated as of _____, 20__ (the "**Effective Date**") between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("**Lessor**"), and FERRY LANDING ASSOCIATES, LLC, a California limited liability company ("**Lessee**"), concerning that certain real property legally described on Exhibit A and delineated on Exhibit B attached hereto and by this reference made a part hereof ("**Premises**").

Reference is hereby made to that certain Lease Between Lessor and Lessee dated October 21, 1997 and recorded in the Office of the District Clerk as Document No. 36616, as amended by that certain Agreement for Amendment of Lease Amendment No. 1 dated October 9, 2001 and recorded in the Office of the District Clerk as Document No. 42938, that certain Agreement for Amendment of Lease Amendment No. 2 dated July 12, 2005 and recorded in the Office of the District Clerk as Document No. 49282, that certain Agreement for Amendment of Lease Amendment No. 3 dated July 2, 2008 and recorded in the Office of the District Clerk as Document No. 53657, that certain Agreement for Amendment of Lease Amendment No. 4 dated September 1, 2016 and recorded in the Office of the District Clerk as Document No. 65563, and that certain Fifth Amendment dated _____, 20__ and recorded in the Office of the District Clerk as Document No. _____ (the "**Fifth Amendment**") (collectively, the "**Lease**").

For good and adequate consideration, the sufficiency of which is hereby acknowledged, Lessor and Lessee agree as of the Effective Date as follows: (i) the Fifth Amendment, which provides for the termination of the Lease with respect to Parcels 2 and 3 of the Premises, has become effective; (ii) Parcels 2 and 3, as legally described on Exhibit A and delineated on Exhibit B attached hereto, are no longer included in the Premises subject to the Lease; and (iii) Lessee hereby remises, releases, and relinquishes to Lessor all of Lessee's right, title, and interest in Parcels 2 and 3 as well as all improvements thereon granted by the Lease; and (iv) except as set forth in the Fifth Amendment, Lessee has no further obligations with respect to Parcels 2 and 3.

The purpose of this Memorandum is to provide constructive notice and make clear that as of the Effective Date and in accordance with the Fifth Amendment, Parcels 2 and 3 have been removed from, and are no longer included in, the Premises under the Lease.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum of Fifth Amendment and Quitclaim Deed as of the Effective Date.

APPROVED AS TO FORM AND LEGALITY:

SAN DIEGO UNIFIED PORT DISTRICT

GENERAL COUNSEL

By: _____
David Jones
Deputy General Counsel

By: _____
Adam Meyer
Director, Real Estate

FERRY LANDING ASSOCIATES, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit A

Legal Description of Premises

(attached)

EXHIBIT "A"
LEGAL DESCRIPTION

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1: WATER AREA

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED "SDUPD-029" AS SHOWN ON RECORD OF SURVEY MAP NO. 16668, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON JULY 25, 2000; THENCE ALONG A TIE-LINE ONLY SOUTH 21°07'34" WEST A DISTANCE OF 100.64 FEET TO A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 60, AS SAID ORDINARY HIGH WATER MARK IS DELINEATED ON THE ABOVE DESCRIBED MISCELLANEOUS MAP 564; THENCE ALONG SAID ORDINARY HIGHWATER MARK SOUTH 26°57'01" WEST A DISTANCE OF 217.53' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 61; THENCE NORTH 63°06'55" WEST A DISTANCE OF 558.87' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 62, ALSO BEING THE **POINT OF BEGINNING** OF PARCEL 6; THENCE SOUTH 26°56'57" WEST A DISTANCE OF 165.42' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 63; THENCE LEAVING SAID ORDINARY HIGH WATER MARK NORTH 63°04'33" WEST A DISTANCE OF 45.04' FEET TO A POINT HEREINAFTER KNOWN AS **POINT A**; THENCE LEAVING SAID POINT A THENCE NORTH 26°56'39" EAST A DISTANCE OF 458.24' FEET TO THE **POINT OF BEGINNING** OF PARCEL 1; THENCE NORTH 26°56'39" EAST 207.94 FEET; THENCE SOUTH 58°24'02" EAST A DISTANCE OF 410.80 FEET; THENCE SOUTH 31°42'55" WEST A DISTANCE OF 195.38 FEET TO A POINT HEREINAFTER KNOWN AS **POINT B**; THENCE LEAVING SAID POINT B SOUTH 31°42'55" WEST A DISTANCE OF 74.15 FEET TO A POINT HEREINAFTER KNOWN AS **POINT C**; THENCE LEAVING SAID POINT C NORTH 56°46'14" WEST A DISTANCE OF 88.65 FEET; THENCE NORTH 19°03'52" EAST A DISTANCE OF 56.54 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75°06'03" AN ARC DISTANCE OF 32.77 FEET; THENCE NORTH 56°02'11" WEST A DISTANCE OF 98.74 FEET; THENCE NORTH 49°31'45" WEST A DISTANCE OF 49.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°46'12" AN ARC DISTANCE OF 38.73 FEET; THENCE SOUTH 41°42'03" WEST A DISTANCE OF 35.00 FEET; THENCE NORTH

68°16'22" WEST A DISTANCE OF 60.00 FEET; THENCE NORTH 21°43'38" EAST A DISTANCE OF 18.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°33'30" AN ARC DISTANCE OF 35.59 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 87,751 SQUARE FEET OR 2.01 ACRES, MORE OR LESS.

PARCEL 2: WATER AREA

COMMENCING AT POINT B OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCEL 2; THENCE ALONG THE SOUTHEASTERLY LINE OF PARCEL 1 NORTH 31°42'55" EAST A DISTANCE OF 195.38 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE SOUTH 58°24'02" EAST A DISTANCE OF 195.17 FEET; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 152.57 FEET TO THE BEGINNING OF A NON-TANGENT 35 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 70°23'55" EAST; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°51'30" AN ARC DISTANCE OF 26.79 FEET; THENCE NORTH 63°27'35" WEST A DISTANCE OF 148.84 FEET TO THE BEGINNING OF A TANGENT 38 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°49'30" AN ARC DISTANCE OF 56.26 FEET TO THE **POINT OF BEGINNING** OF PARCEL 2.

SAID PARCEL CONTAINS 30,845 SQUARE FEET OR 0.708 ACRES, MORE OR LESS.

PARCEL 3: LAND AREA

COMMENCING AT POINT C OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCELS 3 AND 4; THENCE NORTH 31°42'55" EAST A DISTANCE OF 74.15 FEET TO THE BEGINNING OF A TANGENT 38.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°49'30" AN ARC DISTANCE OF 56.26 FEET; THENCE SOUTH 63°27'35" EAST A DISTANCE OF 148.84 FEET TO THE BEGINNING OF A TANGENT 35.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°51'30" A DISTANCE OF 26.79 FEET; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 118.58 FEET; THENCE NORTH 62°00'30" WEST A DISTANCE OF 25.26 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°39'51" AN ARC DISTANCE OF 2.57 FEET; THENCE NORTH 66°00'04" WEST A DISTANCE OF 21.50 FEET; THENCE SOUTH 16°54'59" WEST A DISTANCE OF 10.09 FEET TO THE BEGINNING OF A TANGENT 1.82 FOOT RADIUS

72°49'46" WEST A DISTANCE OF 15.09 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°35'22" A DISTANCE OF 3.13 FEET; THENCE NORTH 16°45'36" EAST A DISTANCE OF 16.33 FEET; THENCE NORTH 73°15'43" WEST A DISTANCE OF 124.89 FEET; THENCE SOUTH 17°05'16" WEST A DISTANCE OF 16.90 FEET TO THE BEGINNING OF A TANGENT 3.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 87°41'05" AN ARC DISTANCE OF 4.59 FEET; THENCE NORTH 75°13'39" WEST A DISTANCE OF 27.41 FEET TO THE BEGINNING OF A TANGENT 28.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°23'11" A DISTANCE OF 6.54 FEET; THENCE NORTH 26°56'39" EAST 168.73 FEET TO A NON-TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE TO SAID CURVE BEARS NORTH 30°10'08" EAST; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°33'30" AN ARC DISTANCE OF 35.59 FEET; THENCE SOUTH 21°43'38" WEST A DISTANCE OF 18.00 FEET; THENCE SOUTH 68°16'22" EAST A DISTANCE OF 60.00 FEET; THENCE NORTH 41°42'03" EAST A DISTANCE OF 35.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°46'12" AN ARC DISTANCE OF 38.73 FEET; THENCE SOUTH 49°31'45" EAST A DISTANCE OF 49.00 FEET; THENCE SOUTH 56°02'11" EAST A DISTANCE OF 98.74 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75°06'03" AN ARC DISTANCE OF 32.77 FEET; THENCE SOUTH 19°03'52" WEST A DISTANCE OF 56.54 FEET; THENCE SOUTH 56°46'14" EAST A DISTANCE OF 88.65 FEET TO THE **POINT OF BEGINNING** OF PARCELS 3 AND 4

SAID PARCEL CONTAINS 40588.82 SQUARE FEET OR 0.932 ACRES, MORE OR LESS.

PARCEL 5: PARKING AREA

COMMENCING AT A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 60 AS DESCRIBED IN SAID MISCELLANEOUS MAP NO. 564; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 37.69 FEET TO THE **POINT OF BEGINNING** OF PARCEL 5; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 179.84 FEET; THENCE NORTH 63°06'55" WEST A DISTANCE OF 444.73 FEET; THENCE NORTH 27°14'48" EAST A DISTANCE OF 17.78 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°17'10" AN ARC DISTANCE OF 3.15 FEET; THENCE NORTH 63°02'22" WEST A DISTANCE OF 14.50 FEET; THENCE NORTH 26°49'41" EAST A DISTANCE OF 85.16 FEET; THENCE SOUTH 63°09'41" EAST A DISTANCE OF 12.99 FEET TO THE BEGINNING OF A TANGENT 1.50 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH

A CENTRAL ANGLE OF $76^{\circ}15'07''$ AN ARC DISTANCE OF 2.00 FEET; TO THE BEGINNING OF A COMPOUND 16.75 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $118^{\circ}44'49''$ AN ARC DISTANCE OF 34.71 FEET TO THE BEGINNING OF A COMPOUND 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $84^{\circ}38'59''$ A DISTANCE OF 2.95 FEET; THENCE SOUTH $17^{\circ}11'25''$ WEST A DISTANCE OF 16.10 FEET; THENCE NORTH $73^{\circ}07'04''$ WEST A DISTANCE OF 75.93 FEET; THENCE NORTH $18^{\circ}01'03''$ EAST A DISTANCE OF 17.71 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $88^{\circ}12'33''$ AN ARC DISTANCE OF 3.08 FEET TO THE BEGINNING OF A COMPOUND 20.50 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $84^{\circ}24'11''$ AN ARC DISTANCE OF 30.20 FEET TO THE BEGINNING OF A COMPOUND 2.50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $85^{\circ}43'24''$ AN ARC DISTANCE OF 3.74 FEET; THENCE SOUTH $60^{\circ}19'05''$ EAST A DISTANCE OF 15.86 FEET; THENCE SOUTH $30^{\circ}24'29''$ WEST A DISTANCE OF 8.27 FEET; THENCE SOUTH $58^{\circ}37'04''$ EAST A DISTANCE OF 17.94 FEET; THENCE SOUTH $30^{\circ}39'31''$ WEST A DISTANCE OF 8.53 FEET; THENCE NORTH $59^{\circ}04'34''$ WEST A DISTANCE OF 5.41 FEET; THENCE SOUTH $30^{\circ}47'23''$ WEST A DISTANCE OF 16.83 FEET; THENCE SOUTH $58^{\circ}31'09''$ EAST A DISTANCE OF 5.36 FEET; THENCE SOUTH $30^{\circ}53'35''$ WEST A DISTANCE OF 34.00 FEET; THENCE NORTH $59^{\circ}34'22''$ WEST A DISTANCE OF 18.00 FEET; THENCE SOUTH $31^{\circ}11'22''$ WEST A DISTANCE OF 16.61 FEET; THENCE NORTH $60^{\circ}01'01''$ WEST A DISTANCE OF 7.31 FEET; THENCE SOUTH $26^{\circ}56'57''$ WEST A DISTANCE OF 171.46 FEET; THENCE NORTH $63^{\circ}04'33''$ WEST A DISTANCE OF 45.04 FEET TO A SAID **POINT A**; THENCE LEAVING SAID **POINT A** NORTH $26^{\circ}56'39''$ EAST A DISTANCE OF 289.51 FEET TO THE BEGINNING OF A NON-TANGENT 28.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL LINE TO SAID CURVE BEARS SOUTH $28^{\circ}09'32''$ WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $13^{\circ}23'11''$ AN ARC DISTANCE OF 6.54 FEET; THENCE SOUTH $75^{\circ}13'39''$ EAST A DISTANCE OF 27.41 FEET TO THE BEGINNING OF A TANGENT 3.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID ARC THROUGH A CENTRAL ANGLE OF $87^{\circ}41'04''$ AN ARC DISTANCE OF 4.59 FEET; THENCE NORTH $17^{\circ}05'16''$ EAST A DISTANCE OF 16.90 FEET; THENCE SOUTH $73^{\circ}15'43''$ EAST A DISTANCE OF 124.89 FEET; THENCE SOUTH $16^{\circ}45'36''$ WEST A DISTANCE OF 16.33 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $89^{\circ}35'22''$ AN ARC DISTANCE OF 3.13 FEET; THENCE SOUTH $72^{\circ}49'46''$ EAST A DISTANCE OF 15.09 FEET; THENCE SOUTH $71^{\circ}47'27''$ EAST A DISTANCE OF 6.80 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $78^{\circ}08'29''$ AN ARC DISTANCE OF 2.73 FEET; THENCE NORTH $30^{\circ}04'04''$ EAST A DISTANCE OF 16.03 FEET; THENCE SOUTH $59^{\circ}43'08''$ EAST A DISTANCE OF

69.08 FEET; THENCE SOUTH 30°03'40" WEST A DISTANCE OF 15.90 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE A CENTRAL ANGLE OF 90°31'09" AN ARC DISTANCE OF 3.16 FEET; THENCE SOUTH 60°27'29" EAST A DISTANCE OF 20.56 FEET TO THE BEGINNING OF A TANGENT 1.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°42'52" AN ARC DISTANCE OF 1.55 FEET; THENCE NORTH 30°49'39" EAST A DISTANCE OF 16.77 FEET; THENCE SOUTH 59°21'04" EAST A DISTANCE OF 59.52 FEET; THENCE SOUTH 30°04'06" WEST A DISTANCE OF 16.01 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°53'58" AN ARC DISTANCE OF 3.14 FEET; THENCE SOUTH 59°49'52" EAST A DISTANCE OF 12.68 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°20'30" AN ARC DISTANCE OF 3.12 FEET; THENCE NORTH 30°49'38" EAST A DISTANCE OF 15.94 FEET; THENCE SOUTH 59°29'18" EAST A DISTANCE OF 64.74 FEET; THENCE SOUTH 73°23'11" EAST A DISTANCE OF 43.00 FEET; THENCE SOUTH 16°02'04" WEST A DISTANCE OF 16.04 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°28'17" AN ARC DISTANCE OF 3.12 FEET; THENCE SOUTH 73°26'13" EAST A DISTANCE OF 18.75 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°45'38" A DISTANCE OF 3.13 FEET; THENCE NORTH 16°48'09" EAST A DISTANCE OF 16.19 FEET; THENCE SOUTH 73°38'32" EAST A DISTANCE OF 67.98 FEET; THENCE SOUTH 15°33'44" WEST A DISTANCE OF 16.47 FEET TO THE BEGINNING OF A TANGENT 1.81 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 178°38'44" AN ARC DISTANCE OF 5.66 FEET; THENCE NORTH 16°54'59" EAST A DISTANCE OF 10.09 FEET; THENCE SOUTH 66°00'04" EAST A DISTANCE OF 21.50 FEET TO THE BEGINNING OF A NON-TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, A RADIAL LINE TO SAID CURVE BEARS NORTH 78°20'39" WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°39'51" AN ARC DISTANCE OF 2.57 FEET; THENCE SOUTH 62°00'30" EAST A DISTANCE OF 25.26 FEET TO THE **POINT OF BEGINNING** OF PARCEL 5.

SAID PARCEL CONTAINS 98005 SQUARE FEET OR 2.250 ACRES, MORE OR LESS.

PARCEL 6: LAND AREA

BEGINNING AT A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 62 AS DESCRIBED IN SAID MISCELLANEOUS MAP NO. 564, HEREINAFTER KNOW AS THE **POINT OF BEGINNING** OF PARCEL 6; THENCE LEAVING SAID

ORDINARY HIGH WATER MARK NORTH 26°56'57" EAST A DISTANCE OF 6.04 FEET; THENCE SOUTH 60°01'01" EAST A DISTANCE OF 7.31 FEET; THENCE NORTH 31°11'22" EAST A DISTANCE OF 16.61 FEET; THENCE SOUTH 59°34'22" EAST A DISTANCE OF 18.00 FEET; THENCE NORTH 30°53'35" EAST A DISTANCE OF 34.00 FEET; THENCE NORTH 58°31'09" WEST A DISTANCE OF 5.36 FEET; THENCE NORTH 30°47'23" EAST A DISTANCE OF 16.83 FEET; THENCE SOUTH 59°04'34" EAST A DISTANCE OF 5.41 FEET; THENCE NORTH 30°39'31" EAST A DISTANCE OF 8.53 FEET; THENCE NORTH 58°37'04" WEST A DISTANCE OF 17.94 FEET; THENCE NORTH 30°24'29" EAST A DISTANCE OF 8.27 FEET; THENCE NORTH 60°19'05" WEST A DISTANCE OF 15.86 FEET TO THE BEGINNING OF A TANGENT 2.50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°43'24" AN ARC DISTANCE OF 3.74 FEET TO THE BEGINNING OF A COMPOUND 20.50 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°24'11" AN ARC DISTANCE OF 30.20 FEET TO THE BEGINNING OF A COMPOUND 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°12'33" AN ARC DISTANCE OF 3.08 FEET; THENCE SOUTH 18°01'03" WEST A DISTANCE OF 17.71 FEET; THENCE SOUTH 73°07'04" EAST A DISTANCE OF 75.93 FEET; THENCE NORTH 17°11'25" EAST A DISTANCE OF 16.10 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°38'59" AN ARC DISTANCE OF 2.95 FEET TO THE BEGINNING OF A COMPOUND 16.75 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 118°44'49" AN ARC DISTANCE OF 34.71 FEET TO THE BEGINNING OF A COMPOUND 1.50 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 76°15'07" AN ARC DISTANCE OF 2.00 FEET; THENCE NORTH 63°09'41" WEST A DISTANCE OF 12.99 FEET; THENCE SOUTH 26°49'41" WEST A DISTANCE OF 85.16 FEET; THENCE SOUTH 63°02'22" EAST A DISTANCE OF 14.50 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°17'10" A DISTANCE OF 3.15 FEET; THENCE SOUTH 27°14'48" WEST A DISTANCE OF 17.78 FEET TO A POINT ON THE SAID ORDINARY HIGH WATER MARK; THENCE ALONG SAID ORDINARY HIGH WATER MARK NORTH 63°06'55" WEST A DISTANCE OF 114.14 FEET TO ORDINARY HIGH WATER MARK STATION 62 AND THE **POINT OF BEGINNING** OF PARCEL 6.

SAID PARCEL CONTAINS 9,030 SQUARE FEET OR 0.207 ACRES, MORE OR LESS.

PARCEL 7: PUBLIC ACCESS EASEMENT AREA

BEGINNING AT POINT A OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCEL 7; THENCE NORTH 63°04'33" WEST A DISTANCE OF 30.00 FEET; THENCE NORTH 26°56'39" EAST A DISTANCE OF 299.42 FEET; THENCE SOUTH 85°34'34" EAST A DISTANCE OF 32.48 FEET; THENCE SOUTH 26°56'39" WEST A DISTANCE OF 311.84 FEET TO THE **POINT OF BEGINNING** OF PARCEL 7.

SAID PARCEL CONTAINS 9,169 SQUARE FEET OR 0.210 ACRES, MORE OR LESS.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS' ACT.


 07-12-2024
GARY L. HUS DATE
LS 7019








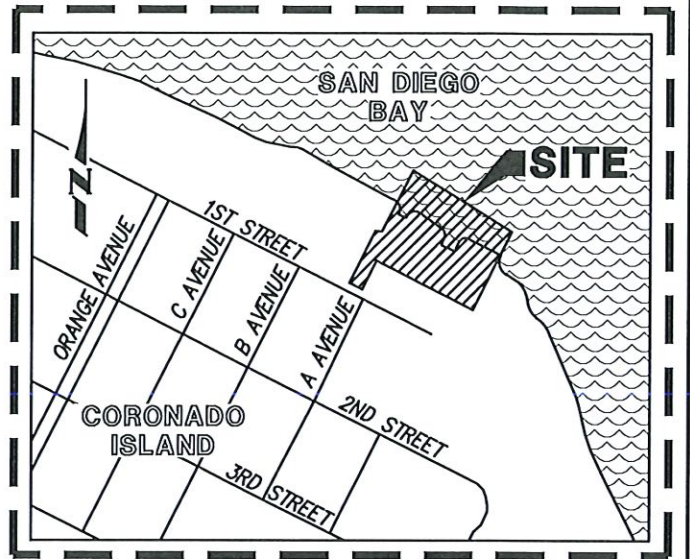
Exhibit B

Plat Map of Premises

(attached)

LEGEND

-  INDICATES LAND LEASE PARCEL
-  INDICATES WATER LEASE PARCEL
-  INDICATES ORDINARY HIGH WATER MARK (OHWM) STATION PER R.O.S. 16818.
-  INDICATES 3" DIAMETER BRASS DISK GPS POINT MARKED "SDUPD-029" AS SHOWN ON ROS No. 16668
- P.O.C.** INDICATES POINT OF COMMENCEMENT
- P.O.B.** INDICATES POINT OF BEGINNING
-  INDICATES 15' WIDE UTILITY/PUBLIC ACCESS EASEMENT



VICINITY MAP
NO SCALE

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6, EPOCH 1991.35 GRID BEARING BETWEEN FIRST ORDER G.P.S. POINT NO. 30 AND FIRST ORDER G.P.S. POINT NO. 29 AS SHOWN HEREON PER ROS 16668.

NORTH 67°18'04" WEST GRID

DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY BY 1/1.00001987. QUOTED BEARINGS FROM REFERENCE DEEDS/MAPS MAY OR MAY NOT BE IN TERMS OF SAID SYSTEM.



PROJECT DESIGN CONSULTANTS

a BOWMAN company
Planning | Landscape Architecture | Engineering | Survey

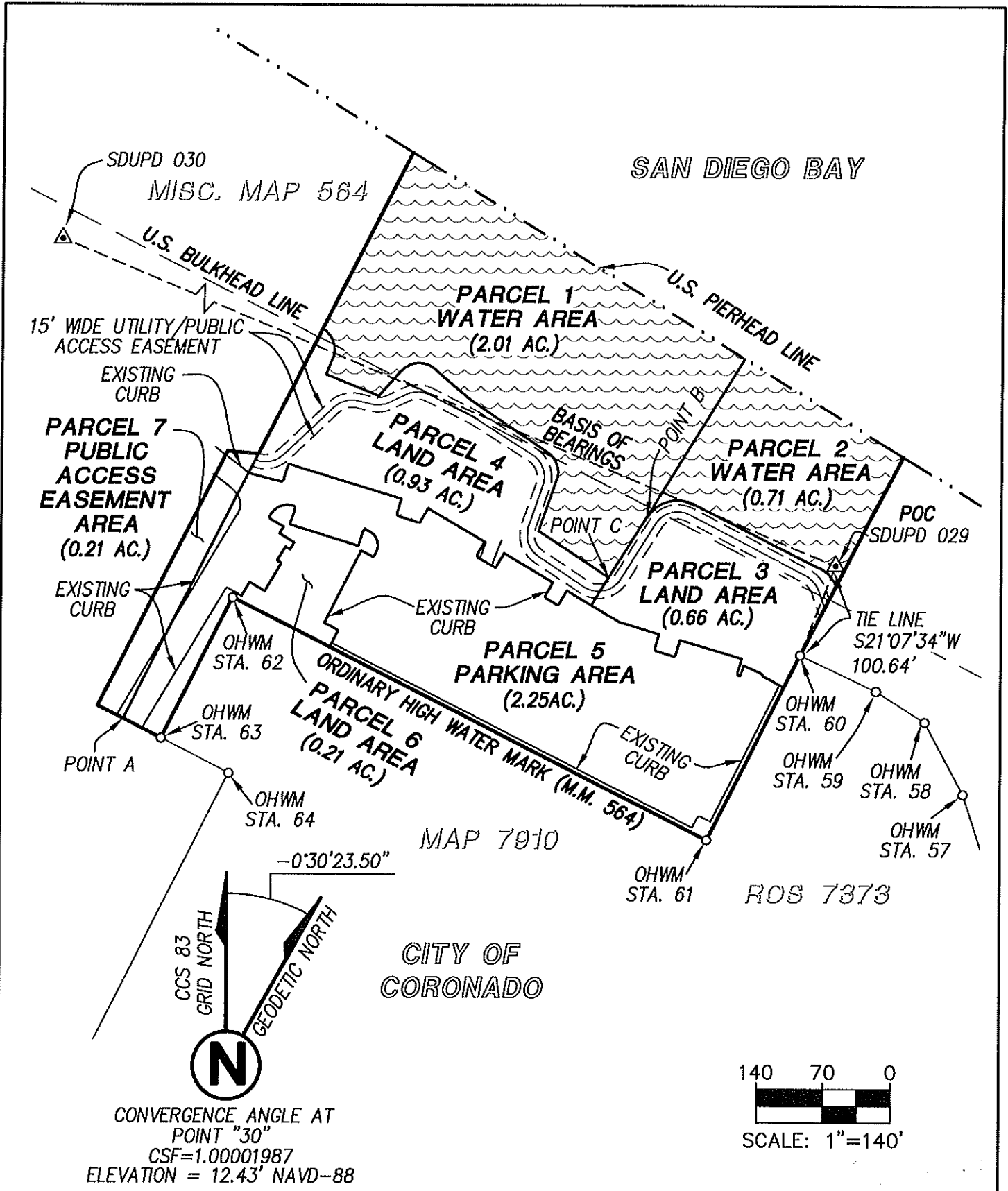
701 B Street, Suite 800 San Diego, CA 92101
619.235.6471 Tel 619.234.0349 Fax

Gary L. Hus 07-12-2024
GARY L. HUS DATE
L.S. 7019

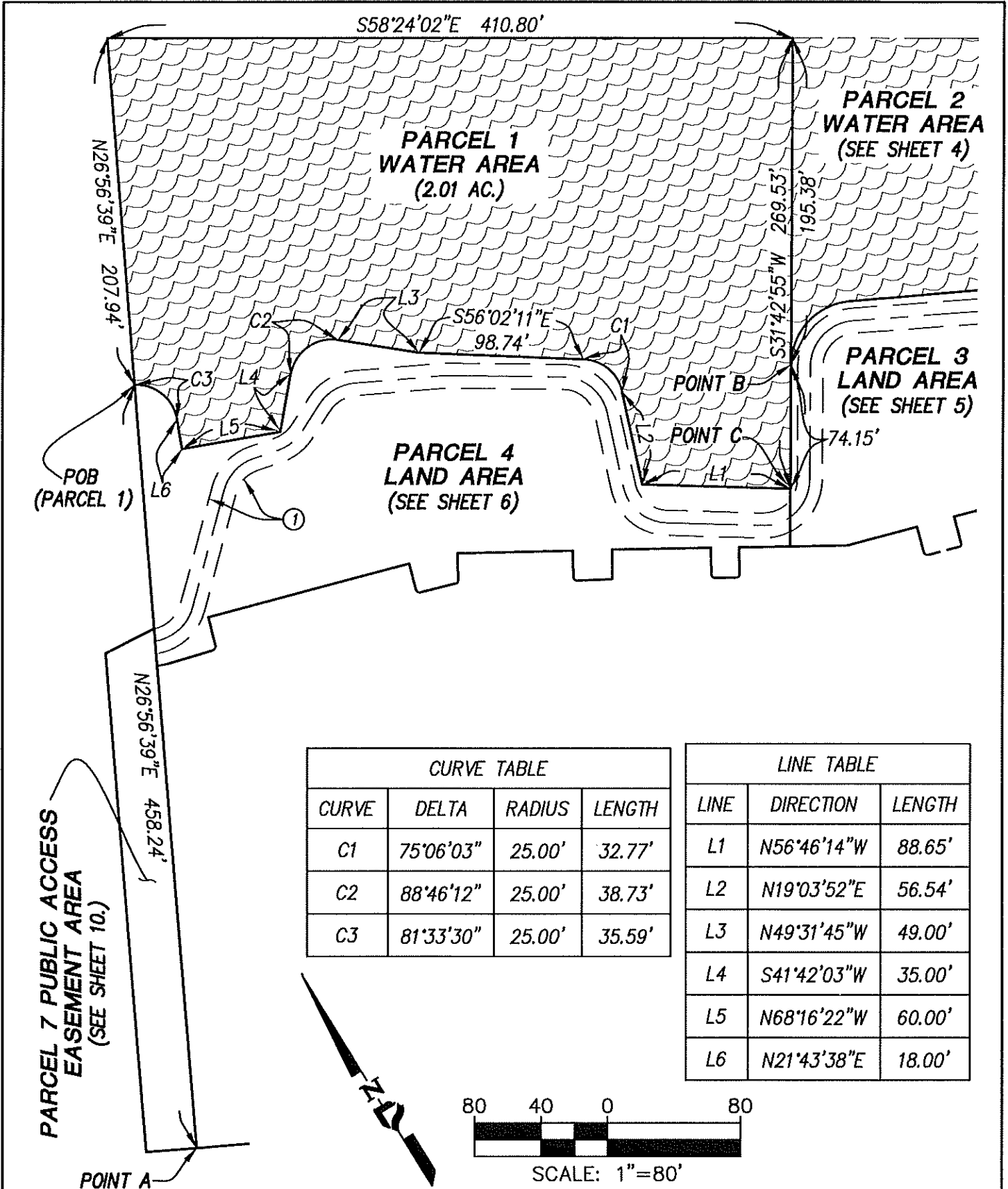
DRAWN KP
CHECKED MM
REVIEWED GLH
DATE: _____

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE _____
SCALE _____
REF. _____
DRAWING NO.
SHEET 1 OF 10
003-041

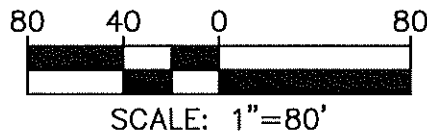


DRAWN <u> KP </u> CHECKED <u> MM </u> REVIEWED <u> GLH </u>	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND LEASE WITHIN CORPORATE LIMITS OF CORONADO - SAN DIEGO FERRY LANDING ASSOCIATES, LLC	DATE <u> 6/19/2024 </u> SCALE <u> 1" = 140' </u> REF. _____
DRAWING NO. SHEET 2 OF 10 003-041		



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	75°06'03"	25.00'	32.77'
C2	88°46'12"	25.00'	38.73'
C3	81°33'30"	25.00'	35.59'

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N56°46'14"W	88.65'
L2	N19°03'52"E	56.54'
L3	N49°31'45"W	49.00'
L4	S41°42'03"W	35.00'
L5	N68°16'22"W	60.00'
L6	N21°43'38"E	18.00'

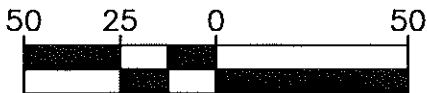
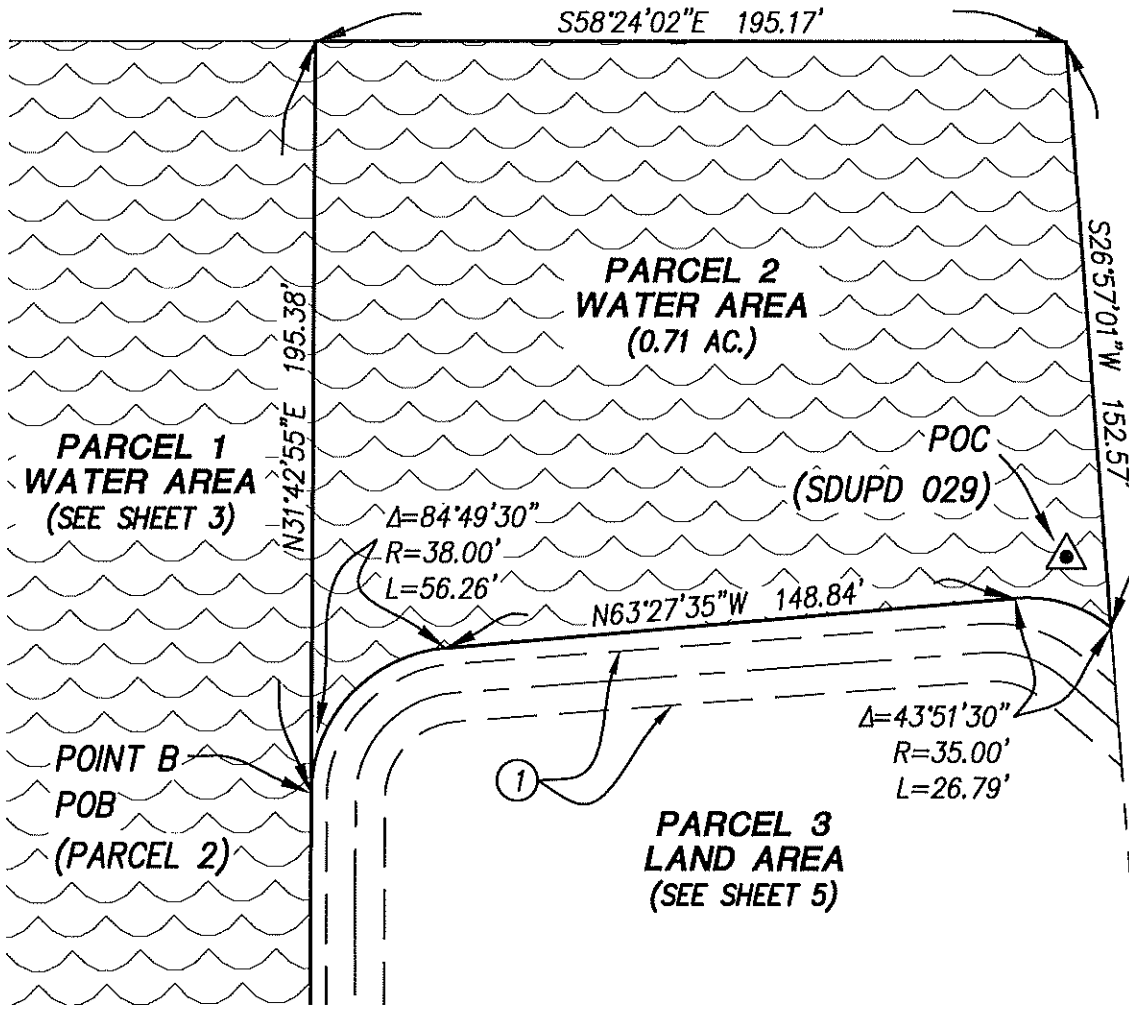


DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 80'
 REF.

DRAWING NO.
SHEET 3 OF 10
003-041



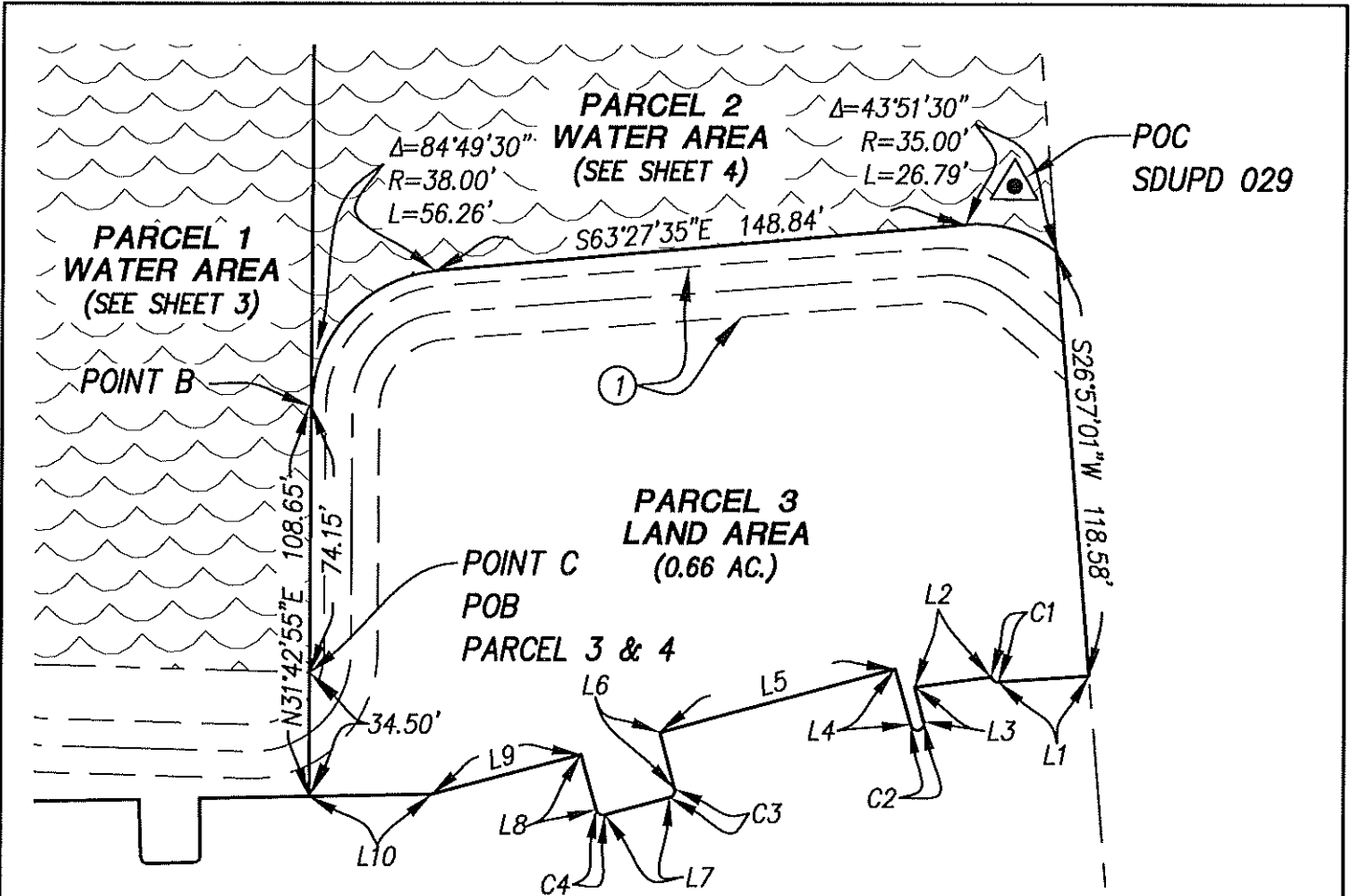
SCALE: 1"=50'

DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

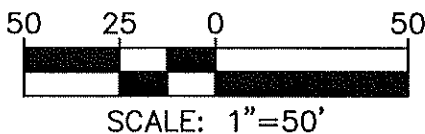
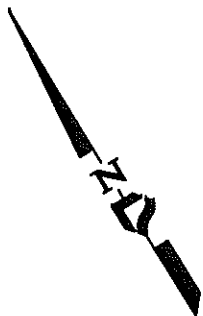
DATE 02/06/2023
 SCALE 1" = 50'
 REF.

DRAWING NO.
SHEET 4 OF 10
003-041



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	73°39'51"	2.00'	2.57'
C2	178°38'44"	1.82'	5.66'
C3	89°45'38"	2.00'	3.13'
C4	89°28'17"	2.00'	3.12'

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N62°00'30"W	25.26'
L2	N66°00'04"W	21.50'
L3	S16°54'59"W	10.09'
L4	N15°33'44"E	16.47'
L5	N73°38'32"W	67.98'
L6	S16°48'09"W	16.19'
L7	N73°26'13"W	18.75'
L8	N16°02'04"E	16.04'
L9	N73°23'11"W	43.00'
L10	N59°29'18"W	34.48'



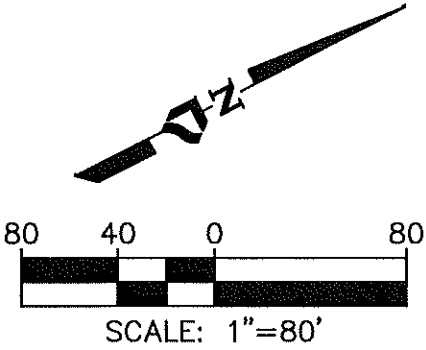
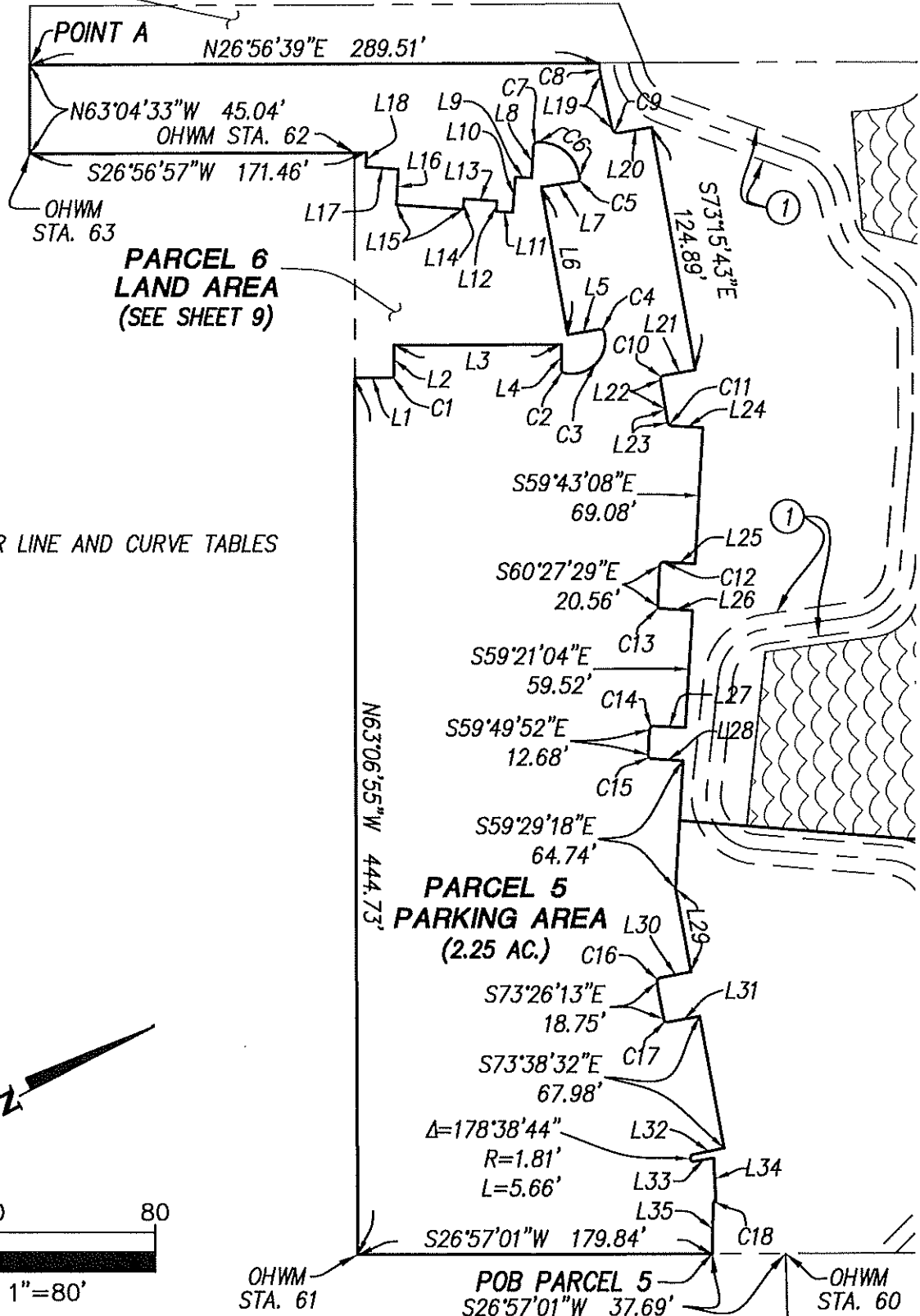
DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 50'
 REF.

DRAWING NO.
SHEET 5 OF 10
003-041

**PARCEL 7
PUBLIC
ACCESS
EASEMENT
AREA
(SEE SHEET 10)**



DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 80'
 REF.

**DRAWING NO.
 SHEET 7 OF 10
 003-041**

LINE AND CURVE TABLES FOR PARCEL 5, SHEET 7

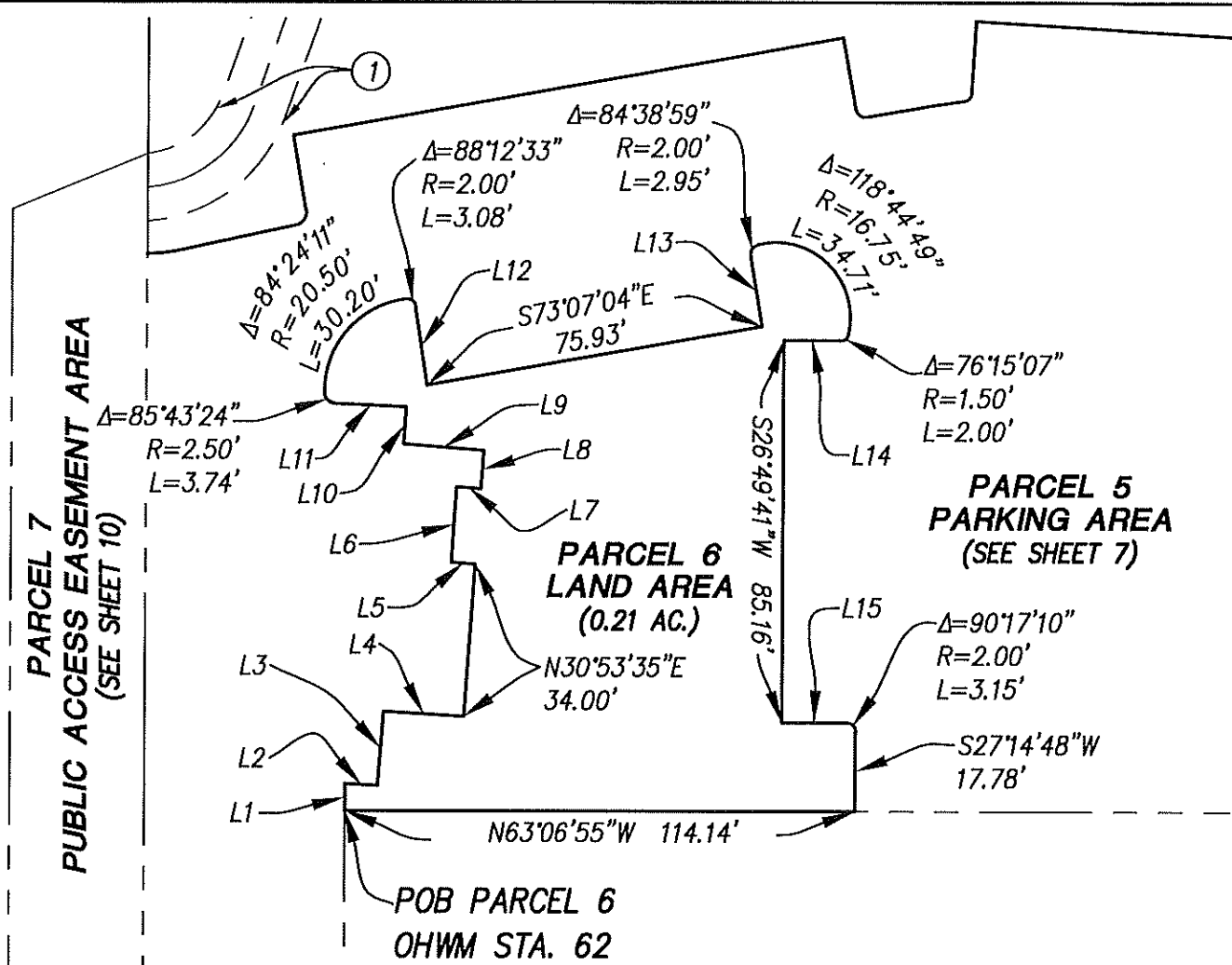
CURVE TABLE				LINE TABLE			LINE TABLE		
CURVE	DELTA	RADIUS	LENGTH	LINE	DIRECTION	LENGTH	LINE	DIRECTION	LENGTH
C1	90°17'10"	2.00'	3.15'	L1	N27°14'48"E	17.78'	L19	S75°13'39"E	27.41'
C2	76°15'07"	1.50'	2.00'	L2	N63°02'22"W	14.50'	L20	N17°05'16"E	16.90'
C3	118°44'49"	16.75'	34.71'	L3	N26°49'41"E	85.16'	L21	S16°45'36"W	16.33'
C4	84°38'59"	2.00'	2.95'	L4	S63°09'41"E	12.99'	L22	S72°49'46"E	15.09'
C5	88°12'33"	2.00'	3.08'	L5	S17°11'25"W	16.10'	L23	S71°47'27"E	6.80'
C6	84°24'11"	20.50'	30.20'	L6	N73°07'04"W	75.93'	L24	N30°04'04"E	16.03'
C7	85°43'24"	2.50'	3.74'	L7	N18°01'03"E	17.71'	L25	S30°03'40"W	15.90'
C8	13°23'11"	28.00'	6.54'	L8	S60°19'05"E	15.86'	L26	N30°49'39"E	16.77'
C9	87°41'04"	3.00'	4.59'	L9	S30°24'29"W	8.27'	L27	S30°04'06"W	16.01'
C10	89°35'22"	2.00'	3.13'	L10	S58°37'04"E	17.94'	L28	N30°49'38"E	15.94'
C11	78°08'29"	2.00'	2.73'	L11	S30°39'31"W	8.53'	L29	S73°23'11"E	43.00'
C12	90°31'09"	2.00'	3.16'	L12	N59°04'34"W	5.41'	L30	S16°02'04"W	16.04'
C13	88°42'52"	1.00'	1.55'	L13	S30°47'23"W	16.83'	L31	N16°48'09"E	16.19'
C14	89°53'58"	2.00'	3.14'	L14	S58°31'09"E	5.36'	L32	S15°33'44"W	16.47'
C15	89°20'30"	2.00'	3.12'	L15	S30°53'35"W	34.00'	L33	N16°54'59"E	10.09'
C16	89°28'17"	2.00'	3.12'	L16	N59°34'22"W	18.00'	L34	S66°00'04"E	21.50'
C17	89°45'38"	2.00'	3.13'	L17	S31°11'22"W	16.61'	L35	S62°00'30"E	25.26'
C18	73°39'51"	2.00'	2.57'	L18	N60°01'01"W	7.31'			

DRAWN KP
CHECKED MM
REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
SCALE 1" = 80'
REF.

DRAWING NO.
SHEET 8 OF 10
003-041

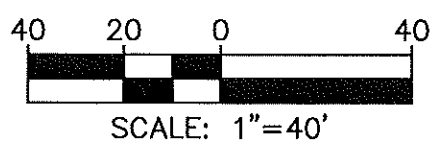
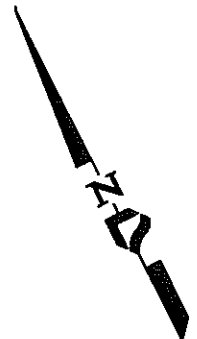


PARCEL 7
PUBLIC ACCESS EASEMENT AREA
(SEE SHEET 10)

PARCEL 5
PARKING AREA
(SEE SHEET 7)

PARCEL 6
LAND AREA
(0.21 AC.)

POB PARCEL 6
OHWM STA. 62



LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N26°56'57"E	6.04'
L2	S60°01'01"E	7.31'
L3	N31°11'22"E	16.61'
L4	S59°34'22"E	18.00'
L5	N58°31'09"W	5.36'
L6	N30°47'23"E	16.83'
L7	S59°04'34"E	5.41'
L8	N30°39'31"E	8.53'

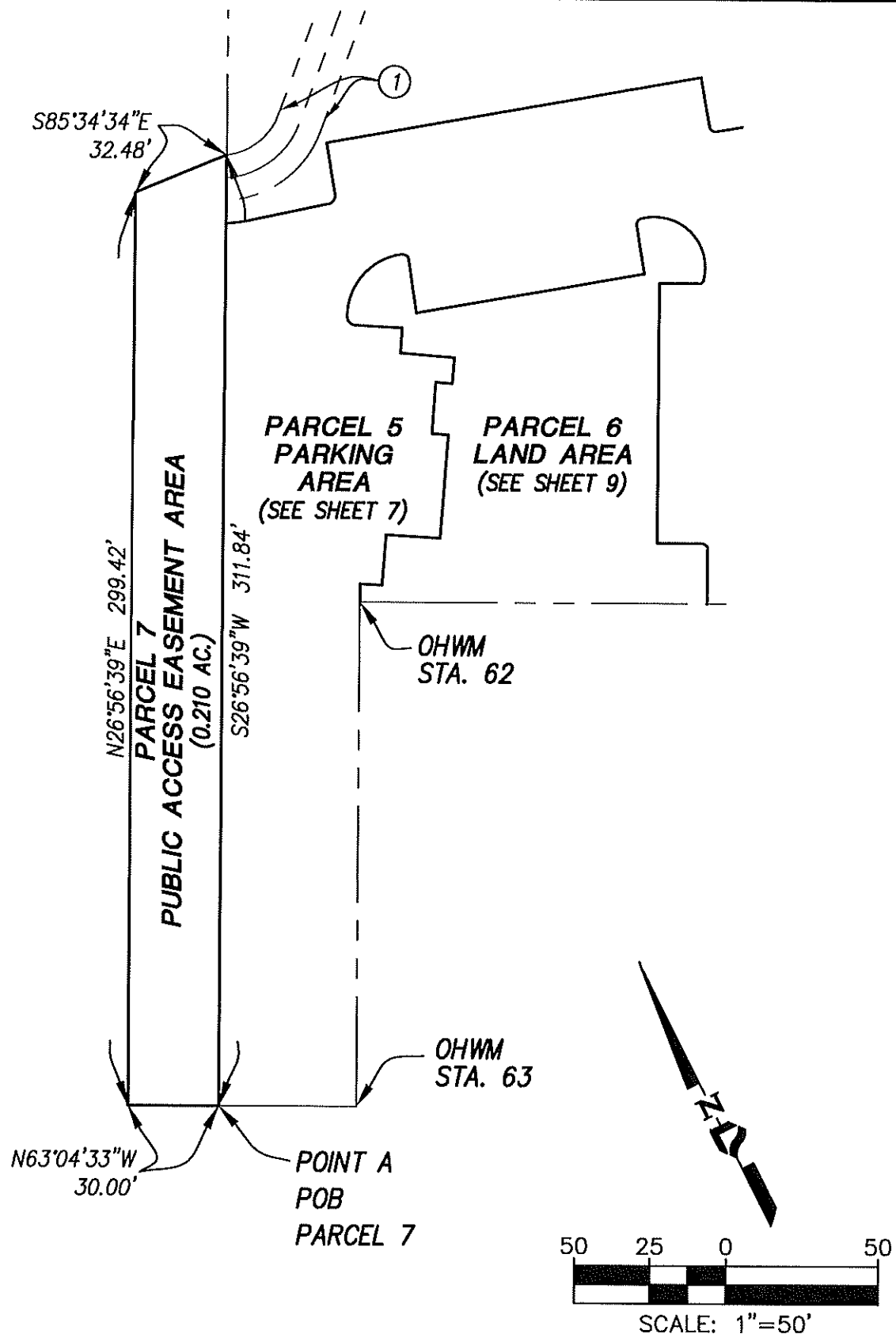
LINE TABLE		
LINE	DIRECTION	LENGTH
L9	N58°37'04"W	17.94'
L10	N30°24'29"E	8.27'
L11	N60°19'05"W	15.86'
L12	S18°01'03"W	17.71'
L13	N17°11'25"E	16.10'
L14	N63°09'41"W	12.99'
L15	S63°02'22"E	14.50'

DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 40'
 REF.

DRAWING NO.
SHEET 9 OF 10
003-041



DRAWN	KP
CHECKED	MM
REVIEWED	GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE	02/06/2023
SCALE	1" = 50'
REF.	
DRAWING NO.	
SHEET 10 OF 10	
003-041	

EXHIBIT D

Parking Easement Agreement

(attached)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488
Attention: Director, Real Estate Department

RECORDING FEE IS EXEMPT UNDER
§27383 OF THE GOVERNMENT CODE

(Space Above this Line for Recorder's Use)

The undersigned District declares that the Documentary Tax is \$-0-

PARKING AND ACCESS EASEMENT AGREEMENT

THIS PARKING AND ACCESS EASEMENT AGREEMENT ("**Agreement**") is made and entered into as of _____, 20__ (the "**Effective Date**"), by and between Ferry Landing Associates, LLC, a California limited liability company ("**Grantor**"), and the San Diego Unified Port District, a California public corporation (in its capacity as an original party to this Agreement, "**Grantee**"). Grantor and Grantee may individually be referred to in this Agreement as a "**Party**" or collectively as the "**Parties**".

RECITALS

A. Grantor, as tenant, and Grantee, as landlord, are parties to the Lease, pursuant to which Grantor leases from Grantee the Grantor Property. Terms capitalized in these Recitals shall have the meanings set forth in Section 1 below.

B. The Vacant Restaurant Parcel currently includes an undeveloped restaurant pad and adjacent water area.

C. The Parking Lot Parcel consists of parking spots, drive isles, and driveways to access public streets for use by the owners, tenants, subtenants, agents, employees, contractors, customers, and invitees of each of the Historic Restaurant Parcel, the Vacant Restaurant Parcel, and the Office Building Parcel.

D. The Public Access Parcel consists of a public walkway with landscaping improvements.

E. The Parties desire to enter into this Agreement in order to ensure that each Party as well as their successors and assigns and Permittees have access to the Parking Lot Parcel and the Public Access Parcel for the uses described herein, and to provide for the shared costs of maintaining the Parking Lot Parcel.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Definitions.** The following definitions shall apply in this Agreement:

- a. **“Grantor Property”** means, collectively, the Historic Restaurant Parcel, the Office Building Parcel, the Parking Lot Parcel, and the Public Access Parcel.
- b. **“Historic Restaurant Parcel”** shall mean, together, Parcels 1 and 4.
- c. **“Lease”** means, collectively, that certain Lease dated October 21, 1997 and filed in the Office of the District Clerk as Document No. 36616, as amended by that certain Agreement for Amendment of Lease Amendment No. 1 dated October 9, 2001 and filed in the Office of the District Clerk as Document No. 42938, that certain Agreement for Amendment of Lease Amendment No. 2 dated July 12, 2005 and filed in the Office of the District Clerk as Document No. 49282, that certain Agreement for Amendment of Lease Amendment of Lease No. 3 dated July 2, 2008 and filed in the Office of the District Clerk as Document No. 53657, that certain Agreement for Amendment of Lease Amendment No. 4 dated September 1, 2016 and filed in the Office of the District Clerk as Document No. 65563, and that certain Fifth Amendment to Lease dated _____, 2024 and recorded in the Office of the District Clerk as Document No. _____.
- d. **“Office Building Parcel”** shall mean Parcel 6.
- e. **“Parcel”** shall mean any of those parcels legally described on Exhibit A and set forth on the plat map attached as Exhibit B.
- f. **“Parking Lot Parcel”** shall mean Parcel 5.
- g. **“Permittees”** shall mean the respective invitees, contractors, independent contractors, employees, occupants, tenants, subtenants, licensees, and guests of a Party.
- h. **“Public Access Parcel”** shall mean Parcel 7.
- i. **“Vacant Restaurant Parcel”** shall mean, together, Parcels 2 and 3.

2. **Term.** Notwithstanding the mutual execution of this Agreement, the rights and obligations of the Parties set forth in Sections 3, 5, 8, 9, 11, and 12 shall not become effective unless and until Grantee issues a Development Notice to Grantor in accordance with Section 6 below. Upon the issuance of a Development Notice by Grantee in accordance with Section 6, Sections 3, 5, 8, 9, 11, and 12 shall become binding and effective on each Party. In any event, and unless sooner terminated in accordance with its terms, all of the terms of this Agreement shall expire and be of no further force and/or effect upon the expiration or earlier termination of the Lease.

3. **Access and Parking Easement.** Grantee and its Permittees shall have a non-exclusive easement, for the benefit of and appurtenant to the Vacant Restaurant Parcel, over the Parking Lot Parcel for the following purposes:

- a. Vehicular and pedestrian ingress and egress, including access to and from the public street adjacent to the Parking Lot Parcel.
- b. Vehicular parking; provided parking utilized by Grantee and its Permittees on the Parking Lot Parcel shall not, at any given point in time, exceed 50% of the parking stalls located on the Parking Lot Parcel, and parking utilized by Grantor and its Permittees on the

Parking Lot Parcel shall not, at any given point in time, exceed 50% of the parking stalls located on the Parking Lot Parcel.

c. The terms of this Section 3 shall not become effective until Grantee issues a Development Notice in accordance with Section 6 below.

4. **Public Access.**

a. Bayshore Bikeway. Grantor and Grantee both acknowledge and agree that a 15-foot wide utility and public access easement as shown on Exhibit B commonly known and for purposes of this Agreement referred to as the “Bayshore Bikeway” is located on Parcels 3 and 4. Each Party shall be responsible for maintaining that portion of the Bayshore Bikeway located on its Parcel in a good, clean, and safe condition, all at the applicable Party’s sole cost and expense. This obligation includes any repairs or replacements of any portions of the Bayshore Bikeway located on Parcel 3 or Parcel 4 necessary to keep the same in the condition required by this Section 4. The Bayshore Bikeway shall be open to the public at all times for pedestrian ingress and egress except to the extent a closure or partial closure is reasonably necessary to make any required repairs and/or upgrades.

b. Public Access Parcel. Grantor shall be responsible for maintaining the Public Access Parcel in a good, clean, and safe condition, all at Grantor’s sole cost and expense, and that this obligation includes any repairs or replacements necessary to keep the same in the condition required by this Section 4. The Public Access Parcel shall be open to the public at all times for bicycle and pedestrian ingress and egress except to the extent a closure or partial closure is reasonably necessary to make any required repairs and/or upgrades.

5. **Maintenance and Repair of Parking Lot Parcel; Reimbursement.**

a. Maintenance and Repair. Grantor shall be responsible for maintaining the Parking Lot Parcel in a good, clean, and safe condition and repairing and replacing the Parking Lot Parcel as necessary (including, but not limited to, sweeping, re-paving, re-slurrying, re-sealing, and re-striping). Except for routine and reoccurring maintenance, Grantor shall provide Grantee with prior written notice prior to performing any maintenance or construction related activities on the Parking Lot Parcel. In the event fulfilling Grantor’s responsibilities under this Section 5(a) will interfere with the operation of the Vacant Restaurant Parcel by Grantee or its Permittees, the time for completing any Grantor related activities on the Parking Lot Parcel shall be subject to Grantee’s prior written approval (such approval not to be unreasonably withheld, conditioned, or delayed). In all cases Grantor shall take reasonable efforts to minimize interference with the use of the Vacant Restaurant Parcel by Grantee and its Permittees. All maintenance, repairs, and replacements shall be completed in a good and workmanlike manner and in compliance with all Laws (as defined in Section 7 below).

b. Reimbursement. Grantee agrees to reimburse Grantor for approximately 40% of the reasonable costs and expenses incurred by Grantor in satisfying its obligations under Section 5(a) of this Agreement. Grantee agrees to reimburse Grantor for such costs and expenses on a quarterly basis within 30 days of receipt of an invoice from Grantor accompanied by reasonable documentation supporting such costs.

c. This terms of this Section 5 shall not become effective until Grantee issues a Development Notice in accordance with Section 6 below.

6. **Parcel Development.** The Parties acknowledge and agree that the Vacant Restaurant Parcel (specifically, Parcel 3 thereof) is currently unimproved with plans for future development. To the extent that either Party desires to conduct development or construction related activities on its Parcel(s), the following shall apply:

a. The Party wishing to develop or construct improvements on its Parcel(s) (the "**Developing Party**") shall send written notice to the non-developing Party no less than 30 days prior to commencing any construction activities (such notice a "**Development Notice**"), which Development Notice shall set forth (i) the nature of the construction activities to take place and the affected Parcel(s), (ii) any approvals issued by applicable governmental agencies in connection with the construction, (iii) the expected duration of the construction, (iv) a Developing Party's planned efforts to mitigate the effects of such construction on the other Party, (v) a Developing Party's planned safety measures to minimize risks associated with the construction activities, and (vi) subject to Section 6(b) below, any area of the Parking Lot Parcel that the Developing Party plans to utilize in connection with the construction related activities, such as a lay down area.

b. **Parking Lot Parcel Use.** A Developing Party shall be entitled to utilize no more than the Developing Party's percentage of the Parking Lot Parcel set forth in Section 3(b) in order to support the construction related activities, provided that (i) the location of the Parking Lot Parcel to be utilized in connection with a Developing Party's construction activities shall be subject to the other Party's approval, such approval not to be unreasonably withheld, conditioned, or delayed, and (ii) in no event shall use of any of the Parking Lot Parcel impede access to drive aisles necessary to access the public street from a Party's Parcel(s) or decrease the number of parking stalls allocated to the non-developing Party's pursuant to Section 3(b).

c. **Legal Compliance/Limitations.** A Developing Party shall conduct any and all construction and development related activities on a Parcel(s) in compliance with all Laws, and prior to commencing any such activities, the Developing Party shall obtain all necessary governmental approvals.

d. **Grantee Development Notice.** As noted in Section 2, the rights and obligations of the Parties set forth in Sections 3, 5, 8, 9, 11, and 12 of this Agreement shall not become effective unless and until Grantee issues a Development Notice to Grantor in accordance with this Section 6. For avoidance of doubt, the rights and obligations of each Party under this Section 6 shall be effective and binding upon the Parties on the Effective Date.

7. **Compliance with Laws.** In connection with the matters contemplated by this Agreement with respect to a Parcel and in all related uses thereof and activities thereon, including without limitation any maintenance, repairs, and/or replacements, each Party shall abide by and conform to all Laws. For purposes of this Agreement, "**Laws**" shall mean all present and future California state, federal and local laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §12101 (et seq.) and the regulations promulgated thereunder (as the same may be amended from time to time), all applicable orders of the State Water Resources Control Board and Regional Water Quality Control Board, the Port Master Plan (as the same may be amended and/or updated), Environmental Laws (as defined in Section 12 below), Laws enacted by the San Diego Unified Port District Act (such as Article 10 of the San Diego Unified Port District Code), any applicable ordinances of the city in which a Parcel is located (including the building code thereof), and any governmental permits and approvals, including, without limitation, any California Coastal Development Permit, applicable to a Parcel or the use or development thereof.

8. **Indemnification.**

a. **Indemnity.** Each Party (an “**Indemnifying Party**”) shall at all times indemnify, defend, and hold harmless the other Party and its Permittees (collectively, the “**Indemnified Parties**”) from and against and pay in full any and all claims, loss, damage or expense (including without limitation any laborer's, materialmen's or mechanic's liens) (collectively “**Claims**”) to the extent arising directly or indirectly out of, from, or in connection with: (i) any default by an Indemnifying Party under this Agreement; (ii) the obligations undertaken in connection with this Agreement by an Indemnifying Party; and (iii) the possession, use, occupancy, operation, or development of a Parcel by the Indemnifying Party and/or its Permittees. The obligations of an Indemnifying Party under this Section 8 shall include, without limitation, the obligation to pay on behalf of (or reimburse) the Indemnified Parties any reasonable attorneys’ fees and costs incurred in defending or responding to any Claim.

b. **Effectiveness and Survival.** The terms of this Section 8 shall not become effective until Grantee issues a Development Notice in accordance with Section 6. Once effective, each Party’s obligations under this Section 8 shall survive the expiration or earlier termination of this Agreement.

9. **Property Taxes.** This Agreement may result in a taxable possessory interest subject to the payment of property taxes. Grantee agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Grantee or its Permittees for the use of the Parking Lot Parcel and the Public Access Parcel pursuant to the terms of this Agreement. The terms of this Section 9 shall not become effective until Grantee issues a Development Notice in accordance with Section 6.

10. **Liens.** A Party shall pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on a Parcel and/or that could result in any mechanics' lien or similar lien on the other Party’s Parcel(s) as and when the contracting Party is required to do so under the Party’s agreement with the respective provider thereof. If a Party receives notice that any mechanics' lien or any similar lien is recorded against the other Party’s Parcel(s) relating to the first Party’s use of any Parcel(s) and such first Party is not contesting such lien in accordance herewith, then the first Party shall cause such lien to be released and removed of record within fifteen (15) days after the first Party receives notice of the recordation of the mechanics' lien or similar lien. The applicable Party to whom the lien relates shall indemnify, defend, release and save each Indemnified Party free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed or caused to be performed or for materials or supplies furnished by or for the applicable Party and all related costs. This Section 10 shall survive the expiration or earlier termination of this Agreement.

11. **Insurance.** From and after the terms of this Section 11 becoming effective following Grantee issuing a Development Notice in accordance with Section 6, the Parties shall be responsible for carrying insurance as follows:

a. **Liability Insurance.** Each Party shall be responsible for carrying the following insurance with respect to its use of the Parking Lot Parcel and the Public Access Parcel: Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury; and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000), which limits of liability can be provided in a combination of a Commercial General Liability Insurance policy and an Umbrella Liability Insurance policy. The policy required to be carried by each Party hereunder

shall name the other Party and as an additional insured thereunder and shall include a waiver of subrogation for the other Party's benefit.

b. Property Insurance. Grantor, with respect to the Grantor Property, and Grantee, with respect to the Vacant Restaurant Parcel, shall keep, or cause to be kept, all improvements located within the applicable Parcels insured against loss or damage by fire, lightening, windstorm, hail, explosion, damage from aircraft and vehicles and smoke damage and such other risks as are from time to time included in "extended coverage" policies or endorsements in the county where the Parcels are located, in an amount not less than the actual replacement cost of such improvements (exclusive of foundations and excavations). Such amount shall be sufficient to restore the same to or replace it with improvements of at least the size and quality as immediately preceding such loss or damage. Any such policy of insurance may be maintained under a "blanket" policy insuring other locations belonging to such Party.

c. Primary & Non-Contributory. Insurance policies carried by a Party shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by the other Party.

d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of the Party required to maintain such policy pursuant to this Section 11.

e. Lease Requirements. Notwithstanding the foregoing, in the event that any insurance requirements set forth in this Section 11 conflict with the insurance requirements imposed on Grantor as "Lessee" under the Lease with respect to its Parcels, then such insurance requirements set forth in the Lease shall control and apply as to Grantor provided that Grantee is named as an additional insured under the required Commercial General Liability Insurance policy (and, if applicable, the Umbrella Liability Insurance policy).

12. Hazardous Materials. Each Party shall not cause or permit any Hazardous Material (as defined below), or products or materials which include any hazardous substance as a component to be generated, brought onto, used, stored, emitted, released or disposed of in or about any Parcel(s) or any improvements located thereon by a Party and its Permittees (collectively and individually, a "**Hazardous Materials Activity**"), except to the extent necessary for a Party's work on any Parcel(s). All Hazardous Materials Activity shall be in strict compliance with all Environmental Laws, including, without limitation, laws and regulations that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment ("**Environmental Laws**"). "**Hazardous Material**" shall mean any contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a hazardous material or hazardous substance as defined under any applicable Environmental Laws. For avoidance of doubt, each Party's indemnity obligations set forth in Section 8 above shall apply to any violation of this Section 12. The terms of this Section 12 shall not become effective until Grantee issues a Development Notice in accordance with Section 6.

13. Remedies and Enforcement.

a. All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by a Party of any of the terms, covenants, restrictions or conditions of this Agreement, the prevailing Party shall be entitled to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

b. Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Party to cure a breach of this Agreement within thirty (30) days following written notice thereof by the other Party (unless, with respect to any such breach the nature of which cannot reasonably be cured within said 30-day period, the defaulting Party commences such cure within said 30-day period and thereafter diligently prosecutes such cure to completion, using best efforts), the Party who delivered such notice shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Party and be reimbursed by such defaulting Party upon demand for the reasonable costs thereof together with interest at the Bank Prime Rate plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). As used herein, the "**Bank Prime Rate**" means the interest rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as the Parties shall reasonably agree upon if such rate ceases to be published).

c. Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

d. Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of this Agreement, each Party agrees that such violation or threat thereof shall cause the non-defaulting Party to suffer irreparable harm and such non-defaulting Party shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of this Agreement, the non-defaulting Party, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin said violation or threat thereof.

14. Notices. All notices provided for by this Agreement or by law to be given or served upon Grantor or Grantee shall be in writing and (a) personally served upon Grantor or Grantee, or any person hereafter authorized by either party in writing to receive such notice, or (b) served by certified letter or reputable overnight courier addressed to the appropriate address hereinafter set forth (as such address may have been changed by subsequent notice given to the other Party):

Grantor:

Ferry Landing Associates, LLC
Attn: Arthur Engel
1311 First Street
Coronado, CA 92118

with a copy to:

Finch, Thornton & Baird, LLP
Attn: David S. Demian, Esq.
4747 Executive Drive, Suite 700
San Diego, CA 92121

Grantee:

Director of Real Estate
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

with a copy to:

Office of the General Counsel
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served two (2) business days after deposit in the U.S. Mail and if by overnight courier, service will be considered completed and binding on the party served one (1) business day after deposit with such overnight courier.

15. **Mortgagee Protections.** Subject to obtaining the consent of the San Diego Unified Port District, a California public corporation ("**Port District**"), each Party and its successors and assigns shall have the right to mortgage, pledge, or collaterally assign its interest in this Agreement as security for any debt and all rights acquired by such secured party under any such security instrument (each a "**Encumbrance**"); provided, however, that any such Grantee Encumbrance consented to by the Port District shall be subordinate to this Agreement and the rights set forth herein. Any Encumbrance over this Agreement not consented to by the Port District shall be null, void, and of no effect.

16. **Binding Covenants.** This Agreement is made pursuant to Section 1468 of the California Civil Code and any covenants, conditions, and restrictions contained herein, shall be deemed covenants which "run with the land," and, subject to Section 17 below, be binding upon and inure to the benefit of the successors, heirs, executors, administrators, permittees, licensees, agents and assigns of Grantor and Grantee and shall be binding upon and enforceable against all successors and assigns of the Grantor Property, and any portions thereof, on the one hand, and the Grantee Property, on the other hand.

17. **Leases and Tenants.**

a. **Future Leases.** For purposes of this Agreement, in the event that the Grantor Property and/or the Vacant Restaurant Parcel is ever subject to a future lease (any such lease a "**Future Lease**") other than the Lease, then the tenant under any such Future Lease for the Grantor Property shall be automatically deemed the Grantor under this Agreement, and the tenant under any such Future Lease for the Vacant Restaurant Parcels shall be deemed the Grantee under this Agreement, with any such Grantor and Grantee having the benefit of, and the liability for, all rights, duties, obligations, and liability under this Agreement.

b. **Port District as Fee Owner.** Grantor acknowledges and agrees that (i) the Port District, as fee owner of all of the Parcels, has, among other rights, the right to access the Parking Lot Parcel pursuant to the Lease and that this Agreement does not in any manner affect and/or diminish the Port District's rights under the Lease, and (ii) the purpose of this Agreement is to ensure the orderly operation of the Parcels and shared use of the Parking Lot Parcel between those parties with rights to the Grantor Property, on the one hand, and the Vacant Restaurant Parcel, on the other hand. In no circumstance will this Agreement be deemed to affect and/or diminish the Port District's rights and obligations set forth in the Lease between Grantor, as tenant, and the Port District, as landlord, and/or in a Future Lease with a tenant and the Port District, as landlord.

18. **Attorneys' Fees.** If either Party files any action or brings any proceeding against the other Party arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the other Party as an element of its costs of suit and not as damages, reasonable attorneys' fees (including fees for in-house counsel), costs and expenses incurred in the action or proceeding, including any appeal thereof.

19. **Parking Fees.** Neither Party shall be entitled to charge the other Party or any of its Permittees for access or use of the Parking Lot Parcel, provided, however, Grantee acknowledges and agrees Grantor may charge members of the Public (other than a Party or Permittees) for parking subject to (a) the terms of the Lease or any Future Lease (including obtaining any required approvals thereunder) and (b) Grantee and its Permittees being allotted a sufficient number of parking stalls free of charge as required by this Easement.

20. **Waiver**. Either Party's failure to insist upon the strict performance of any of the other Party's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. A Party's failure to discover a breach of any obligation of this Agreement or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but such Party may at any and all times require the cure of any such breach.

21. **Amendment/Termination**. This Agreement may be amended or modified only by an instrument duly executed by the Grantor and Grantee; provided that in no event can this Agreement be amended or modified, or terminated prior to its expiration, without the consent of the Port District's Executive Director, which consent may be granted, withheld, or conditioned in the Executive Director's sole and absolute discretion.

22. **Severability**. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

23. **Applicable Laws/Venue**. This Agreement shall be construed, interpreted and determined in accordance with the laws of the State of California without reference to its choice of law provisions. Venue for any legal proceeding shall be in San Diego County, California.

24. **Time is of the Essence**. The Parties hereby agree that time is of the essence with respect to this Agreement.

25. **Effectiveness**. It is an express condition of this Agreement that the Agreement shall not be complete or effective until signed by each Party.

26. **Recitals/Exhibits**. The recitals first set forth above are hereby incorporated into the terms of this Agreement. The Exhibits attached to this Agreement are hereby incorporated by reference.

27. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument.

28. **Entire Agreement**. This Agreement constitutes the only agreements of the Parties with respect to the rights granted hereby and the obligations assumed herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Parking and Access Easement Agreement as of the Effective Date.

APPROVED AS TO FORM AND LEGALITY: **SAN DIEGO UNIFIED PORT DISTRICT**

GENERAL COUNSEL

By: _____
David Jones
Deputy General Counsel

By: _____
Adam Meyer
Director, Real Estate

FERRY LANDING ASSOCIATES, LLC,
a California limited liability company

By: _____

Name: _____

Its: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit A

Legal Description of Parcels

(attached)

EXHIBIT "A"
LEGAL DESCRIPTION

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1: WATER AREA

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED "SDUPD-029" AS SHOWN ON RECORD OF SURVEY MAP NO. 16668, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON JULY 25, 2000; THENCE ALONG A TIE-LINE ONLY SOUTH 21°07'34" WEST A DISTANCE OF 100.64 FEET TO A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 60, AS SAID ORDINARY HIGH WATER MARK IS DELINEATED ON THE ABOVE DESCRIBED MISCELLANEOUS MAP 564; THENCE ALONG SAID ORDINARY HIGHWATER MARK SOUTH 26°57'01" WEST A DISTANCE OF 217.53' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 61; THENCE NORTH 63°06'55" WEST A DISTANCE OF 558.87' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 62, ALSO BEING THE **POINT OF BEGINNING** OF PARCEL 6; THENCE SOUTH 26°56'57" WEST A DISTANCE OF 165.42' FEET TO ORDINARY HIGH WATER MARK ANGLE POINT STATION 63; THENCE LEAVING SAID ORDINARY HIGH WATER MARK NORTH 63°04'33" WEST A DISTANCE OF 45.04' FEET TO A POINT HEREINAFTER KNOWN AS **POINT A**; THENCE LEAVING SAID POINT A THENCE NORTH 26°56'39" EAST A DISTANCE OF 458.24' FEET TO THE **POINT OF BEGINNING** OF PARCEL 1; THENCE NORTH 26°56'39" EAST 207.94 FEET; THENCE SOUTH 58°24'02" EAST A DISTANCE OF 410.80 FEET; THENCE SOUTH 31°42'55" WEST A DISTANCE OF 195.38 FEET TO A POINT HEREINAFTER KNOWN AS **POINT B**; THENCE LEAVING SAID POINT B SOUTH 31°42'55" WEST A DISTANCE OF 74.15 FEET TO A POINT HEREINAFTER KNOWN AS **POINT C**; THENCE LEAVING SAID POINT C NORTH 56°46'14" WEST A DISTANCE OF 88.65 FEET; THENCE NORTH 19°03'52" EAST A DISTANCE OF 56.54 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75°06'03" AN ARC DISTANCE OF 32.77 FEET; THENCE NORTH 56°02'11" WEST A DISTANCE OF 98.74 FEET; THENCE NORTH 49°31'45" WEST A DISTANCE OF 49.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°46'12" AN ARC DISTANCE OF 38.73 FEET; THENCE SOUTH 41°42'03" WEST A DISTANCE OF 35.00 FEET; THENCE NORTH

68°16'22" WEST A DISTANCE OF 60.00 FEET; THENCE NORTH 21°43'38" EAST A DISTANCE OF 18.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°33'30" AN ARC DISTANCE OF 35.59 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 87,751 SQUARE FEET OR 2.01 ACRES, MORE OR LESS.

PARCEL 2: WATER AREA

COMMENCING AT POINT B OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCEL 2; THENCE ALONG THE SOUTHEASTERLY LINE OF PARCEL 1 NORTH 31°42'55" EAST A DISTANCE OF 195.38 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE SOUTH 58°24'02" EAST A DISTANCE OF 195.17 FEET; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 152.57 FEET TO THE BEGINNING OF A NON-TANGENT 35 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 70°23'55" EAST; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°51'30" AN ARC DISTANCE OF 26.79 FEET; THENCE NORTH 63°27'35" WEST A DISTANCE OF 148.84 FEET TO THE BEGINNING OF A TANGENT 38 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°49'30" AN ARC DISTANCE OF 56.26 FEET TO THE **POINT OF BEGINNING** OF PARCEL 2.

SAID PARCEL CONTAINS 30,845 SQUARE FEET OR 0.708 ACRES, MORE OR LESS.

PARCEL 3: LAND AREA

COMMENCING AT POINT C OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCELS 3 AND 4; THENCE NORTH 31°42'55" EAST A DISTANCE OF 74.15 FEET TO THE BEGINNING OF A TANGENT 38.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°49'30" AN ARC DISTANCE OF 56.26 FEET; THENCE SOUTH 63°27'35" EAST A DISTANCE OF 148.84 FEET TO THE BEGINNING OF A TANGENT 35.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°51'30" A DISTANCE OF 26.79 FEET; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 118.58 FEET; THENCE NORTH 62°00'30" WEST A DISTANCE OF 25.26 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°39'51" AN ARC DISTANCE OF 2.57 FEET; THENCE NORTH 66°00'04" WEST A DISTANCE OF 21.50 FEET; THENCE SOUTH 16°54'59" WEST A DISTANCE OF 10.09 FEET TO THE BEGINNING OF A TANGENT 1.82 FOOT RADIUS

72°49'46" WEST A DISTANCE OF 15.09 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°35'22" A DISTANCE OF 3.13 FEET; THENCE NORTH 16°45'36" EAST A DISTANCE OF 16.33 FEET; THENCE NORTH 73°15'43" WEST A DISTANCE OF 124.89 FEET; THENCE SOUTH 17°05'16" WEST A DISTANCE OF 16.90 FEET TO THE BEGINNING OF A TANGENT 3.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 87°41'05" AN ARC DISTANCE OF 4.59 FEET; THENCE NORTH 75°13'39" WEST A DISTANCE OF 27.41 FEET TO THE BEGINNING OF A TANGENT 28.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°23'11" A DISTANCE OF 6.54 FEET; THENCE NORTH 26°56'39" EAST 168.73 FEET TO A NON-TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE TO SAID CURVE BEARS NORTH 30°10'08" EAST; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°33'30" AN ARC DISTANCE OF 35.59 FEET; THENCE SOUTH 21°43'38" WEST A DISTANCE OF 18.00 FEET; THENCE SOUTH 68°16'22" EAST A DISTANCE OF 60.00 FEET; THENCE NORTH 41°42'03" EAST A DISTANCE OF 35.00 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°46'12" AN ARC DISTANCE OF 38.73 FEET; THENCE SOUTH 49°31'45" EAST A DISTANCE OF 49.00 FEET; THENCE SOUTH 56°02'11" EAST A DISTANCE OF 98.74 FEET TO THE BEGINNING OF A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75°06'03" AN ARC DISTANCE OF 32.77 FEET; THENCE SOUTH 19°03'52" WEST A DISTANCE OF 56.54 FEET; THENCE SOUTH 56°46'14" EAST A DISTANCE OF 88.65 FEET TO THE **POINT OF BEGINNING** OF PARCELS 3 AND 4

SAID PARCEL CONTAINS 40588.82 SQUARE FEET OR 0.932 ACRES, MORE OR LESS.

PARCEL 5: PARKING AREA

COMMENCING AT A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 60 AS DESCRIBED IN SAID MISCELLANEOUS MAP NO. 564; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 37.69 FEET TO THE **POINT OF BEGINNING** OF PARCEL 5; THENCE SOUTH 26°57'01" WEST A DISTANCE OF 179.84 FEET; THENCE NORTH 63°06'55" WEST A DISTANCE OF 444.73 FEET; THENCE NORTH 27°14'48" EAST A DISTANCE OF 17.78 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°17'10" AN ARC DISTANCE OF 3.15 FEET; THENCE NORTH 63°02'22" WEST A DISTANCE OF 14.50 FEET; THENCE NORTH 26°49'41" EAST A DISTANCE OF 85.16 FEET; THENCE SOUTH 63°09'41" EAST A DISTANCE OF 12.99 FEET TO THE BEGINNING OF A TANGENT 1.50 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH

A CENTRAL ANGLE OF $76^{\circ}15'07''$ AN ARC DISTANCE OF 2.00 FEET; TO THE BEGINNING OF A COMPOUND 16.75 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $118^{\circ}44'49''$ AN ARC DISTANCE OF 34.71 FEET TO THE BEGINNING OF A COMPOUND 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $84^{\circ}38'59''$ A DISTANCE OF 2.95 FEET; THENCE SOUTH $17^{\circ}11'25''$ WEST A DISTANCE OF 16.10 FEET; THENCE NORTH $73^{\circ}07'04''$ WEST A DISTANCE OF 75.93 FEET; THENCE NORTH $18^{\circ}01'03''$ EAST A DISTANCE OF 17.71 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $88^{\circ}12'33''$ AN ARC DISTANCE OF 3.08 FEET TO THE BEGINNING OF A COMPOUND 20.50 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $84^{\circ}24'11''$ AN ARC DISTANCE OF 30.20 FEET TO THE BEGINNING OF A COMPOUND 2.50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $85^{\circ}43'24''$ AN ARC DISTANCE OF 3.74 FEET; THENCE SOUTH $60^{\circ}19'05''$ EAST A DISTANCE OF 15.86 FEET; THENCE SOUTH $30^{\circ}24'29''$ WEST A DISTANCE OF 8.27 FEET; THENCE SOUTH $58^{\circ}37'04''$ EAST A DISTANCE OF 17.94 FEET; THENCE SOUTH $30^{\circ}39'31''$ WEST A DISTANCE OF 8.53 FEET; THENCE NORTH $59^{\circ}04'34''$ WEST A DISTANCE OF 5.41 FEET; THENCE SOUTH $30^{\circ}47'23''$ WEST A DISTANCE OF 16.83 FEET; THENCE SOUTH $58^{\circ}31'09''$ EAST A DISTANCE OF 5.36 FEET; THENCE SOUTH $30^{\circ}53'35''$ WEST A DISTANCE OF 34.00 FEET; THENCE NORTH $59^{\circ}34'22''$ WEST A DISTANCE OF 18.00 FEET; THENCE SOUTH $31^{\circ}11'22''$ WEST A DISTANCE OF 16.61 FEET; THENCE NORTH $60^{\circ}01'01''$ WEST A DISTANCE OF 7.31 FEET; THENCE SOUTH $26^{\circ}56'57''$ WEST A DISTANCE OF 171.46 FEET; THENCE NORTH $63^{\circ}04'33''$ WEST A DISTANCE OF 45.04 FEET TO A SAID **POINT A**; THENCE LEAVING SAID **POINT A** NORTH $26^{\circ}56'39''$ EAST A DISTANCE OF 289.51 FEET TO THE BEGINNING OF A NON-TANGENT 28.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL LINE TO SAID CURVE BEARS SOUTH $28^{\circ}09'32''$ WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $13^{\circ}23'11''$ AN ARC DISTANCE OF 6.54 FEET; THENCE SOUTH $75^{\circ}13'39''$ EAST A DISTANCE OF 27.41 FEET TO THE BEGINNING OF A TANGENT 3.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID ARC THROUGH A CENTRAL ANGLE OF $87^{\circ}41'04''$ AN ARC DISTANCE OF 4.59 FEET; THENCE NORTH $17^{\circ}05'16''$ EAST A DISTANCE OF 16.90 FEET; THENCE SOUTH $73^{\circ}15'43''$ EAST A DISTANCE OF 124.89 FEET; THENCE SOUTH $16^{\circ}45'36''$ WEST A DISTANCE OF 16.33 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $89^{\circ}35'22''$ AN ARC DISTANCE OF 3.13 FEET; THENCE SOUTH $72^{\circ}49'46''$ EAST A DISTANCE OF 15.09 FEET; THENCE SOUTH $71^{\circ}47'27''$ EAST A DISTANCE OF 6.80 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $78^{\circ}08'29''$ AN ARC DISTANCE OF 2.73 FEET; THENCE NORTH $30^{\circ}04'04''$ EAST A DISTANCE OF 16.03 FEET; THENCE SOUTH $59^{\circ}43'08''$ EAST A DISTANCE OF

69.08 FEET; THENCE SOUTH 30°03'40" WEST A DISTANCE OF 15.90 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE A CENTRAL ANGLE OF 90°31'09" AN ARC DISTANCE OF 3.16 FEET; THENCE SOUTH 60°27'29" EAST A DISTANCE OF 20.56 FEET TO THE BEGINNING OF A TANGENT 1.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°42'52" AN ARC DISTANCE OF 1.55 FEET; THENCE NORTH 30°49'39" EAST A DISTANCE OF 16.77 FEET; THENCE SOUTH 59°21'04" EAST A DISTANCE OF 59.52 FEET; THENCE SOUTH 30°04'06" WEST A DISTANCE OF 16.01 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°53'58" AN ARC DISTANCE OF 3.14 FEET; THENCE SOUTH 59°49'52" EAST A DISTANCE OF 12.68 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°20'30" AN ARC DISTANCE OF 3.12 FEET; THENCE NORTH 30°49'38" EAST A DISTANCE OF 15.94 FEET; THENCE SOUTH 59°29'18" EAST A DISTANCE OF 64.74 FEET; THENCE SOUTH 73°23'11" EAST A DISTANCE OF 43.00 FEET; THENCE SOUTH 16°02'04" WEST A DISTANCE OF 16.04 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°28'17" AN ARC DISTANCE OF 3.12 FEET; THENCE SOUTH 73°26'13" EAST A DISTANCE OF 18.75 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°45'38" A DISTANCE OF 3.13 FEET; THENCE NORTH 16°48'09" EAST A DISTANCE OF 16.19 FEET; THENCE SOUTH 73°38'32" EAST A DISTANCE OF 67.98 FEET; THENCE SOUTH 15°33'44" WEST A DISTANCE OF 16.47 FEET TO THE BEGINNING OF A TANGENT 1.81 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 178°38'44" AN ARC DISTANCE OF 5.66 FEET; THENCE NORTH 16°54'59" EAST A DISTANCE OF 10.09 FEET; THENCE SOUTH 66°00'04" EAST A DISTANCE OF 21.50 FEET TO THE BEGINNING OF A NON-TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, A RADIAL LINE TO SAID CURVE BEARS NORTH 78°20'39" WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°39'51" AN ARC DISTANCE OF 2.57 FEET; THENCE SOUTH 62°00'30" EAST A DISTANCE OF 25.26 FEET TO THE **POINT OF BEGINNING** OF PARCEL 5.

SAID PARCEL CONTAINS 98005 SQUARE FEET OR 2.250 ACRES, MORE OR LESS.

PARCEL 6: LAND AREA

BEGINNING AT A POINT ON THE ORDINARY HIGH WATER MARK ANGLE POINT STATION 62 AS DESCRIBED IN SAID MISCELLANEOUS MAP NO. 564, HEREINAFTER KNOW AS THE **POINT OF BEGINNING** OF PARCEL 6; THENCE LEAVING SAID

ORDINARY HIGH WATER MARK NORTH 26°56'57" EAST A DISTANCE OF 6.04 FEET; THENCE SOUTH 60°01'01" EAST A DISTANCE OF 7.31 FEET; THENCE NORTH 31°11'22" EAST A DISTANCE OF 16.61 FEET; THENCE SOUTH 59°34'22" EAST A DISTANCE OF 18.00 FEET; THENCE NORTH 30°53'35" EAST A DISTANCE OF 34.00 FEET; THENCE NORTH 58°31'09" WEST A DISTANCE OF 5.36 FEET; THENCE NORTH 30°47'23" EAST A DISTANCE OF 16.83 FEET; THENCE SOUTH 59°04'34" EAST A DISTANCE OF 5.41 FEET; THENCE NORTH 30°39'31" EAST A DISTANCE OF 8.53 FEET; THENCE NORTH 58°37'04" WEST A DISTANCE OF 17.94 FEET; THENCE NORTH 30°24'29" EAST A DISTANCE OF 8.27 FEET; THENCE NORTH 60°19'05" WEST A DISTANCE OF 15.86 FEET TO THE BEGINNING OF A TANGENT 2.50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°43'24" AN ARC DISTANCE OF 3.74 FEET TO THE BEGINNING OF A COMPOUND 20.50 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°24'11" AN ARC DISTANCE OF 30.20 FEET TO THE BEGINNING OF A COMPOUND 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°12'33" AN ARC DISTANCE OF 3.08 FEET; THENCE SOUTH 18°01'03" WEST A DISTANCE OF 17.71 FEET; THENCE SOUTH 73°07'04" EAST A DISTANCE OF 75.93 FEET; THENCE NORTH 17°11'25" EAST A DISTANCE OF 16.10 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°38'59" AN ARC DISTANCE OF 2.95 FEET TO THE BEGINNING OF A COMPOUND 16.75 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 118°44'49" AN ARC DISTANCE OF 34.71 FEET TO THE BEGINNING OF A COMPOUND 1.50 FOOT RADIUS CURVE, CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 76°15'07" AN ARC DISTANCE OF 2.00 FEET; THENCE NORTH 63°09'41" WEST A DISTANCE OF 12.99 FEET; THENCE SOUTH 26°49'41" WEST A DISTANCE OF 85.16 FEET; THENCE SOUTH 63°02'22" EAST A DISTANCE OF 14.50 FEET TO THE BEGINNING OF A TANGENT 2.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°17'10" A DISTANCE OF 3.15 FEET; THENCE SOUTH 27°14'48" WEST A DISTANCE OF 17.78 FEET TO A POINT ON THE SAID ORDINARY HIGH WATER MARK; THENCE ALONG SAID ORDINARY HIGH WATER MARK NORTH 63°06'55" WEST A DISTANCE OF 114.14 FEET TO ORDINARY HIGH WATER MARK STATION 62 AND THE **POINT OF BEGINNING** OF PARCEL 6.

SAID PARCEL CONTAINS 9,030 SQUARE FEET OR 0.207 ACRES, MORE OR LESS.

PARCEL 7: PUBLIC ACCESS EASEMENT AREA

BEGINNING AT POINT A OF THE ABOVE DESCRIBED PARCEL 1, KNOWN HEREINAFTER KNOWN AS THE **POINT OF BEGINNING** OF PARCEL 7; THENCE NORTH 63°04'33" WEST A DISTANCE OF 30.00 FEET; THENCE NORTH 26°56'39" EAST A DISTANCE OF 299.42 FEET; THENCE SOUTH 85°34'34" EAST A DISTANCE OF 32.48 FEET; THENCE SOUTH 26°56'39" WEST A DISTANCE OF 311.84 FEET TO THE **POINT OF BEGINNING** OF PARCEL 7.

SAID PARCEL CONTAINS 9,169 SQUARE FEET OR 0.210 ACRES, MORE OR LESS.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS' ACT.


 07-12-2024
GARY L. HUS DATE
LS 7019





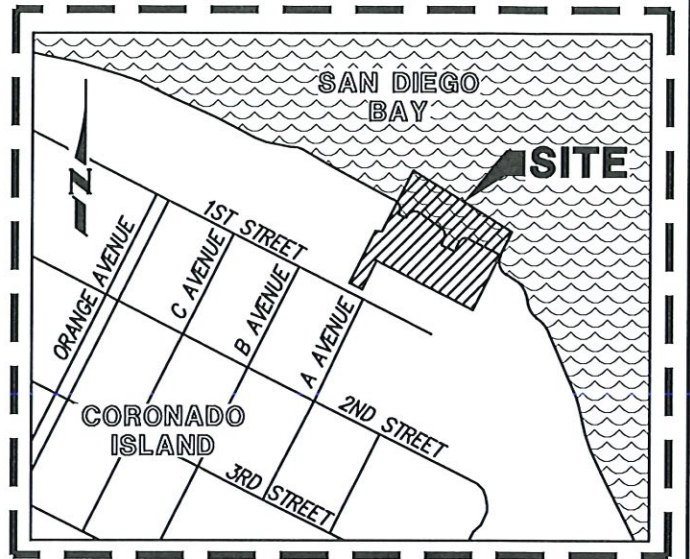
Exhibit B

Plat Map of Parcels

(attached)

LEGEND

-  INDICATES LAND LEASE PARCEL
-  INDICATES WATER LEASE PARCEL
- INDICATES ORDINARY HIGH WATER MARK (OHWM) STATION PER R.O.S. 16818.
- △ INDICATES 3" DIAMETER BRASS DISK GPS POINT MARKED "SDUPD-029" AS SHOWN ON ROS No. 16668
- P.O.C. INDICATES POINT OF COMMENCEMENT
- P.O.B. INDICATES POINT OF BEGINNING
- ① INDICATES 15' WIDE UTILITY/PUBLIC ACCESS EASEMENT



VICINITY MAP
NO SCALE

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6, EPOCH 1991.35 GRID BEARING BETWEEN FIRST ORDER G.P.S. POINT NO. 30 AND FIRST ORDER G.P.S. POINT NO. 29 AS SHOWN HEREON PER ROS 16668.

NORTH 67°18'04" WEST GRID

DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY BY 1/1.00001987. QUOTED BEARINGS FROM REFERENCE DEEDS/MAPS MAY OR MAY NOT BE IN TERMS OF SAID SYSTEM.



PROJECT DESIGN CONSULTANTS

a BOWMAN company
Planning | Landscape Architecture | Engineering | Survey

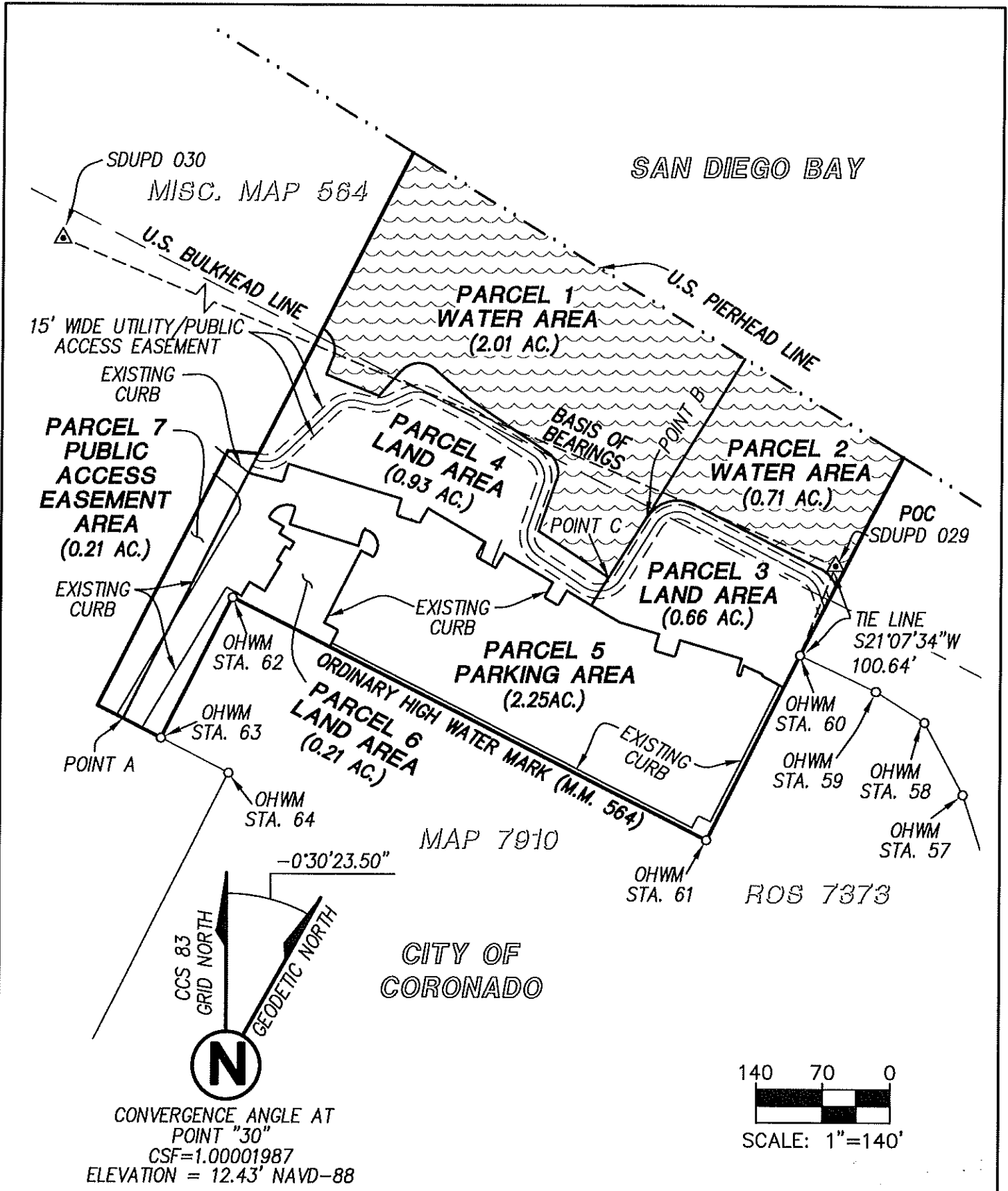
701 B Street, Suite 800 San Diego, CA 92101
619.235.6471 Tel 619.234.0349 Fax

Gary L. Hus 07-12-2024
GARY L. HUS DATE
L.S. 7019

DRAWN KP
CHECKED MM
REVIEWED GLH
DATE: _____

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE _____
SCALE _____
REF. _____
DRAWING NO.
SHEET 1 OF 10
003-041

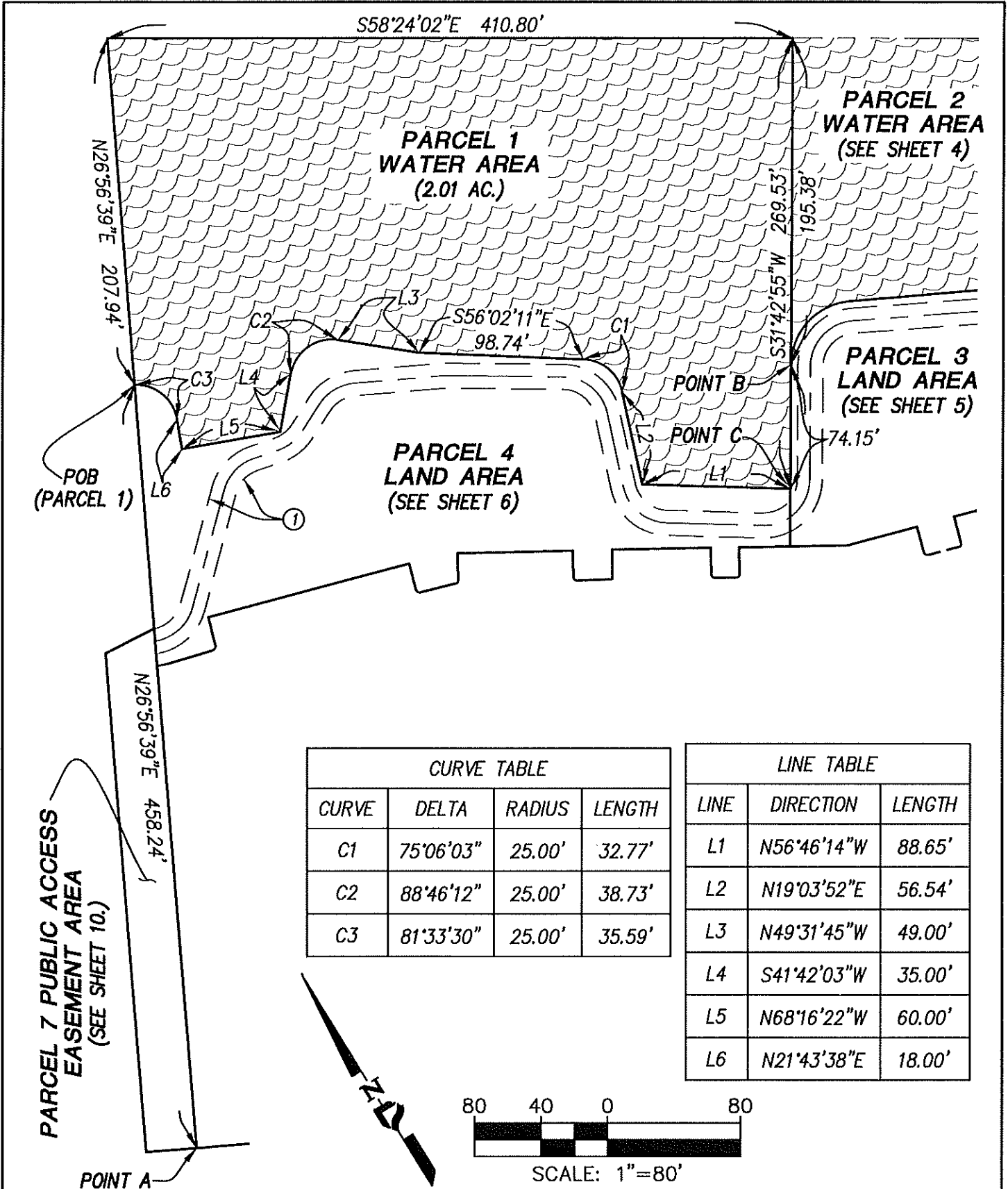


DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

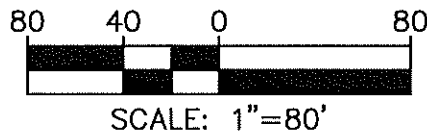
DATE 6/19/2024
 SCALE 1" = 140'
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DRAWING NO.
SHEET 2 OF 10
003-041



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	75°06'03"	25.00'	32.77'
C2	88°46'12"	25.00'	38.73'
C3	81°33'30"	25.00'	35.59'

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N56°46'14"W	88.65'
L2	N19°03'52"E	56.54'
L3	N49°31'45"W	49.00'
L4	S41°42'03"W	35.00'
L5	N68°16'22"W	60.00'
L6	N21°43'38"E	18.00'

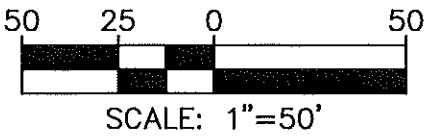
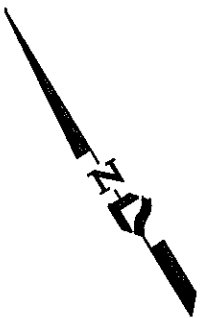
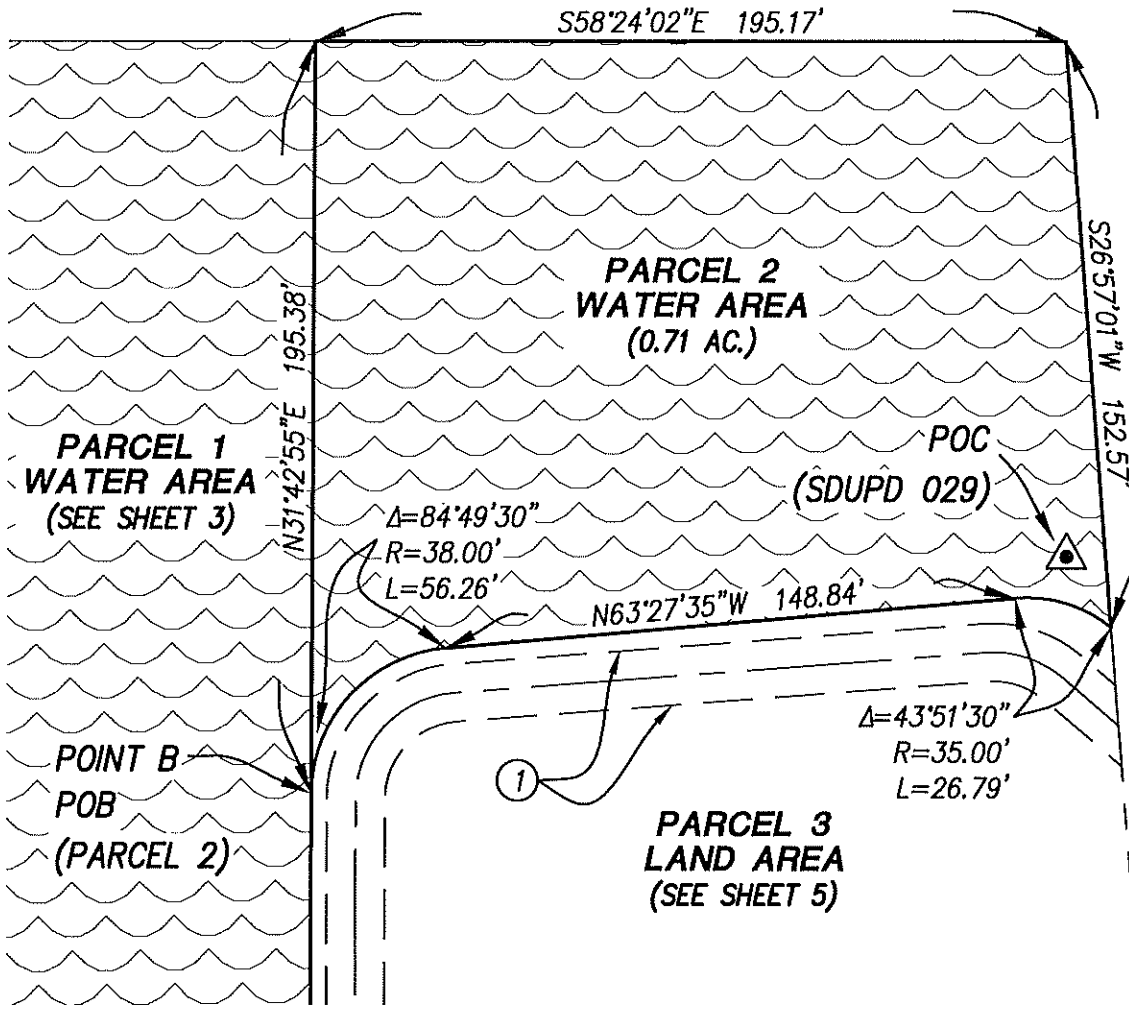


DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 80'
 REF.

DRAWING NO.
SHEET 3 OF 10
003-041

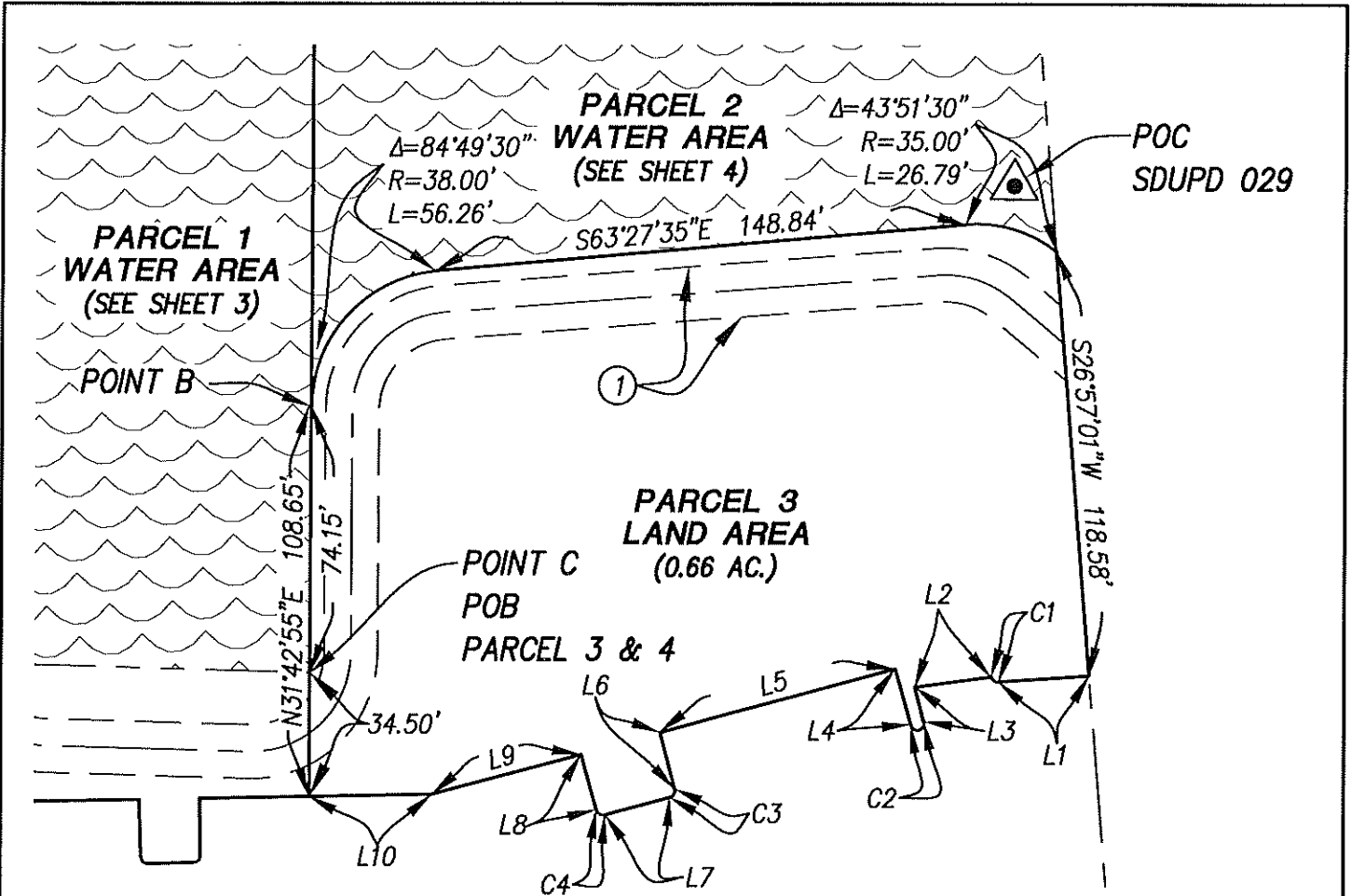


DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

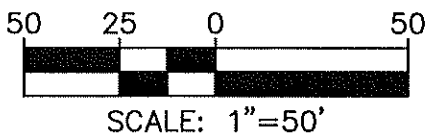
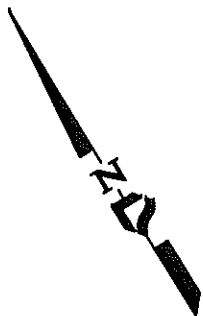
DATE 02/06/2023
 SCALE 1" = 50'
 REF.

DRAWING NO.
SHEET 4 OF 10
003-041



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	73°39'51"	2.00'	2.57'
C2	178°38'44"	1.82'	5.66'
C3	89°45'38"	2.00'	3.13'
C4	89°28'17"	2.00'	3.12'

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N62°00'30"W	25.26'
L2	N66°00'04"W	21.50'
L3	S16°54'59"W	10.09'
L4	N15°33'44"E	16.47'
L5	N73°38'32"W	67.98'
L6	S16°48'09"W	16.19'
L7	N73°26'13"W	18.75'
L8	N16°02'04"E	16.04'
L9	N73°23'11"W	43.00'
L10	N59°29'18"W	34.48'



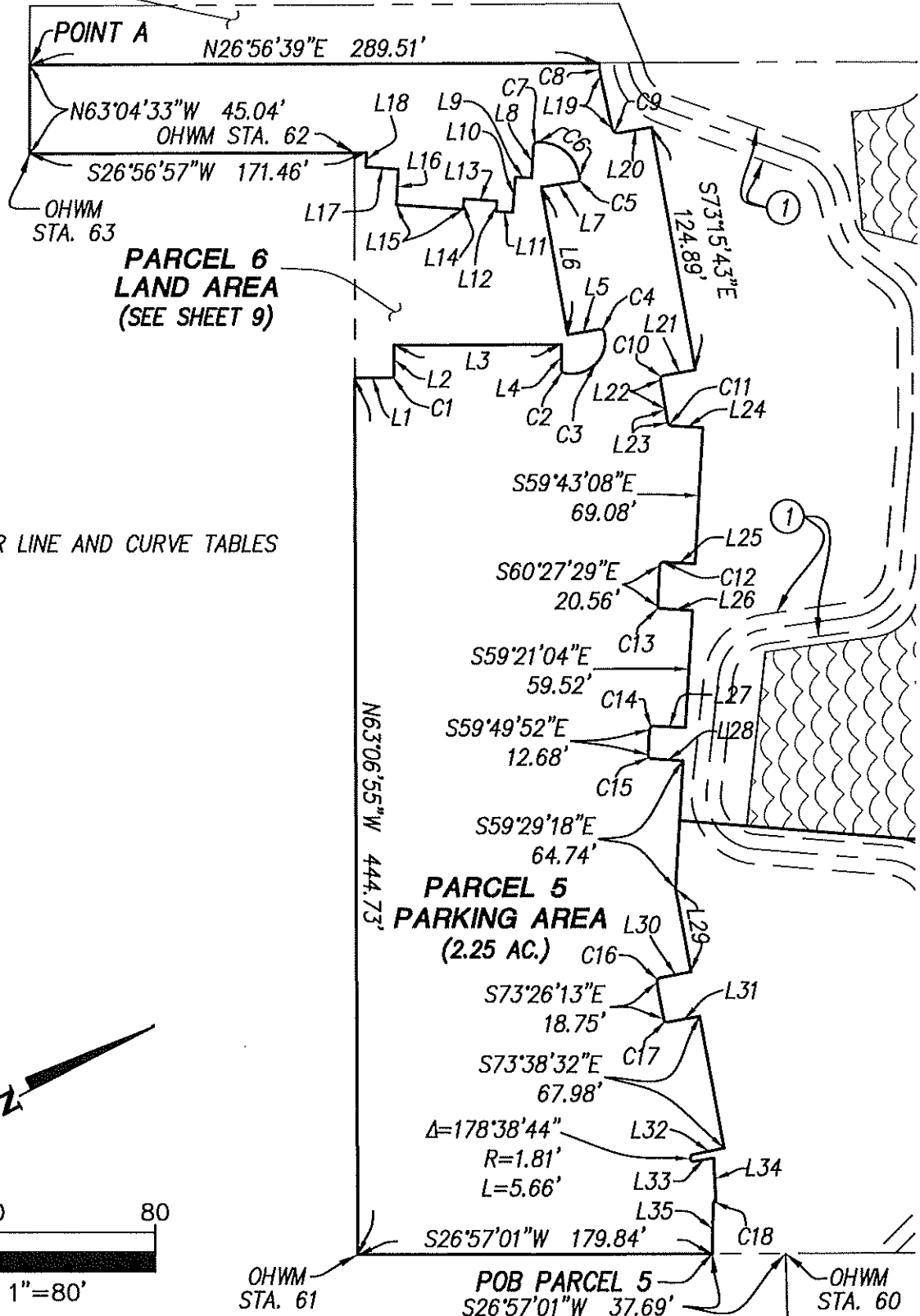
DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

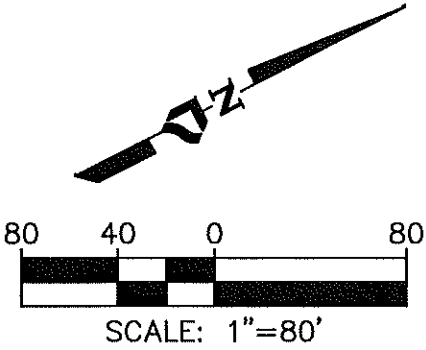
DATE 02/06/2023
 SCALE 1" = 50'
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DRAWING NO.
SHEET 5 OF 10
003-041

**PARCEL 7
PUBLIC
ACCESS
EASEMENT
AREA
(SEE SHEET 10)**



SEE SHEET 8 FOR LINE AND CURVE TABLES



DRAWN KP
 CHECKED MM
 REVIEWED GLH

**SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
 FERRY LANDING ASSOCIATES, LLC**

DATE 02/06/2023
 SCALE 1" = 80'
 REF.

**DRAWING NO.
 SHEET 7 OF 10
 003-041**

LINE AND CURVE TABLES FOR PARCEL 5, SHEET 7

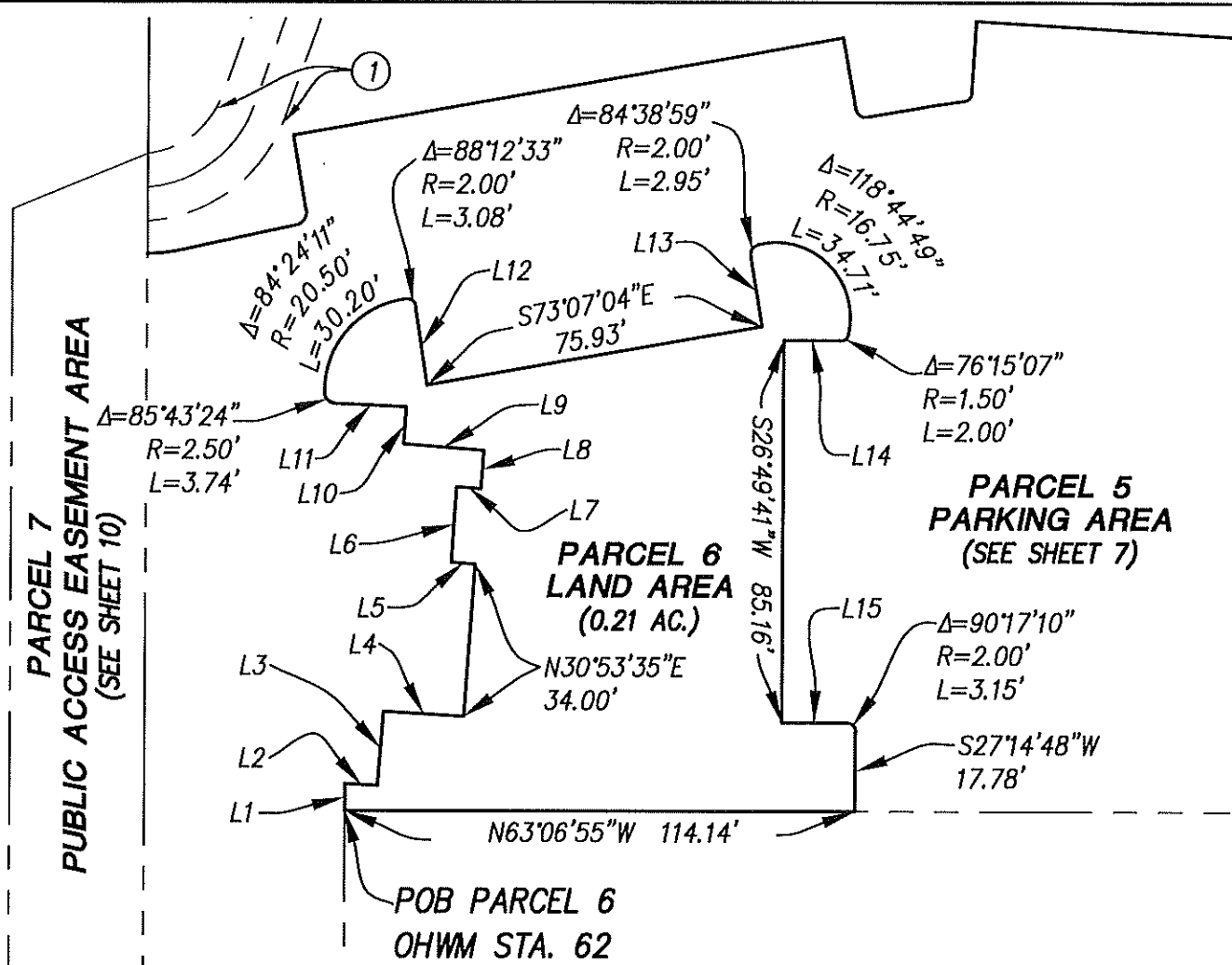
CURVE TABLE				LINE TABLE			LINE TABLE		
CURVE	DELTA	RADIUS	LENGTH	LINE	DIRECTION	LENGTH	LINE	DIRECTION	LENGTH
C1	90°17'10"	2.00'	3.15'	L1	N27°14'48"E	17.78'	L19	S75°13'39"E	27.41'
C2	76°15'07"	1.50'	2.00'	L2	N63°02'22"W	14.50'	L20	N17°05'16"E	16.90'
C3	118°44'49"	16.75'	34.71'	L3	N26°49'41"E	85.16'	L21	S16°45'36"W	16.33'
C4	84°38'59"	2.00'	2.95'	L4	S63°09'41"E	12.99'	L22	S72°49'46"E	15.09'
C5	88°12'33"	2.00'	3.08'	L5	S17°11'25"W	16.10'	L23	S71°47'27"E	6.80'
C6	84°24'11"	20.50'	30.20'	L6	N73°07'04"W	75.93'	L24	N30°04'04"E	16.03'
C7	85°43'24"	2.50'	3.74'	L7	N18°01'03"E	17.71'	L25	S30°03'40"W	15.90'
C8	13°23'11"	28.00'	6.54'	L8	S60°19'05"E	15.86'	L26	N30°49'39"E	16.77'
C9	87°41'04"	3.00'	4.59'	L9	S30°24'29"W	8.27'	L27	S30°04'06"W	16.01'
C10	89°35'22"	2.00'	3.13'	L10	S58°37'04"E	17.94'	L28	N30°49'38"E	15.94'
C11	78°08'29"	2.00'	2.73'	L11	S30°39'31"W	8.53'	L29	S73°23'11"E	43.00'
C12	90°31'09"	2.00'	3.16'	L12	N59°04'34"W	5.41'	L30	S16°02'04"W	16.04'
C13	88°42'52"	1.00'	1.55'	L13	S30°47'23"W	16.83'	L31	N16°48'09"E	16.19'
C14	89°53'58"	2.00'	3.14'	L14	S58°31'09"E	5.36'	L32	S15°33'44"W	16.47'
C15	89°20'30"	2.00'	3.12'	L15	S30°53'35"W	34.00'	L33	N16°54'59"E	10.09'
C16	89°28'17"	2.00'	3.12'	L16	N59°34'22"W	18.00'	L34	S66°00'04"E	21.50'
C17	89°45'38"	2.00'	3.13'	L17	S31°11'22"W	16.61'	L35	S62°00'30"E	25.26'
C18	73°39'51"	2.00'	2.57'	L18	N60°01'01"W	7.31'			

DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 80'
 REF.

DRAWING NO.
SHEET 8 OF 10
003-041

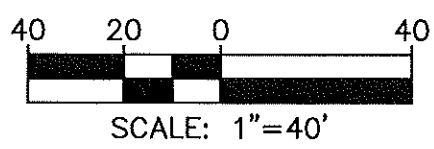
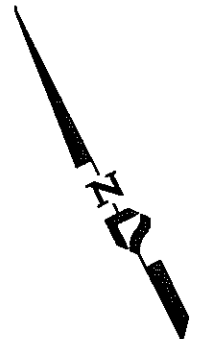


**PARCEL 7
PUBLIC ACCESS EASEMENT AREA
(SEE SHEET 10)**

**PARCEL 5
PARKING AREA
(SEE SHEET 7)**

**PARCEL 6
LAND AREA
(0.21 AC.)**

**POB PARCEL 6
OHWM STA. 62**



LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N26°56'57"E	6.04'
L2	S60°01'01"E	7.31'
L3	N31°11'22"E	16.61'
L4	S59°34'22"E	18.00'
L5	N58°31'09"W	5.36'
L6	N30°47'23"E	16.83'
L7	S59°04'34"E	5.41'
L8	N30°39'31"E	8.53'

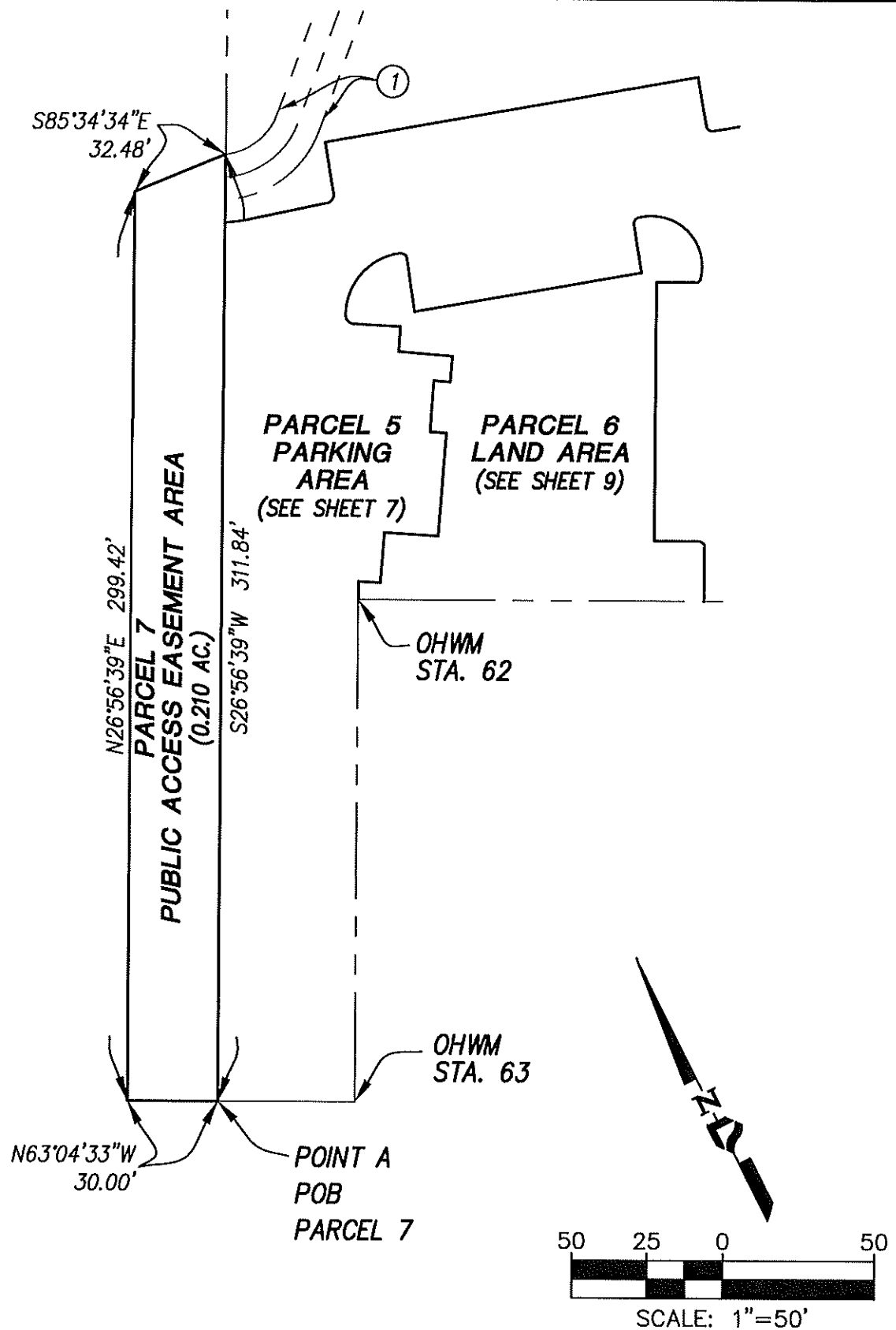
LINE TABLE		
LINE	DIRECTION	LENGTH
L9	N58°37'04"W	17.94'
L10	N30°24'29"E	8.27'
L11	N60°19'05"W	15.86'
L12	S18°01'03"W	17.71'
L13	N17°11'25"E	16.10'
L14	N63°09'41"W	12.99'
L15	S63°02'22"E	14.50'

DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO -
SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 40'
 REF. _____

DRAWING NO.
SHEET 9 OF 10
003-041



DRAWN KP
 CHECKED MM
 REVIEWED GLH

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO -
 SAN DIEGO
FERRY LANDING ASSOCIATES, LLC

DATE 02/06/2023
 SCALE 1" = 50'
 REF.
DRAWING NO.
SHEET 10 OF 10
003-041

EXHIBIT E

Sublessor's Work
Cold Dark Shell

- (a) building enclosure including all primary structural elements;
- (b) roof;
- (c) exterior walls including finishes/cladding;
- (d) interior flooring will be unfinished (no slab);
- (e) stubs to within 10 feet of Building foundation of water, sewer, electrical, communications and gas utilities;
- (f) landscaping of common area walkways and entrance and exit areas to the Building, including stormwater retention;
- (g) minimum interior lighting to obtain permit for shell;
- (h) HVAC unit(s) of make and model, but no distribution or duct work;
- (h) unfinished and unpainted perimeter interior walls (no demising walls);
- (i) unfinished exposed ceiling;
- (j) sprinkler system as required for shell in minimum amounts (does not include dropping sprinkler heads to finished ceiling height or otherwise as required in connection with restaurant improvements);
- (k) entry and exit doors as required to obtain permit for shell;
- (l) railing, glass shield wall, masonry wall and/or similar features bordering patio;
- (m) patio that will comprise part of premises will be paved with minimum finish only as necessary to obtain permit; and
- (n) concrete walkways into and around restaurant, including to trash enclosure.

SUBLEASE AGREEMENT

between

**FERRY LANDING ASSOCIATES, LLC,
a California limited liability company**

(Sublessor)

and

**ISLAND TIMES LLC,
a California limited liability company**

(Sublessee)

SUBLEASE AGREEMENT

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- C Premises Plot Plan
- D Common Area
- E Sublessor's Work
- F Sublessee's Work

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (“Sublease”) is made and entered into as of July 12, 2023 (“Effective Date”), by and between FERRY LANDING ASSOCIATES, LLC, a California limited liability company (the “Sublessor”), and ISLAND TIMES LLC, a California limited liability company, (the “Sublessee”), with reference to the following facts:

A. Sublessor entered into that certain lease dated October 21, 1997, as amended by Agreement For Amendment Of Lease Amendment No. 1 dated October 9, 2001, Agreement For Amendment Of Lease Amendment No. 2 dated July 12, 2005, and Agreement For Amendment Of Lease Amendment No. 3 dated July 2, 2008, (the “Master Lease”), with the San Diego Unified Port District, a public corporation (the “District”), pursuant to which Sublessor leases certain land and water area generally known as the Ferry Landing Marketplace Development and sometimes described as 1311 First Street, Coronado, California (the “Property”), and more particularly described in the Master Lease. Sublessee hereby acknowledges receipt of a copy of the Master Lease, which is on file in the office of the District Clerk as Document No. 36616. The Master Lease term is forty years beginning September 1, 1997, and ending August 31, 2037. The provisions of the Master Lease, while not attached hereto, are nonetheless incorporated herein by this reference.

B. Sublessor has constructed a commercial complex on the Property commonly known as the Coronado Ferry Landing (the “Project”) in accordance with Sublessor’s development proposal submitted to District and on file in the office of the District Clerk as Document No. 17648.

C. The Property and the Project include that certain vacant land located at the southern and eastern part of the Project, facing San Diego Bay to the North and East and Commercial Retail to the South and West, generally described as 1355 First Street, Coronado, California. Upon the terms and conditions set forth in this Sublease, the Parties desire to work together to design, build, sublease, and operate a fine dining restaurant on said vacant land.

D. Under Section 9 of the Master Lease, Sublessor has the right to sublease all or part of the Property for uses permitted under the Master Lease, subject to the prior consent of the District, evidenced by resolution first had and obtained in each instance.

1. PREMISES

1.1 Description of Premises. In consideration of the amounts to be paid and the terms, covenants and conditions to be kept, performed and satisfied by Sublessee under this Sublease, Sublessor subleases to Sublessee and Sublessee subleases from Sublessor that certain premises (“Premises”) which includes a proposed new building consisting of approximately seven thousand two hundred (7,200) square feet and four thousand nine hundred (4,900) square feet of patio area situated in the Project, as more particularly described in EXHIBITS A through D attached, consisting of: (i) the legal description of the Property

(EXHIBIT A); (ii) a plot plan showing the Project (EXHIBIT B); (iii) a plot plan showing the approximate location of the Premises (EXHIBIT C); and (iv) the Common Area described in Section 17 (EXHIBIT D).

1.2 Project Construction. The parties acknowledge that, prior to the execution of this Sublease, Sublessor has completed, at its own cost and expense, the Common Areas and certain other improvements to the Project.

1.3 Premises Construction. Sublessor, at Sublessor's own cost and expense, shall construct the base, shell, and core of the Building in which the Premises is located, as more particularly set forth in EXHIBIT E (the "Sublessor's Work"). Sublessee, at Sublessee's own cost and expense, subject to Sublessor's contribution, if any, as provided in Exhibit F, shall construct certain improvements to the Premises, both of an exterior and interior nature, in accordance with the provisions set forth in EXHIBIT F (the "Sublessee's Work"). No major construction shall be commenced upon the Premises by Sublessee until Sublessee has secured and submitted to District and Sublessor performance and payment bonds in the amount of the total estimated construction cost of improvements to be constructed by Sublessee. Such bonds shall be issued by a surety admitted in the State of California and must be in a form acceptable to Sublessor and District.

2. DISTRICT'S CONSENT, SUBLESSOR'S TITLE AND CONSTRUCTION REQUIREMENTS

2.1 District's Consent. Sublessee acknowledges the rights and obligations of the parties under this Sublease are subject to and contingent upon: (a) District's prior consent of this executed Sublease and of Sublessee as a sublessee; and (b) District and Sublessor entering into a restated Master Lease containing, among other terms and conditions, an extension of the Master Lease term by an additional ten years until August 31, 2047 ("Restated Master Lease"); and (c) Sublessee shall have the right to reject any of the other terms and conditions contained in the "Restated Master Lease" if and when adopted, to the extent that they seek to modify Sublessee's operation of its business as previously approved. Following execution of this Sublease, Sublessor forthwith shall request and use its best efforts to obtain District's consent and to negotiate in good faith to enter into the Restated Master Lease. Sublessor shall pay all costs and fees charged by District to Sublessor and/or Sublessee for processing this Sublease and entering into the Restated Master Lease. If for any reason District consent is not obtained, Sublessor and Sublessee agree to make such modifications to this Sublease as District may reasonably request in order to obtain District's consent; provided, however, should the requested modifications be unreasonable or materially change the fundamental terms of this Sublease, or if District is otherwise unwilling to grant its consent and enter the Restated Master Lease, this Sublease shall be of no further force or effect, and no obligation shall have been incurred by either Sublessor or Sublessee. Upon its execution the Restated Master Lease shall automatically be deemed incorporated into this Sublease as if set forth in full and all references to "Master Lease" in this Sublease shall mean and refer to the Restated Master Lease immediately upon its execution.

2.2 Master Lease, District and State Rights. Sublessee expressly agrees that all rights under this Sublease shall be subject to the Master Lease and any amendments thereto and all prior exceptions, reservations, restrictions, easements, rights-of-way, licenses and other matters of record now existing which affect the Property or the Premises in any manner. This Sublease is subject to any and all rights, present and future, of the State of California and the United States of America to exercise dominion over the Premises and the adjoining public waterways. Sublessor represents and warrants to Sublessee as follows: (i) no default or breach or event or circumstance which with the giving of notice or passage of time or both has occurred under the Master Lease by either the District or Sublessor; (ii) the Master Lease is in full force and effect and has not been amended, modified, supplemented or changed either in writing or orally; and (iii) Sublessee's anticipated use and occupancy of the Premises is permitted under the Master Lease. Sublessor shall not exercise any right or remedy under the Master Lease that would materially and adversely affect Sublessee's rights under this Sublease, including, without limitation, the termination or cancellation of the Master Lease, without Sublessee's prior written consent. Sublessor shall comply with and perform all terms, covenants, promises, obligations and duties required to be complied with and performed by Sublessor under the Master Lease in a timely fashion, except to the extent such duties or obligations are placed on Sublessee pursuant to this Sublease.

2.3 Sublessor's Title. Subject to the provisions of the Master Lease, Sublessor warrants and represents that it has a good, valid and lawful leasehold estate in the Property and the Premises for the entire Term. Subject to the provisions of the Master Lease, Sublessor warrants that it has authority to make this Sublease for the Original Term (as defined in Section 3) and any Extended Term (as defined in Section 3) and that the Property comprising the Project and the Premises is free and clear of all restrictions, encumbrances, easements, and zoning or other ordinances which might in any manner or extent (i) prevent or have a materially adverse effect upon the use of the Premises as defined in Section 5, (ii) disturb Sublessee's peaceful and quiet possession of the Premises and the Common Area, or (iii) disturb normal utility and roadway easements in and around the Project and the Premises. All warranties and covenants of Sublessor in this Paragraph are subject to those restrictions, encumbrances and easements referenced in the Master Lease.

3. TERM

3.1 Original Term. The original term of this Sublease shall be for a period of ten (10) years, unless earlier terminated as herein provided, (the "Original Term") commencing on the date (the "Commencement Date") which is the earlier of either (i) the date Sublessee opens the Premises for business, or (ii) the date which is two hundred and seventy (270) days from Delivery of Possession. "Delivery of Possession" shall mean the date when Sublessor delivers the Premises to Sublessee in the condition provided in Sublessor's Work Letter. When the Commencement Date is determined, Sublessor and Sublessee shall execute a written declaration certifying said date; provided, however, the failure to do so will not affect the Commencement Date.

3.1.1 If the Commencement Date is other than the first (1st) day of a calendar month, the Original Term shall begin on the first (1st) day of the following calendar month. All of the terms and provisions of this Sublease shall apply during the period from the Commencement Date to the beginning of the Original Term, except that the Base Rent (as defined in Section 4) for such period shall be prorated on a daily basis and shall be due and payable to Sublessor on the Commencement Date.

3.1.2 The term Sublease Year as used in this Sublease shall refer to each twelve (12) month period during the Original Term and any Extended Term, except that the first Sublease Year shall begin on the Commencement Date and end twelve (12) months following the first (1st) day of the Original Term and the last Sublease Year shall end when this Sublease expires or terminates.

3.1.3 Whenever the word "Term" is used in this Sublease, it shall include the Original Term as well as any Extended Term.

3.2 **Option to Extend Term.** So long as Sublessee is not in default of the Sublease and the Premises are being used for the Authorized Use, Sublessee shall have the right to extend the Original Term for two (2) extension periods of five (5) years each (collectively, the "Extended Terms" and individually a "Extended Term"), on the same terms and conditions set forth in this Sublease, provided Sublessee has provided written notice to Sublessor of Sublessee's desire to so extend the Original Term of this Sublease no less than One Hundred and Eighty (180) calendar days prior to the expiration of the Original Term or the Extended Term. If the Original Term and/or Extended Term is extended, the Termination Date shall be automatically revised to the last date of the Extended Term. Notwithstanding the foregoing, the last date of the Extended Term shall in no event occur later than the date of the termination date set forth in the Master Lease.

3.3 **Possession After Expiration of Term.** Should Sublessee, with the consent of Sublessor, remain in possession of the Premises after the expiration of the Term, and remain in possession of the Premises after such expiration, then Sublessee's occupancy shall be subject to the terms of Section 27.2.

4. RENT

4.1 **Rent.** Beginning on the Commencement Date and thereafter each month during the Original Term, Sublessee agrees to pay to Sublessor, as rent for the use and occupancy of the Premises, in lawful money of the United States and without deduction, setoff, prior notice or demand, at 1311 First Street, Coronado, California 92118 or at such other address as Sublessor may from time to time designate in writing, the following:

4.1.1 **Base Rent.** Beginning on the Commencement Date and for the balance of the Term, Sublessee shall pay to Sublessor as and for minimum monthly rent ("Base Rent"), due and payable monthly in advance on the first (1st) day of each calendar month of the Term,

except for the first month's Base Rent which shall be paid upon Sublessee's execution of this Sublease, as follows:

(a) Years 1-5: Annual rate of \$4.50 per rentable square foot of the building located in the Premises, and as measured after Sublessor's construction work identified in Exhibit E is completed.

(b) Years 6-10 and 16-20 (if applicable): Base Rent shall be adjusted in the following manner. The Base Rent payable immediately prior to the start of the 6th Lease Year and the 16th Lease Year (as applicable) shall be adjusted by the increase, if any in the CPI (CPI means Consumer Price Index for All Urban Consumers for all items in Los Angeles, Long Beach, and Anaheim, CA Items. Items based on the period 1982 - 84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics, as the same may be substituted as set forth in this Sublease.) as follows. The Base Rent payable immediately prior to the start of the 6th Lease Year and the 16th lease Year (as applicable) shall be multiplied by a fraction, the numerator of which shall be the CPI for the calendar month which is three (3) months prior to the start of the 6th Lease Year and the 16th Lease Year (as applicable), and the denominator of which shall be the CPI for the calendar month which is three (3) months prior to the (i) Commencement Date with respect to the start of the 6th Lease Year, and (ii) the first day of the 11th Lease Year with respect to the start of the 16th Lease Year (as applicable). The new Base Rent shall be the product so calculated to reflect the increase in the CPI as provided above. In no event shall such new Base Rent be less than the Base Rent payable immediately preceding said adjustment. In the event the CPI is no longer published, the index for the foregoing adjustment shall be the one reported in the U. S. Department of Labor's comprehensive official index determined by Sublessor to be the one most nearly corresponding to the CPI. If the Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by Sublessor. Notwithstanding the publication dates of the CPI, the Base Rent shall be adjusted to be effective on the first day of the 6th Lease Year and the 16th Lease Year (as applicable). Until said adjustment can be reasonably determined by CPI publication payments of Base Rent due shall be calculated utilizing the Base Rent payable immediately prior to such adjustment date. Within ten (10) days following calculation of the CPI adjustment, any underpayments of Base Rent by reason of the delay in the availability of the CPI information shall be paid to the Sublessor.

(c) Years 11-16: Base Rent shall be adjusted in the following manner. Within 30 days following the start of the 11th Lease Year (as applicable), Sublessor shall determine, and provide to Sublessee a written statement setting forth the calculation of, the average annual Base Rent and Percentage Rent that was payable by Sublessee during the period from the Commencement Date through the end of the 10th Lease Year. Effective as of the start of the 11th Lease Year (as applicable) Base Rent shall be adjusted to an amount equal to seventy-five percent of such average annual Base Rent and Percentage Rent, provided that in no event shall such new Base Rent be less than the Base Rent payable for the Lease Year immediately preceding such adjustment date. Immediately following the determination of the new Base Rent, any underpayments of Base Rent shall be paid to Sublessor.

4.1.2 Percentage Rent. Sublessee will pay to Sublessor as additional rent during the Term, at the times and in the manner specified below, percentage rent (“Percentage Rent”) equal to the amount by which eight and 65/100 percent (8.65%) of Sublessee’s Sublease Year-to-date Gross Sales (as defined in Section 4.7) exceeds the Sublease Year-to-date Base Rent paid by Sublessee to Sublessor with customary exclusions for the first Nine Million Dollars (\$9,000,000) in sales. Thereafter, for all sales in excess of Nine Million Dollars (\$9,000,000) but less than Thirteen Million, Eighteen Thousand, Seven Hundred and Fifty Dollars (\$13,018,750) the percentage rent will be eight percent (8.00%). Thereafter, for all sales in excess of Thirteen Million, Eighteen Thousand, Seven Hundred and Fifty Dollars (\$13,018,750) or after one point one million dollars (\$1,100,000) in gross rents paid to the Sublessor, the percentage rent will be equal to the percentage rent due from Sublessor to the Port that is attributable to Sublessee’s gross sales, provided, however, such percentage will in no event exceed five percent (5%) on sales of food and five percent (5%) on sales of beverages (alcoholic or non-alcoholic). In the event of an increase in any base rent and/or percentage rent that Sublessor is required to pay to District under the Master Lease, Sublessee’s Base Rent and/or Percentage Rent shall be automatically increased by the corresponding rate or amount of such increase. Notwithstanding the foregoing, Sublessee shall only be responsible for Sublessee’s share of additional base rent actually paid by Sublessor and for additional percentage rent actually paid by Sublessor that is attributable to Sublessee’s gross sales.

4.2 Monthly Percentage Rent Statements and Payments. Within ten (10) days after the end of each calendar month of the Term, Sublessee shall furnish to Sublessor, in a form reasonably approved by Sublessor and containing such detail as to categories of sales as required by the Master Lease, a written statement certified under penalty of perjury by Sublessee or its responsible agent to be correct, showing at a minimum: (i) Sublessee’s Gross Sales for the immediately preceding calendar month; (ii) Gross Sales Sublease Year-to-date; and (iii) separate monthly and Sublease Year-to-date figures showing the Base Rent and Percentage Rent previously paid by Sublessee during the Sublease Year. Concurrently with the rendering of each monthly statement, Sublessee shall pay to Sublessor the amount, if any, by which the Sublease Year-to-date Percentage Rent exceeds the total Base Rent previously paid by Sublessee during the Sublease Year. Within thirty (30) days after the end of each Sublease Year, Sublessee shall submit to Sublessor a statement certified by Sublessee or its applicable agent of the Gross Sales for the prior Sublease Year and the Percentage Rent payable for such prior Sublease Year. To the extent Sublessee has underpaid Percentage Rent, Sublessee’s annual statement shall be accompanied by the amount of the underpayment. To the extent Sublessee has overpaid Percentage Rent, Sublessee shall be entitled to offset the excess against payments next thereafter due Sublessor, or if this Sublease shall be terminated or there shall be insufficient offset payments available to Sublessee, Sublessor shall reimburse such excess amount within thirty (30) days after such statement shall have been delivered to Sublessor.

4.3 Additional Rent. Beginning on the Commencement Date and for the balance of the Term, Sublessee shall pay as additional rent (“Additional Rent”) the following amounts: (i) Sublessee’s specified share of taxes and assessments levied, assessed, or charged upon the

Property and Project (as provided in Section 12), (ii) Sublessee's specified share of the Common Area Costs (as provided in Section 17), and (iii) Sublessee's specified share of Insurance Costs (as provided in Section 17).

4.4 Sublessee's Certificate Upon Early Termination. In the event of earlier termination of this Sublease, Sublessee covenants and agrees to deliver to Sublessor within thirty (30) days immediately following such earlier termination of this Sublease a final certified statement by a duly authorized financial officer or responsible agent of the Sublessee certifying the amount of Gross Sales for the preceding Sublease Year and the amount of Gross Sales made since the last certified statement pursuant to Section 4.2.

4.5 Sublessee's Books.

4.5.1 Sublessee shall keep full and accurate records, double entry books and other pertinent data documenting Sublessee's Gross Sales and the Gross Sales of any subtenant, licensee or concessionaire, and such books and records shall be kept for a minimum of a period of seven (7) years after the close of each calendar year. Said records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoices, or other pertinent supporting documents. Financial statements (a balance sheet and income/expense statement), based upon the double entry books of about shall be prepared periodically but not less often than annually. All retail sales shall be recorded by means of a computer-based Point of Sale System (POS), or by means of cash registers which display to the customer the amount of the transaction and automatically issue a receipt. If cash registers are used, all cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and sequential transaction counters which are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. Other types of sales recordation may be used by Sublessee with the written approval of Sublessor and District. All of Sublessee's books of account, records and documentation related to this Sublease or business operations conducted within or from the Premises shall be kept at Sublessee's corporate office or at other locations as acceptable to Sublessor and District, and Sublessor and District, during the seven year period Sublessee is required to maintain its books, shall have the right at any and all reasonable times after at least forty-eight (48) hours prior telephonic notice to examine and audit said books and records without restriction for the purpose of determining their accuracy and the accuracy of monthly statements of Gross Sales submitted and of rental paid to Sublessor. In the event the Sublessee does not make available the original records and books of account at the Premises or within the limits of San Diego County, Sublessee agrees to pay all necessary reasonable travel expenses incurred by Sublessor and District in conducting an audit at the location where said records and books of account are maintained. Sublessor shall have the discretion to require the installation of any additional accounting methods or controls required by District or Sublessor. The receipt by Sublessor of any statement or any payment or percentage rental for any period shall not bind Sublessor as to the correctness of the statement or the payment.

4.5.2 Sublessor's audits shall be at Sublessor's expense except as provided in this Section 4.5.2. In the event it is determined by Sublessor's audit of Sublessee's records and accounts that Sublessee has understated its Gross Sales, whether intentionally or unintentionally, Sublessee will pay to Sublessor any Base Rent or Percentage Rent due plus interest on such payments from the date the same should have been paid at the interest rate provided in this Sublease. In the event Sublessor's and/or District's audit discloses that the Gross Sales were understated by five percent (5%) or more, the cost of such audits as determined by Sublessor and/or District, including all reasonable expenses incurred as a result of such audits, shall also be paid by Sublessee immediately. Notwithstanding the foregoing, should Sublessor and Sublessee disagree as to any alleged discrepancy in either Base Rent or Percentage Rent, then Sublessee's records and accounts shall be audited by an independent nationally certified public accounting firm selected by Sublessor in its reasonable discretion and such firm's audit shall be deemed to be conclusive as between the Sublessor and Sublessee absent arithmetic error apparent on the face of the award. "Independent" as used in this Section 4.5.2 shall mean a firm that is not at the time nor has not, within three (3) years prior to such time, been employed by Sublessor. If the independent audit discloses that Gross Sales were understated by five percent (5%) or more, the cost of such audit, including all reasonable expenses incurred as a result of the audit, shall be paid by Sublessee to Sublessor, in all other cases Sublessor shall pay the cost of the audit. Sublessor agrees not to and Sublessor shall request that the District agree in writing not divulge to any person or persons, firm or corporation the amount of Sublessee's Gross Sales in the Premises, provided that Sublessor shall have the right to disclose Sublessee's certified statements required under Section 4.2 to District and to any prospective purchasers of the Premises or any existing or prospective mortgagee or to any governmental entity lawfully compelling disclosure thereof.

4.6 **Gross Sales.** The term "Gross Sales" as used in this Sublease shall mean receipts by Sublessee from all sales of all goods or services from business conducted upon or from the Premises by Sublessee's agents, licensees, or subleases and whether such sales are for cash or credit. If any one or more departments or other divisions of Sublessee's business in the Premises shall be sublet by Sublessee or conducted by any person, firm or corporation other than Sublessee, then there shall be included in Gross Sales for the purpose of determining Percentage Rent, all the Gross Sales of such departments or divisions, in the same manner and with the same effect as if the business or sales of such departments and divisions of Sublessee's business had been conducted by Sublessee itself. Each charge or sale upon installment or credit shall be treated as a sale in the month during which such charge or sale shall be made, irrespective of the time when Sublessee shall receive payment (whether full or partial) therefor. Without limiting the foregoing, Gross Sales shall also include:

4.6.1 All admission, entry, catering and other fees and charges of any kind or nature received by Sublessee, its agents, sublessees, concessionaires, or licensees, including, but not limited to, deposits accepted by Sublessee;

4.6.2 Any manufacturer's or importer's excise tax included in the prices of goods sold, even though Sublessee may be the manufacturer or importer of such goods, regardless of whether the amount of excise tax is stated as a separate charge; and

4.6.3 Proceeds from business interruption insurance or similar insurance to the extent included within the definition of Gross Sales under the Master Lease.

4.7 **Exclusions from Gross Sales.** Gross Sales shall not include:

4.7.1 The amount of any discounts or allowances, credits, refunds or exchanges;

4.7.2 Sales of trade fixtures, bulk sales of stock-in-trade, or operating equipment after use thereof in the conduct of Sublessee's business in the Premises;

4.7.3 All sums and credits received in settlement of claims for loss or damage to merchandise;

4.7.4 Proceeds of casualty insurance or condemnation claims;

4.7.5 Sales or excise or similar taxes payable by Sublessee to any governmental agency as a direct result of operations under this Sublease. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained;

4.7.6 Returns to shippers, suppliers and manufacturers;

4.7.7 Sales to Sublessee's employees of uniforms, T-shirts, hats, etc., for which Sublessee receives no profit but is reimbursed a reasonable carrying charge;

4.7.8 Promotional items for which Sublessee receives no payment or any other consideration whatsoever; and

4.7.9 The exchange of merchandise between restaurants and other operations of Sublessee where such exchanges are made solely for the convenient operation of Sublessee's entire business and not for the purpose of consummating a sale which has been made at, in, on, or from the Premises or for the purpose of depriving Sublessor of the benefit of a sale which otherwise would have been made at, in, on or from the Premises .

4.8 **Refunds, Bad Debt Losses and Credit Card Fees.** Refunds shall be deducted from current Gross Sales when incurred. Bad debt losses shall not be deducted from Gross Sales. Credit card transaction fees shall be deducted from Gross Sales.

4.9 **Delinquency Compensation Charge.** Sublessee recognizes that the failure to pay rent when due will cause Sublessor to incur certain costs, including without limitation, processing and accounting charges, delinquent rent charges imposed upon Sublessor under the

Master Lease, late charges under any mortgage or deed of trust encumbering the Property and the loss to Sublessor of the use of the funds. If any installment of rent (including Base Rent, Percentage Rent, or Additional Rent), or other monetary charge due hereunder from Sublessee to Sublessor is not paid within five (5) days after its due date, Sublessee agrees to pay to Sublessor a delinquency compensation charge for each payment in an amount equal to five percent (5%) of each such installment. Sublessee agrees the delinquency compensation charges are reasonable under the circumstances existing at the time this Sublease is executed. Sublessee understands that the payment of the delinquency compensation charge for any delinquent rent represents compensation to Sublessor for damages incurred by reason of the failure to receive the rent when due. Sublessee's obligation to pay the delinquency compensation charge does not alter or preclude Sublessor's right and option to exercise any right or remedy Sublessor may have under this Sublease or otherwise for Sublessee's failure to pay any rent or other amount when due. Sublessor's election not to include a demand for the payment of any such delinquency compensation charge in any notice to pay any delinquency shall not constitute a waiver by Sublessor of its right to collect any such delinquency compensation charge.

4.10 Interest on Rent. Any amount of Base Rent, Percentage Rent, Additional Rent, or other monetary charge due hereunder from Sublessee to Sublessor and not paid within five (5) days after its date due shall bear interest at the rate provided in this Sublease.

5. USE OF PREMISES

5.1 Authorized Use. Sublessee shall have use of the Premises for the purpose of conducting a casual elegant sports bar and restaurant business, serving breakfast, lunch and dinner, with a bar serving beer, wine and distilled spirits under the trade name to be determined ("Authorized Use"). Live entertainment shall be limited to that customarily found in similar restaurant businesses and Sublessor shall have the right to withhold consent to any such entertainment to be conducted within the Premises but outside any building constructed thereon. Sublessee shall actively and continuously use and operate the Premises for the use expressly provided for in this Section 5, except during periods of restoration after damage or destruction or periodic remodeling. Except as expressly provided in this Section 5, nothing contained in this paragraph or otherwise in this Sublease shall be construed as the grant to Sublessee of an exclusive right to operate a restaurant in the Project. Sublessee acknowledges that another restaurant operates on the Property and that the type of food offered by that restaurant has been disclosed to Sublessee and Sublessee agrees not to offer a menu similar to that offered by the other restaurant.

5.2 Prohibited Uses. In no event shall Sublessee generate any income or sales from any of the following: (a) coin-operated vending or service machines or devices, including telephones, whether installed and/or operated by Sublessee or others; (b) office space rentals; (c) parking fees; or (d) itinerant vendors or from service enterprises based outside the Sublease premises. Sublessee shall not and is expressly prohibited from using the Premises for any other purpose or use whatsoever, whether it is purported to be in addition to or in lieu of the

particular Authorized Use expressed in this Section 5, without the prior written consent of Sublessor and District.

5.3 Operating Standards. The operating standards of the restaurant shall at no time be of any lesser quality than those established system-wide for restaurants operated by Sublessee under the same trade name or style.

5.4 Compliance with Law. Sublessee shall at all times, and at Sublessee's sole cost and expense (except with respect to hazardous substances and environmental conditions that arose prior to Sublessee's occupancy of the Premises), comply with and conform to all municipal, district, city, county, state and federal laws, regulations, requirements or orders, present or future, which in any way relate to the condition, licensing, use or occupancy of the Premises.

5.5 Waste. Sublessee agrees not to waste or suffer any waste upon the Premises, nor to use or permit the Premises to be used for any noxious, unlawful or offensive trade or business, nor to cause, maintain or permit any nuisance upon the Premises, nor cause or permit any act which obstructs or interferes with the use and enjoyment of the Project by other Sublessees or their patrons including, without limitation, unusually loud live, recorded or reproduced entertainment.

5.6 Non-Discrimination. Sublessor and Sublessee agree at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of sex, color, race, religion, handicap or national origin. In complying with all such laws, including, without limitation, the Americans with Disabilities Act of 1990, Sublessee shall be solely responsible for such compliance and required programs for the Premises and Sublessor shall be solely responsible for such compliance and required programs for the Common Areas.

5.7 Easements. This Sublease and all rights given hereunder are subject to all easements and rights-of-way (including, but not limited to, the public access rights-of-ways and public utility easements described and delineated on EXHIBITS A and B) previously granted or reserved by the District and/or Sublessor in, to, or over the Premises for any purpose whatsoever, and also shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and other Sublessee or public facilities as may be determined from time to time by Sublessor and/or District to be in the best interests of the development of the tidelands. Sublessor agrees that an effort shall be made so that such future easements and rights-of-way shall be so located and facilities installed as to produce a minimum amount of interference to the business of Sublessee. Sublessee shall not be entitled to any monetary payment or other remuneration for any such future easements.

5.8 Banners. Sublessee further agrees that no banners, pennants, flags, eye-catching spinners or other advertising devices, nor any temporary signs shall be permitted to

be flown, installed, placed, or erected on the Premises without written consent of the Sublessor and the Executive Director of District.

6. UTILITIES

6.1 Utility Payment. From and after the Commencement Date, Sublessee agrees that it shall contract in its own name and pay all charges for sewer, water, fuel, gas, telephone, electricity, refuse disposal, CATV, satellite television, grease trap clean out and other utilities used or consumed in the Premises before the charges for the same become delinquent. Sublessor represents and warrants to Sublessee that utilities are (or shall be) available at the Premises for Sublessee's use in accordance with EXHIBIT E. If such charges are not paid when due and such failure continues for five (5) days after receipt of written notice from Sublessor, Sublessor may pay the same and any amount so paid shall thereupon become due to Sublessor from Sublessee as additional rent. All costs and expenses for the installation, connection, disconnection and maintenance of such utility services shall be the sole responsibility of Sublessor. In no event shall Sublessor be liable for damages or otherwise for any interruption, reduction, disruption, curtailment or failure in the supply, quality or character of water, gas, electricity, sewer and sanitation or any other service or utility, nor shall any such interruption, reduction, disruption, curtailment or failure, constitute or be deemed to constitute constructive eviction of Sublessee or relieve Sublessee from its obligations under this Sublease, except to the extent of negligent or intentional acts or omissions of Sublessor, its agents, employees, contractors, guests and licenses, or Sublessor's breach of this Sublease.

7. INSURANCE/WAIVER OF SUBROGATION/INDEMNITY

7.1 Insurance. Sublessee shall maintain insurance reasonably acceptable to Sublessor and District in full force and effect throughout the Term.

7.2 Forms of Coverage. The policies for said insurance shall, as a minimum, provide the following:

7.2.1 All Risk And Builder's Risk Property Coverage. From and following the Commencement Date and throughout the term of this Sublease, Sublessee, at its sole cost and expense, shall maintain "all risk" property insurance coverage, including flood and water damage, and debris cleanup provisions, for one hundred percent (100%) of replacement value of the Premises and all improvements therein, including furniture, fixtures and equipment, together with business interruption and extra expense coverage, including a provision for the continuation of Rent payments for 24 months, earthquake sprinkler leakage coverage, boiler and machinery coverage, and, if so required by Sublessor and/or District, earthquake coverage.

Sublessee, at its sole cost and expense, shall maintain, during the construction of any improvements or restoration work, "Builder's Risk" completed value form insurance covering the perils insured under the ISO special causes of loss form, including collapse, water damage, transit and flood and earthquake coverage, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case

of construction) and covering the full insurable value (exclusive of the cost of noninsurable items) of all equipment, supplies and materials at any off-site storage location used with respect to the Alterations or restoration work or in transit. In lieu of a standalone Builder's Risk policy, the All-Risk Property policy with coverage for property under the course of construction shall be acceptable.

All of Sublessee's liability insurance policies shall name District, Sublessor, and Sublessor's mortgagees as additional insureds, as their interests may appear. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of Sublessor and District.

(a) Whenever and as often as any damage occurs, the entire amount payable under said insurance policies will be first applied to the cost of any repairs to or restoration of improvements and contents in and on the Premises before using any portion thereof for any other purpose. Any excess portion of funds remaining after the cost of repairs or restoration is paid shall belong to the Sublessee, Sublessor, its mortgagees and District as their interests may appear.

(b) Sublessor shall, as part of Insurance Costs (as defined in Section 17), provide for "all risk" property insurance for one hundred percent (100%) of replacement cost of all buildings, structures and other improvements within the Project, including the Sublessor's Work and the Common Area but excluding any other premises constructed for the sole use of Sublessee, any other tenant, or Sublessor. All such insurance shall provide that any loss shall be payable to Sublessor, its mortgagees and District as their interests shall appear.

(c) Damage or destruction to the Premises or any portion thereof, by reason of any casualty, including, without limitation, fire, earthquake, flood, act of God, or the elements, shall not annul or void this Sublease. Sublessee hereby expressly waives the provisions of Section 1932(2) and 1933(4) of the California Civil Code or any statute or law now or hereafter in effect which provides for the automatic termination of a leasehold interest or provides a tenant with the right to terminate its tenancy upon the partial or total damage to or destruction of the leasehold estate. If the Premises are damaged by fire, the elements, acts of God or other casualty, the damage shall be repaired in accordance with the provisions of Section 16.

(d) In the event of any damage to the Premises covered by insurance, Sublessor and Sublessee shall, within thirty (30) days of notice, report the claim and initiate loss adjustment with the insurance carrier and proceed with the collection of the claim under said policies of insurance without delay. The Sublessee, if required pursuant to Section 16, shall further proceed as promptly as possible, utilizing its own funds and applicable proceeds of any insurance (which Sublessor and its mortgagees shall make available to Sublessee), with the repairing or rebuilding of the interior of any building constructed on the Premises, in accordance with the provisions of Section 16.

(e) The insurance policies to be maintained by Sublessee as provided herein shall be in a form and from an insurer reasonably satisfactory to Sublessor. All policies shall provide that, before changing or canceling any coverage, the insurance company issuing the same shall give District, Sublessor and Sublessor's mortgagees, as applicable, at least thirty (30) days' prior written notice thereof. Duplicate certificates of such insurance policy shall be delivered to Sublessor. The "all risk" policy shall be issued at least ten (10) days prior to the Commencement Date and all renewals thereof shall be issued at least ten (10) days prior to the expiration of the then existing policy. If Sublessee has not secured said insurance or evidenced the securing of such insurance by the delivery of original certificates thereof, Sublessor may do so and Sublessee shall be liable for the cost thereof as additional rent.

7.2.2 Commercial General Liability Insurance. Sublessee shall, at its own cost and expense, at all times during the Term, maintain occurrence form commercial general liability insurance covering premises, operations and contractual liability assumed by Sublessee in this Sublease, including the liability assumed by Sublessee under the indemnity provision in Section 7.10, in the amount of not less than Two Million Dollars (\$2,000,000.00) combined single limit for bodily injury, personal injury, products liability and property damage, with an insurance company or companies reasonably satisfactory to Sublessor and licensed to do business in California. If alcoholic beverages are served or sold at the Premises, Sublessee shall also obtain Liquor Liability coverage in the amount of not less than Two Million Dollars (\$2,000,000.00).

(a) Sublessee will, at least ten (10) days prior to the Commencement Date, deposit with Sublessor certificate(s) showing such insurance to be in force. All such insurance policies will name, or be endorsed to name, Sublessor and District, and their respective officers, officials, and employees as additional insured with respect to any obligation or liability of Sublessee under this Sublease, including, without limitation, any liability assumed by Sublessee under Section 7.10 of this Sublease, and protect Sublessor and District, and their respective officers, officials and employees, against any legal costs in defending such claims. All such insurance policies will provide that coverage will not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (or in the event of premium non-payment, ten (10) days' prior written notice) has been given to Sublessor and District. Any deductibles or self-insured retentions must be declared and acceptable to both Sublessor and District. If the deductibles or self-insured retentions are unacceptable to Sublessor or District, Sublessee shall have the option of either (i) reducing or eliminating such deductible or self-insured retentions as they related to Sublessor and District and their respective officers, officials and employees, or (ii) procuring a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(b) All insurance renewals shall be obtained at least ten (10) days prior to the expiration of the then existing policies. If Sublessee has not secured such insurance (or evidenced the securing of such insurance by delivery of original insurance certificates) within ten (10) days prior to the insurance renewal date, Sublessor may secure the same and Sublessee shall pay to Sublessor the cost of renewal as additional rent.

7.2.3 Worker's Compensation. Workers' compensation insurance covering all persons employed by Sublessee at the Premises and with respect to whom death or bodily injury claims could be asserted against Sublessee, Sublessor, District or the Premises, with statutorily required limits, and employer's liability insurance with minimum limits of not less than One Million Dollars (\$1,000,000) for each accident/employee/disease. Workers' compensation insurance shall include a waiver of subrogation in favor of Sublessor and District and other respective officers, officials and employees.

7.2.4 Automobile Liability. Business automobile liability insurance covering liability arising out of vehicles used on or about the Premises by Sublessee or its employees (including owned, non-owned, leased, rented and/or hired vehicles) insuring against liability for bodily injury, death and property damage in an amount not less than One Million Dollars (\$1,000,000) each accident limit.

7.2.5 UST Insurance Obligations. In the event underground storage tanks are located on the Premises, Sublessee is required to comply with all laws applicable to underground storage tanks, including, without limitation, United States Code, Title 42, Chapter 82, Subchapter IX, 40 CFR Part 280, 40 CFR Part 281 and 40 CFR Parts 282.50 - 282.105, and Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Sublessee is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Sublessee shall provide Sublessor with a certified copy of its Certification of Financial Responsibility. If Sublessee's program for financial responsibility requires insurance, then Sublessee's policy(ies) shall name the Sublessor and District and other respective officers, officials and employees as additional insureds, and all other terms of this Section shall apply. Should Sublessee change its financial assurance mechanisms, Sublessee shall immediately provide Sublessor with a certified copy of its revised Certification of Financial Responsibility.

7.3 District Insurance Requirements. Sublessee acknowledges that District has the right at any time to review the coverage, form, amount, and type of insurance required of Sublessor under the Master Lease. If, in the opinion of District, the insurance provisions in the Master Lease do not provide adequate protection for District and/or for members of the public using the Project, District may require that insurance sufficient in coverage, form and amount to provide adequate protection be obtained. In such event, and if such insurance is commonly required by the District from tenants similar to Sublessee occupying similar space, Sublessee agrees, at its own cost, to obtain insurance sufficient in coverage, form and amount to satisfy District's requirements with respect to the Premises. In all other cases Sublessor shall satisfy such additional insurance requirements. Sublessor shall notify Sublessee in writing of changes in insurance coverage required by District and, if Sublessee does not deposit certificates evidencing acceptable insurance policies with Sublessor incorporating such changes, if required pursuant to this Section, within thirty (30) days of receipt of such notice, Sublessor shall have the right to secure such additional insurance and Sublessee shall be liable for the cost thereof as additional rent.

7.4 Lack of Insurance Coverage. If Sublessee fails or refuses to maintain insurance as required in this Sublease, or fails to provide proof of insurance, Sublessor has the right to declare this Sublease in default without further notice to Sublessee and Sublessor shall be entitled to exercise all legal remedies.

7.5 No Limit to Liability. The procuring of such required policies of insurance shall not be construed to limit Sublessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Sublease. Notwithstanding the procuring of said policies of insurance, Sublessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Sublease or with the use or occupancy of the Premises.

7.6 Use and Insurance Cancellation. Except for uses permitted by this Sublease, Sublessee agrees not to use the Premises in any manner that will result in cancellation of any insurance Sublessor may have on the Premises or the Project, or that will cause cancellation of any other insurance coverage for the Premises or Project. Except for items normally kept by a tenant operating a business similar to Sublessee's, Sublessee further agrees not to keep on the Premises or permit to be kept, used or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Sublessee agrees to pay Sublessor, upon demand, the amount equal to any increase in premiums paid by Sublessor for insurance carried outside the permitted uses and maintained by Sublessor as a result of any activity or use of the Premises by Sublessee whether or not such activity or use has been consented to by Sublessor. Sublessee shall, at its sole cost and expense, comply with any and all requirements regarding the Premises of any insurance organization which are necessary for maintaining fire and other insurance coverage at reasonable costs. During the Term, Sublessee shall provide Sublessor with insurance certificates, in a form acceptable to Sublessor evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind insurance on its behalf. All insurance policies will name Sublessor, its mortgagees and District as additional insured, protect Sublessor against any legal costs in defending claims and will not terminate without written notice to Sublessor. All insurance companies must be satisfactory to Sublessor and licensed to do business in California.

7.7 Hazardous Activities. If Sublessee commits, permits or causes the conduct of any activity or the bringing or operation of any equipment on or about the Premises creating unusual hazards, Sublessee shall procure and maintain daily on such activity or operation insurance sufficient to cover the risks represented by the unusual hazards. This requirement for unusual hazard insurance shall not constitute a waiver of Sublessor's right to demand the removal, cessation or abatement of any such activity or operation.

7.8 Waivers of Subrogation. Sublessor and Sublessee hereby waive any rights each may have against the other on account of any loss or damage suffered by Sublessor or Sublessee, as the case may be, to their respective property, the Premises, or to the building

constructed thereon or any of its contents, arising from any risk specifically covered by fire and extended coverage insurance required to be maintained by this Sublease, even if such fire or other event shall have been caused by the fault or negligence of Sublessor or Sublessee. Each party, on behalf of their respective insurance companies insuring the property of either the Sublessor or the Sublessee against any such loss, hereby waives any right of subrogation that it may have against the other. The foregoing waivers of subrogation shall be operative only so long as available in the State of California upon reasonable terms and do not invalidate any such policy.

7.9 Destruction Due to Risk Not Covered By Insurance. If, during the Term, the Premises are totally or partially destroyed from a risk not covered by the insurance described in Section 7 of this Sublease, this Sublease shall not terminate, except as expressly provided in Section 16.2, and 16.3 and Sublessee shall restore Sublessee's Premises in accordance with the provisions of Section 16 and continue to pay Rent, Additional Rent and all other sums due under this Sublease.

7.10 Sublessee's and Sublessor's Indemnification. Sublessee shall defend (by legal counsel reasonably acceptable to Sublessor), indemnify and hold harmless Sublessor, its managers, members, officers, officials, and employees from and against any and all liability, action, claim (including claims under negligence and strict liability), administrative or judicial proceedings, orders, judgements, damage and expense, including reasonable attorneys' fees incurred in defense thereof, and costs arising after the Effective Date and throughout the Term, which may be imposed upon or incurred by or asserted against Sublessor by reason of any accident, injury to or death of any person or any damage to property of any kind whatsoever and to whomever belonging (except as set forth in Section 7.8), including without limitation Sublessee or its employees, occurring on or about the Premises or the Project, and arising out of or related to (a) Sublessee's Authorized Use of the Premises or the Project; (b) the conduct of Sublessee's business; (c) any activity, work, or thing which may be permitted or suffered by Sublessee in or about the Premises or the Project; (d) Sublessee's breach or default in the performance of any obligation on Sublessee's part to be performed under this Sublease; (e) the construction of any improvements or alterations; or (f) arising from any negligence or willful misconduct of Sublessee or any of its agents, contractors, employees, invitees, patrons, customers or members in or about the Premises or the Project, except to the extent the damage is caused by the negligence or willful misconduct of Sublessor or its employees. Sublessor shall defend, indemnify and hold harmless Sublessee, its managers, members, officers, officials and employees from and against any and all liability, action, claim, damage and expense, including reasonable attorneys' fees incurred in defense thereof and costs arising after the Effective Date and throughout the Term which might be imposed upon or incurred by or asserted against Sublessee by reason of any accident, injury to or death of any person or any damage to property of any kind whatsoever and to whomever belonging (except as set forth in Section 7.8), including, without limitation, Sublessor and its employees, occurring on or about the Common Area or that portion of the Premises and Property required by this Sublease to be repaired or maintained by Sublessor and caused by Sublessor's, its agents', servants', or employees' negligence or willful act or failure to act, or by Sublessor's negligent construction

of the Project or those portions of the Project required by this Sublease to be repaired or maintained by Sublessor, by Sublessor's breach of this Sublease, or by the existence of any hazardous, dangerous or toxic materials, substances or wastes on the Property on the Effective Date or any violation of applicable law resulting therefrom. The terms of this Section 7.10 shall survive the expiration or earlier termination of this Sublease.

7.11 Non-Liability of District or Sublessor. Except as set forth in Section 7.10, neither Sublessor nor District shall be liable to Sublessee for any damages to Sublessee or Sublessee's property from any cause whatsoever and Sublessee waives all claims against Sublessor or District for damages to person(s) or property arising for any reason, except to the extent those claims arise from Sublessor's or District's or other agent's, employee's or contractor's sole negligence or willful misconduct. Sublessor shall not be liable for injury to Sublessee's business, or loss of income therefrom, however occurring (including, without limitation, from any failure or interruption of services or utilities or as a result of Sublessor's negligence), or, except in connection with damage or injury resulting from the negligence or willful misconduct of Sublessor or its managers, members, officers, officials, employees, subsidiaries, and affiliates, for damage that may be sustained by the person, goods, wares, merchandise or property of Sublessee, its managers, members, officers, officials, employees, invitees, customers, agents, or contractors, or any other person in, on or about the Premises directly or indirectly caused by or resulting from any cause whatsoever, including, but not limited to, fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, light fixtures, or mechanical or electrical systems, or from intrabuilding cabling or wiring, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Project or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Sublessee. Sublessor shall not be liable to Sublessee for any damages arising from any willful or negligent action or inaction of any other tenant of the Project.

7.12 Security. Sublessee acknowledges that Sublessor's election whether or not to provide any type of mechanical surveillance or security personnel whatsoever in the Project is solely within Sublessor's discretion. Sublessor shall have no duty or liability in connection with the provision, or lack, of such services, and Sublessee hereby agrees to hold Sublessor harmless with regard to any such potential claim. Sublessor shall not be liable for losses due to theft, vandalism, or like causes.

8. ALTERATIONS BY SUBLESSEE

8.1 Alterations. Except for Sublessee's Work as provide in Exhibit F, Sublessee agrees that it will not make any alterations, additions, improvements or changes that would by law, rule or regulation require a building permit or the approval of the District (collectively "Alterations") in or to the Premises without the prior written consent of Sublessor and with the approval of the District, if required, in accordance with Section 5(a) of the Master Lease. In

the event that Sublessor (and District, if so required) consent to Sublessee's requested Alterations, Sublessee shall be responsible for the entire cost and expense of such Alterations.

8.2 Construction Requirements. The plans and specifications for any Alterations will be submitted to Sublessor and District for approval in the same manner as set forth on EXHIBIT F. All Alterations shall be (a) under the supervision of a competent architect or licensed engineer, (b) made in accordance with plans and specifications previously approved in writing by Sublessor and District, and (c) carried out by a licensed general contractor previously approved by Sublessor. All work with respect to any Alterations must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of Alteration work. Upon completion of such work, Sublessee shall have recorded in the office of the County Recorder where the Project is located, a Notice of Completion, as required or permitted by law, and Sublessee shall deliver to Sublessor, within ten (10) days after completion of said work, a copy of the building permit and certificate of occupancy with respect thereto. Sublessee shall promptly upon completion furnish Sublessor with as-built plans and specifications. All Alterations shall be performed and done strictly in accordance with the laws and ordinances relating thereto. Sublessee shall have the Alterations work performed in such a manner as to not obstruct the access to the premises of any other tenant in the Project.

8.3 Insurance for Permitted Alterations. In the event that Sublessee shall make any permitted Alterations to the Premises under the provisions of this Section 8, Sublessee agrees to carry such insurance as required by Section 7 covering in any such Alterations, it being expressly understood and agreed that none of such Alterations shall be insured by Sublessor under the insurance it may carry for the Project unless required by District, nor shall Sublessor be required under the provisions of Section 16 to reinstall any such Alterations.

8.4 Title and Removal. Any Alterations shall at the option of Sublessor and upon approval of District be removed by Sublessee upon the expiration or earlier termination of this Sublease. Sublessor may exercise said option as to any or all Alterations by written notice to Sublessee at least one hundred twenty (120) days prior to the expiration or earlier termination of this Sublease. If Sublessor exercises such option and Sublessee fails to remove such Alterations within thirty (30) days after the expiration or earlier termination of this Sublease, Sublessor shall have the right to have such Alterations removed at the expense of Sublessee. As to any Alterations that Sublessor does not exercise said option for removal, the same shall become a part of the Premises, shall become the property of Sublessor without any payment to Sublessee and shall remain upon and be surrendered with the Premises upon the expiration or earlier termination of this Sublease. During any period of time employed by Sublessee under this paragraph to remove any Alterations, Sublessee shall pay the Base Rent and Additional Rent to Sublessor in accordance with this Sublease, which Base Rent and Additional Rent shall be prorated on a daily basis. During the Term, all Alterations shall belong to Sublessee.

8.5 Alterations Not Including Equipment. For the purposes of this paragraph, Alterations shall not include changes, additions, or deletions of furniture, trade fixtures, and items constituting Sublessee's trade dress or containing Sublessee's logo and equipment covered by Section 11.

9. MECHANIC'S LIENS

9.1 Sublessee's Covenants. Sublessee agrees that it will timely pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and Sublessee will keep the Premises free and clear of all mechanics' liens and other such liens on account of work done at Sublessee's request. Sublessee agrees to and shall at all times save Sublessor and District free and harmless and indemnify them against any and all liability loss, damage, costs, attorneys' fees and all other expenses on account of claims for labor or materials used in connection with improvements, repairs or alterations in the Premises.

9.2 Bond. In the event any lien or levy of any nature whatsoever is filed against the Premises or the leasehold interest of Sublessee, Sublessee shall, upon written request of Sublessor, deposit with Sublessor a bond conditioned for the payment in full of all claims upon which such lien already has been filed. Such bond shall be acknowledged by Sublessee, as principal, and by a corporation, licensed by the Insurance Commissioner of the State of California to transact the business as a fidelity and surety insurance company, as surety. Sublessor shall have the right to declare this Sublease in default in the event the bond required by this Section 9.2 has not been deposited with Sublessor within seven (7) days after receipt of Sublessor's written request therefor.

9.3 Right to Cure. If Sublessee shall be in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien has been filed, and shall not have given Sublessor security to protect the Property, Sublessor and District from liability for such claim of lien, Sublessor may (but shall not be required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Sublessee to Sublessor, and Sublessee shall pay the same to Sublessor with interest at the rate provided in this Sublease from the date of Sublessor's payments.

9.4 Notice of Lien. Sublessee covenants to give Sublessor written notice within three (3) business days of receipt by Sublessee of notice of any claim of lien filed against the Premises or the commencement of any action affecting the title to the Property.

9.5 Notice of Non-Responsibility. Sublessor or its representatives shall have the right to go upon and inspect the Premises at all reasonable times, upon not less than twenty-four (24) hours prior written or telephonic notice to Sublessee and shall have the right to post and keep posted thereon notices of non-responsibility or other such notices which Sublessor

may deem to be proper for the protection of Sublessor's interest in the Premises. Sublessee shall, at least ten (10) days prior to the commencement of any work which might result in any such lien, give to Sublessor written notice of its intention to do so.

10. SIGNS

10.1 Sublessee's Signs. Sublessee shall, at its sole cost and expense, with Sublessor's and District's prior written approval, and subject to applicable San Diego Unified Port District codes and its applicable tenant signage guidelines as well as Sublessor's Sign Program, erect suitable signage on the Premises referring to Sublessee's business. During the Term, Sublessee shall maintain such signage at its sole cost and expense. With the prior written approval of Sublessor and District, Sublessee may, from time to time, remove Sublessee's signs in or upon the Premises, as the Sublessee may deem necessary or desirable. Sublessee agrees to obtain all appropriate District and other governmental approvals and permits for Sublessee's signs, marquees or awnings. Sublessor will provide its reasonable assistance in securing such governmental and District approval and permits. Sublessor agrees to execute promptly any consents or applications for permission to erect such signs as may be required by any governmental authorities. Subsequent to the Effective Date, if Sublessor or District adopts any other ordinances or policies governing signage for the Premises or Project, Sublessee shall also comply with such ordinances and policies subject to any grandfathering terms thereof.

10.2 Restrictions. Sublessee shall not display, paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the Common Area of the Project, whether belonging to Sublessee or to Sublessee's agents, or to any other person; nor shall Sublessee distribute, or cause to be distributed in the Project, any handbills or other advertising devices. Sublessee agrees that no banners, balloons, inflatables, pennants, flags, signs, digital displays, spinners or other advertising devices nor any temporary signs shall be permitted to be flown, installed, placed or erected on the Premises without the prior written consent of Sublessor and District.

11. FURNITURE, FIXTURES AND EQUIPMENT

11.1 Installation. Sublessee, at its sole cost and expense, but with the approval of Sublessor, shall install trade fixtures, trade dress and equipment, for Sublessee's restaurant. During the Term, Sublessee may from time to time replace and alter its trade fixtures, trade dress and equipment at its sole cost and expense.

11.2 Removal. Trade fixtures, trade dress and equipment of any kind placed on the Premises by Sublessee shall be removed by Sublessee prior to the expiration or earlier termination of this Sublease and Sublessee shall repair any and all damage occasioned by the removal thereof. If any such trade fixtures, trade dress or equipment are not removed within fifteen (15) days after the expiration or earlier termination of this Sublease, the same may be considered abandoned and shall thereupon become the property of Sublessor without cost to

Sublessor and without any payment to Sublessee; except that Sublessor shall have the right to have the same removed at the expense of Sublessee. During any period of time employed by Sublessee under this paragraph to remove trade fixtures and equipment, Sublessee shall pay the Base Rent and Additional Rent to Sublessor in accordance with this Sublease, which Base Rent and Additional Rent shall be prorated on a daily basis.

11.3 Personal Property Taxes. Sublessee shall pay before delinquency all taxes, including sales and use taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operations as well as upon its merchandise, fixtures, equipment and personal property. If any such items of property are assessed with property of Sublessor and Sublessor has provided prompt notice of such assessment, then, and in such event, such assessment shall be divided between Sublessor and Sublessee to the end that Sublessee shall pay only its equitable portion of such assessment. Sublessor shall reasonably determine the basis of prorating any such assessment and such reasonable determination shall be binding upon both Sublessor and Sublessee. No taxes, assessments, fees or charges referred to in this Section 11.3 shall be considered as taxes or assessments under the provisions of Section 12.

12. TAXES AND ASSESSMENTS

12.1 Taxes. Sublessee shall pay as Additional Rent, Sublessee's specified share of all taxes and assessments levied, assessed or charged upon the Property and the Project. Sublessee's "specified share" shall mean (i) one hundred percent (100%) of all taxes and assessments accruing and assessed with respect to the Property and the Project, as a result of the construction of the Premises located thereon ("Premises Taxes"), and (ii) Sublessee's pro rata share of all taxes and assessments accruing and assessed with respect to the Project other than the Premises ("Common Area Taxes"). Sublessee's pro rata share of Common Area Taxes shall be that portion thereof as the gross square footage area of the Premises (anticipated to be 12,100 square feet based on aggregating the anticipated 7,200 square foot building to be constructed at the Premises and the appurtenant 4,900 square foot patio) bears to the total gross square footage area of the Project which is available for leasing or subleasing by Sublessor. Prior to the development of the Premises in accordance with this Sublease and excluding the area on which the Premises is situated, the gross square footage area of the Project which is available for leasing or subleasing by Sublessor is 16,123 square feet (of which Il Fornaio is 11,716). Accordingly, Sublessee's pro rata share of the Common Area Taxes is expected to be 42.9 percent (12,100 divided by the aggregate of 16,123 plus 12,100 (i.e. 28,223)). If either the Premises or the Project are expanded or reduced, Sublessee's pro rata share of the Common Area Taxes shall be appropriately adjusted consistent with this section.

12.2 Tax Payments. Beginning on the Commencement Date and for the balance of the Term, Sublessor shall estimate in advance, from time to time, and Sublessee shall pay one-twelfth (1/12th) of the estimated amount payable pursuant to Section 12.1, if any, on a monthly basis on the first (1st) day of each month as Additional Rent. The foregoing estimated monthly charge may be adjusted by Sublessor at the end of any calendar quarter on the basis of Sublessor's experience and reasonably anticipated costs. Within forty-five (45) days following

the end of each Sublease Year, Sublessor shall furnish Sublessee a statement covering the Sublease Year, certified as correct by an authorized representative of Sublessor, showing the total Premises Taxes and Common Area Taxes for such Sublease Year and the estimated payments made by Sublessee, if any, for such period as set forth in this section. If the actual Premises Taxes and Common Area Taxes for the Sublease Year exceeds the estimated payments made by Sublessee in such Sublease Year, Sublessee shall pay Sublessor the deficiency within ten (10) days after receipt of such statement. If Sublessee's estimated payments of Premises Taxes and Common Area Taxes exceed the actual taxes for the Sublease Year, Sublessee shall be entitled to offset the excess against payments next thereafter due Sublessor, or if this Sublease is terminated or insufficient offset payments are available, Sublessor shall reimburse such excess amount within thirty (30) days after the statement shall have been delivered to Sublessee.

12.3 Taxes Defined. Under this Sublease, the term "taxes and assessments" shall include any form of tax or assessment, license fee, license tax, commercial rental tax, possessory interest tax, levy, charge, penalty where caused by Sublessee's failure to timely pay, or similar imposition by any authority having power to tax, including, any municipal, district, city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district, on any legal or equitable interest of Sublessor, District or Sublessee in the Premises, Property, and the Project, including, without limitation:

12.3.1 Any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge on land, buildings, waterways, or property, including all costs (including attorneys' fees) incurred by Sublessor in challenging any assessment against the Project or Property, it being acknowledged by Sublessee and Sublessor that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formally provided without charge to property owners or occupants, and it being the intention of Sublessee and Sublessor that any and all such new and increased assessments, taxes, fees, levies and charges be included within the definition of "taxes and assessments" for the purposes of this Sublease.

12.3.2 Any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises, Project, or the Property, any gross income tax or excise tax (but excluding Sublessor's general or net income taxes, gross profits, franchise, personal property or similar taxes or charges upon the profits, assets, franchise, employees or income of Sublessor not attributable to operations at the Project) levied by the state, city or federal government, or any political subdivision thereof, with respect to the receipt of rent, or upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Premises, Project, or the Property, including all real and personal property taxes and assessments thereon and possessory interest taxes on secured or unsecured tax rolls imposed, assessed or attributed to the Property, Project or Common Area. In the event and to the extent

any tax is imposed in substitution or in lieu of a tax or assessment, any increase in any tax or assessment, such tax shall, for the purposes of this Sublease, be considered taxes and assessments regardless of the source from which it is collected.

12.4 Exclusions. Notwithstanding Section 12.3 above, Sublessee will have no obligation to pay increases in taxes and assessments (whether the increases result from increased rate, valuation, or both) attributable to transfer of Sublessor's interest in the Property or the Project.

13. ASSIGNMENT OR SUBLEASE

13.1 Sublease is Personal. The purpose of this Sublease is to transfer possession of the Premises to Sublessee for Sublessee's personal use in return for rent and other consideration to be given by Sublessee to Sublessor. Sublessee acknowledges and agrees that (i) Sublessee's business skills and philosophy were an important inducement to Sublessor for entering into this Sublease, (ii) Sublessee has entered into this Sublease in order to acquire the Premises for its own personal use and not for the purpose of obtaining the right to transfer any of its rights under this Sublease to others, and (iii) Sublessee's right to transfer as provided in this Section 13 is subordinate and incidental to the underlying purpose of this Sublease.

13.2 No Transfer Without Consent. Sublessee shall not assign, sublet, hypothecate or otherwise divest itself of this Sublease or any of its rights hereunder or permit any third party or parties other than Sublessee, its authorized agents, employees, invitees and visitors, including, without limitation, a Change of Control, to occupy, manage or operate the Premises or any portion thereof (collectively a "Transfer") without Sublessor's and District's prior written consent. Sublessor agrees that it will not unreasonably withhold such consent provided Sublessee fully complies with the provisions of Sections 13.3 and 13.4 and Sublessor's requirements thereunder. Any attempted transfer without Sublessor's advance written consent shall constitute a default hereunder and shall be void ab initio so as not to confer any rights upon any third person. The provisions of Section 13.3 constitute the sole means by which such consent may be requested. Sublessee shall not enter into a license or concession agreement without Sublessor's and District's prior written consent, which shall not be unreasonably withheld.

13.3 Procedure for Requesting Consent. If Sublessee desires at any time to effect a transfer it must first notify Sublessor in writing of its desire to do so and shall submit in writing to Sublessor: (i) the name of the third party concerned; (ii) the nature of the third party's business proposed to be carried on in the Premises; (iii) the terms and provisions of the proposed transfer; (iv) such financial information as Sublessor may reasonably request concerning the third party; (v) the proposed effective date of the Transfer, which shall not be less than ninety (90) days nor more than one hundred eighty (180) days after the date of delivery of Sublessee's notice; (vi) a completed Sublease Questionnaire form (Form 317 or 320); (vii) if the Transfer is due to a Change of Control, a complete description of the direct and indirect ownership of the third party before and after the Transfer and copies of all existing

and/or proposed documentation pertaining to the third party, including operative documents to be executed in connection with the Transfer; (viii) a statement of any current litigation or litigation which was resolved in the last five (5) years affecting the third party or persons or entities acquiring an interest resulting in a Change of Control of Sublessee; and (ix) current financial statements of the proposed sublessee and proposed additional guarantors certified by a reputable certified public accountant. Submission to Sublessor by Sublessee of an executed assignment, sublease or other document purporting to make a transfer subject to Sublessor's and District's approval, accompanied by the information set forth above, shall constitute a request for Sublessor's consent under this Section 13.3.

13.4 **Conditions of Authorization.** As conditions precedent to Sublessor's consent to Sublessee's transfer, Sublessor may require any or all of the following:

13.4.1 Sublessee and all guarantors of this Sublease shall remain fully liable under this Sublease during the unexpired Term hereof;

13.4.2 Sublessee shall provide Sublessor with evidence reasonably satisfactory to Sublessor and District that the value of Sublessor's interest under this Sublease will not thereby be diminished or reduced. Such evidence shall include, but need not be limited to, evidence respecting the relevant business experience and financial responsibility of the third party concerned and evidence that such third party's rent for the Premises will equal or exceed the average of Sublessee's rent during the three (3) full Sublease Years immediately preceding the date of Sublessee's request for a transfer;

13.4.3 Sublessee shall reimburse Sublessor for Sublessor's and District's reasonable costs, including attorneys' fees, incurred in connection with the review, processing and documentation of such request, including any necessary approval or consent from District, regardless of whether or not Sublessor's consent is given to the proposed Transfer; if Sublessee's transfer provides for the receipt by, on behalf or on account of Sublessee of any consideration of any kind whatsoever (including, but not by way of limitation, a premium rental for a sublease or lump sum payment for an assignment) in excess of the rental and other charges due Sublessor under this Sublease, said excess shall be Sublessee's sole property and Sublessor shall have no right to any portion thereof;

13.4.4 Written agreement from any third party concerned that, in the event Sublessor gives such third party notice that Sublessee is in default under this Sublease, such third party shall thereafter make all payments otherwise due Sublessee directly to Sublessor, which payments will be received by Sublessor without any liability of Sublessor except to credit such payment against those due under this Sublease, and any such third party shall agree to attorn to Sublessor or its successors and assigns should this Sublease be terminated for any reason; provided, however, that in no event shall Sublessor or its successors or assigns be obligated to accept such attornment;

13.4.5 Any such transfer and consent shall be effected on forms reasonably approved by Sublessor as to form and substance;

13.4.6 Sublessee shall not then be in default hereunder beyond any applicable cure period in any respect, unless such default will be cured in connection with the transfer;

13.4.7 Such third party shall agree in writing to assume, be bound by and perform all of the terms, covenants and conditions of this Sublease which could reasonably be construed as applicable to such third party;

13.4.8 Such third party's proposed use of the Premises shall be the same as Sublessee's Authorized Use (provided such third party may operate under a different trade name) or otherwise approved by Sublessor pursuant to the provisions of this Sublease;

13.4.9 Sublessor shall not be bound by any provision of any agreement pertaining to Sublessee's transfer;

13.4.10 Sublessee shall deliver to Sublessor such number of executed copies of any and all written instruments evidencing or relating to Sublessee's transfer as Sublessor shall reasonably request;

13.4.11 Such third party, at its sole cost and expense, shall keep and maintain in effect throughout the entire Term a policy of business interruption insurance with a twenty-four (24) month rental loss endorsement covering the Base Rent and Percentage Rent payable pursuant to Section 4; and

13.4.12 Sublessee shall pay any and all fees required to be paid to the District as a result of the Transfer, including, without limitation, an assignment participation fee.

Sublessee hereby acknowledges and agrees that the above conditions imposed upon the granting of Sublessor's consent are reasonable and Sublessor's imposition of such conditions shall under no circumstances impair or limit Sublessor's rights and remedies under California Civil Code Section 1951.4 or any related, successor or similar provision of law. Sublessee acknowledges that the District's sublease policy discourages sub subleases and, except for extenuating circumstances, consent will not be granted.

13.5 **No Waiver.** Sublessor's consent to Sublessee's transfer on any one occasion shall apply only to the specific transaction thereby authorized and such consent shall not be construed as a waiver or modification of the duty of Sublessee or any transferee to obtain Sublessor's consent to any other or subsequent transfer or as modifying or limiting Sublessor's rights hereunder in any way. Sublessor's acceptance of rent or any other payment directly from any third party shall not be construed as a waiver or modification of any of Sublessor's rights or as Sublessor's agreement to accept the attornment of any third party in the event of a

termination of this Sublease. In no event shall Sublessor's enforcement of any provision of this Sublease against any third party be deemed a waiver of Sublessor's right to enforce any term of this Sublease against Sublessee or any other person.

13.6 Change of Control. If a transfer by sale, assignment, death or incompetency, mortgage, trust, operation of law, or otherwise of any shares, voting rights or ownership interest results in a change in the identity of the persons or entities exercising, or who may exercise, effective control of Sublessee, unless such change results from the trading of shares listed on a recognized public stock exchange ("Change of Control"), then such Change of Control shall be deemed a transfer within the meaning and provisions of this Section 13 and shall be subject to the term hereof.

13.7 Consent to Approved Third Parties. In the event that Sublessor and District give their consent to a transfer, such consented to third party must in turn apply to Sublessor and District for consent to subsequent transfers, in which case the provisions of this Section 13 shall apply as fully as possible to such third party (including this Section 13.7 in the case of more remote transfers); provided, however, that, as an additional condition of the granting of Sublessor's consent, the Premises will not, in Sublessor's opinion, thereby become unduly fractionalized.

14. SUBLESSEE'S CONDUCT OF BUSINESS

14.1 Operating Covenants. Sublessee covenants and agrees that it will continuously and uninterruptedly during the hours set forth in Section 14.2 from and after its initial opening for business operate and conduct within the Premises the business which it is permitted to operate and conduct under the provisions of Section 5, except while the Premises are untenable by reason of fire or other casualty or during periods of restoration after damage or destruction or periodic remodeling, keep and maintain within and upon the Premises an adequate stock of merchandise and trade fixtures to service and supply the usual and ordinary demands and requirements of its customers, and keep the Premises in a neat, clean and orderly condition.

14.2 Operating Days and Hours. Recognizing that it is in the interests of both Sublessee and Sublessor to have regulated hours of business for all of the Project, Sublessee agrees that, commencing with the opening for business by Sublessee in the Premises and for the remainder of the Term, Sublessee shall, unless otherwise approved by Sublessor, be open for business three hundred and sixty-five (365) days per year, with the exception of up to five (5) floating holidays each year when Sublessor may be closed for business. In addition, Sublessee may close for remodeling up to a maximum of fourteen (14) days within every ten (10) years. No rent shall be abated under this Sublease during any permitted holiday or remodeling closure periods under this section. Sublessee shall open for business daily no later than 11:30 a.m. and close no earlier than 10:00 p.m. It is agreed, however, that the foregoing provisions shall be subject to the hours of operation prescribed by any governmental regulations which may govern the operations or business of Sublessor or Sublessee.

14.3 **Policy of District.** It is the policy of District that prevailing wage rates shall be paid to all persons who are employed by Sublessee on the tidelands of District.

14.4 **Equal Employment Opportunity and Non-Discrimination.** Sublessee agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Constitution, the California Fair Employment and Housing Act and any other applicable federal, state or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination, including without limitation, laws and regulations prohibiting discrimination because of race, color, ancestry or national origin, religion, age, sex or disability. Upon reasonable notice, Sublessee shall make available to Sublessor and District for inspection and copying all of its records relevant to compliance with this provision. Sublessee's compliance with the equal employment opportunity provisions of this Sublease is an express condition hereof and any failure by Sublessee to so comply and perform shall be a default as provided in this Sublease and Sublessor may exercise any right as provided herein and as otherwise provided by law.

15. MAINTENANCE AND REPAIRS

15.1 Maintenance.

15.1.1 Except as otherwise provided otherwise, Sublessor shall, at its sole cost and expense, keep and maintain the structural portions of the Premises, including the roof, foundation, and bearing walls of the Premises, in good operating, safe, healthy and sanitary order, condition and repair in compliance with all applicable laws and regulations. Sublessor shall not, however, be obligated to paint the exterior walls and has no obligation to make repairs under this section until a reasonable time after receipt of written notice from Sublessee of the need for such repairs. Sublessee expressly waives the benefits of any statute now or hereafter in effect, including Civil Code sections 1942 and 1943 (if applicable), which would otherwise afford Sublessee the right to make repairs at Sublessor's expense or to terminate this Sublease because of the Sublessor's failure to keep the Premises in good operating, safe, healthy and sanitary order, condition and repair.

15.1.2 Except as otherwise provided below and in Section 17 with respect to the Common Area, Sublessee shall, at its sole cost and expense and at all times during the Term, keep and maintain the Premises, including, without limitation, Sublessee's signs, painting, entrances and exits, exterior walls, pilings, pavement and all utility lines, plate glass, glazing and skylights, plumbing and other fixtures, equipment and appliances, including heating, ventilating and air conditioning equipment, plumbing lines exclusively serving the Premises, interior walls, ceilings and floors, any patio and terraces and service areas and related walls, fences and appurtenances comprising a part of the Premises, in good operating, safe, healthy and sanitary order, condition and repair in compliance with all applicable laws and regulations. The maintenance of all glass, both exterior and interior, is at the sole risk of Sublessee and any glass broken or damaged shall be promptly replaced at Sublessee's sole cost and expense with

glass of the same size, same kind and the same, or better, quality. The water and wash closets and other plumbing fixtures within the Premises shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be deposited therein. Any grease stoppage repairs or other damages resulting from any misuse of the plumbing fixtures by Sublessee, Sublessee's servants, employees, agents, visitors or licensees shall be borne by the Sublessee. Sublessee acknowledges that in order to adhere to these maintenance and repair standards, certain repairs and replacements will be required and that regular reinvestment should therefore be anticipated. Sublessee's maintenance shall include, without limitation, all preventative maintenance, painting, and replacements necessary to maintain the preserve the Premises and Improvements in compliance with any best management practices set forth in the San Diego Unified Port District Code. Prior to Sublessee performing any non-routine repairs or replacements (i.e., those not occurring with an expected or known frequency in the normal course of business) to the exterior, the structure or building systems or which will substantially interfere with the typical operation of the Improvements or affect the portions of the Improvements generally accessible to the public must first be submitted to Sublessor and receive Sublessor's written consent.

15.1.3 The maintenance obligations set forth above shall also apply to any other sublessee who has a "premises" which has been constructed in the Project Plot Plan area, which area can be seen attached to this Sublease as Exhibit "B."

15.2 **Sublessor's Right to Inspect.** For the purpose of keeping the Premises in a good, safe, healthy, and sanitary condition, Sublessor shall always have the right, without the duty, to enter, view, inspect and determine the condition of, and protect its interests in, the Premises and Improvements, including the right to determine if Sublessee is complying with this Sublease; except in case of emergency, Sublessor shall provide Sublessee with at least twenty-four (24) hours' prior notice. Sublessor will conduct such activities in a manner and at times designed to minimize any disruption to Sublessee's business and, to that end, will conduct such activities when Sublessee is not open for business; the foregoing restrictions do not apply to the District which also has the right, without the duty, to inspect the Premises. If inspection discloses that the Premises are not in good, safe, healthy, and sanitary condition, Sublessee must perform the necessary maintenance work to bring the Premises up to such condition within ten (10) days after written notice from Sublessor (unless a longer period is required in the exercise of due diligence and Sublessee promptly commences the work and diligently precedes with such work to completion) but in no event longer than one hundred and eighty (180) days after written notice from Sublessor, or immediately in the case of an emergency, and diligently pursue such work to completion. If at any time Sublessor determines that the Premises are not in the condition described, but subject to Section 19.2 below, and/or Sublessee either (i) fails to provide adequate assurances to address said conditions within ten (10) days after Sublessor's notice, or (ii) fails to promptly and diligently address said conditions in a manner that Sublessor reasonably believes that Sublessee will not have addressed the same prior to the expiration of any applicable cure period, Sublessor may require Sublessee to file and pay for a faithful performance bond or suitable letter of credit to

assure prompt correction without additional notice. The amount of this bond or suitable letter of credit shall be adequate, in Sublessor's opinion, to correct the unsatisfactory condition. Sublessor shall not be liable to Sublessee for any damage or interruption in Sublessee's business caused by such entry, maintenance or repairs except to the extent caused by the negligent or intentional acts or omissions of Sublessor, its agents, employees or contractors or by Sublessor's breach of this Sublease.

15.3 Sublessor's Right to Enter and Repair. Sublessee agrees Sublessor may, but need not, enter the Premises and make any necessary repairs to the Premises and perform any work thereon (i) which may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or of any similar body, or the requirements of the insurers of Sublessee, Sublessor or District; (ii) to maintain or repair any utilities located within the Premises but serving other portions of the Project; (iii) that Sublessee is obligated to make under the terms of this Sublease, subject to Section 19.2 below, or (iv) that Sublessor deems necessary to prevent any waste or deterioration of the Premises, if the Sublessee does not repair or cause such repairs to be performed pursuant to the requirements of Section 15.2 within ten (10) days after receipt of the written demand for such repairs from Sublessor. Sublessor's rights under this Section 15.3 shall not impose any duty on Sublessor to make any such repairs, nor constitute a waiver of Sublessee's failure to do the same. If Sublessor makes or causes to be made any repairs which Sublessee is obligated to make under Section 15.2 or elsewhere in this Sublease, Sublessee shall pay to Sublessor as additional rent upon demand the cost of such repairs, plus a supervision fee equal to twenty percent (20%) of such costs, the total of which shall bear interest at the rate provided in this Sublease. If requested by Sublessor, Sublessee shall pay to Sublessor the entire estimated cost of such work in advance, but such payment shall not relive Sublessee from the obligation to pay any excess cost that may be actually incurred by Sublessor. For any and all maintenance, alteration, repair and replacement work undertaken by Sublessor, Sublessee hereby indemnifies and shall defend, at Sublessee's sole cost and expense, and with counsel acceptable to Sublessor, and hold Sublessor, the District, its agents, employees, officers, directors, and assigns harmless from any and all liability, costs, demands, damages, expenses (including, without limitation, attorneys' fees, consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions) arising directly or indirectly out of such work or the performance thereof, unless the same is the result of the gross negligence or willful misconduct of Sublessor. The rights of Sublessor under this section shall not create any obligations or increase any obligations of Sublessor elsewhere in this Sublease, nor shall the exercise of such rights, or the failure to exercise same, limit any other rights or remedies of Sublessor. During the last six (6) months of the Term or at any time after Sublessee is in default under this Sublease beyond any applicable cure period, Sublessor may enter the Premises at reasonable times upon reasonable notice for the purposes of exhibiting the Premises to prospective tenants.

15.4 Sublessee's Waiver. Sublessee waives the provisions of any law permitting repairs by a tenant at the expense of Sublessor, including all rights of Sublessee under Sections 1941 and 1942 of the California Civil Code.

15.5 **Records.** At all times during the Term, Sublessee shall keep or cause to be kept, accurate and complete records of maintenance conducted at the Premises. The records shall be supported by source documents of original entry such as invoices, receipts, work orders, construction contracts, service contracts, and all other pertinent documentation. Sublessee's maintenance records shall be kept at the Premises or at another location in San Diego County as determined acceptable by Sublessor in its sole discretion. Sublessor shall have the right at any time to examine Sublessee's maintenance records without any restriction and Sublessee shall provide Sublessor with copies of any and all requested records, at Sublessee's sole cost, for the purpose of determining the accuracy thereof.

16. RECONSTRUCTION

16.1 **Insured Casualty.** In the event of damage to or destruction of the Premises by fire, the elements, acts of God, or any other cause, (provided Sublessor or Sublessee is insured for such damage or destruction), Sublessor shall commence repair, reconstruction and restoration of Sublessor's Work and shall prosecute the same diligently to completion, and this Sublease shall continue in full force and effect. In the event of such reconstruction of Sublessor's Work, upon completion of said reconstruction, Sublessee, at its sole cost and expense, shall commence repair, reconstruction and restoration of Sublessee's Work, including all leasehold improvements, and replacement of its stock in trade, fixtures, furniture, furnishings and equipment. Sublessee shall diligently prosecute such installation to completion. Repair, replacement or reconstruction of the Premises and other improvements shall be done in accordance with plans approved by Sublessor and District.

Notwithstanding any other provision of this Sublease to the contrary, to the extent Sublessee receives insurance proceeds applicable to damage to the Premises, and if Sublessee is otherwise excused from repairing the Premises for any reason, Sublessee shall pay over to Sublessor the insurance proceeds so received applicable to damages to the Premises provided that Sublessor has provided Sublessee with proof that such repairs have been completed

16.2 **Uninsured Casualty.** In the event of uninsured damage or destruction to the Premises that constitutes thirty-three percent (33%) or more of the replacement costs of the improvements located on the Premises immediately before the damage or destruction, Sublessor shall have the option, subject to the prior written consent of District, of either repairing, reconstructing and restoring the Premises, or terminating the Sublease. In the event that Sublessor determines to repair and reconstruct the Premises, Sublessor shall give written notice to Sublessee of such determination within forty five (45) days of the event of damage or destruction. If Sublessor elects to repair, reconstruct and restore the Premises, Sublessor shall commence repair, reconstruction and restoration of Sublessor's Work and shall prosecute the same diligently to completion, and this Sublease shall continue in full force and effect. In the event of such reconstruction of Sublessor's Work, upon completion of said reconstruction, Sublessee, at its sole cost and expense, shall commence repair, reconstruction and restoration of Sublessee's Work, including all leasehold improvements, and replacement of its stock in trade, fixtures, furniture, furnishings and equipment. Sublessee shall diligently prosecute such

installation to completion. Repair, replacement or reconstruction of the Premises and other improvements shall be done in accordance with plans approved by Sublessor and District.

In the event that Sublessor determines not to repair and reconstruct the Premises, Sublessor shall give written notice to Sublessee of such determination within forty five (45) days of the event of damage or destruction, and Sublessee shall have thirty (30) days following receipt thereof to elect, by notice in writing to Sublessor, to effect the repairs itself; in which case, Sublessee, at its sole cost and expense, shall commence repair, reconstruction and restoration of the Premises and Sublessee's leasehold improvements, and replacement of its stock in trade, fixtures, furniture, furnishings and equipment, subject to the consent of the District and in accordance with plans approved by Sublessor and District. Sublessee shall diligently prosecute such repairs to completion. In the event that Sublessee does not notify Sublessor of its election to repair and reconstruct the Premises within that thirty (30) day period, this Sublease shall thereupon terminate. Base Rent shall be prorated to the date of such termination and the unpaid Base Rent and any other charges or assessments shall be computed and paid to the date of such termination. If this Sublease is terminated by the exercise of such option, neither Sublessee nor Sublessor shall be under any duty or obligation to repair damage to or restore the Premises and Sublessor shall have any rights to which it would be entitled under the provisions of Section 11.2.

16.3 **Waiver.** Sublessee shall not be entitled to any abatement or reduction in Base Rent, Percentage Rent or other charges and rents due during any period of time that any improvements at the Premises are in need of repair, restoration or replacement, or are under construction for such repairs, restoration or replacements, or any other period of time during the Sublease, and all such obligations of Sublessee shall remain in full force and effect notwithstanding the occurrence of a casualty event. Sublessee shall not be entitled to any compensation or damages from Sublessor for loss of use of the whole or any part of the Premises, Sublessee's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration. With respect to any partial or total destruction which Sublessor is obligated to restore or may restore under the provisions of this Sublease, the provisions of California Civil Code Section 1932(2) and Section 1933(4) are hereby waived by Sublessee.

17. COMMON AREA

17.1 **Common Area Defined.** The "Common Area" is approximately located as shown on EXHIBIT D. The Common Area for the purpose of this Sublease includes all portions of the Project outside the Premises' boundary, including, without limitation, trash dumpsters, and not constructed nor improved for the specific or dedicated use of Sublessee or any other tenant within the Project and is that property which is designated on EXHIBIT D for the common use of all tenants, their guests, employees or invitees, which includes, without limitation, parking areas, sidewalks, revetments, piers, marina slips, floats, landscaping, curbs, loading areas, private streets and alleys, exterior surfaces, roofs and skylights of all or other structures now or hereafter located within the Project, and other areas and improvements that

Sublessor may designate, from time to time. If Sublessor acquires any property adjoining the Project (property shall be considered as adjoining even if it is separated by roads, streets, easements or rights of way), Sublessor shall have the right to expand and reconfigure the Project and the Common Area provided such does not adversely impact the access to parking for or visibility of the Premises as exists on the Effective Date. In such event, Common Area Costs (as defined in Section 17.5) shall include those applicable to any additional Project or Common Area and gross square footage of buildings available for leasing within any additional Project area shall be included in the determination of “gross square footage area” (as defined in Section 17.6.5) for the Project.

17.2 Management and Control. All of the Common Area shall be subject to Sublessor’s sole management and control. Sublessor reserves the right to make changes from time to time in the Common Area, including, without limitation, changes in or establishing the location of driveways, entrances, exits, vehicular parking spaces, and direction of traffic flow, prohibited areas and employee parking areas and to change the building perimeters (excluding the Premises) of the Project and other building and improvement locations within the Project, provided such does not adversely impact the access to parking for or visibility of the Premises as exists on the Effective Date. Sublessor shall have the right to remove any person, authorized or unauthorized, from the Common Area or to restrain the use thereof by such persons. Sublessor may establish a system or systems of parking validation, vessel moorage control or other restrictions, including a system of charges against non-validated user parking and vessel moorage.

17.3 Non-Exclusive Use and Sublessor’s Rules. Sublessor grants to Sublessee and Sublessee’s employees, customers, subtenants, licensees and concessionaires the non-exclusive right in common with Sublessor, other tenants of the Project and other persons permitted by Sublessor, to use the Common Area as constituted from time to time, subject to such reasonable non-discriminatory rules and regulations governing Common Area use and the Project generally as Sublessor may from time to time prescribe (the “Sublessor’s Rules”), including the designation of specific areas within the Common Area or without the Common Area in reasonable proximity thereto in which automobiles owned by Sublessee, Sublessee’s employees, subtenants, licensees, concessionaires and suppliers shall be parked, or the partial or total prohibition of such parking within the Common Area.

17.3.1 Sublessee and Sublessee’s employees, agents and invitees, excluding Sublessee’s customers, shall comply with all Sublessor’s Rules. Any violation by Sublessee or Sublessee’s employees, agents or invitees of any Sublessor’s Rules shall constitute a default under this Sublease. Sublessor shall give notice to Sublessee of the Sublessor’s Rules as they may exist from time to time, and Sublessee will not be bound thereby until given a copy of same. Sublessee shall indemnify and hold Sublessor harmless from all claims and liabilities for Sublessee’s breach of Sublessor’s Rules. If there is a conflict between any of Sublessor’s Rules and any of the provisions of this Sublease, this Sublease shall prevail. Prior to the execution of this Sublease, Sublessor shall furnish Sublessee with a copy of any existing Sublessor’s Rules.

17.3.2 In addition to Sublessor's Rules, Sublessee shall use commercially reasonable efforts to complete, or cause to be completed, all trash removal, deliveries, loading, unloading and other services to the Premises between the hours of 7:00 a.m. and 3:00 p.m. of each day. Sublessee shall use commercially reasonable efforts to prevent delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 3:00 p.m. to 9:00 p.m. each day. Sublessee may not display, sell merchandise, allow carts, portable signs, devices or any other objects to be stored or to remain outside the Premises, or in the Common Area, without the prior written consent of Sublessor in each instance. Sublessee shall remove any of said objects maintained in violation of this section within twenty-four (24) hours of receipt of written notice to do so by Sublessor or Sublessor shall be entitled to remove said objects without liability to Sublessor at Sublessee's sole expense. No aerial, antenna, satellite dish or other receiving or transmitting device shall be erected on the roof or exterior walls of the Premises without the prior written consent of Sublessor and District, which shall not be unreasonably withheld. Any device so installed without such written consent shall be subject to removal without notice at any time by Sublessor at Sublessee's sole expense. Sublessee agrees that all receiving and delivery of goods and merchandise, and all removal of merchandise, supplies, equipment, trash and garbage, and all storage of trash and garbage, shall be made only by way of or in the areas located within the Premises and, if necessary, the Common Areas reasonably determined by Sublessor.

17.3.3 Sublessor covenants that Sublessee and all other Project tenants shall have only a non-exclusive right to use the parking areas in the Common Area of the Project during the Term.

17.3.4 Sublessor may temporarily close any part of the Project or the Common Area for such periods of time as may be reasonably necessary to prevent the public from obtaining prescriptive rights or to make necessary repairs, alterations or improvements.

17.4 **Parking Restrictions.** Sublessee acknowledges and agrees that Sublessor may partially or totally restrict parking within the Project by Sublessee's employees and others.

17.5 **Maintenance and Charges.**

17.5.1 Common Area Costs. Sublessor shall keep and maintain, or cause to be kept and maintained, the Common Area in a neat, clean, orderly condition and state of repair, properly lighted and landscaped. Sublessee agrees to pay to Sublessor, as part of the Additional Rent, Sublessee's specified share (defined below) of all costs and expenses incurred by Sublessor in connection with the maintenance, repair, management and operation of the Common Area (collectively, "Common Area Costs"), including without limitation all costs, expenses, fees and other sums incurred, expended or reserved in accordance with generally accepted accounting principles and property management practices for: (i) all general maintenance and repairs, pest control, resurfacing, painting, restriping, cleaning, removal of

rubbish and debris, sweeping and janitorial services; (ii) maintenance and repair of sidewalks, curbs, revetments, piers, parking areas and private roads, including resurfacing and restriping, planting and landscaping, lighting, drainage and other utilities; (iii) directional signs and other markers and bumpers; (iv) maintenance and repair of all structures and improvements available for use in common by all tenants and the visiting public; (v) security; (vi) personnel to implement all such services and to police the automobile parking and Common Area when deemed advisable by Sublessor or required by District; (vii) fees for Sublessor's management and supervision of the Common Area and the Project generally (not to exceed ten percent (10%) of the costs and expenses incurred by Sublessor in connection with the maintenance, repair, management and operation of the common area)); (viii) licenses and permits; (ix) parking gates, parking personnel or other improvements in order for Sublessor to implement any system for paid parking or parking by validation; (x) seasonal and permanent decorating; (xi) the removal or remediation of pollutants, contaminants or hazardous materials as such terms are defined by governmental authorities as shall arise after the date hereof; and (xii) all other costs and expenses incurred by Sublessor in the maintenance, repair and management of the Common Area.

17.5.2 Insurance Costs. Sublessee shall pay to Sublessor, as part of Additional Rent, Sublessee's specified share (defined below) of all costs, expenses, fees and other sums incurred, expended, or reserved in accordance with generally accepted accounting principles and property management practices by Sublessor in connection with the Property and the Project, including without limitation, comprehensive public liability and property damage insurance on the Project or Common Area (including any reasonable deductibility provisions therefor) in such amounts as Sublessor shall determine, and fire and extended coverage insurance on all structures and improvements in the Project exclusive of any premises occupied exclusively by another tenant (collectively, "Insurance Costs").

17.6 Method of Payment.

17.6.1 Specified Share of Common Area Costs. Sublessee shall pay as Additional Rent, Sublessee's specified share of Common Area Costs, provided, however, in the event Sublessee's share of Common Area Costs in a Lease Year, (excluding utilities, insurance and real estate taxes) increase by more than five percent over the prior Lease Year, Sublessee shall not be obligated to pay in excess of that five percent increase. Sublessee's "specified share" of Common Areas Costs shall mean Sublessee's pro rata share of all Common Area Costs as set forth in Section 17.6.5.

17.6.2 Specified Share of Insurance Costs. Sublessee shall pay as Additional Rent, Sublessee's specified share of Insurance Costs. Sublessee's "specified share" of Insurance Costs shall mean Sublessee's pro rata share of all Insurance Costs as set forth in Section 17.6.5.

17.6.3 Estimated Payments. Beginning on the Commencement Date and for the balance of the Term, Sublessor shall estimate in advance, from time to time, and Sublessee

shall pay one-twelfth (1/12th) of the estimated amounts payable under sections 17.6.1 and 17.6.2, if any, on a monthly basis on the first (1st) day of each month as Additional Rent. The foregoing estimated monthly charge may be adjusted by Sublessor at the end of any calendar quarter on the basis of Sublessor's experience and reasonably anticipated costs.

17.6.4 Sublessor Statements. Within ninety (90) days following the end of each calendar year, Sublessor shall furnish Sublessee a statement covering the calendar year just expired, certified as correct by an authorized representative of Sublessor, showing the total Common Area Costs and Insurance Costs, Sublessee's pro rata share thereof for such calendar year, and the payments made by Sublessee for such period as set forth in Section 17.6.3. If Sublessee's share of the Common Area Costs and Insurance Costs exceeds Sublessee's payments made pursuant to Section 17.6.3, Sublessee shall pay Sublessor the deficiency within ten (10) days after receipt of such statement. If said payments exceed Sublessee's share of the Common Area Costs and Insurance Costs, Sublessee shall be entitled to offset the excess against payments next thereafter due Sublessor, or if this Sublease shall be terminated or there shall be insufficient offset payments available to Sublessee, Sublessor shall reimburse such excess amount within thirty (30) days after such statement shall have been delivered to Sublessee.

17.6.5 Calculation of Pro Rata Share. Sublessee's pro rata share of the Common Area Costs and Insurance Costs shall be that portion thereof as the gross square footage area of the Premises (anticipated to be 12,100 square feet based on aggregating the anticipated 7,200 square foot building to be constructed at the Premises and the appurtenant 4,900 square foot patio) bears to the total gross square footage area of the Project which is available for leasing or subleasing by Sublessor. Prior to the development of the Premises in accordance with this Sublease and excluding the area on which the Premises is situated, the gross square footage area of the Project which is available for leasing or subleasing by Sublessor is 16,123 square feet. Accordingly, Sublessee's pro rata share of the Common Area Costs is expected to be 42.9 percent (12,100 divided by the aggregate of 16,123 and 12,100 (i.e. 28,223)). If either the Premises or the Project are expanded or reduced, Sublessee's pro rata share of the Common Area Costs and Insurance Costs shall be appropriately adjusted consistent with this section.

18. BANKRUPTCY/INSOLVENCY

18.1 Right of Termination. The filing by Sublessee of any petition for relief under the provisions of Federal Bankruptcy Law, including any petition for reorganization, or the making by Sublessee of a general assignment for the benefit of Sublessee's creditors, or any action at the corporate or partnership level taken by Sublessee to authorize either of the foregoing actions to be taken on behalf of Sublessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Sublessee, or any action taken or suffered by Sublessee under any State insolvency law now or hereafter in effect, or the taking or seizing of the Premises or any portion thereof under levy of execution or attachment against Sublessee, unless any such appointment, action or taking is involuntary and is released within

ninety (90) days, shall constitute a breach of this Sublease by Sublessee and in such event Sublessor may at its option terminate this Sublease upon written notice to Sublessee.

18.2 Automatic Transfer. It is understood and agreed that neither this Sublease nor any interest herein, nor any estate hereby created, in favor of Sublessee, shall pass by operation of law under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, or any other person whomsoever without the prior written consent of Sublessor and District. Any transfer in violation of the provisions of this Section 18.2 shall constitute a breach of this Sublease by Sublessee.

19. DEFAULT BY SUBLESSEE

19.1 Events of Default. The occurrence of any of the following shall constitute a default by Sublessee and a breach of this Sublease:

19.1.1 Failure to submit any report of Gross Sales;

19.1.2 Failing or refusing to pay any amount of Base Rent, Percentage Rent, Additional Rent or other monetary charge when due in accordance with the provisions of this Sublease;

19.1.3 Abandoning the Premises by failing or refusing to occupy and operate the Premises in accordance with Section 5;

19.1.4 The discovery that any financial statement or report of Sublessee or any guarantor given to Sublessor was materially false;

19.1.5 Sublessee's failure to abide by any other terms, covenants, conditions or provisions of this Sublease, or of the rules adopted under Section 17.3 hereof;

19.1.6 The failure of Sublessee to provide reasonable evidence of insurance, surety bond or letter of credit in accordance with the terms of the Sublease;

19.1.7 The commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Sublessor, or Sublessee's failure to fulfill any obligation under this Sublease which endangers or threatens life or property where such actions continue for a period of three (3) business days following written notice to Sublessee;

19.1.8 The failure by Sublessee to provide within ten (10) business days of Sublessor's request: (i) the rescission of an unauthorized assignment or subletting, (ii) an Estoppel Certificate, (iii) a requested subordination in reasonable form and content, or (iv) any other documentation or information which Sublessor may reasonably require of Sublessee under the terms of this Sublease; or

19.1.9 The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a “debtor” as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Sublessee, the same is dismissed within 90 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Sublessee’s assets located at the Premises or of Sublessee’s interest in this Sublease, where possession is not restored to Sublessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Sublessee’s assets located at the Premises or of Sublessee’s interest in this Sublease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subsection is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

19.2 **Notices.** Following the occurrence of any of the defaults specified in Sections 19.1.6 through 19.1.9, Sublessee shall immediately be in breach of this Sublease without the right to any additional notice rights or cure periods. For all other defaults specified in Section 19.1, Sublessor shall give Sublessee a written notice specifying the nature of the default and demanding that Sublessee either fully cure each such default within the time period specified below in this Section 19.2 for cure of such default, or quit the Premises and surrender the same to Sublessor:

19.2.1 For failure to submit any report of Gross Sales, five (5) business days;

19.2.2 For non-payment of Base Rent, Percentage Rent, Additional Rent, or other monetary charge, five (5) business days;

19.2.3 For abandonment of the Premises or failure to use the Premises in accordance with the provisions of Section 5, five (5) business days; and

19.2.4 For all other defaults, failures, or refusals to perform fully and promptly any covenant or condition of this Sublease not otherwise specified above, thirty (30) days, or such longer period as is reasonably necessary provided Sublessee commences the cure during the initial thirty (30) day period and continuously and diligently pursues such cure to completion.

19.3 **Sublessor’s Rights and Remedies.** Should Sublessee fail to cure any default specified in Section 19.1 within the time period specified in Section 19.2 (“Event of Default”), Sublessor, in addition to any other rights or remedies available to Sublessor at law or in equity (including without limitation, the remedies of Civil Code section 1951.4 and any successor statute or similar law, which provides that Sublessor may continue this Sublease in effect following Sublessee’s breach and abandonment and collect rent as it falls due, if Sublessee has the right to sublet or assign, subject to reasonable limitations), shall have the right to:

19.3.1 Terminate this Sublease and all rights of Sublessee under this Sublease by giving Sublessee written notice that this Sublease is terminated, in which case Sublessor may recover from Sublessee 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 (1) the unpaid rent that would have been earned after termination until the time of award exceeds (2) the amount of the rental loss, if any, as Sublessee affirmatively proves could have been reasonably avoided;

(iii) the worth at the time of award of the amount by which (1) the unpaid rent for the balance of the term after the time of award exceeds (2) the amount of rental loss, if any, as Sublessee affirmatively proves could be reasonably avoided;

(iv) any other amount necessary to compensate Sublessor for all the detriment caused by Sublessee's failure to perform Sublessee's obligations or that, in the ordinary course of things, would be likely to result from Sublessee'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 19.3.1, 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 19.3.1, 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 Base Rent, Percentage Rent, Additional Rent, and any other payments required by Sublessee under this Sublease.

19.3.2 Continue this Sublease and, from time to time, without terminating this Sublease, recover all rent and other amounts payable as they become due.

19.3.3 None of the following remedial actions, alone or in combination, shall be construed as an election by Sublessor to terminate this Sublease unless Sublessor has in fact given Sublessee written notice that this Sublease is terminated or unless a court of competent jurisdiction decrees termination of this Sublease: any act by Sublessor to maintain or preserve the Premises; any efforts by Sublessor to relet the Premises. If Sublessor takes any of the previous remedial actions without terminating this Sublease, Sublessor may nevertheless at any later time terminate this Sublease by written notice to Sublessee.

19.4 Sublessor's Cure of Sublessee's Default. Sublessor shall have the right, after expiration of Sublessee's cure period, to take any action necessary or appropriate, including entering upon the Premises, to cure any default. All costs incurred by Sublessor to cure any such default, including reasonable attorneys' fees, with interest, shall become immediately due and payable by Sublessee upon demand as additional rent. Nothing in this Section 19.4 shall preclude or limit Sublessor from electing to terminate this Sublease pursuant to Section 19.3.1 upon written notice to Sublessee.

19.5 No Waiver. The waiver by Sublessor of any breach of any term, covenant or condition contained in this Sublease shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition contained in this Sublease. The subsequent acceptance of rent by Sublessor shall not be deemed to be a waiver of any preceding breach by Sublessee of any term, covenant, or condition of this Sublease or of any right of Sublessor to a forfeiture of this Sublease by reason of such breach, regardless of Sublessor's knowledge of such preceding breach at the time of acceptance of such rent. No term, covenant or condition of this Sublease shall be deemed to have been waived by Sublessor unless such waiver be in writing and signed by Sublessor.

20. DEFAULT BY SUBLESSOR

20.1 Sublessor's Default; No Right of Termination. Sublessor shall not be charged with default in the performance at any of its obligations hereunder unless Sublessor fails to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after written notice by Sublessee to Sublessor specifying Sublessor's default. If Sublessor's interest in and to the premises, or any part thereof, is at any time subject to a ground lease, mortgage or deed of trust, and this Sublease or the rentals due hereunder are assigned in connection with such ground lease, mortgage or deed of trust and Sublessee is given written notice thereof, including the post office address of such assignee, Sublessee agrees that it will, concurrently with the giving of any notice of default to Sublessor, mail a duplicate of such default notice to such assignee. Sublessee further agrees that it will, prior to exercising any remedies by reason of such default give any such assignee, mortgagee or trust deed holder a reasonable opportunity to make performance for and on behalf of Sublessor.

21. EMINENT DOMAIN

21.1 Taking Resulting in Termination.

21.1.1 In the event the entire Premises or so much of the Common Area as to materially interfere with Sublessee's use of the Premises as reasonably determined by Sublessee (but in no event less than 25% of the total gross square footage of the Common Area) shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Sublease shall terminate and expire as of the date of such taking,

and Sublessor and Sublessee shall each thereupon be released from any further liability accruing under this Sublease.

21.1.2 In the event more than twenty-five percent (25%) of the rentable area of the Premises is taken under the power of eminent domain by any public or quasi-public authority, or if by reason of any appropriation or taking, regardless of the amount so taken, the remainder of the Premises or Common Area is not satisfactory for Sublessee's business operations in the reasonable opinion of Sublessee, Sublessee shall have the right to terminate this Sublease as of the date Sublessee is required to vacate a portion of the Premises or the Common Area, upon giving notice in writing of such election within thirty (30) days after receipt by Sublessee from Sublessor of written notice that said Premises or Common Area has been so appropriated or taken. In the event of such termination, both Sublessor and Sublessee shall thereupon be released from any liability thereafter accruing under this Sublease. Sublessor agrees immediately after learning of any proposed appropriation or taking to give to Sublessee notice in writing thereof.

21.2 Award. If this Sublease is terminated in either manner as provided in Sections 21.1.1 or 22.1.1.2, Sublessor, the District and Sublessee, shall each be entitled to retain any such damages to which they are entitled to by law.

21.3 Partial Taking. If this Sublease is not so terminated as a result of a partial taking, Sublessee shall continue to occupy that portion of the Premises which shall not have been appropriated or taken and the parties will proceed as follows: (i) at Sublessor's cost and expense and soon as is reasonably possible, Sublessor will restore the Premises on the land remaining to a complete unit of like quality and character as existed prior to such appropriation or taking; (ii) the Base Rent provided for in Section 4 shall be adjusted on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining; and (iii) Sublessor the District and Sublessee, as their interests appear, shall each be entitled to retain any such damages to which they are entitled to by law.

21.4 Transfer under Threat of Taking. For the purposes of this Section 21 only, a voluntary sale or conveyance under threat and in lieu of condemnation shall be deemed an appropriation or taking under the power of eminent domain.

22. ATTORNEYS' FEES

22.1 Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Sublease, the Prevailing Party (as hereafter defined) shall be entitled to a reasonable attorneys' fees and costs which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled and including, without limitation, any such fees or costs incurred on any appeal from such action or proceeding. The term, "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by judgment or the abandonment by the

other party of its claim or defense. The attorneys' fees and costs award shall not be computed in accordance with any court fee schedule but shall be such as to fully reimburse all attorneys' fees and costs reasonably incurred. In addition, a Prevailing Party shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default.

23. SUBORDINATION; ATTORNMENT

23.1 Subordination/Non-Disturbance. This Sublease, and the rights of Sublessee hereunder shall be subject and subordinate to the Master Lease and to all mortgages, deeds of trust, or other hypothecation or security devices placed upon the Premises by Sublessor; provided that, as to existing and future mortgages, deeds of trust, or other hypothecation or security devices, Sublessor obtains a written agreement that provides that Sublessee will not be disturbed in its peaceful enjoyment of the Premises pursuant to the provisions of this Sublease so long as Sublessee is not in default under this Sublease beyond any applicable cure period. Sublessor shall have the right to encumber in any manner whatsoever its right or interest in the Premises and this Sublease. Upon Sublessor's request, and in conformity with the foregoing, Sublessee shall subordinate this Sublease and Sublessee's rights hereunder to any mortgage, deed of trust, hypothecation, security instrument, or other form of encumbrance, present or future, and to any and all conditions, modifications, consolidations, extensions, renewals or replacements thereof. The Master Lease and all mortgages or deeds of trust pertaining in whole or in part to the Premises will not encumber the Sublessee's furniture, trade fixtures, equipment, inventory and all other personal property placed on the Premises by the Sublessee.

23.2 Attornment. If any right or interest in the Premises or this Sublease is sold or transferred by judicial or non-judicial sale, deed in lieu of foreclosure or any other proceeding or action commenced to enforce an encumbrance, Sublessee shall attorn to such purchaser, transferee or grantee, as the case may be, and recognize such purchaser, transferee or grantee as Sublessor under and for the purpose of this Sublease.

23.3 Prior Status. If any encumbrancer elects to have this Sublease prior to its encumbrance, this Sublease shall upon notice to Sublessee be deemed prior to such encumbrance, whether this Sublease is dated prior or subsequent to the date of recording of the encumbrance.

23.4 Necessary Documents. Sublessee agrees to execute and deliver to Sublessor within ten (10) days of Sublessor's written request, all documents and instruments required by Sublessor or any encumbrancer to make this Sublease and Sublessee's rights hereunder subordinate or prior to any encumbrance, as the case may be. Sublessee hereby irrevocably appoints Sublessor as Sublessee's attorney-in-fact to execute such documents and instruments on behalf of Sublessee if Sublessee fails to execute and deliver such documents and instruments to Sublessor within the ten (10) day period.

23.5 **Estoppel Certificates.** Within ten (10) days after written request of Sublessor, Sublessee shall execute, acknowledge and deliver to Sublessor a statement certifying: (i) this Sublease is unmodified and in full force and effect (or, if there have been modifications, the same is in full force and effect as modified and stating the modifications); (ii) any existing offsets or defenses against the enforcement of any provisions of this Sublease (and, if so, specifying the same); (iii) the dates to which rent or other charges have been paid in advance; and (iv) such other matters as Sublessor may reasonably request. This certificate may be relied upon by any prospective purchaser, lessor, mortgagee or holder of a deed of trust on the Premises but shall not amend any express terms of this Sublease. Sublessee's certification shall not preclude Sublessee from asserting an existing default of Sublessor of which Sublessee did not have actual knowledge on the date of certification.

23.6 **Protection of Sublessee's Lender.** Subject to the requirements of the Master Lease and the assignment and sublease restrictions contained in Section 13, Sublessee's lender shall have the right, but not the obligation, at any time prior to termination of this Sublease, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Sublessee hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants, and conditions in this Sublease to prevent termination of this Sublease. All payments so made and all things so done and performed by a lender shall be as effective to prevent a termination of this Sublease as the same would have been if made, done, and performed by Sublessee instead of by a lender. Subject to the requirements of the Master Lease and the assignment and sublease restrictions contained in Section 13, should Sublessor terminate this Sublease by reason of any default by Sublessee, Sublessor agrees, upon written request by a lender given within thirty (30) days after such termination, to execute and deliver a new sublease of the Premises to such lender, or its nominee, purchaser, assignee or transferee ("Lender Party") for the remainder of the Term with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Sublessee prior to termination) as are contained herein and with priority equal to that hereof; provided, however, that (a) such Lender Party shall cure any defaults of Sublessee susceptible to cure by such Lender Party, (b) such Lender Party's right to possession of the Premises under the new sublease shall commence only upon Sublessee's vacating of the Premises, and (c) the District and Sublessor shall approve of and consent to the transfer to the Lender Party as provided in Section 13. Sublessor and Sublessee will cooperate in including in this Sublease by suitable amendment from time to time any provision which may reasonably be necessary to implement the provisions of this Section 23.6; provided, however, that such amendment shall not in any way affect the Term hereby demised nor affect adversely in any material respect any rights of Sublessor under this Sublease.

24. HAZARDOUS SUBSTANCES

24.1 **Reportable Uses Require Consent.** The term "Environmental Laws" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to or imposing

liability or standards of conduct concerning any Hazardous Substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances or regulations relate to Hazardous Substances on, under or about the Property), occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) [42 USCS § 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (“RCRA”) [42 USCS § 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 USCS § 1251 *et seq.*]; the Toxic Substances Control Act (“TSCA”) [15 USCS § 2601 *et seq.*]; the Hazardous Materials Transportation Act (“HMTA”) [49 USCS § 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 USCS § 136 *et seq.*]; the Superfund Amendments and Reauthorization Act [42 USCS § 6901 *et seq.*]; the Clean Air Act [42 USCS § 7401 *et seq.*]; the Safe Drinking Water Act [42 USCS § 300f *et seq.*]; the Solid Waste Disposal Act [42 USCS § 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USCS § 1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USCS § 11001 *et seq.*]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C § 25280 *et seq.*]; the California Hazardous Substances Account Act [H & S C § 25300 *et seq.*]; the California Hazardous Waste Control Act [H & S C § 25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C § 24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Wat C § 13000 *et seq.*] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, but only to the extent that the occupational health or industrial hygiene laws, ordinances or regulations relate to Hazardous Substances on, under or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use. The term “Hazardous Substances” includes without limitation: (i) those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminant” in CERCLA, RCRA, TSCA, HMTA or under any other Environmental Law; (ii) those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302]; (iii) other substances, materials and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and (iv) any material, waste or substance that is (a) a petroleum or refined petroleum product, (b) asbestos, (c) polychlorinated biphenyl, (d) designated as a hazardous substance pursuant to 33 USCS Section 1321 or listed pursuant to 33 USCS Section 1317, (e) a flammable explosive, or (f) a radioactive material. “Reportable Use” shall mean (i) the installation or use of any above or below ground storage tank; (ii) the generation, possession, storage, use, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority; and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any applicable laws require that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the

foregoing, Sublessee may, without Sublessor's prior consent, but upon notice to Sublessor and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by Sublessee in the normal course of the uses of the Sublessee permitted under this Sublease, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Sublessor to any liability therefore. In addition, Sublessor may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Sublessee upon Sublessee's giving Sublessor such additional assurances as Sublessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including, but not limited to, the installation (and, at Sublessor's option, removal on or before Sublease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasement) and/or the deposit of an additional Security Deposit under Section 27 hereof.

24.2 Duty to Inform Sublessor. If Sublessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on or under or about the Premises or any building constructed thereon, other than as previously consented to by Sublessor, Sublessee shall immediately give Sublessor written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance, including, but not limited to, all such documents as may be involved in any Reportable Use involving the Premises. Sublessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, or under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

24.3 Indemnification. Sublessee shall indemnify, protect, defend (with counsel reasonably acceptable to Sublessor) and hold Sublessor and District, its officers, employees and lenders, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Sublessee or by anyone under Sublessee's control. Sublessee's obligations under this Section 24.3 shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Sublessee, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Sublease. No termination, cancellation or release agreement entered into by Sublessor and Sublessee shall release Sublessee from its obligations under this Sublease with respect to Hazardous Substances, unless specifically so agreed by Sublessor in writing at the time of such agreement. Sublessor shall indemnify, protect, defend and hold Sublessee, its officers, employees and lenders, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the

Project by or for Sublessor or by anyone under Sublessor's control. Sublessor's obligations under this Section 24.3 shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Sublessor, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Sublease. No termination, cancellation or release agreement entered into by Sublessor and Sublessee shall release Sublessor from its obligations under this Sublease with respect to Hazardous Substances, unless specifically so agreed by Sublessee in writing at the time of such agreement.

24.4 Sublessee's Compliance with Requirements. Except as otherwise specifically set forth in this Sublease, Sublessee shall, at Sublessee's sole cost and expense, fully, diligently and in a timely manner, comply with all Applicable Requirements, which term is used in this Sublease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits and the requirements of any applicable fire insurance underwriter or rating bureau relating in any manner to the Premises (including but not limited to matters pertaining to (i) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, to the extent brought onto the Premises by or for Sublessee or by anyone under Sublessee's control, and (ii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Sublessee shall, within five (5) days after receipt of Sublessor's written request, provide Sublessor with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Sublessee's compliance with any Applicable Requirements specified by Sublessor, and shall promptly upon receipt, notify Sublessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Sublessee or the Premises to comply with any Applicable Requirements. Sublessor represents and warrants to Sublessee that, as of the Effective Date the Premises are in compliance with all Applicable Requirements.

24.5 Inspection; Compliance with Law. Sublessor, District, Sublessor's agents, employees, contractors and designated representatives, and the holders of any mortgages or deeds of trust on the Premises (Lenders) shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times upon reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Sublessee with this Sublease and all Applicable Requirements (as defined in Section 24.4), and Sublessor and District shall be entitled to employ experts and/or consultants in connection therewith to advise Sublessor and District with respect to Sublessee's activities, including, but not limited to, Sublessee's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless an uncured default or breach of this Sublease by Sublessee or a violation of Applicable Requirements or a contamination, caused by Sublessee, is found to exist or to be imminent, or unless the inspection is requested or ordered

by a governmental authority as the result of any such existing or imminent violation or contamination; in such case, Sublessee shall upon request reimburse Sublessor, District or Sublessor's Lender, as the case may be for the costs and expenses of such inspections.

25. NOTICES

25.1 Notices. Any notice to be given under this Sublease by one party to the other shall be in writing and hand delivered, or sent via certified mail, postage prepaid, or via email or facsimile to the parties at the addresses or facsimile numbers listed below, or such other address, email, or facsimile number as a party may designate by a written notice made pursuant to this section. Notices, if sent by mail shall be deemed served two (2) days after the date of mailing or, if sent by facsimile or email, shall be deemed served upon dispatch.

If to Sublessor:	Arthur E. Engel Ferry Landing Associates, LLC 1311 First Street Coronado, California 92118 Facsimile: 619-522-6320 Email: art@SDHE.com
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If to Sublessee:	Brendan Huffman Managing Member 5083 Santa Monica Avenue, Suite 2c San Diego, California 92109 Email: B@socialsyndicate.com
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Either party may by written notice to the other specify a different address for notice, except that upon Sublessee's taking possession of the Premises, the Premises shall constitute Sublessee's address for notice.

25.2 Certain Default Notices. Notwithstanding anything to the contrary contained in this Section 25.2, any notice Sublessor is required or authorized to deliver to Sublessee under this Sublease shall be deemed to have been duly given to Sublessee by delivering a copy of such notice to one (1) of Sublessee's managing employees at the Premises or by mailing a copy of such notice to Sublessee in the manner specified above. In the event Sublessor gives notice as provided in this Section 25.2 by delivering a copy to one of Sublessee's managing employees at the Premises, Sublessor shall also at the same time fax a copy to Sublessee and deposit a copy of such notice in the United States mail, postage prepaid, addressed to Sublessee at its address first specified in Section 25.1; however, such mailing shall not diminish or in any way alter the effectiveness of the notice delivered to Sublessee's employee.

26. WAIVER OR CONSENT LIMITATION

26.1 Waiver or Consent Limitation. No waiver, benefit or privilege voluntarily given or performed by either party shall give the other party any contractual right by custom, estoppel or otherwise. Sublessor's consent to or approval of any act by Sublessee requiring Sublessor's consent or approval shall not be deemed to waive or render unnecessary Sublessor's consent to or approval of any subsequent similar act by Sublessee. The acceptance of rent or any payment after termination of this Sublease shall not constitute a reinstatement, extension or renewal of the Sublease or revocation of any notice or other act by Sublessor.

27. MISCELLANEOUS

27.1 Incorporation by Reference. All EXHIBITS and any other documents attached hereto are incorporated herein by this reference.

27.2 Holdover. This Sublease shall terminate without further notice at the expiration of the Term. Any holding over by Sublessee after expiration or earlier termination of this Sublease shall not constitute a renewal or extension or give Sublessee any rights in or to the Premises. If Sublessee, with Sublessor's and District's express written consent, remains in possession of the Premises after expiration or earlier termination of the Term or after the date in any notice given by Sublessor to Sublessee terminating this Sublease, such possession by Sublessee shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' prior written notice given at any time by either party. During any such month-to-month tenancy, Sublessee shall pay all Base Rent, Percentage Rent, Additional Rent and all other charges as required by this Sublease. All provisions of this Sublease, except those pertaining to the Term, shall apply to the month-to-month tenancy. If Sublessee fails to surrender the Premises upon the expiration of this Sublease, despite demand to do so by Sublessor, Sublessee shall indemnify and hold Sublessor harmless from all loss, liability, costs and expenses, including attorneys' fees, incurred by Sublessor as a result of such holdover, including, without limitation, any claims made by any succeeding tenant, and, in addition to paying all Base Rent, Percentage Rent, Additional Rent and all other charges as required by this Sublease, Sublessee shall also pay a Base Rent equal to one hundred twenty-five percent (125%) of the otherwise applicable Base Rent.

27.3 District Approval and Rules and Regulations.

27.3.1 District Approval. The approval or consent of the District wherever required in the Master Lease shall mean the approval or consent of the Executive Director of the San Diego Unified Port District, unless otherwise specified. Sublessor's refusal to consent or approve of any matter under this Sublease shall be deemed reasonable if the consent or approval of District is required and District fails or refuses to give its consent or approval, and Sublessor shall have no liability to Sublessee with respect to such failure or refusal.

27.3.2 District Rules and Regulations. Sublessee agrees that in all activities on or in connection with the Premises and in all uses thereof, including the making of any alterations or changes and the installation of any machines, trade fixtures, appliances or equipment or other improvements, it will abide by and conform to all rules and regulations prescribed by the San Diego Unified Port District Act, any ordinance of any city wherein the Premises are located, including the Building Code thereof, and any ordinances and general rules of the District, including tariffs, and any applicable laws of the State of California and federal government, as any of the same now exists or may hereafter be adopted or amended.

27.3.3 Transfer by Sublessor. If Sublessor or Sublessor's successor in interest transfers its interest in this Sublease, Sublessor, or its successor in interest, shall automatically be freed and relieved from all personal liability for the performance of any obligation after the date of such transfer or conveyance provided any such transferee specifically assumes all of the duties and obligations of Sublessor or Sublessor's successor in interest under this Sublease. Any funds in which Sublessee has an interest which are in the hands of Sublessor, or its successor in interest, shall be turned over to the transferee.

27.3.4 Time of the Essence. Time is of the essence under this Sublease.

27.4 Force Majeure. A Force Majeure Event means an actual delay in Sublessee's construction or interference with Sublessee's ability to operate actually caused by: (a) a strike or labor dispute other than a strike or dispute which would have been avoided had Sublessee complied with laws and any agreements it has entered into with the striking union or parties; (b) inclement weather (that causes a suspension of work) in excess of the ten (10) year average for the area within the District's jurisdiction during the month or months when work was suspended; (c) an earthquake or other natural disaster resulting in suspension of work; (d) inability to procure or general shortage of labor, equipment, materials, or supplies in the open market, or failure of transportation (but, in each case, not attributable to a mere increase in price or Sublessee's acts or failure to act); (e) acts of a public enemy, insurrections, riots, pandemics, mob violence, sabotage, acts of terrorism, and malicious mischief; or (f) casualty causing material damage to previously constructed Improvements. In order to extend the time for commencement or completion of the project improvements for Force Majeure Event or claim an excuse of failure to operate, Sublessee must notify Sublessor in writing within fifteen (15) days of the commencement of any Force Majeure Event and describe in such notice the Force Majeure Event creating delay or interference, why such delay or interference is occurring, the expected duration of such delay or interference and the best efforts Sublessee is taking to minimize the period of delay or interference. Any period of applicable Force Majeure Event shall be added to the times for the commencement and completion of construction of Sublessee's Improvements; provided however, in no event shall the period of excused delay exceed 365 days in the aggregate. Sublessee covenants to make best efforts to minimize and otherwise overcome the impact on Sublessee's operation caused by any Force Majeure Event and, in addition to Sublessee's initial notice described above, on Sublessor's request from time to time, shall provide Sublessor with a report on the status of the Force Majeure Event, its expected duration, Sublessee's best efforts to minimize and otherwise overcome the impact

on Sublessee's operation caused by any Force Majeure Event. The occurrence of a Force Majeure Event shall not, however, excuse the Sublessee's obligations to pay Base Rent, Percentage Rent, Additional Rent, or any other charge (unless the provisions of Section 16 apply) nor excuse such obligations as this Sublease may otherwise impose on the party to abate, remedy or avoid such event; moreover, should the work performed by Sublessee or Sublessee's contractor result in a strike, lockout and/or labor dispute, such strike, lockout or labor dispute shall not excuse Sublessee's performance.

27.5 Quiet Possession. Sublessor agrees that Sublessee, upon paying the Base Rent, Percentage Rent, Additional Rent and all other charges provided for in this Sublease and performing all the covenants and conditions of this Sublease, may quietly have, hold and enjoy the Premises from and after Sublessor's delivery of the Premises to Sublessee in accordance with EXHIBITS E and F to this Sublease, and until the end of the Term; subject, however, to the provisions of Sections 15.2, 15.3 and 27.2, the Master Lease and any mortgages, subground leases, agreements and encumbrances to which this Sublease is or may become subordinate.

27.6 Headings/Number and Gender. The captions and paragraph headings of this Sublease are inserted only as a matter of convenience and no way define, limit or describe the scope of the meaning or intent of the provisions of this Sublease. Words of gender shall include any other gender, singular words include the plural and the word "person" includes individuals, firms, partnerships, joint ventures, corporations, trusts and other types of entities or associations.

27.7 Governing Law and Severability. This Sublease is entered into at San Diego, California, and shall be governed and construed under California laws applicable to contracts made and to be performed entirely in California. If any provision of this Sublease is invalid or contravenes California law, such provision shall be deemed not to be a part of this Sublease and shall not affect the validity or enforceability of the remaining provisions.

27.8 Interest Rate/Consecutive Days. Whenever it is provided in this Sublease that interest at a rate provided in this Sublease shall accrue and be payable by Sublessee to Sublessor on amounts paid or incurred by Sublessor on behalf of Sublessee or due and payable by Sublessee to Sublessor, unless otherwise specifically provided, such interest shall be at the annual rate of ten percent (10%) and shall accrue as of the date paid or incurred by Sublessor on behalf of Sublessee or the date due and payable by Sublessee to Sublessor and shall continue to accrue up to and including the date all such amounts, together with interest, are paid by Sublessee to Sublessor. Whenever the term "days" is used in this Sublease, it shall mean consecutive days, unless otherwise specifically provided.

27.9 Binding Effect. Subject to restrictions on the rights of Sublessee to transfer, assign or sublet this Sublease, this Sublease shall be binding upon and inure to the benefit of Sublessor and Sublessee and their respective heirs, beneficiaries, legal representatives, successors and assigns.

27.10 **Amendments and Modification.** This Sublease may be amended or modified only by a written instrument executed by both parties. This Sublease shall not be amended or modified in any respect without the prior written consent of District. Any purported amendment or modification without prior written consent shall be null and void.

27.11 **Negation of Partnership.** Sublessor shall not become or be deemed a partner or a joint venturer with Sublessee by reason of the provisions of this Sublease.

27.12 **Entire Agreement.** This Sublease, all attached exhibits and all documents incorporated by reference supersede all oral statements and representations and contain the entire agreement of the parties with respect to Sublessee's use and occupancy of the Premises. Sublessee specifically acknowledges and agrees that Sublessor has not in any fashion solicited Sublessee's execution of this Sublease or Sublessee's occupancy of the Premises during the Term, nor has Sublessor made any representation, claim or warranty to Sublessee in connection with Sublessee's execution of this Sublease and occupancy of the Premises during the Term related to (i) the profitability or anticipated financial success of the Project; (ii) the tenant mix or composition within the Project; (iii) the identity of any particular tenant proposed to occupy space within the Project; (iv) the anticipated occupancy rate of subleaseable space within the Project at any time; (v) the opening date of any business to be operated within the Project; and (vi) the commencement or continued operation of any public or private transportation service of any type to or from the Project at any time during the Term; or (vii) any means of access to or from the Project or its general locale.

27.13 **Brokers.** Sublessee represents it has dealt only with Urban Property Group, Inc. in connection with this Sublease. Subject to the foregoing, each party represents and warrants that it has not dealt with or taken any other action with any other party in a manner so as to give rise to any valid claim against either party for a broker's commission of finder's fee in connection with the execution of this Sublease. Each of the parties will indemnify, defend and hold harmless the other from and against all claims, demands and liabilities arising out of its breach of the foregoing representation and warranty.

27.14 **Consent.** Whenever the consent or approval of either party is required pursuant to this Sublease, except as otherwise expressly provided herein, such consent or approval will not be unreasonably withheld or delayed.

27.15 **Non-Disturbance—Attornment.** By the District approving this Sublease, the District agrees to the following:

27.15.1 Non-Disturbance. So long as Sublessee is not in default in the performance of any of the terms, covenants, or conditions of this Sublease, Sublessee's possession of the Property shall not be disturbed by District in any manner and District will not join Sublessee as a party defendant in any action or proceeding in connection with the Master Lease for the purpose of terminating Sublessee's interest and estate under this Sublease because of any default by Sublessor under the Master Lease.

27.15.2 Attornment. If the Master Lease is terminated for any reason, all of Sublessor's interests as sublessor under this Sublease shall be deemed automatically assigned, transferred, and conveyed to District. District shall thereafter be bound on this Sublease to the same extent Sublessor was bound on this Sublease and shall have all the rights under this Sublease that Sublessor had under this Sublease; provided, however, that any amendments to this Sublease made after this Sublease is approved by the District shall not be binding on the District unless approved by District in writing. Further, on such a termination, Sublessee shall be bound to District under all the conditions of this Sublease for the balance of this Sublease's term with the same force and effect as if District were the landlord under this Sublease. As a part of this process, Sublessee attorns to District as Sublessee's landlord. This attornment will become effective immediately when District succeeds to Sublessor's interest under this Sublease and shall not require the execution of any additional instruments by the Sublessor, Sublessee or District. However, Sublessee shall be under no obligation to pay rent to District until Sublessee receives written notice from District that it has succeeded to Sublessor's interest under this Sublease.

27.16 Obligations. If the Master Lease is terminated for any reason and District succeeds to Sublessor's interest under this Sublease, District shall be bound to Sublessee under all of this Sublease's provisions and conditions, and Sublessee shall, from and after that event, have the same remedies against District for the breach of any agreement contained in this Sublease that Sublessee might have had under this Sublease against Sublessor. However, District shall not be liable for any act or omission of Sublessor and shall not be subject to any offsets or defenses that Sublessee might have against Sublessor and shall not be bound by any rent or additional rent that Sublessee might have paid to Sublessor for more than the current month.

27.17 Certified Inspection Specialist Inspection. In accordance with California Civil Code section 1938, Sublessor hereby warrants and represents the leased property has not undergone inspection by a Certified Access Specialist.

27.18 Security Deposit. Omitted in its entirety.

27.19 Letter of Credit. As security for Sublessee's full and faithful performance of its obligations under this Sublease, Sublessee shall deliver to Sublessor, and maintain in full force and effect throughout the Term, a clean, irrevocable and fully transferrable standby letter of credit ("Letter of Credit") in the principal amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) payable in the City of San Diego, running in favor of Sublessor, drawn on a federally insured banking or lending institution with a retail banking branches located in San Diego, California, and in form and content otherwise reasonably acceptable to Sublessor. Sublessee shall deliver the Letter of Credit no later than 48 hours following the last to occur of (a) the District's consent of this executed Sublease and of Sublessee as a sublessee; and (b) District and Sublessor entering into the Restated Master Lease. The Letter of Credit shall specifically provide for partial draws, multiple presentations and draws, and be callable at sight, and shall be self-renewing annually. If Sublessee defaults on any obligation under this

Sublease, Sublessor, at Sublessor's option, may make a demand for payment under the Letter of Credit in the full amount of the funds to be held in cash without obligation or interest and to be applied against the obligations of Sublessee as the same come due. In the event that Sublessor draws upon the Letter of Credit, Sublessee shall present to Sublessor a replacement Letter of Credit in the full Letter of Credit Amount satisfying all of the terms and conditions of this Section within ten (10) days after receipt of notice from Sublessor of such draw. Sublessee's failure to do so within such 10-day period will constitute a default hereunder (Sublessee hereby waiving any additional notice and grace or cure period), and upon such default, Sublessee shall be entitled to immediately exercise all rights and remedies available to it hereunder, at law or in equity. In the event that the Letter of Credit is terminated by the issuer therefore at any time during the Term, and/or Sublessee has not presented to Sublessor a replacement Letter of Credit which complies with the terms and conditions of the Sublease on or before ten (10) days prior to the expiration date of any such Letter of Credit then held by Sublessor, then Sublessee shall be deemed in default hereunder and Sublessor shall have the right to draw upon the Letter of Credit then held by Sublessor and any amount paid to Sublessor by the issuer of the Letter of Credit shall be held in cash without obligation or interest and to be applied against the obligations of Sublessee as the same come due. Sublessor's election to draw under the Letter of Credit and to hold the proceeds of the drawing under the Letter of Credit shall not be deemed a cure of any default by Sublessee hereunder and shall not relieve Sublessee from any of its obligations under this Sublease. Sublessor shall have the right to require Sublessee to obtain a new Letter of Credit in accordance with the requirements of this Section should the original issuer be placed on a FDIC "watch list" or any similar state or federal banking regulatory agency "watch list". Any time after the Commencement Date, provided Sublessee is not in default under this Sublease and has completed the Sublessee's Work and opened for business, Sublessee may request Sublessor accept a personal guaranty in place of the Letter of Credit. Sublessor may accept or deny such request in its sole and absolute discretion, for any reason or no reason. After the completion of the seventh year of this Sublease, and provided Sublessee is not in default under this Sublease, Sublessee may elect to terminate any personal guarantee or the Letter of Credit, as applicable, by depositing a security deposit in an amount equal to three months of Base Rent then in effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the day and year first above written.

SUBLESSOR

SUBLESSEE

FERRY LANDING ASSOCIATES, LLC,
a California limited liability company

ISLAND TIMES LLC
a California limited liability company

Art engel
By: Art engel (Jul 12, 2023 20:38 MDT)
Arthur E. Engel, Managing Member
Dated: July 12 2023



By: Brendan Huffman (Jul 12, 2023 21:11 PDT)
Brendan Huffman, Managing Member
Dated: 7/12/23

EXHIBIT A

EXHIBIT A

LEGAL DESCRIPTION

**Legal Description for
FERRY LANDING ASSOCIATES, LLC
TIDELAND LEASE
Parcel / Drawing No 057-002
Within Corporate Limits of Coronado-San Diego**

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 LAND AREA

Commencing at a 3" diameter brass disk monument stamped "SDUPD-029" as shown on Record of Survey Map No. 16668, filed in the Office of the San Diego County Recorder on July 25, 2000; thence along a tie-line South 00°55'08" East a distance of 22.03 feet (calculated) to the TRUE POINT OF BEGINNING of Parcel No. 1; thence South 26°57'01" West a distance of 80.88 feet to a point on the Ordinary High Water Mark angle point Station 60, as said Ordinary High Water Mark is delineated on the above described Miscellaneous Map 564; thence along said Ordinary High Ordinary Mark South 26°57'01" West a distance of 217.53 feet to Ordinary High Water Mark angle point Station 61; thence North 63°06'55" West a distance of 558.87 feet to Ordinary High Water Mark angle point Station 62; thence leaving said Ordinary High Water Mark North 26°56'57" East a distance of 25.00 feet; thence North 63°03'21" West a distance of 45.05 feet; thence North 26°56'39" East a distance of 267.80 feet to the beginning of a non-tangent 25.00 foot radius curve, concave to the southwest to which a radial bears North 30°10'08" East from the center of said curve; thence southeasterly along the arc of said curve through a central angle of 81°33'30" an arc distance of 35.59 feet to a point of tangency; thence South 21°43'38" West a distance of 18.00 feet; thence South 68°16'22" East a distance of 60.00 feet; thence North 41°42'03" East a distance of 35.00 feet to the beginning of a 25.00 foot radius curve, concave to the south; thence easterly along the arc of said curve through a central angle of 88°46'12" an arc distance of 38.73 feet; thence South 49°31'45" East a distance of 49.00 feet; thence South 56°02'11" East a distance of 98.74 feet to the beginning of a 25.00 foot radius curve, concave to the southwest; thence southeasterly along the arc of said curve through a central angle of 75°06'03" an arc distance of 32.77 feet; thence South 19°03'52" West a distance of 56.54 feet; thence South 56°46'14" East a distance of 88.65 feet; thence North 31°42'55" East a distance of 74.15 feet to the beginning of a 38.00 foot radius curve, concave to the southeast; thence northeasterly along the arc of said curve through a central angle of 84°49'30" an arc distance of 56.26 feet; thence

Sheet 1 of 4

EXHIBIT "A"

South $63^{\circ}27'35''$ East a distance of 148.84 feet to the beginning of a 35.00 foot radius curve, concave to the southwest; thence southeasterly along the arc of said curve through a central angle of $43^{\circ}51'30''$ an arc distance of 26.79 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 155,040 square feet or 3.56 acres of tidelands area, after excluding therefrom a 15.0 foot wide utility and access easement containing 12,649 square feet or 0.29 acre described hereinafter as Parcel No. 5.

PARCEL NO. 2 WATER AREA

Commencing at the True Point of Beginning of the above described Parcel No. 1, said point also being the TRUE POINT OF BEGINNING of Parcel No. 2 said point is also the beginning of a non-tangent 35.00 foot radius curve, concave to the southwest to which a radial bears North $70^{\circ}23'55''$ East from the center of said curve; thence northwesterly along the arc of said curve through a central angle of $43^{\circ}51'30''$ an arc distance of 26.79 feet; thence North $63^{\circ}27'35''$ West a distance of 148.84 feet to the beginning of a 38.00 foot radius curve, concave to the southeast; thence southwesterly along the arc of said curve through a central angle of $84^{\circ}49'30''$ an arc distance of 56.26 feet; thence South $31^{\circ}42'55''$ west a distance of 74.15 feet; thence North $56^{\circ}46'14''$ West a distance of 88.65 feet; thence North $19^{\circ}03'52''$ East a distance of 56.54 feet to the beginning of a 25.00 foot radius curve, concave to the southwest; thence northwesterly along the arc of said curve through a central angle of $75^{\circ}06'03''$ an arc distance of 32.77 feet; thence North $56^{\circ}02'11''$ West a distance of 98.74 feet; thence North $49^{\circ}31'45''$ West a distance of 49.00 feet; to the beginning of a 25.00 foot radius curve, concave to the south; thence westerly along the arc of said curve through a central angle of $88^{\circ}46'12''$ an arc distance of 38.73 feet; thence South $41^{\circ}42'03''$ West a distance of 35.00 feet; thence North $68^{\circ}16'22''$ West a distance of 60.00 feet; thence North $21^{\circ}43'38''$ East a distance of 18.00 feet to the beginning of a 25.00 foot radius curve, concave to the southwest; thence northwesterly along the arc of said curve through a central angle of $81^{\circ}33'30''$ an arc distance of 35.59 feet to a point of non-tangency; thence North $26^{\circ}56'39''$ East a distance of 207.94 feet to a point on the U.S. Pierhead Line, as said U.S. Pierhead line is now established for the Bay of San Diego and delineated on the map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426, approved by the Secretary of Army, April 29, 1963, filed in the office of the District Engineer, Los Angeles, California; thence along said U.S. Pierhead Line South $58^{\circ}24'02''$ East a distance of 605.97 feet; thence leaving said U.S. Pierhead Line South $26^{\circ}57'01''$ West a distance of 152.57 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 118,596 square feet or 2.72 acres of tidelands area.

PARCEL NO. 3 LAND AREA

Commencing at the True Point of Beginning of the above described Parcel No. 1; thence South $26^{\circ}57'01''$ West a distance of 80.88 feet to said Ordinary High Water Mark

angle point Station 60; thence along said Ordinary High Water Mark South 26°57'01" West a distance of 217.53 feet to Ordinary High Water Mark angle point Station 61; thence North 63°06'55" West a distance of 558.87 feet to Ordinary High Water Mark angle point Station 62, said point also being the TRUE POINT OF BEGINNING of Parcel No.3; thence South 26°56'57" West a distance of 165.42 feet to Ordinary High Water Mark angle point Station 63, said point is also on the northerly right-of-way line of First Street; thence leaving said Ordinary High Water Mark and along said northerly right-of-way line of First Street North 63°04'33" West a distance of 45.04 feet; thence leaving said northerly right-of-way line of First Street North 26°56'39" East a distance of 190.44 feet; thence South 63°03'21" East a distance of 45.05 feet; thence South 26°36'57" West a distance of 25.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 8,578 square feet or 0.20 acre of tidelands area.

PARCEL NO. 4 PUBLIC ACCESS EASEMENT

Being a non-exclusive easement area for public access purposes situated along the northwesterly side of the above described Parcel No. 1 and Parcel No. 3, said easement area being more particularly described as follows:

Commencing at the True Point of Beginning of the above described Parcel No. 3; thence South 26°56'57" West a distance of 165.42 feet to the Ordinary High Water Mark angle point Station 63, said point is also on the northerly right-of-way line of First Street; thence along said northerly right-of-way line of First Street North 63°04'33" West a distance of 45.04 feet to the TRUE POINT OF BEGINNING of Parcel No.4; thence continuing along said northerly right-of-way line of First Street North 63°04'33" West a distance of 30.00 feet; thence leaving said northerly right-of-way line of First Street North 26°56'39" East a distance of 299.42 feet; thence South 85°34'34" East a distance of 32.48 feet; thence South 26°56'39" West a distance of 311.84 feet to the TRUE POINT OF BEGINNING of Parcel No. 4, containing 9,169 square feet or 0.21 acre of tidelands area.

PARCEL NO. 5 PUBLIC ACCESS AND UTILITY EASEMENT

Being a non-exclusive easement area for public access purposes and also for subsurface utilities purposes 15.00 feet in width lying 7.50 feet each side of the following described center line:

Commencing at the True Point of Beginning of Parcel No. 1; thence South 26°57'01" West a distance of 25.54 feet to the TRUE POINT OF BEGINNING of Parcel No. 5; thence North 18°13'25" West a distance of 19.39 feet to the beginning of a 27.50 foot radius curve, concave to the southwest; thence northwesterly along the arc of said curve through a central angle of 44°32'38" an arc distance of 21.38 feet; thence North

62°46'02" West a distance of 138.85 feet to the beginning of a 27.50 foot radius curve, concave to the southeast; thence southwesterly along the arc of said curve through a central angle of 85°31'03" an arc distance of 41.05 feet; thence South 31°42'55" West a distance of 67.59 feet to the beginning of a 27.50 foot radius curve, concave to the northwest; thence southwesterly along the arc of said curve through a central angle of 91°30'51" an arc distance of 43.92 feet; thence North 56°46'14" West a distance of 57.27 feet to the beginning of a 27.50 foot radius curve, concave to the northeast; thence northwesterly along the arc of said curve through a central angle of 75°50'06" an arc distance of 36.40 feet; thence North 19°03'52" East a distance of 45.18 feet to the beginning of a 27.50 foot radius curve, concave to the southwest; thence northwesterly along the arc of said curve through a central angle of 76°51'51" an arc distance of 36.89 feet; thence North 57°48'00" West a distance of 71.37 feet; thence North 63°13'46" West a distance of 53.91 feet to the beginning of a 27.50 foot radius curve, concave to the south; thence westerly along the arc of said curve through a central angle of 52°21'32" an arc distance of 25.13 feet; thence South 64°24'42" West a distance of 19.18 feet to the beginning of a 27.50 foot radius curve, concave to the north; thence westerly along the arc of said curve through a central angle of 38°26'51" an arc distance of 18.45 feet; thence North 77°08'27" West a distance of 15.99 feet to the beginning of a 27.50 foot radius curve, concave to the southeast; thence southwesterly along the arc of said curve through a central angle of 56°12'34" an arc distance of 26.98 feet; thence South 46°38'59" West a distance of 72.82 feet to the beginning of a 27.50 foot radius curve, concave to the northwest; thence southwesterly along the arc of said curve through a central angle of 65°40'29" an arc distance of 31.52 feet to a point on the westerly line of the above described Parcel No. 1, said point is also the POINT OF TERMINUS of Parcel No. 5, containing approximately 12,649 square feet or 0.29 acre of tidelands area. The side lines of said 15.00 foot wide easement to be extended or shortened to terminate at the easterly and westerly lines of said Parcel No. 1.

The above described tidelands areas are delineated on the San Diego Unified Port District Drawing No. 057-002, dated April 25, 2008 and made a part of this agreement.

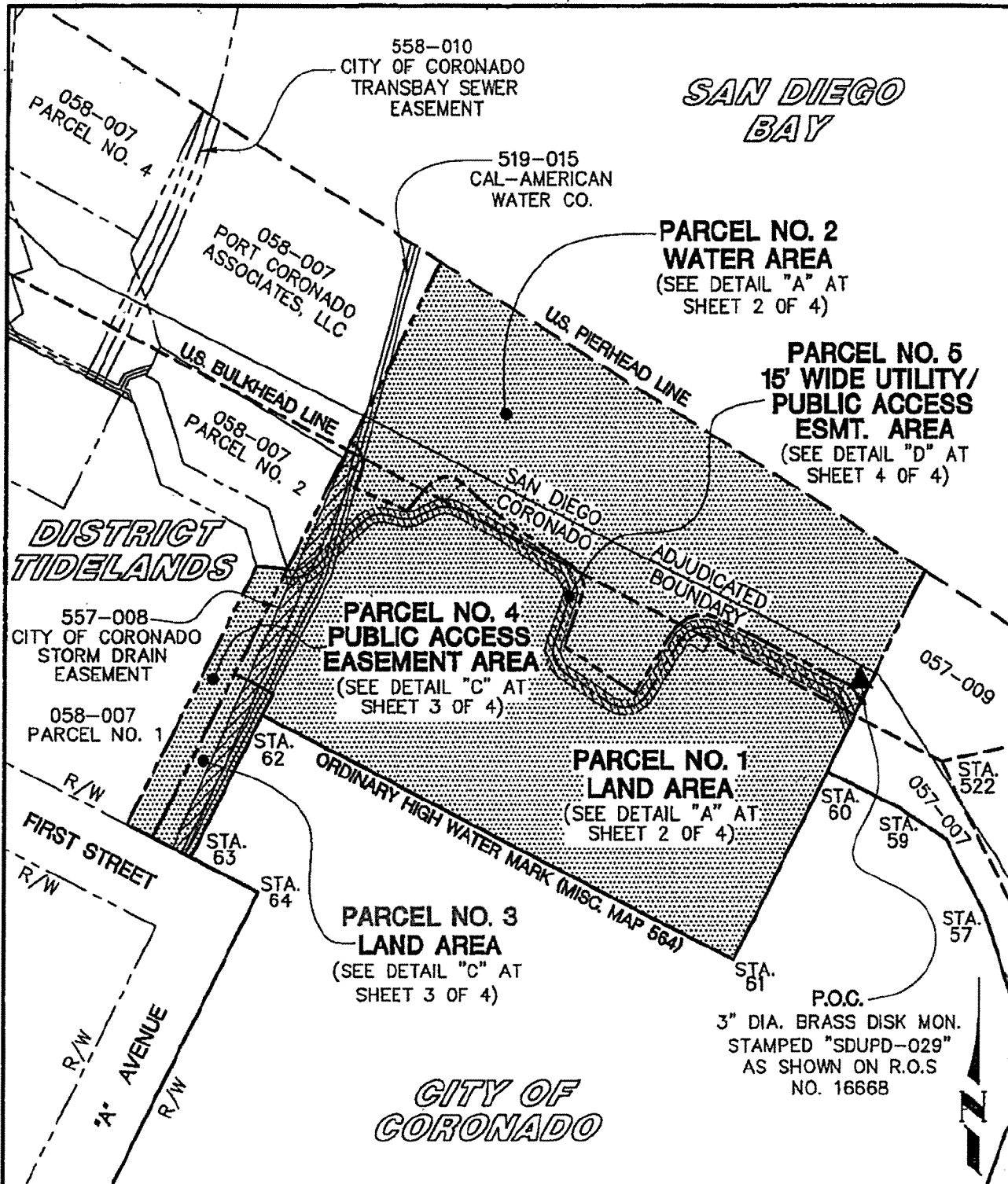
All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.

Charles J. Sefkow 5-12-08
 Charles J. Sefkow Date
 L.S. 7876 Expires 31 Dec. 2008
 Land Surveyor
 San Diego Unified Port District



EXHIBIT B

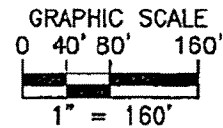
EXHIBIT B
PROJECT PLOT PLAN



NOTES:

1. LEASE AREA SHOWN SHADED.
2. BEARINGS AND DISTANCES ARE GRID AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM ZONE 6, NAD 83, EPOCH 1991.35.

KEY MAP
SCALE: 1"=160'



DRAWN DARWIN VASQUEZ
CHECKED A. SANTONIL
REVIEWED T. MARSHALL

APPROVED
Charles J. [Signature]
LAND SURVEYOR, S.D.U.P.D.

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF CORONADO - SAN DIEGO
FERRY LANDING ASSOCIATES

DATE APRIL 25, 2008
SCALE 1"=160'
REF. 058-007.2E-57

DRAWING NO.
SHEET 1 OF 4
057-002

EXHIBIT "B"

DEVSERV\REM\057-002\057-002-042508dwg.

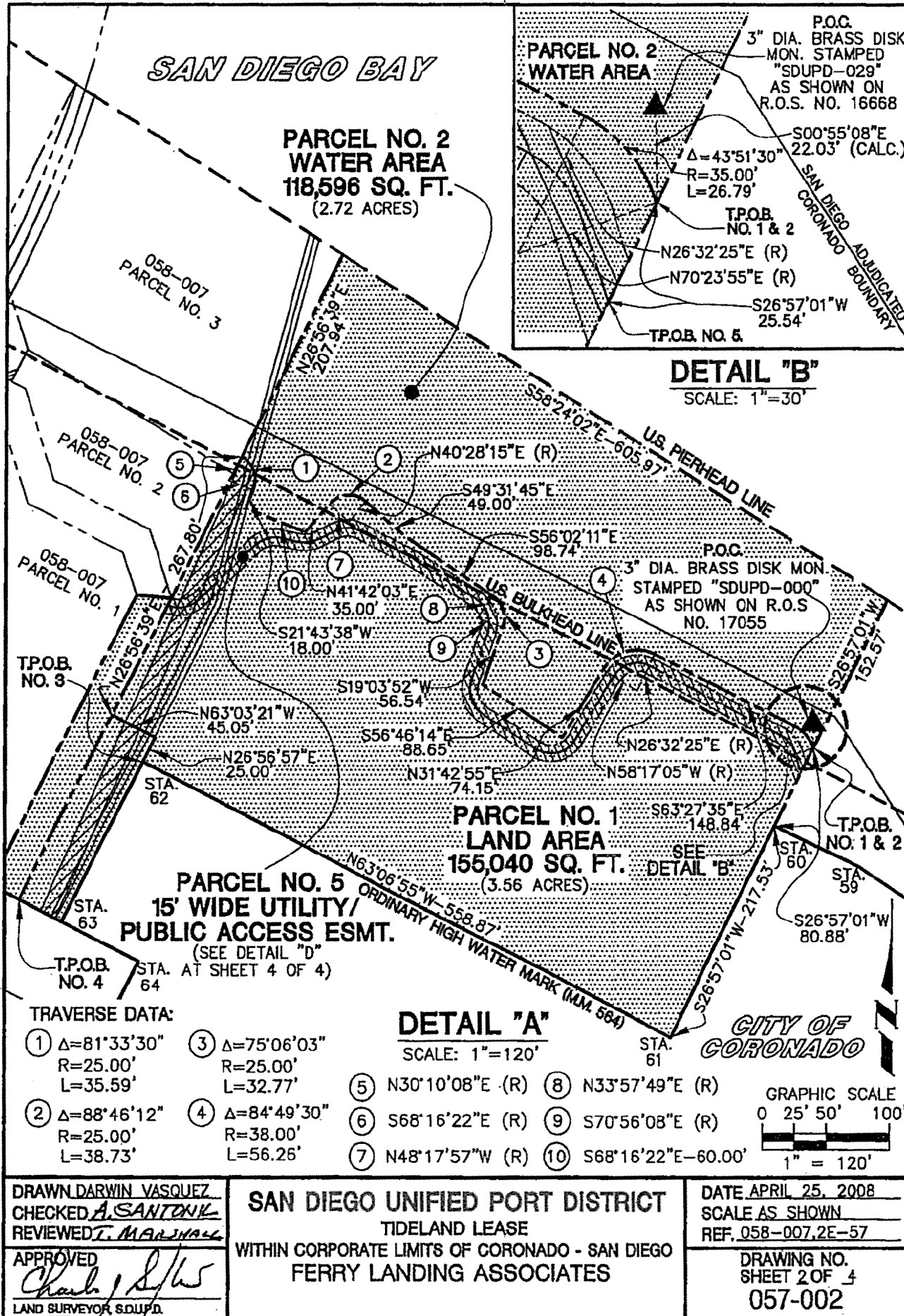
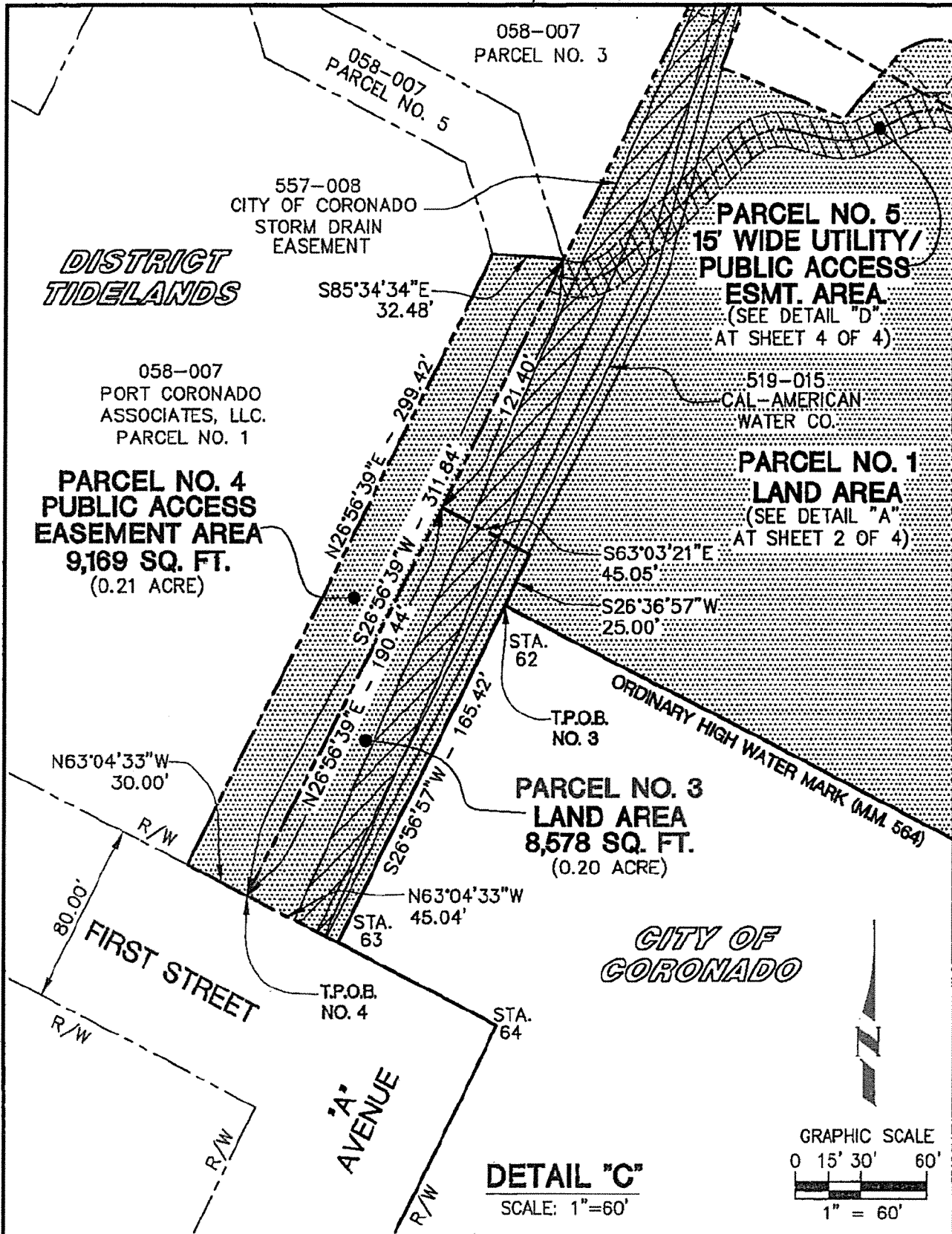


EXHIBIT "B"



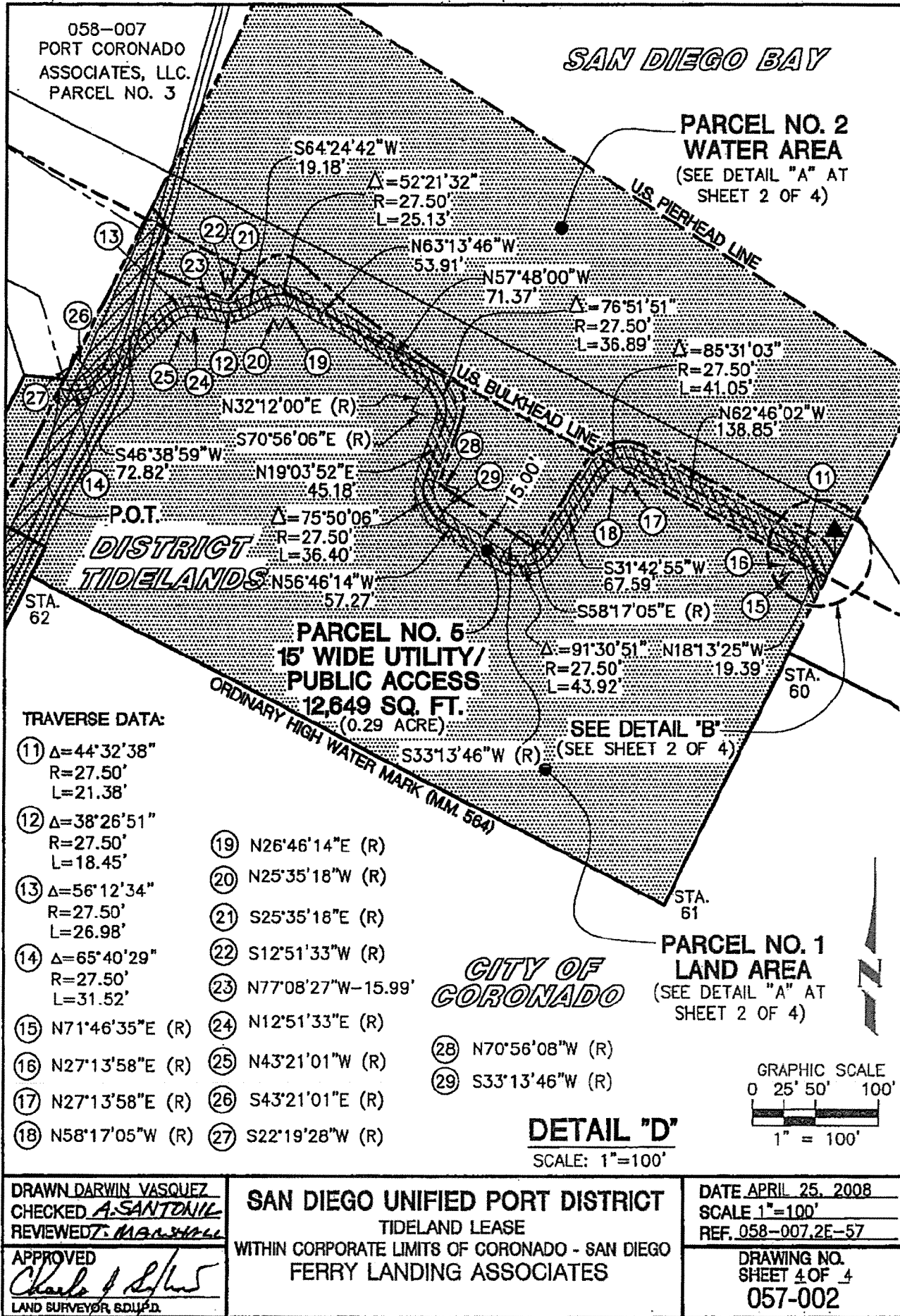
DRAWN DARWIN VASQUEZ
 CHECKED A. SANTONIL
 REVIEWED T. MASTON
 APPROVED
Charles J. Skins
 LAND SURVEYOR, S.D.U.P.C.

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO - SAN DIEGO
 FERRY LANDING ASSOCIATES

DATE APRIL 25, 2008
 SCALE 1"=60'
 REF. 058-007.2E-57
 DRAWING NO.
 SHEET 3 OF 4
 057-002

DEVSERV\REM\057-002\057-002-042508.dwg

EXHIBIT "B"

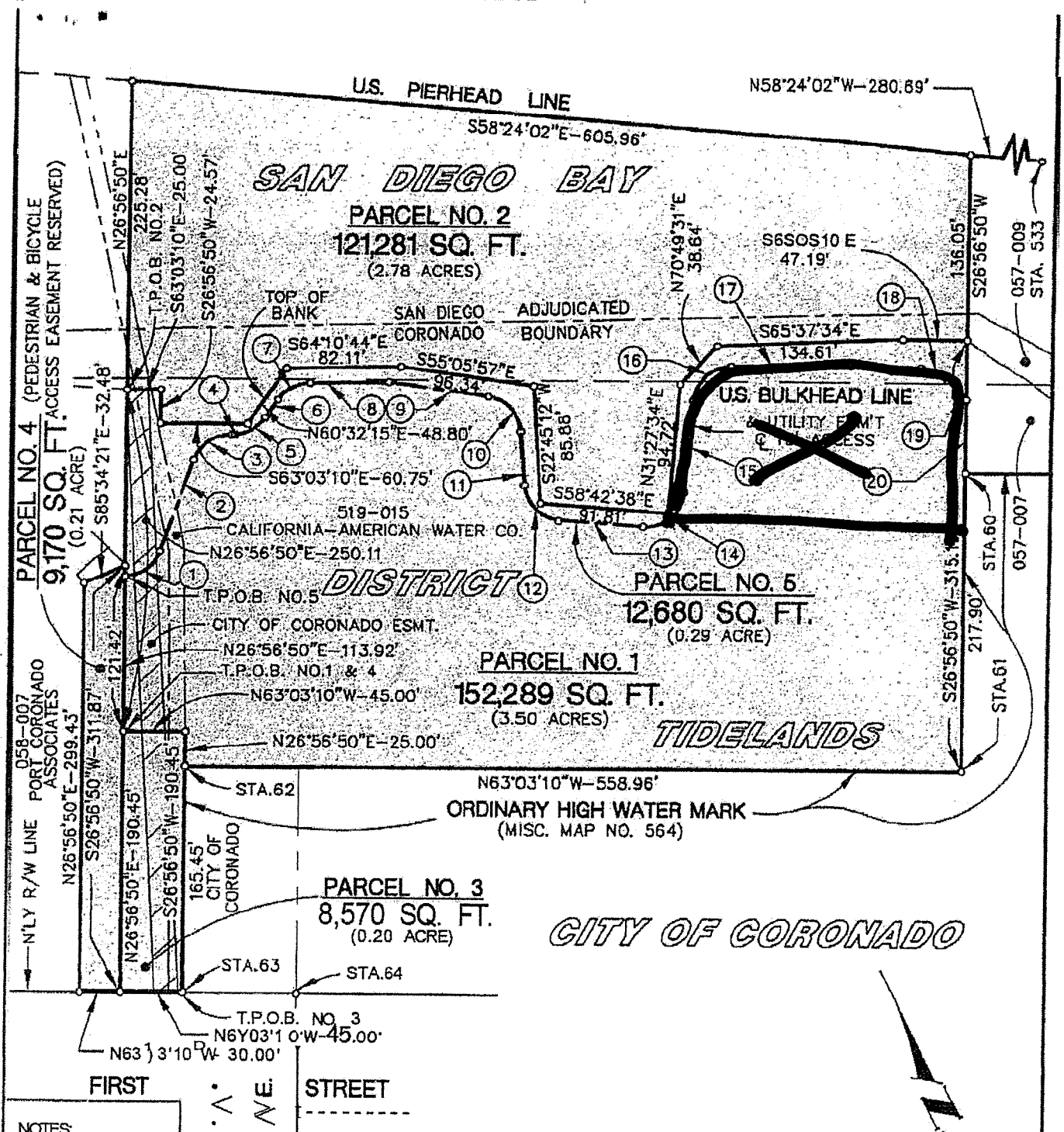


DEVSERV\REM\E057\057-002-002-042508dwg.

EXHIBIT "B"

EXHIBIT C

EXHIBIT C
PREMISES PLOT PLAN



NOTES:

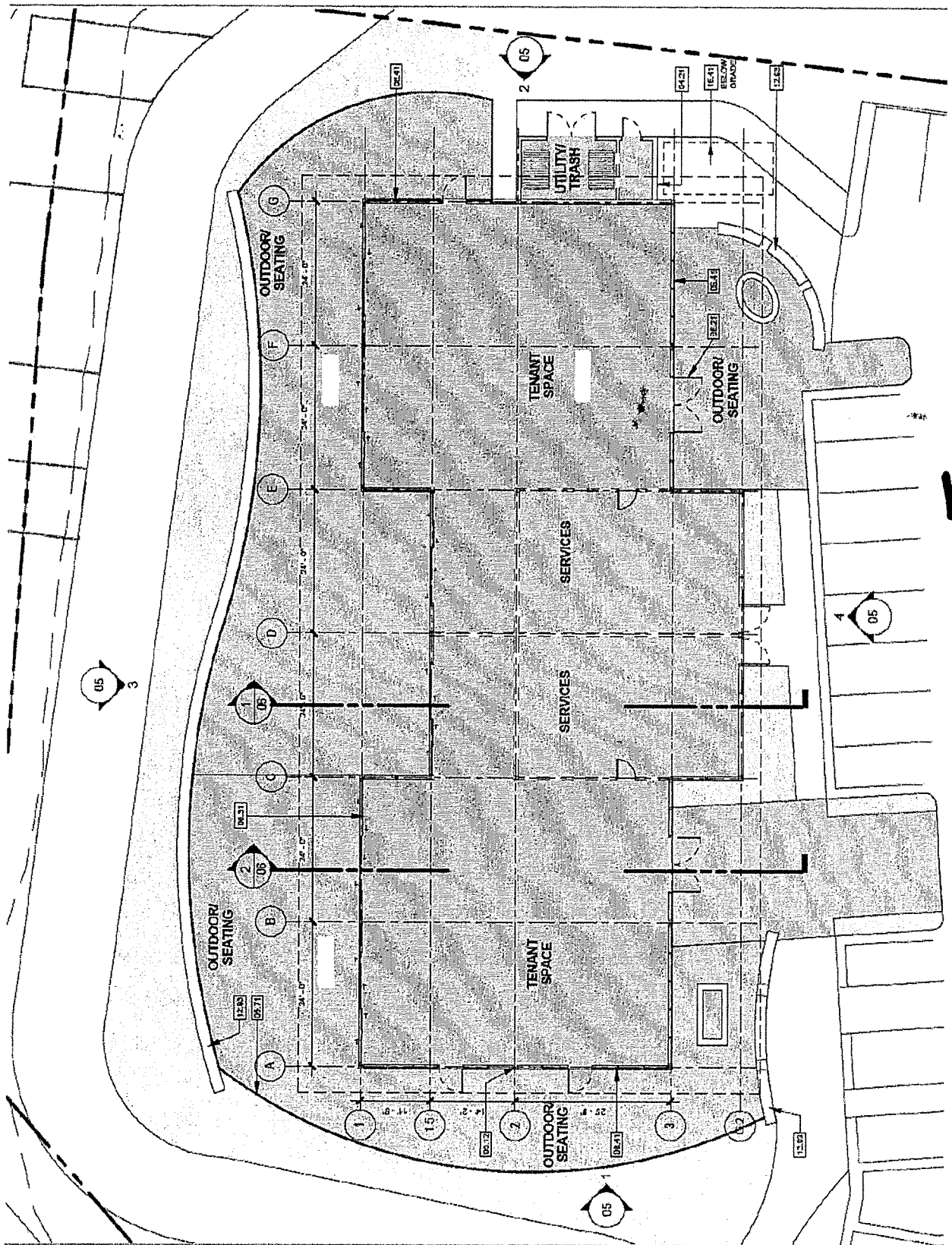
1. LEASE AREAS SHOWN SHADED.
2. BEARINGS & DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM (N.A.O. 1927) ZONE 6.
3. EASEMENT AREA SHOWN BY CENTER LINE THUS: --- - - - -

E:slw
 JFB/SDUPD
 REVIEWED
 APPROVED
 SR. DIRECTOR/PUBLIC WORKS

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF CORONADO & SAN DIEGO
FERRY LANDING ASSOCIATES

DATE DEC 1 1997
 SCALE 1-100'
 REF. 3041-8, 2E-57
 DRAWING NO.
057-002
 SHEET No. 1 OF 2

EX. C



Ex. C

EXHIBIT D

EXHIBIT D
COMMON AREA

CARRIEN JOHNSON WP

DATE: 08/12/11
PROJECT: FERRY LANDING EXPANSION
SHEET: 79 OF 95

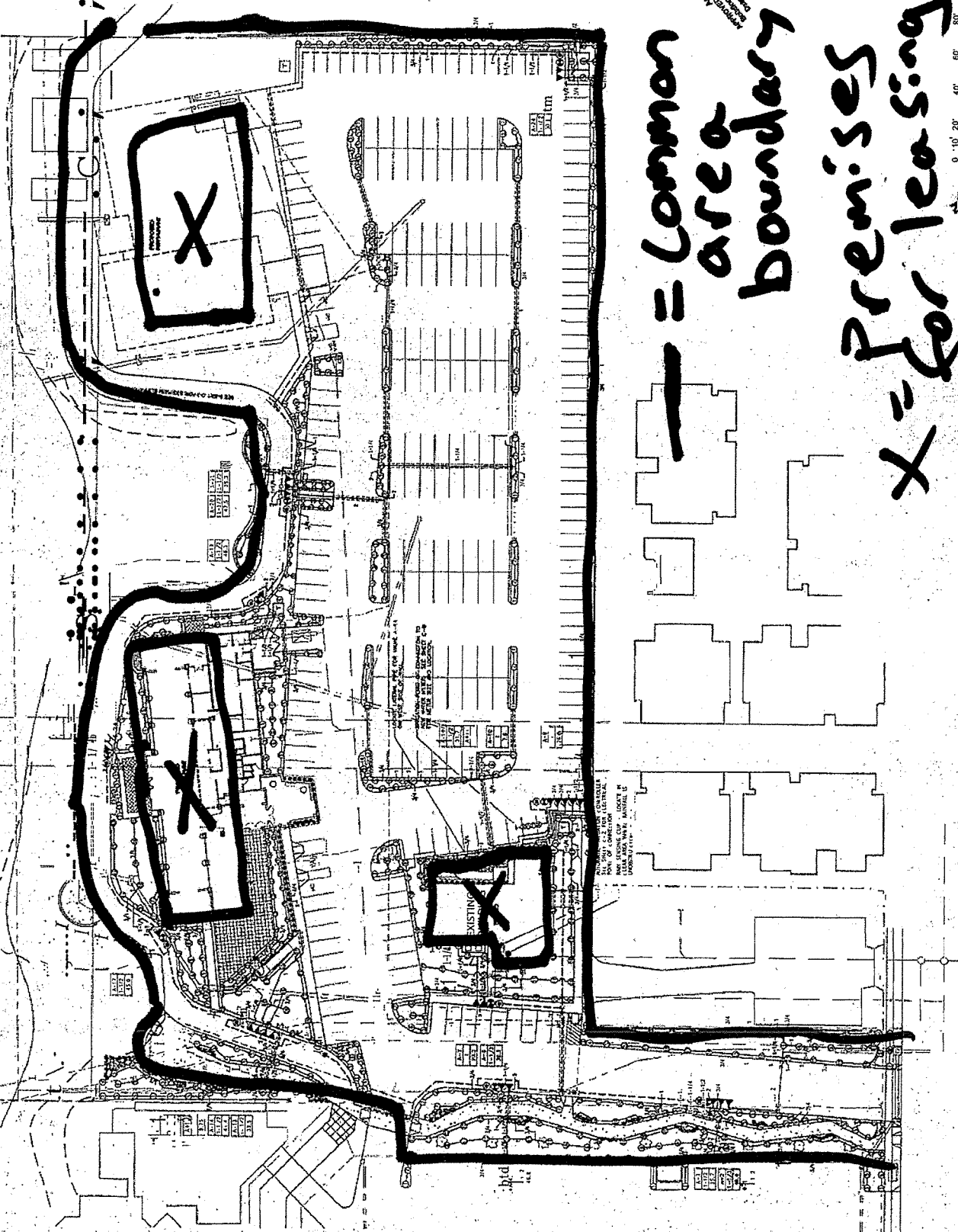
DESIGNED BY: CARRIEN JOHNSON
CHECKED BY: [Name]
DATE: 08/12/11



SCALE: 1" = 20'-0"
0' 10' 20' 40' 60' 80'

— = Common
boundary

X = Premises
for leasing



ALL DATA, DIMENSIONS AND PLANS SHOWN ON THIS SHEET ARE BASED ON RECORDS AND SURVEYS OF THE PROPERTY OF THE COUNTY OF SAN DIEGO, CALIFORNIA. THE ENGINEER HAS CONDUCTED A VISUAL GENERAL VERIFICATION OF THE RECORDS AND SURVEYS AND HAS FOUND THEM TO BE REASONABLY ACCURATE. THE ENGINEER HAS CONDUCTED A VISUAL GENERAL VERIFICATION OF THE RECORDS AND SURVEYS AND HAS FOUND THEM TO BE REASONABLY ACCURATE. THE ENGINEER HAS CONDUCTED A VISUAL GENERAL VERIFICATION OF THE RECORDS AND SURVEYS AND HAS FOUND THEM TO BE REASONABLY ACCURATE.

EX D

EXHIBIT E

EXHIBIT E
SUBLESSOR'S WORK

EXHIBIT "E"

SUBLESSOR'S WORK

This Exhibit "E" Sublessor's Work Letter ("Work Letter") sets forth the respective rights, duties, and obligations of Sublessor and Sublessee in connection with Sublessor's construction of the base, shell and core of the Building in which the Premises is located.

1. Definitions. All terms used in this Work Letter which are not specifically defined herein shall have the meanings ascribed to them in the Sublease to which this Work Letter is attached.

2. Sublessor's Work. Following execution of the Sublease by Sublessor and Sublessee, Sublessor shall construct, at its sole cost and expense, the Sublessor's Work, consisting of the construction of and delivery of the Building, which Sublessor will make every effort to design and construct in such manner as to house the approximately 7,200 square feet to be used as the Premises and the approximately 4,900 square feet of patio area, as a "Cold Dark Shell." As used in this Work Letter, "Cold Dark Shell" means Sublessor shall design and construct: (a) building enclosure including all primary structural elements; (b) roof; (c) exterior walls including finishes/cladding, all to be selected by Sublessor in Sublessor's sole and absolute discretion; (d) interior flooring will be unfinished (no slab); (e) stubs to within 10 feet of Building foundation of water, sewer, electrical, communications and gas utilities; (f) landscaping of common area walkways and entrance and exit areas to the Building, including stormwater retention; (g) minimum interior lighting to obtain permit for shell; (h) HVAC unit(s) of make and model selected in the sole discretion of Sublessor, but no distribution or duct work; (i) unfinished and unpainted perimeter interior walls (no demising walls); (j) unfinished exposed ceiling; (k) sprinkler system as required for shell in minimum amounts (does not include dropping sprinkler heads to finished ceiling height or otherwise as required in connection with restaurant improvements); (l) entry and exit doors as required to obtain permit for shell of basic minimum quality selected in the sole discretion of Sublessor; (m) railing, glass shield wall, masonry wall and/or similar features bordering patio, all to be selected by Sublessor in Sublessor's sole and absolute discretion; (n) patio that will comprise part of premises will be paved with minimum finish, selected in sole discretion of Sublessor, only as necessary to obtain permit; and (o) concrete walkways into and around restaurant, including to trash enclosure.

3. Sublessor's Work Plans and Specifications. Sublessor shall cause its architect ("Sublessor Architect") to prepare initial plans for construction of Sublessor's Work ("Preliminary Shell Plans"). Sublessor will provide copies of the Preliminary Shell Plans to Sublessee for Sublessee's approval. Sublessee will provide written approval or written disapproval within ten days. Any comments or changes proposed by Sublessee, including accommodations for connections of the utility lines to be run by Sublessee in the Building's foundation, will be considered in good faith by Sublessor, provided however, all decisions as to the content of the Preliminary Shell Plans will be determined solely by Sublessor. Sublessor will cause Sublessor Architect and such engineering consultants as are reasonably necessary to prepare final plans, drawings and specifications, for Sublessor's Work ("Final Shell Plans"). Sublessor will submit the Final Shell Plans to Sublessee for approval. Sublessee will provide

written approval or written disapproval within ten days. Any comments or changes proposed by Sublessee will be considered in good faith by Sublessor, provided however, all decisions as to the content of the Final Shell Plans will be determined solely by Sublessor.

4. Construction. Sublessor will retain a licensed contractor to perform Sublessor's Work in a good and workmanlike manner and in accordance with all applicable laws and regulations.

EXHIBIT F

EXHIBIT F
SUBLESSEE'S WORK

**EXHIBIT “F”
SUBLESSEE’S WORK**

This Exhibit “F” Sublessee’s Work Letter (“Work Letter”) sets forth the respective rights, duties, and obligations of Sublessor and Sublessee in connection with Sublessee’s construction of all Sublessee improvements at the Premises, both of an exterior and interior nature, necessary for Sublessee to commence the Agreed Use as contemplated by the Sublease.

1. Definitions. All terms used in this Work Letter which are not specifically defined herein shall have the meanings ascribed to them in the Sublease to which this Work Letter is attached.

2. Sublessee’s Work. Sublessee shall, at Sublessee’s sole cost and expense improve the “Cold Dark Shell” to be delivered by Sublessor at the Premises and the adjoining patio as necessary to operate the restaurant business of Sublessee (the “Sublessee’s Work”). Sublessee’s Work shall include, without limitation, the following items of work: (a) construction of restaurant facility to a finished condition comprised of approximately 7,200 rentable square feet with a patio of approximately 4,900 square feet, including all furniture, fixtures, equipment and décor required for Sublessee to operate its business and open to the public; (b) signage at the maximum permissible per local codes and ordinances, the Port District requirements, and per Sublessor’s signage program; (c) slab floor and all utility sleeves, connections and distribution lines that pass through the slab floor; (d) all grease traps as required by law; (e) distribution of water service; (f) fire sprinkler system in accordance with law; (g) electrical services as reasonably required and approved by Sublessor; (h) distribution of natural gas services; (i) all low voltage including audio, telephone and ethernet distribution at the Premises; (j) HVAC ducting and distribution work; (k) patio as reasonably required and approved by Sublessor; (l) exterior lighting as reasonably required and approved by Sublessor; (m) plumbing plan as reasonably required and approved by Sublessor; (n) electrical plan as reasonably required and approved by Sublessor; (o) interior lighting as reasonably required and approved by Sublessor; and (p) overall space plan and layout as reasonably required and approved by Sublessor, including décor, wall coverings, window coverings, ceiling coverings, color coordination, kitchen and other equipment (as approved by local Health Department), furniture/fixture layout, partitioning of space, and similar effects and improvement decisions.

3. Construction Drawings.

3.1 Conceptual Design. Subject to Sublessor’s prior written consent, which consent shall not be unreasonably withheld, Sublessee shall retain an architect (“Sublessee Architect”), reasonably acceptable to Sublessor, to prepare an initial plan for the Premises and Sublessee’s Work (“Draft Conceptual Design”). Sublessor shall have the right to require reasonable revisions to the Draft Conceptual Design, subject to reasonable input of Sublessee. The Draft Conceptual Design, as revised by Sublessor with input of Sublessee, shall be used to prepare a final conceptual design for the Sublessee’s Work (“Final Conceptual Design”).

3.2 Construction Drawings. Sublessee shall cause Sublessee Architect to prepare the “Construction Drawings” (as defined below) and coordinate the design, construction and installation of the improvements comprising the Sublessee’s Work. Subject to Sublessor’s prior written consent, which consent shall not be unreasonably withheld, Sublessee shall retain engineering consultants

(“Engineers”) to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life-safety, and sprinkler work in the Premises and required for Sublessee’s Work. The plans and drawings to be prepared by the Sublessee Architect and the Engineers hereunder shall be known collectively as the “Construction Drawings.” Notwithstanding anything to the contrary contained herein or in the Sublease, Sublessor shall have no liability whatsoever in connection with the Construction Drawings and shall not be responsible for any omissions or errors contained in the Construction Drawings.

3.3 Final Working Drawings. Sublessee, the Sublessee Architect and the Engineers shall complete the architectural and engineering drawings for the Sublessee’s Work, and the Sublessee Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings, all in accordance with the Final Conceptual Design, in a form which is complete to allow contractors to bid on the work and to obtain all applicable permits (“Final Working Drawings”) and shall submit the same to Sublessor and the San Diego Unified Port District for approval or reasonable disapproval, and thereafter to the City of Coronado and such other government authorities (ie. health department) as are necessary for issuance of all permits for Sublessee’s Work. Sublessee shall promptly implement revisions to address any such disapproval. Notwithstanding anything to the contrary contained herein or in the Sublease, Sublessor shall have no liability whatsoever in connection with the Final Working Drawings and shall not be responsible for any omission or errors contained in the Final Working Drawings.

3.4 Approved Working Drawings. Sublessee at its sole cost and expense shall submit or cause to be submitted the Final Working Drawings (“Approved Working Drawings”) to the appropriate governmental entities for all applicable building permits necessary. Sublessor will reasonably cooperate with Sublessee (at no cost to Sublessor) in Sublessee’s efforts to obtain all such permits and approvals. Sublessor makes no representation concerning the availability of such permits or approvals.

3.5 Change Orders. If Sublessee desires any change, modification or alteration in the Approved Working Drawings, (“Change Order”) Sublessee must first obtain the prior written consent of Sublessor and the San Diego Unified Port District.

4. Sublessor and Port Consent. No improvement of any kind to the Premises shall be erected or maintained unless and until the plans, specifications and proposed location of such improvements have been approved in writing by Sublessor, which approval shall not be unreasonably withheld or delayed, and by the San Diego Unified Port District. Sublessor’s review and approval of the plans and specifications for the improvements shall create no liability or responsibility on the part of Sublessor for the completeness of such plans or their design sufficiency or compliance with laws.

5. Sublessor Responsibility. Sublessor shall not be responsible for any costs associated with Sublessee’s design and construction of Sublessee’s Work, except as provided as to the Improvement Allowance in section 8 below.

6. Insurance; Bonds. No work of any kind shall be commenced, and no building or other material shall be delivered, until at least five (5) business days after written notice has been given by Sublessee to Sublessor of the intent to commence such work or the delivery of such materials. In

addition, prior to commencement of construction of Sublessee's Work, Sublessee shall furnish Sublessor with (a) evidence that Sublessee has satisfied the insurance requirements of the Sublease in connection with such work; and (b) Sublessee has secured and submitted to Sublessor and the San Diego Unified Port District performance and payment bonds in the amount of the total estimated construction cost of improvements to be constructed by Sublessee.

7. Selection of Contractor; Rights of Sublessor. The improvements constructed, and all work performed, on the Premises, shall be in accordance with the Approved Working Drawings. All work performed on the Premises shall be done in a good, workmanlike and lien free manner and only with new materials of good quality and high standards. All work required in the construction of Sublessee's Work shall be performed only by competent contractors duly licensed as such under the laws of the State of California and reasonably approved by Sublessor. Sublessee will competitively bid the construction with contractors approved by Sublessor. Sublessee shall then enter into a construction contract approved by Sublessor (which approval shall not be unreasonably withheld or delayed) with the selected contractor to construct the Sublessee's Work in accordance with the Approved Working Drawings, which contract will (i) name Sublessor as a third party beneficiary, (ii) permit an assignment to Sublessor, at Sublessor's election, upon a default by Sublessee under the Sublease, and (iii) provide that the contractor will guarantee that the Sublessee's Work will be free from any defects in workmanship and materials for at least one (1) year following substantial completion. Sublessee shall be responsible for all aspects of coordinating the construction management, including obtaining and paying for utilities consumed during construction. Sublessee shall be bound by the following terms and will include the following terms as special conditions in any contract entered between Sublessee and its contractors:

(a) Prior to the start of Sublessee's Work, Sublessee and its contractors shall provide Sublessor (i) written notice thereof at least five (5) days prior thereto for purposes of posting appropriate notices of nonresponsibility and (ii) a construction schedule indicating the estimated completion dates of all phases of Sublessee's Work.

(b) Sublessee's contractor shall perform said work in a manner and at times which do not impede or delay Sublessor in the completion of Sublessor's Work. Any delays in the completion of Sublessor's Work and any damage to Sublessor's Work caused by a Sublessee's contractor shall be at the sole cost and expense of Sublessee.

(c) Sublessee's contractor shall be responsible for the repair, replacement or clean-up of any damage done by it to other contractor's work which specifically includes accessways to the Building which may be concurrently used by others.

(d) Sublessee's contract shall contain its storage of materials and its operations within the Premises and such other space as it may be assigned by Sublessor. Should Sublessee or its contractor(s) be assigned space outside of the Premises, it shall move to such other space as Sublessor shall direct from time to time to avoid interference or delays with other work.

(e) All trash and surplus construction materials shall be stored within the Premises and shall be promptly removed from the Project.

(f) Sublessee's contractor(s) shall provide temporary utilities, portable toilet facilities and drinking water as required for its work within the Premises and shall pay to Sublessor the cost of any temporary utilities and facilities provided by Sublessor at Sublessee's contractor's request.

(g) Sublessee's contractor(s) shall notify Sublessor of any planned work to be done other than during normal business days and working hours, including on weekends.

(h) Sublessee' and Sublessee's contractor(s) are responsible for compliance with all applicable codes and regulations, all applicable safety regulations established by Sublessor for the Project and Sublessee further agrees to save and hold Sublessor harmless for said work as provided in paragraph 7.11 of the Sublease.

(i) Sublessee's contractors shall not post signs on any part of the Project or on the Premises, unless required by law for the purpose of construction.

(j) Sublessee shall furnish Sublessor copies of all construction contracts prior to the commencement of Sublessee's Work.

(k) Sublessee shall be responsible for and shall obtain and record a notice of completion promptly following completion of Sublessee's Work.

8. Improvement Allowance. Sublessor shall provide Sublessee Fifty Dollars and No Cents (\$50.00) per rentable square foot of the building located in the Premises, and as measured after Sublessor's construction work is completed ("Improvement Allowance"), provided, however, the Improvement Allowance shall in no event exceed \$360,000, for the costs relating to the design, construction and installation of the Sublessee's Work. Except as herein provided, in no event shall Sublessor be obligated to pay any amount which exceeds the Improvement Allowance. All improvements for which the Improvement Allowance has been made available shall be deemed Sublessor's property under the Sublease. Notwithstanding anything to the contrary contained herein or in the Sublease, Sublessee shall not be entitled to any credit for any unused portion of the Improvement Allowance.

9. Disbursement of Improvement Allowance. The Improvement Allowance will be disbursed by Sublessor in three installments, subject in all cases to Sublessee's submission of a Draw Request in accordance with the terms of this Work Letter. The first installment shall be due twenty days following substantial completion by Sublessee of Sublessee's work, the second installment shall be due twenty days following Sublessor's opening for business to the public, and the third installment will be due within 90 days of delivery of final lien releases and a certification from the Sublessee's contractor that all subcontractors and suppliers have been paid. As an express condition precedent to any disbursement of the Improvement Allowance, Sublessee must submit and Sublessor must receive and approve of a Draw Request which includes all of the following items:

(a) Sublessee's certification (i) that the Sublessee's Work has been completed in a good and workmanlike manner and in accordance with the Approved Working Drawings and in compliance with the law, together with invoices, receipts, bills, subcontracts, purchase orders, and such other

documentation reasonably required by Sublessor evidencing the costs and expenses; and (ii) of an itemized statement of the actual construction cost of all Sublessee's Work, sworn to and signed by Sublessee under penalty of perjury.

(b) Sublessee Architect has certified to Sublessor that the Sublessee's Work has been completed in accordance with the Approved Working Drawings and in compliance with the law.

(c) Sublessor has had the reasonable opportunity, by and through its agents, to inspect the Sublessee's Work and determine that Sublessee's Work has been completed in a good and workmanlike manner.

(d) A final or temporary certificate of occupancy for the Premises (if a temporary certificate, the conditions set forth therein shall be satisfactory to Sublessor in its reasonable judgment) has been issued by the appropriate governmental body.

(e) Sublessee shall have delivered to Sublessor one set of reproducible "As Built" plans for the Sublessee's Work as prepared by Sublessee Architect.

(f) A complete list of the names, addresses, telephone numbers and contract amount for all contractors, subcontractors, vendors and/or suppliers providing materials and/or labor for the Sublessee's Work.

(g) No claim of lien shall be of record respecting the Sublessee's Work.

(h) Sublessee shall have delivered to Sublessor conditional or unconditional lien releases, as applicable, in accordance with California Civil Code Sections 8132, 8134, 8136, and 8138, as to all of the Sublessee's Work;

(i) Sublessee shall have delivered to Sublessor copies of all building permits, indicating inspection and approval of the Premises by the issuer of said permits;

(j) Sublessee shall have delivered copies of all guaranties, warranties and operations manuals issued by the contractor and suppliers providing labor and/or materials for the Sublessee's Work, which guaranties and warranties shall inure to the benefit of both Sublessor and Sublessee and the San Diego Unified Port District.

(k) Sublessee is not in default under the Sublease and no circumstance exists that would, with notice or lapse of time, or both, constitute a default under the Sublease.

Should Sublessee fail to request payment of the Improvement Allowance within one hundred eighty (180) days after its opening for business, then Sublessor shall not be obligated to pay Sublessee the Improvement Allowance. In addition, Sublessee shall not be entitled to any credit for any unused portion of the Improvement Allowance.











Sublease Agreement between Ferry Landing Associates LLC and Island Times LLC

Final Audit Report

2023-07-13

Created:	2023-07-12
By:	Alexandria Quindt (aquindt@ftblaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAMtY9TCdUNpZlRYSQ0Dctkpw18EwMgb6D

"Sublease Agreement between Ferry Landing Associates LLC and Island Times LLC" History

-  Document created by Alexandria Quindt (aquindt@ftblaw.com)
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-  Email viewed by aeengel8@gmail.com
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-  Signer aeengel8@gmail.com entered name at signing as Art engel
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-  Document e-signed by Art engel (aeengel8@gmail.com)
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-  Signer brendan@socialsyndicate.com entered name at signing as Brendan Huffman
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-  Document e-signed by Brendan Huffman (brendan@socialsyndicate.com)
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-  Agreement completed.
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FIRST AMENDMENT TO SUBLEASE

THIS FIRST AMENDMENT TO SUBLEASE (“**First Amendment**”), is dated as of July 31, 2024 (“**Amendment Date**”), by and between Ferry Landing Associates, LLC, a California limited liability company (“**Sublessor**”) and Island Times LLC, a California limited liability company (“**Sublessee**”).

RECITALS:

A. WHEREAS, by that certain Sublease Agreement dated as of July 12, 2023 (the “**Sublease**”), Sublessor leased to Sublessee a certain premises as more particularly described in Section 1.1 of the Sublease (“**Premises**”) and located in the commercial complex commonly known as Coronado Ferry Landing in Coronado, California for an initial term of ten (10) years (“**Original Term**”), together with the option to extend the Original Term for two (2) successive five-year periods thereafter.

B. WHEREAS, the Sublease effectiveness is conditioned upon certain consents to be granted by the San Diego Unified Port District (the “**District**”) including that Sublessor enter into certain amended and restated Master Lease with the District, all as more particularly described in Section 2.1 of the Sublease. In connection therewith, Sublessor will enter into a certain Option to Lease Agreement (“**Option**”) with the District, which Option specifies a certain timeline by which Sublessor shall submit working drawings for the development of the Premises for District approval (“**Working Drawings**”), among other obligations, in order to obtain a necessary extension of term under the existing Master Lease.

C. WHEREAS, Sublessor and Sublessee desire to amend the Sublease to (i) define and distinguish the Sublease effective date from the Term and rent commencement dates; and (ii) provide for mutual cooperation with respect to satisfying Sublessor's obligations under the Option with respect to Working Drawings, all upon the terms and conditions as set forth herein.

D. WHEREAS, the Sublease, together with this First Amendment, shall be collectively referred to as the “Sublease,” and all references to the ‘Sublease’ shall mean the Sublease, as amended by this First Amendment, whether or not such reference shall expressly refer to such amendment. Capitalized terms not defined herein shall have the meanings set forth in the Sublease.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublessor and Sublessee, intending to be bound, hereby agree as follows:

1. Ratification; Effectiveness of Sublease. Sublessor and Sublessee each hereby ratify and confirm that the Sublease was made and entered into as of July 12, 2023, which date shall be deemed the “**Execution Date**” of the Sublease for all purposes. Notwithstanding anything to the contrary contained in the first paragraph of the Sublease, the parties agree that pursuant to the contingencies set forth in Section 2.1 of the Sublease, the “**Effective Date**” of the Sublease shall be for all purposes the date on which the last of the following occurs: (a) the date the District grants its consent to the Sublease and the Sublessee; (b) the date Sublessor and the District enter into the Restated Master Lease; or (c) the date Sublessee approves the content of the Restated Master Lease together with any changes to the Sublease required by the District (if any).

2. Term Commencement and Rent Commencement Dates. Notwithstanding anything to the contrary contained in the Sublease, and for avoidance of doubt, Sublessor and Sublessee each acknowledge and agree that (a) the Original Term shall commence on the “**Commencement Date**” as defined in Section 3.1 of the Sublease, and (b) Tenant’s obligation to pay Base Rent, Percentage Rent and Additional Rent under Article 4 of the Sublease shall commence on the “**Commencement Date**” as defined in Section 3.1 of the Sublease.

3. Letter of Credit. Section 27.19 of the Sublease is amended such that Sublessee will deliver the Letter of Credit no later than August 2, 2024.

4. Mutual Cooperation Until the Effective Date. Notwithstanding anything to the contrary contained in the Sublease, Sublessee hereby acknowledges and agrees that upon Sublessor's execution of the Option prior to the Effective Date of the Sublease, Sublessor will be required to submit its Working Drawings for the "Cold Dark Shell" specified in the Work Letter Exhibit E of the Sublease to the District for its review and approval. Therefore, Sublessee hereby agrees to use diligent efforts to timely respond to requests by Sublessor to review, comment upon and/or approve the Preliminary Shell Plans and Final Shell Plans and to do so no later than the time periods described in Section 3 of Exhibit E of the Sublease, all prior to the Effective Date of the Sublease. Any and all costs and expenses incurred by each party respectively prior to the Effective Date of the Sublease in furtherance of this Section 3 and in connection with Exhibit E of the Sublease shall be at the sole cost and expense of the incurring party.

5. Permitted Entity Transactions. Notwithstanding anything to the contrary contained in Sections 13.2 and 13.6 of the Sublease, Sublessee shall be permitted, subject to the consent of the District under the Master Lease, to convert the sublessee entity specified as "Island Times, LLC, a California limited liability company" to a limited partnership (a "**Conversion Entity**") and to sell limited partner equity interests in such Conversion Entity; so long as the current beneficial owners and managers as of the date of this First Amendment retain management control (through the general partner of the limited partnership) and at least 20% of the equity of the Conversion Entity. It is expressly understood by Sublessee that any transfer of the equity ownership or management control of the general partner entity in excess of 33% of such general partner, or any transfer of limited partnership equity interests in excess of 80% of the Sublessee entity's shall require Sublessor's prior written consent as set forth in Article 13 of the Sublease, including but not limited to Section 13.2.

6. Except as specifically set forth in this First Amendment, all provisions of the Sublease are unmodified and remain in full force and effect, and the parties hereby ratify and confirm each and every provision thereof.

7. This First Amendment contains the entire agreement between the parties with respect to the subject matter herein contained and all preliminary negotiations with respect to the subject matter herein contained are merged into and incorporated in this First Amendment and all prior documents and correspondence between the parties with respect to the subject matter herein contained are superseded and of no further force or effect, other than the Sublease.

8. This First Amendment shall be binding upon and inure to the benefit of Sublessor and Sublessee and their respective successors and permitted assigns.

9. Sublessor and Sublessee agree that this First Amendment may be executed in counterparts, subject to exchange of signature pages, each of which shall be deemed an original and together shall constitute one and the same instrument. Signatures transmitted by the parties through email in a "PDF" format may be used in place of original signatures on this First Amendment for purposes of evidencing execution and delivery of this First Amendment by the transmitting party.

10. In the event that any provision or term of this First Amendment is found to be unenforceable, that finding shall not affect the enforceability or validity of any other provision or term hereof.

11. Sublessor and Sublessee represent and warrant that (a) they have all the required power, capacity, and authority to enter into, execute, and perform this First Amendment; (b) the execution of this First Amendment is free and voluntary; and (c) they have not assigned or transferred to any person, firm, corporation, partnership, association or other entity whatsoever any or all of the rights, duties or obligations embodied or released in this First Amendment. Sublessor represents and warrants to Sublessee that Sublessor has obtained all required lender consents in connection herewith prior to Sublessor's execution and delivery of this First Amendment.

12. A waiver of any term of this First Amendment by either party must be made in writing by such party and will be limited to the express written terms of the waiver.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year first written above.

SUBLESSOR:

FERRY LANDING ASSOCIATES, LLC,
a California limited liability company

By: art engel
art engel (Aug 5, 2024 11:52 MDT)
Arthur E. Engel
Its: Managing Member

DATE:

SUBLESEE:

ISLAND TIMES LLC,
a California limited liability company

By: 
Brendan Huffman (Jul 31, 2024 13:28 PDT)
Brendan Huffman
Its: Managing Member

DATE: 07/31/2024







3RJ0163-First Amend SS Lease (FOR SIG)

Final Audit Report

2024-08-05

Created:	2024-08-05
By:	Opus Law (contact@opus.attorney)
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-  Document created by Opus Law (contact@opus.attorney)
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-  Document emailed to aeengel8@gmail.com for signature
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-  Email viewed by aeengel8@gmail.com
2024-08-05 - 5:51:40 PM GMT
-  Signer aeengel8@gmail.com entered name at signing as art engel
2024-08-05 - 5:52:28 PM GMT
-  Document e-signed by art engel (aeengel8@gmail.com)
Signature Date: 2024-08-05 - 5:52:30 PM GMT - Time Source: server
-  Agreement completed.
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Attachment D

**SAN DIEGO UNIFIED PORT DISTRICT
DEVELOPMENT SERVICES DEPARTMENT**

P.O. BOX 120488
SAN DIEGO, CA 92112-0488
(619) 686-6419

COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 2

Board Action:	Date
Permit Amendment:	DATE (issuance date)
Applicant:	Ferry Landing Associates, LLC (FLA) 1311 First Street Coronado, CA 92118
Project:	CDP 97-3 The Ferry Landing Expansion
Location:	1355 First Street Coronado, CA 92118

You are hereby granted an amendment to Coastal Development Permit (CDP) CDP-97-3. The original CDP, Clerk Document No. 36851, was issued on November 18, 1997 and amendment to the CDP, Clerk Document No. 53487, was issued on May 27, 2008, both of which were done in conformance with the California Coastal Act of 1976 and the CDP Regulations of the San Diego Unified Port District.

The Project, as defined below, is located within the jurisdiction of the San Diego Unified Port District (District) and is between the nearest public road and the sea or the shoreline of a body of water located within the California coastal zone. The District has determined that this amendment to the original CDP 97-3 is a material change to the permit. The Project, as conditioned, is fully consistent with Chapter 3 and Chapter 8 of the Coastal Act and the District's certified Port Master Plan. On **BOARD DATE**, the Board of Port Commissioners approved Amendment No. 2 to CDP-97-3.

This amendment is limited to the modifications described below in ~~strikeout~~/underline and set forth in material on file with the District. All remaining terms, conditions, limitations and provisions of CDP-97-3, as amended, unless shown as deleted in this amendment, are to remain in effect.

DEVELOPMENT

Construction of two restaurants with a total of approximately 18,500 square feet of gross floor area, extension of the bicycle path along the waterfront, approximately 6,500 square feet of offices, parking for approximately 255 vehicles, rip-rap and revetment shoreline protection, and landscaping. The project is further described in the Environmental Assessment for the Ferry Landing Expansion dated July 20, 1995, and in current plans on file with the San Diego Unified Port District.

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3
Page 2 of 11

The applicant (or “Permittee”) has completed one single story restaurant of approximately 11,700 square feet, the extension of the bicycle path along the waterfront, approximately 6,500 square feet of two-story office space, a paved parking lot for 269 vehicles, the relocation of the access/egress driveway west of A Street (extended), a sound attenuation wall on the south and east side of the project site, revetment shoreline protection, and landscape improvements for most of the 3.9 acre site.

The Permittee proposes to construct the second single-story restaurant, approximately 7,500 square feet and up to 23 feet high, with outdoor seating areas and landscaping improvements adjacent to the existing Il Fornaio restaurant at Ferry Landing (“project” or “second restaurant project”). The proposed building would provide space for one or two restaurants that would accommodate approximately 300 guests, including approximately 190 indoor guests and approximately 110 outdoor guests. Solar panels are proposed on the roof, along with heating, ventilation, and air conditioning units and tankless natural gas water heaters. All mechanical equipment would be enclosed within a recessed well. Railing is proposed around the outdoor patio areas, including a low-profile wall between the restaurant building and the shoreline public walkway. A covered 224 square foot utility and trash area is proposed at the southeastern side of the building and an underground, appropriate size, grease interceptor tank is proposed in the southeastern corner of the site, adjacent to the proposed utility and trash area.

Parking for the project would be provided within the existing 269 spaces in the parking lot located south and adjacent to the project. No changes to the current parking configuration are proposed with the exception of re-striping to include handicapped-accessible parking stalls. Bicycle racks would be installed at the southwestern portion of the site along the sidewalk and at the three existing concrete viewing decks over the San Diego Bay.

The proposed landscaping includes grasses and drought tolerant plants and palm trees. The palm trees would be located toward the parking lot and low-lying vegetation would be planted toward San Diego Bay. Existing overhead lighting located along the 15-foot-wide shoreline public pathway would be removed and replaced with low-profile bollard lighting, with a correlated color temperature of 2,700 kelvins or less, along both sides of the pathway. The bollards will match the lighting output of the existing overhead lighting to allow for pedestrian and bicycle safety as well as uninterrupted views of the nighttime downtown San Diego skyline. Three bio-filtration areas for stormwater are proposed, including two at each entrance of the restaurant building and one between the outdoor seating area and the walkway.

Construction of the project is expected to take nine months to complete the building shell and another nine months to complete tenant improvement work for a total of 18 months commencing in late 2025. Construction would occur in three phases: 1) preliminary earthwork; 2) foundation work; and 3) building construction and exterior site work.

Operations would involve full-service indoor and outdoor dining activities seven days a week and year-round. Operations are anticipated to occur between the hours of 7:00 a.m.

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3
Page 3 of 11

and 11:00 p.m., with the majority of customers expected to patronize the restaurant after 4:00 p.m.

STANDARD PROVISIONS

1. ~~Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District. Permittee shall adhere to the plans for the second restaurant project as approved by the District July 17, 2018 and the project features described above under Development, and as attached (Exhibit A) and made a part of this Coastal Development Permit Amendment.~~
2. Permittee shall notify District of any changes in the project and herein described. Notification shall be in writing and be delivered promptly to the District. The District shall determine whether or not District approval of the project change is required prior to implementation of any changes, and if the project change will require an amendment to this Permit.
3. Any questions of intent or interpretation of any condition will be resolved by the District Executive Director or the Board of Port Commissioners.
4. Permittee and the project shall meet all applicable codes, statutes, ordinances and regulations, the local code requirements and ordinances and Permittee shall obtain all necessary permits from local, regional, state and federal agencies.
5. Permittee shall conform to, and this permit amendment is subject to, the permit rules and regulations of the District, including, but not limited to, the District's Coastal Development Permit Regulations.
6. Permittee shall commence development within two (2) years following the date of permit amendment issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. ~~This permit shall not be valid until two copies of the permit have been returned to the Planning and Environmental Management Department of the San Diego Unified Port District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations and provisions of the permit. This permit amendment shall not be valid unless two copies of the permit amendment have been returned to the Development Services Department of the District, upon which copies the Permittee has signed~~

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3
Page 4 of 11

a statement agreeing that the Permittee will abide by the terms, conditions, limitations and provisions of the permit amendment.

9. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
10. The Permittee and contractor shall implement all best management practices (BMPs) during construction and maintenance operations. No non-stormwater (irrigation, wash water, etc.) may discharge to the District's storm drains. Storm water discharges to storm drains or to Pacific Ocean are allowable, if they do not contain pollutants.
11. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2013-0001, as amended by Order Nos. R9-2015-001 and R9-2015-0100, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0109226, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region (Municipal Permit). The Municipal Permit prohibits any activities that could degrade stormwater quality.

The Permittee shall ensure that post-construction/operational use of this Project site complies with the Municipal Permit and District direction related to permitted activities including the requirements found in the District's Jurisdictional Runoff Management Program (JRMP). The JRMP is available on the District website: <https://www.portofsandiego.org/environment/environmental-protection/stormwater> or by contacting the Environmental Protection Department at (619) 686-6254.

12. This Project may be subject to the District post-construction BMP requirements. If so, approval of the Project by the District is necessarily conditioned upon submission by the Permittee of a specific Stormwater Quality Management Plan (SWQMP) for the Project that meets District requirements and is compliant with the District BMP Design Manual (JRMP Appendix D). If required, the Permittee shall implement all post-construction structural and non-structural BMPs in perpetuity.

The implementation and maintenance of the post-construction BMPs constitute regulatory obligations for the Permittee, and failure to comply with the Municipal Permit, the JRMP, or the District approved SWQMP, including the specific BMPs contained therein, may be considered a violation of the permit and a violation of District Code.

13. In the discretion of the District, prior to commencement of construction, Permittee may be required to require that their contractor(s) furnish security, naming the District as a dual obligee, in the form of a performance bond and a payment bond, each in an amount deemed appropriate by the District to guarantee payment of

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3
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the subcontractors, completion of the approved work under this permit, and compliance with the conditions and limitations upon which such permit is granted. Prior to commencement of construction, Permittee may also be required by the District to furnish security in the form of a payment bond in an amount deemed appropriate by the District to guarantee payment to the contractor(s) for work performed under this permit.

14. By accepting this permit, Permittee acknowledges and agrees (a) that the Project site may be subject to environmental conditions and hazards; (b) to assume the risks to the Permittee of injury and damage from such conditions in connection with the implementation or operations of the Project; (c) to unconditionally waive any claim of damage or liability against the District, its Board of Port Commissioners, officers, agents and employees ("District" for purposes of this condition) for injury or damage from such conditions to persons performing the development for which this permit is issued or operating on the Project site under this permit; (d) to defend, indemnify and hold harmless, and require that Permittee's contractor(s) engaged to perform the development on the Project defend, indemnify and hold harmless, the District from any claim, demand, liability, loss, action, administrative agency appeal, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment (collectively, Claims) arising out of, resulting from, or in any way related to the performance of the development by Permittee's contractor(s) for which this permit is issued, with the exception of any claim, action, damages, liability or costs arising or resulting from the project caused by the gross negligence or willful misconduct of the District; (e) to defend, indemnify and hold harmless the District from any Claims arising out of, resulting from, or in any way related to Permittees operation of the Project site with the exception of any claim, action, damages, liability or costs arising or resulting from the project caused by the gross negligence or willful misconduct of the District; (f) to defend, indemnify and hold harmless the District from any Claims arising out of, resulting from, or in any way related to the District's approval of the Project, the granting of this permit, and the District's adoption of the Final Negative Declaration; and (g) that Permittee will require Permittee's contractors to name the District as an additional insured on all policies of insurance, now in existence or to be obtained by them, for the work conducted pursuant to this permit.
15. Permittee acknowledges and agrees that: (a) it is the sole and exclusive responsibility of Permittee, and not the District, to ensure that all persons and/or entities who provide any labor, services and/or equipment in connection with the project, shall comply with the requirements of California's prevailing wage laws (the "PWL"), to the extent such laws are applicable; and (b) it is the sole and exclusive responsibility of Permittee, and not the District, to determine whether the Project is subject to the PWL by obtaining a determination by means that do not involve the District. If the Project is determined to be subject to the PWL, Permittee shall comply with all applicable provisions of the PWL, and shall take reasonable steps to ensure that all persons and/or entities who provide any labor,

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3
Page 6 of 11

services, equipment and/or materials in connection with the Project shall likewise comply with all applicable provisions of the PWL.

Permittee further acknowledges and agrees that Permittee's failure to comply with all applicable provisions of the PWL, and/or their failure to take reasonable steps to ensure that all persons and/or entities who provide any labor, services, equipment and/or materials in connection with the Project comply with all applicable provisions of the PWL, shall render Permittee, and not the District, liable for all remedies (inclusive of all applicable fines and penalties), afforded by law as a consequence of such non-compliance. Permittee expressly agrees to defend, indemnify and hold harmless the District, from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the PWL (collectively "PWL Claim") made against or incurred by the District in any capacity (including, without limitation, as a real party in interest), except for any PWL Claim arising out of the sole negligence or willful misconduct of the District.

16. The conditions of this permit are independent of, and in addition to, the obligations of the Permittee under any existing lease(s), Tidelands Use and Occupancy Permit(s), or other contractual agreement(s) with the District, and are binding upon Permittee and its agents, representatives, successors and permitted assigns.

SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, the Permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm. During any emergency operation at nighttime, special measures, such as using less noisy equipment (based on manufacturer's specifications and properly maintained) should be considered when possible to limit adverse noise impact on the residential areas; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding (temporary walls and noise barriers) around construction equipment. (Attachment B, MM-SC-4, MM-NOI-1 and MM-NOI-2)
2. To minimize fugitive air emissions during construction, the Permittee will require the construction contractor to keep fugitive dust down by regular wetting of work areas. (Attachment B, MM-SC-5, MM-AQ-1 and MM-AQ-2)
3. To minimize nuisance effects from lights or glare during construction, the Permittee will require the construction contractor to shield and direct night lighting away from San Diego Bay waters and from adjacent areas. (Attachment B, MM-SC-7, and MM-AES-2 (modified))

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3
Page 7 of 11

4. The bike/walk pathway shall remain open during construction.
5. Any previously unidentified historical resources discovered during project construction will be afforded full protection by the Permittee until qualified personnel can assess their importance. (Attachment B, MM-CUL-1)
6. All construction equipment shall be maintained in peak condition to reduce operational emissions.
7. Diesel equipment shall use low-sulfur diesel fuel.
8. Electric equipment shall be used to the maximum extent feasible during construction.
9. The Permittee shall require the construction contractor to provide construction employees with transit and ride share information.
10. The Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to hazardous materials, workers shall be provided with adequate protective gear.
11. The Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
12. Permittee and/or contractor shall comply with State Water Resources Control Board Order No. 2022-0057-DWQ (NPDES General Permit No. CAS000002), and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "Construction General Permit"), as adopted, amended, and/or modified. Construction activity subject to the Construction General Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor are responsible for submitting to the District a SWPPP that is compliant with the Construction General Permit and District required minimum BMPs. The District requires the use of District SWPPP templates. Once approved, the SWPPP document shall be maintained on the construction site at all times and made available for review by the District or other regulatory agencies.

The Permittee and/or contractor is responsible for ensuring that the SWPPP document is maintained on the site, implemented, and amended as required throughout construction. No discharges of any material or waste, including potable water, wash water, dust, soil, trash, and debris, may contaminate stormwater or

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3
Page 8 of 11

enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations shall be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean shall be reported immediately to the District Stormwater Department, in order to address any regulatory permit requirements regarding spill notifications.

A project's total disturbed soil area (DSA) shall not exceed 5 acres during the rainy season (October 1 - April 30) and 17 acres during the non-rainy season (May 1 - September 30). The District may temporarily increase these limits if the individual site is in compliance with applicable stormwater regulations and the site has adequate control practices implemented to prevent stormwater pollution.

SPECIAL PROVISIONS

- ~~1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm, (b) keep construction equipment as far as possible from sensitive receptors, and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.~~
- ~~2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular wetting.~~
- ~~3. To minimize nuisance effects from lights or glare during construction, the contractor will use sodium vapor lights, and will shield and direct night lighting away from residences.~~
- ~~4. To minimize noise from normal operations, the permittee will relocate the access/egress driveway west of A Street (extended).~~
- ~~5. To minimize noise, a sound attenuation wall will be constructed at the property line on the south and east side of the project site. The height of the wall will be no higher than 8 feet, however it may be less than 8 feet if agreed to, in writing, by the abutting property owner.~~
- ~~6. The permittee will arrange for pick-up of trash dumpsters between 7:00 am and 7:00 pm.~~
1. Permittee shall comply with all applicable Mitigation Monitoring and Reporting Program requirements (attached as Exhibit B), as described in the Second Addendum to the Final Environmental Impact Report for the Coronado Boatyard Plan Amendment - The Wharf Development (UPD #83356-EIR-143; SCH #88062222, Clerk Document No. 68850), dated July 2018, and adopted by Resolution No. 2018-131 on July 17, 2018. The applicable mitigation measures are provided in the following Special Provisions.

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3

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2. The Permittee shall arrange for pick-up of trash dumpsters between 8:00 am and 5:00 pm. (Attachment B, MM-SC-4 and MM-NOI-4)
3. The Permittee shall require operators to use, and regularly maintain, after-burners or carbon filters on exhaust venting to reduce odorous emissions from food establishments. (Attachment B, MM-SC-6)
4. To mitigate impacts resulting from the visual intrusion of the project into a largely residential area, the Permittee shall incorporate the following design features:
 - a) extensive landscaping
 - b) solid fences and landscape buffer along edges of the project
 - c) waterfront/nautical design theme (Attachment B, MM-AES-1)
5. The proposed project design includes cowls on light standards to control off-site spillage of night lighting and sky glow. Trees shall be used along the project perimeter to cut down the effects of night lighting and glare from passing and parked vehicles. (Attachment B, MM-SC-7 and AES-2 (modified))
6. To reduce natural gas, electrical energy and water consumption, the Permittee's architect and contractor shall design and construct the building structures for efficient energy use. Energy saving devices such as setback thermostats, solar lighting, and solar water heaters and water saving devices shall be installed as part of the second restaurant project. (Attachment B, MM-AQ-3, MM-AQ-4 and MM-AQ-5)
7. The lessee will require vendors to use and regularly maintain after-burners or carbon filters to reduce odorous emissions from food establishments. (Attachment B, MM-AQ-6)
8. Trash compactors shall be fully enclosed behind sound-proof material.
9. Air conditioning units shall be out-of-sight from adjacent residential dwellings with a solid wall buffer to prevent noise impacts.
10. Building structures shall not be higher than 23 feet above grade (36 feet mean sea level).
11. Use of reflective coatings on any glass surface is prohibited. Building structure windows shall incorporate measures to the satisfaction of the Port to indicate to birds that the glass surface is solid by creating visual markers and muting reflection such as glass surfaces tilted at a downward angle; fitted with screening, decorative grills, or louvers; utilizing fritted or patterned glass; utilizing vertical or horizontal mullions or other fenestration patterns; utilizing awnings, overhangs, bris sole, or other exterior sun-shading devices; utilizing external films or coatings perceivable by birds; and/or artwork, drapery, banners, and wall coverings that

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3
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counter the reflection of glass surfaces or block “see through” pathways.

12. New shoreline armoring that is constructed for the purpose of protecting the development authorized by this permit amendment shall not be permitted. As a condition of coastal permit approval for new development in an area subject to current or future hazards, a permittee shall be required to acknowledge and agree that they have no rights under Coastal Act 30235 to shoreline armoring in the future. Additionally, should flooding occur to the point that renders the structures and/or access to the structures for essential services no longer useable and/or a threat to human life or safety, structures would be removed by Permittee at the sole cost of the Permittee. A sea level rise analysis conducted for the second restaurant project (prepared by Engeo, dated May 9, 2022) identified that the development may be subject to flooding near the end of its useful life. Further, because the second restaurant project is new development, shoreline protection that is constructed for the purpose of protecting it, is prohibited. However, if shoreline protection is needed to protect adjacent existing or coastal-dependent development or public amenities surrounding the restaurant development (such as the public pathway), and such protection would incidentally protect the second restaurant, such protection may be allowed, if it is otherwise consistent with the Port Master Plan. The development related to the second restaurant project must be removed or relocated in the future if: (1) any government agency with relevant authority and jurisdiction has ordered that the structure is not to be occupied, or that it be removed, due to hazards; (2) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); or (3) the development requires new and/or augmented shoreline protective devices that conflict with Port Master Plan or relevant Coastal Act policies.
13. Prior to operation of the restaurant or by 2026, whichever comes first, Permittee shall install two electric vehicle (EV) charging stations in the parking lot.
14. The 269 space parking lot adjacent to the second restaurant includes free parking for the public for the first two hours and free daily parking for ferry commuters, (commuters are identified by pre-registered license plate number). Any changes to public parking shall require an amendment to this permit.
15. To accommodate potential future sea level rise, working drawings shall specify that:
 - the restaurant building must be constructed with a) materials resistant to damage from immersion in flood waters b) methods and practices that minimize flood damage and, c) electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within their components during conditions of flooding;
 - all utilities and facilities, such as sewer, gas, electrical, and water systems for any proposed new development, must be located and constructed to minimize or eliminate flood damage;

AMENDMENT NO. 2 TO COASTAL DEVELOPMENT PERMIT NO. CDP-97-3
Page 11 of 11

- adequate drainage must be provided for all new development in order to reduce exposure to flood hazards;
- all new and replacement sanitary sewage systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;

Exhibits:

- A. Project Site Plan and Conceptual Renderings
- B. Mitigation and Monitoring and Reporting Program

If you have any questions on this permit, please contact the Development Services Department of the San Diego Unified Port District at (619) 686-6419.

RANDA CONIGLIO
Acting President/Chief Executive Officer

By: _____
WILEEN. C. MANAOIS
Director, Development Services Department

I have read and understand the reasonable terms, conditions, limitations, and provisions of this permit and agree to abide by them. I further understand that the reasonable terms, conditions, limitations, and provisions of the permit are material to its issuance by the District, and that such terms, conditions, limitations, and provisions are included to ensure consistency with applicable laws and regulations, including the Coastal Act. Any failure to abide by the reasonable terms, conditions, limitations, and provisions may result in enforcement by the District and/or the California Coastal Commission, including revocation, as may be warranted.

Signature of Permittee
Christian Herrera
General Manager, Ferry Landing Associates.

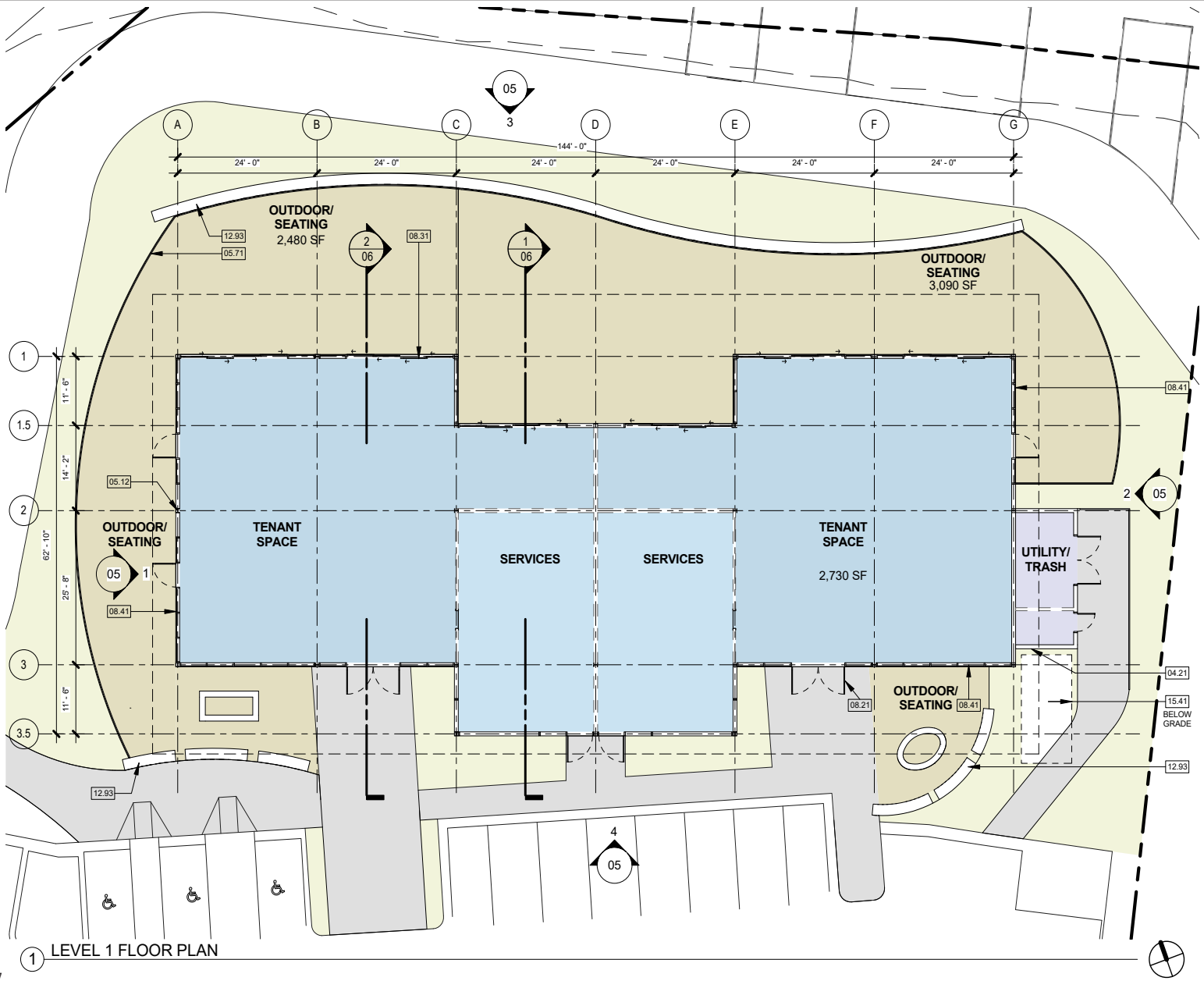
Date



I:\PROJECTS\SUP\SUP-048 - Coronado Ferry Landing\Map\Task2\Fig.3 - Aerial.mxd SUP-048.2.2.2017 - NG

Project Site

SECOND RESTAURANT AT FERRY LANDING



I:\PROJECTS\SSUP\SUP-08_CoronadoFerryLanding\Map\Task2\Fig1_SitePlan.indd - SUP-08.2.2.2017 - NG

Source: JWDA, 2017

Proposed Site Plan
NEW RESTAURANT AT FERRY LANDING












Figure 2

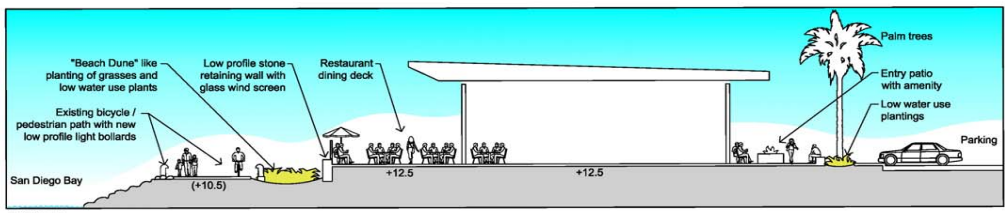




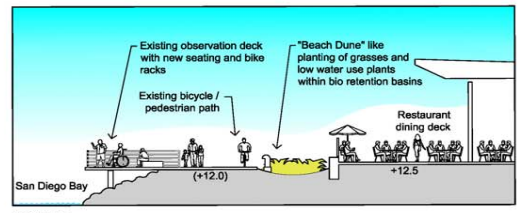
LANDSCAPE CONCEPT PLAN
1" = 10'-0"

LEGEND

-  EXISTING OBSERVATION DECK WITH SEATING
-  EXISTING OBSERVATION DECK
-  "BEACH DUNE" LIKE PLANTING OF GRASSES AND LOW WATER USE PLANTS
-  PALM TREE
-  GLASS WIND SCREEN
-  BICYCLE RACK
-  LOW PROFILE STONE WALL WITH GLASS WIND SCREEN
-  RESTAURANT OUTDOOR SEATING WITH AMENITIES
-  LOW PROFILE PATHWAY BOLLARD LIGHTING
-  DECORATIVE PAVING
-  Wood Pavers Decking



SECTION A-A
LANDSCAPE SECTIONS
N.T.S.



SECTION B-B

PARTERRE
SITE PLANNING
URBAN DESIGN
LANDSCAPE ARCHITECTURE
1221 HAYES AVENUE
SAN DIEGO, CALIFORNIA 92103

Fig.5_LandscapePlan.mxd - SUP-08 2/2/2017 - NG

Source: JWDA, 2017

Proposed Landscape Plan

NEW RESTAURANT AT FERRY LANDING

Figure 3



I:\PROJECTS\SUP\SUP-08_CoronadoFerryLanding\Map\Task2\Fig6_RenderingDaytime.indd SUP-08 22/2017 - NG

Source: JWDA, 2017

Architectural Rendering (Daytime)

NEW RESTAURANT AT FERRY LANDING



I:\PROJECTS\SUP\SUP-08_Coronado\FerryLanding\Map\Task2\Fig7_Rendering\Night.indd - SUP-08-2/2/2017 - NG

Source: JWDA, 2017

Architectural Rendering (Nighttime)

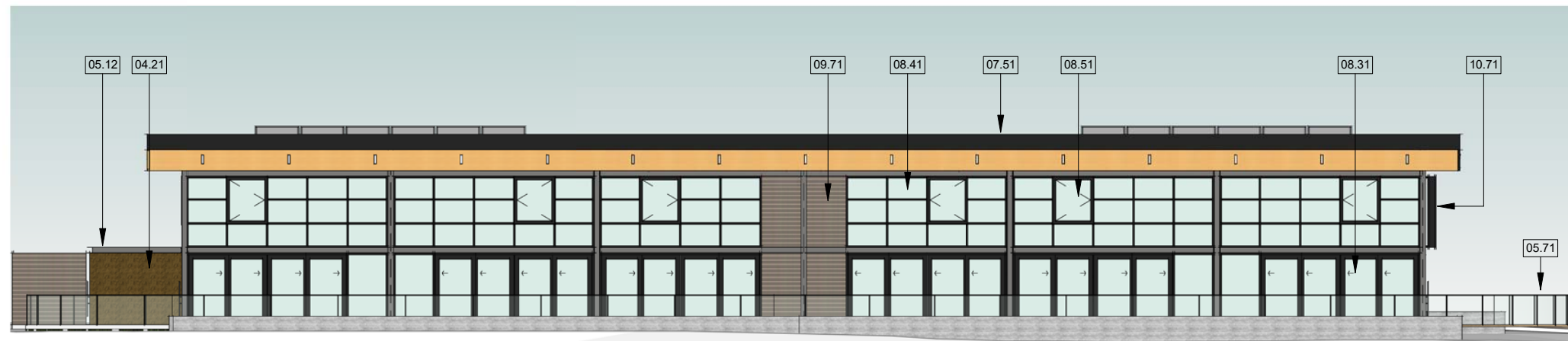
NEW RESTAURANT AT FERRY LANDING



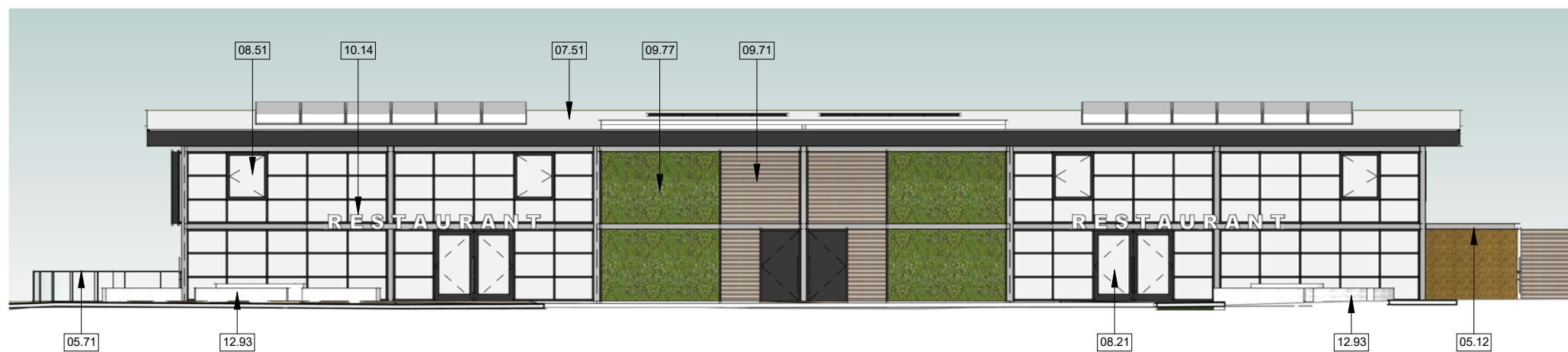
1 BUILDING ELEVATION - WEST



2 BUILDING ELEVATION - EAST



3 BUILDING ELEVATION - NORTH



4 BUILDING ELEVATION - SOUTH

KEY NOTES - 01 CONCEPT DESIGN	
04.21	CONCRETE MASONRY UNITS
05.12	METAL FRAMING - PER STRUCTURAL
05.71	GLASS & METAL RAILING
07.51	REFLECTIVE TPO ROOFING OVER ROOF ASSEMBLY
08.21	DOOR PER SCHEDULE
08.31	SPECIALTY DOOR - SLIDING/ RETRACTABLE
08.41	STOREFRONT SYSTEM
08.51	OPERABLE WINDOW
09.71	COMPOSITE WOOD WALL PANELS
09.77	VEGETATED WALL SYSTEM OVER EXTERIOR WALL ASSEMBLY
10.14	DIMENSIONAL LETTERS SIGNAGE
10.71	EXTERIOR SUN CONTROL DEVICES
12.93	SITE IMPROVEMENTS - PER LANDSCAPE

I:\PROJECTS\SUP\SUP-08_CoronadoFerryLanding\Map\Task2\Fig8_BuildingElevations.indd - SUP-08.2/2/2017 - NG

Source: JWDA, 2017

Building Elevations

NEW RESTAURANT AT FERRY LANDING

New Restaurant at Ferry Landing

Mitigation, Monitoring, and Reporting Program

Prepared for:



San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

July 2018

1.0 Mitigation, Monitoring, and Reporting Program

1.1 Purpose

This Mitigation Monitoring and Reporting Program (MMRP) was prepared for the proposed New Restaurant at Ferry Landing Project (project or proposed project) to comply with Section 15097 of the California Environmental Quality Act (CEQA) and Public Resources Code Section 21081.6. Public Resources Code Section 21081.6 requires the Lead Agency for each project subject to CEQA to adopt a reporting or monitoring program for changes made to the project or conditions of approval adopted in order to mitigate or avoid significant effects on the environment. The Lead Agency must also monitor performance of the mitigation measure included in any environmental document to ensure that implementation takes place. The Lead Agency is responsible for review of all monitoring reports, enforcement actions, and document disposition. The Lead Agency will rely on information provided by a monitor as accurate and up to date and will field check mitigation measure status as required.

The purpose of the MMRP is to ensure that the mitigation measures, required by the Final Environmental Impact Report (FEIR), are properly implemented. As the Lead Agency for the project under CEQA, the San Diego Unified Port District (District) will monitor the mitigation measures for construction and operation of the proposed project. The District may modify how it will implement a mitigation measure, as long as the alternative means of implementing the mitigation still achieves the same or greater impact reduction. An effective reporting system shall be established prior to any monitoring efforts. Copies of the measures shall be distributed to the participants of the mitigation monitoring measures adopted. The MMRP includes specific conditions and mitigation measures listed in the FEIR for the Wharf Development, several of which have been completed in prior to previous development at the Wharf Development project area.

1.2 Mitigation Monitoring Checklist

The Mitigation Monitoring Checklist (Table MMRP-1) provides a mechanism for monitoring the mitigation measures in compliance with the FEIR. The Mitigation Monitoring Checklist is organized by categories of environmental impacts. Numbering has been added to the mitigation measures, which were not numbered in the FEIR, and the specific conditions are numbered similar to how they are presented in the FEIR. Potential impacts identified in the FEIR are summarized for each impact area and the required mitigation measures are listed. The checklist identifies the implementation schedule, who is responsible for implementing the measure, and required monitoring and reporting frequency, and who is responsible for verification of implementation. A description of these items is provided below.

Mitigation Measure or Specific Condition. The specific mitigation measure or specific condition language as described in the FEIR is listed in this category.

Monitoring Requirement. Specific requirements are provided for use by District staff to ensure that measures and specific conditions are appropriately implemented.

Responsible Party for Mitigation Implementation. This column explains who will ensure that the mitigation measure or specific condition is properly implemented. The District shall be responsible for either monitoring each measure or specific condition, or may delegate an agency or party at their discretion.

Completion Requirement. The mitigation measure or specific condition required for the project will be implemented at various times as construction proceeds and during operations.

Agency Responsible for Verification. This column describes who will be ultimately responsible for ensuring that each mitigation measure or specific condition is monitored and who will coordinate the final reporting program.

**Table MMRP-1
NEW RESTAURANT AT FERRY LANDING PROJECT
ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT MITIGATION MONITORING AND REPORTING PROGRAM**

FEIR Mitigation Measure or Specific Condition	Monitoring Requirement	Responsible Party for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>SC-1: That any subsequent commercial recreation development will meet the District's on-site parking requirements as set forth in the Final EIR as follows: retail and associated office: 1 parking space per 200 square feet; restaurants: 1 parking space per 3 seats or 1 space per 100 square feet, whichever is greater; accommodation docks: 1 space per slip.</p>	Prior to operation	Applicant	Prior to operation	District
<p>SC-2: That as mitigation for the incremental increase in traffic generated by the project and cumulative effects upon State Route 75/State Route 282, the District will require as a condition of any subsequent project approval of a commercial recreation development that the Applicant shall make appropriate; and reasonable monetary contributions for controls and improvements at the intersections of Fourth Street and Orange Avenue, if and when constructed and implemented by the responsible jurisdictions (CALTRANS and/or City of Coronado).</p> <p>To improve access, the Applicant will install a left east-bound First Street. Concurrently, a right-turn installed from east-bound First Street onto southbound "A" Street. Both turn lanes will be installed within the existing; street width.</p> <p>The implementation of the traffic circulation mitigation measures is within the purview of Coronado and CALTRANS. They have been recommended for implementation in the Memorandum of /Agreement among the City of Coronado, San Diego Association of Governments, California Department of Transportation District 11, \NAS North Island, and the San Diego Branch, Western Division, NAVFACENGCOM, dated July 20, 1984 and made part of the NAS North Island-Coronado Commuter Access Plan (July 1984), prepared by the San Diego Association of Governments.</p>				<p>Due to a reduction in development and improved surrounding traffic conditions, the proportional contribution of traffic has been reduced and would avoid a significant impact. Further implementation and monitoring is not warranted.</p> <hr/> <p>The right-turn lane from eastbound First Street onto southbound "A" Street has been completed. Due to a reduction in development, site access impacts have been avoided and the left-turn lane on east-bound First Street into the project site is not necessary to reduce impacts to less than significant. Further monitoring and verification is not warranted.</p>

Second Addendum to the Wharf Development FEIR
Mitigation, Monitoring, and Reporting Program

**Table MMRP-1
NEW RESTAURANT AT FERRY LANDING PROJECT
ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT MITIGATION MONITORING AND REPORTING PROGRAM**

FEIR Mitigation Measure or Specific Condition	Monitoring Requirement	Responsible Party for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>SC-3: That a mitigation plan for the transplantation of eelgrass on one-to-one area replacement basis for any that is impacted by in-water construction or development, including provisions for regular monitoring and subsequent transplantation over a three year period, shall be submitted by the Applicant for approval by the Department of Fish and Game, National Marine Fisheries Service, and the District.</p>	No in-water work is proposed and further monitoring and verification is not warranted.			
<p>SC-4: That to minimize short term noise impacts during construction, the Applicant will require the construction contractor to (1) restrict normal construction activities to the hours 7 a.m. to 7 p.m. weekdays; (2) keep construction equipment as far as possible from sensitive receptors; and (3) provide acoustical shielding around night operating construction equipment (10 p.m. to 7 a.m.).</p>	During construction	Applicant/Contractor	At the end of construction	District
<p>To minimize noise levels to adjacent residents from normal operations of the development, the Applicant will relocate the access/egress driveway, as originally shown in Figure 2.3, about 50 feet to the west (not within A Avenue).</p>	This specific condition has been implemented and further monitoring and verification is not warranted.			
<p>A 6-foot high sound attenuation wall will be built along the fenceline of the condominium's western border.</p>	This specific condition has been implemented and further monitoring and verification is not warranted.			
<p>An 8-foot high sound attenuation wall will be constructed at the property line on the east side of the project site.</p>	This specific condition was not implemented due to objections by residents and would not be required for the proposed project.			
<p>The lessee will arrange for business hour (8 a.m. to 5 p.m.) pick-up of trash dumpsters.</p>	During operations	Applicant	Ongoing	District
<p>SC-5: That to minimize fugitive air emissions during construction, the Applicant will require the construction contractor to keep fugitive dust down by regular wetting of work areas.</p>	During construction	Applicant/Contractor	At the end of construction	District
<p>SC-6: To minimize nuisance odors from restaurants, the lessee will require vendors to use and regularly maintain after-burners or carbon filters to reduce odorous emissions from food establishments.</p>	During operations	Applicant	Ongoing	District

**Table MMRP-1
NEW RESTAURANT AT FERRY LANDING PROJECT
ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT MITIGATION MONITORING AND REPORTING PROGRAM**

FEIR Mitigation Measure or Specific Condition	Monitoring Requirement	Responsible Party for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
SC-7: That to minimize nuisance effects from light or glare, the contractor will use sodium vapor lights during construction, and shield and direct night lighting away from residences. The proposed project design includes cowls on light standards to control off-site spillage of night lighting and sky glow. Landscaping will be used along the project perimeter to cut down the effects of night lighting and glare from passing and parked vehicles.	During construction	Applicant/Contractor	At the end of construction	District
SC-8: As the existing site is contaminated with hazardous wastes and to determine the extent of subsurface contamination and alternatives for site remediation, the Applicant will prepare a Site Assessment and Remediation Plan to the satisfaction of the County Department of Health Services, Regional Water Quality Control Board, Air Pollution Control District, and District. Site remediation shall be required to be implemented prior to or concurrent with construction of the development.	This specific condition has been implemented and further monitoring and verification is not warranted.			
AES-1: The Wharf on San Diego Bay includes the following design features which mitigate impacts resulting from the visual intrusion of the project into a largely residential area: 1) extensive landscaping;	During project review	Applicant	During project review	District
2) solid fences and landscape buffer along edges of the project;	During project review	Applicant	During project review	District
3) below grade parking;	A surface parking lot has been constructed at the project site and no additional parking is proposed. Further monitoring and verification is not warranted.			
4) waterfront/nautical design theme; and	During project review	Applicant	During project review	District
5) an apron wharf for public access to view of the Bay.	The apron wharf has been implemented and further monitoring and verification is not warranted.			
AES-2: The Applicant will use sodium vapor light bulbs during construction and shield direct night lighting away from homes. The proposed project design includes cowls on light standards to control	Upon completion of landscaping improvements	Applicant	Prior to occupancy	District

Second Addendum to the Wharf Development FEIR
Mitigation, Monitoring, and Reporting Program

**Table MMRP-1
NEW RESTAURANT AT FERRY LANDING PROJECT
ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT MITIGATION MONITORING AND REPORTING PROGRAM**

FEIR Mitigation Measure or Specific Condition	Monitoring Requirement	Responsible Party for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
off-site spillage of night lighting and sky glow. Trees will be used along the project perimeter to cut down the effects of night lighting and glare from passing and parked vehicles.				
AES-3: None planned by the Applicant. The project could be redesigned to preserve some private Bay views. This would require a lower density development and positioning of buildings to allow view corridors. A lower density development with view corridors would only partially mitigate the impact to private adjacent residences.	The proposed project has been redesigned to include a single-story building that is reduced in height and no further implementation or monitoring of this measure is necessary.			
AES-4: Project implementation, however, would provide a significant increase in opportunity for the public to view the bay and San Diego skyline. Public views to the bay would be provided from the piers, the bayside promenade and bicycle path, and the proposed bayside dining and commercial establishments.	Previous development of the Ferry Landing site has included increased public views of the Bay from the piers, the bayside promenade, and existing restaurants, and no further implementation or monitoring of this measure is necessary.			
AQ-1: The Applicant will require the construction contractor to keep fugitive dust down by regular wetting of work areas.	During construction	Applicant/Contractor	At the end of construction	District
AQ-2: To reduce short-term impacts from construction activities for the project, the Applicant will require the construction contractor to control fugitive dust by regular wetting of work areas.	During construction	Applicant/Contractor	At the end of construction	District
AQ-3: To reduce natural gas and energy consumption, the Applicant will design structures for efficient energy use. Energy-saving devices will be installed as part of the proposed project.	During project review	Applicant	During project review	District
AQ-4: Design the structures for efficient energy use to reduce natural gas and electrical consumption.	During construction	Applicant	Prior to issuance of occupancy permits	District
AQ-5: Install energy saving devices such as setback thermostats, solar lighting, and solar water heaters.	During construction	Applicant	Prior to issuance of occupancy permits	District
AQ-6: The lessee will require vendors to use and regularly maintain after-burners or carbon filters to reduce odorous emissions from food establishments.	During operations	Applicant	Ongoing	District

**Table MMRP-1
NEW RESTAURANT AT FERRY LANDING PROJECT
ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT MITIGATION MONITORING AND REPORTING PROGRAM**

FEIR Mitigation Measure or Specific Condition	Monitoring Requirement	Responsible Party for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
AQ-7: Require vendors to use and regularly maintain afterburners or carbon filters to reduce odorous emission from food establishments	During operations	Applicant	Ongoing	District
BIO-1: The Applicant will relocate or replace lost eelgrass to the sandy bottom area at the northern-most end of the site where the planned "L" dock is set from the project boundary. Alternatively, the Applicant will join in off-site transplant program, as approved by appropriate resource agencies.	No in-water work is proposed and further monitoring and verification is not warranted.			
CUL-1: Any previously unidentified historical resources discovered during project construction will be afforded full protection by the Applicant until qualified personnel can assess their importance.	During construction	Applicant/Contractor	At the end of construction	District
HAZ-1: To determine the extent of subsurface contamination and alternatives for site remediation, the Applicant will prepare a site Assessment and Remediation Report. Site remediation recommendation(s) contained in this document will be implemented.	This mitigation measure has been implemented and further monitoring and verification is not warranted.			
HAZ-2: A Site Assessment and Remediation report will be prepared to determine the extent of subsurface contamination and alternatives for site remediation. Specific tasks to be undertaken as part of the Site Assessment and Remediation analysis would include the following: a. Preparation of a thorough site history review to target additional areas of potential waste accumulation. b. Additional subsurface investigations which may include drilling, soil and groundwater sampling, geophysical exploration, and monitoring. c. Laboratory analysis of selected samples; and d. Preparation of site remediation alternatives.	This mitigation measure has been implemented and further monitoring and verification is not warranted.			
NOI-1: The Applicant will require the construction contractor to: 1) restrict normal construction activities to the hours of 7 a.m. to 7 p.m. weekdays; 2) keep construction equipment as far as possible from	During construction	Applicant/Contractor	At the end of construction	District

**Table MMRP-1
NEW RESTAURANT AT FERRY LANDING PROJECT
ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT MITIGATION MONITORING AND REPORTING PROGRAM**

FEIR Mitigation Measure or Specific Condition	Monitoring Requirement	Responsible Party for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
sensitive receptors; and 3) provide acoustical shielding around night-operating construction equipment (10 p.m. to 7 a.m.) .				
<p>NOI-2: To reduce short-term noise impacts during the construction phase of the project, the following measures will be implemented:</p> <p>a. Normal construction activities will be restricted to weekday daylight working hours (7:00 a.m. to 7:00 p.m.). During any emergency operation at nighttime, special measures, such as using less noisy equipment (based on manufacturer's specifications and properly maintained) should be considered when possible to limit adverse noise impact on the residential areas.</p> <p>b. Construction equipment will be kept as far as possible from sensitive receptors; and</p> <p>c. Acoustic shielding (temporary walls and noise barriers) around night-operating (10:00 p.m. to 7:00 a.m.) construction equipment will be used.</p>	During construction	Applicant/Contractor	At the end of construction	District
<p>NOI-3: The Applicant will relocate the access/egress driveway as originally shown in Figure 2.3, about 50 feet to the west. A 6-foot sound wall will be built along the fenceline of the condominium's western border. An 8-foot noise wall will be constructed at the property line on the south and east side of the proposed project site.</p>	This mitigation measure has been implemented and further monitoring and verification is not warranted.			
<p>NOI-4: The lessee will arrange for a business hour (8 a.m. to 5 p.m.) pick-up of the dumpster.</p>	During operations	Applicant	Ongoing	District
<p>TRA-1: The Applicant will contribute a fair share to the cost of recommended improvements, if and when the City of Coronado decides to signalize this intersection [First Street and Orange Avenue]. The Applicant's share is expected to be based upon no more than their proportional contribution to the total traffic at the impacted intersection.</p>	This mitigation measure has been implemented and further monitoring and verification is not warranted.			

**Table MMRP-1
NEW RESTAURANT AT FERRY LANDING PROJECT
ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT MITIGATION MONITORING AND REPORTING PROGRAM**

FEIR Mitigation Measure or Specific Condition	Monitoring Requirement	Responsible Party for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
TRA-2: The Applicant will contribute a fair share to the cost of recommended improvements, if and when CALTRANS decides to improve the junction of SR75 and 282. The Applicant's share is expected to be based upon no more than their proportional contribution to the total traffic at the impacted intersection.				
TRA-3: To insure safe access, the Applicant will install a left-turn lane on east-bound First Street. Concurrently, a right-turn lane will be installed from eastbound First Street onto southbound "A" Street. Both turn lanes will be installed within the existing street width.				
TRA-4: Ferry, water taxi, bus and shuttle service connect the project to Coronado and other points on San Diego Bay. The traffic consultant estimates a potential reduction in demand for parking of 12 to 15%. Onsite parking would still be less than the estimated demand between 6 p.m. and 9 p.m. of up to 57 spaces.				
TRA-5: To eliminate a parking shortfall, either the number of parking spaces would need to be increased, the mix of restaurant use decreased in favor of retail, or the overall density of the project decreased.				

SECOND AMENDMENT TO SUBLEASE AGREEMENT

This Second Amendment to Sublease Agreement (“**Second Amendment**”) is made and entered into a of _____, 2024 by and between Ferry Landing Associates, LLC, a California limited liability company (“**Sublessor**”). and Island Times, LLC, a California limited liability company (“**Sublessee**”).

RECITALS

WHEREAS, Sublessor and Sublessee entered into that certain Sublease Agreement dated as of July 12, 2023 (as amended by that certain First Amendment to Sublease dated July 31, 2024, the “**Sublease**”); and

WHEREAS, as part of obtaining the District’s consent to the Sublease, the District is requiring certain amendments to the Sublease, as set forth in this Second Amendment.

NOW, THEREFORE, for and in consideration of the Premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged and confessed, and as a condition to obtaining the District’s consent to the Sublease, Sublessor and Sublessee hereby covenant and agree as follows:

1. **Defined Terms**. All terms used in this Second Amendment which are not otherwise defined in this Second Amendment are used with the same meaning attributed to such terms in the Sublease. For purposes of the Sublease (as amended and/or modified), the “**Master Lease**” shall refer to that certain Lease between the District and Sublessor dated October 21, 1997 and filed in the Office of the District Clerk as Document No. 36616, as amended by that certain Agreement for Amendment of Lease Amendment No. 1 dated October 9, 2001 and filed in the Office of the District Clerk as Document No. 42938, that certain Agreement for Amendment of Lease Amendment No. 2 dated July 12, 2005 and filed in the Office of the District Clerk as Document No. 49282, that certain Agreement for Amendment of Lease Amendment of Lease No. 3 dated July 2, 2008 and filed in the Office of the District Clerk as Document No. 53657, that certain Agreement for Amendment of Lease Amendment No. 4 dated September 1, 2016 and filed in the Office of the District Clerk as Document No. 65563, and as further amended or modified. In the event that the Master Lease is amended and restated, then “**Master Lease**” as used in this Sublease shall mean such Master Lease as amended and restated.

2. **Additional Terms**. The Sublease is amended to include the following terms:

a. Sublessor and Sublessee acknowledge and agree that Sublessor’s rights to the Premises are pursuant to the Master Lease. Sublessor and Sublessee both acknowledge and agree that notwithstanding anything to the contrary stated or implied in the Sublease (as amended and/or modified), the Sublease shall at all times be subject and subordinate, in all respects, to the Master Lease, and the Sublease is a sublease being created under the authority of the Master Lease, the terms of which shall be incorporated into the Sublease.

b. In no event shall Sublessee have any rights under the Sublease which have not been granted to Sublessor under the Master Lease nor may Sublessee take any action under the Sublease that would violate any term, provisions, requirement, or condition of the Master Lease. Sublessor and Sublessee acknowledge and agree that nothing contained in the Sublease shall in any way amend or modify any of the rights and obligations of District and Sublessor under, nor be used in the interpretation of any provision of, the Master Lease, including, but not limited to, those provisions governing approvals of any modifications and/or alterations to the Premises. Nothing in the Sublease (as amended and/or modified) is

to be construed as an approval by the District of any project described or set forth in the terms of the Sublease and District retains all discretion under the Master Lease to approve, disapprove, and/or condition its approval on any proposed modifications and/or alterations of the Premises proposed by Sublessor and/or Sublessee.

c. Sublessor and Sublessee understand and agree that nothing contained in the Sublease shall be binding on or enforceable against District, nor will District incur any liability arising out of or relating to the Sublease and Sublessor and Sublessee hereby release and agree to jointly and severally indemnify and hold District harmless from and against any litigation, claim, action, proceeding, loss, damage, cost, expense (including, without limitation, all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, or relating to, the Sublease.

d. Sublessee agrees, that if the Master Lease terminates, or if District succeeds to Sublessor's estate in the Premises, Sublessee shall, at the option of District (in District's sole and absolute discretion), attorn to and recognize District as Sublessee's Sublessor under the Sublease, provided that District shall not: (i) be liable for any act or omission or negligence of Sublessor; (ii) be subject to any counterclaim, offset, or defense which theretofore accrued to such Sublessee against Sublessor; (iii) be bound by any payment of rent or other sums of money for more than one (1) month in advance or any security deposit (unless actually received by District); (iv) be obligated to perform any work in the Premises under the Sublease; (v) in the event of a casualty, be obligated to repair or restore any improvements or make any payment to Sublessee; (vi) in the event of a taking, be obligated to repair or restore any improvements or make any payment to Sublessee; or (vii) be bound by any obligations that District lacks the capacity to perform. Sublessee shall promptly execute and deliver any instrument District may reasonably request to evidence such attornment.

e. Sublessee agrees to make all payments of rent and other sums of money due under the Sublease to District during the existence of a default under the Master Lease and following written notice of the same from District, and District shall apply said payments made to all rent that is due and payable to District pursuant to the Master Lease, and any remaining amounts will be held and applied to future rent payable under this Master Lease.

f. In the event of a conflict between the terms of this Section 2 of this Second Amendment and the other terms of the Sublease (as amended), the terms of this Section 2 shall control.

3. **Counterparts.** This Second Amendment may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Second Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Second Amendment and of signature pages by electronic mail transmission (e.g., in .PDF format) will constitute effective execution and delivery of this Second Amendment as to the parties and may be used in lieu of the original copy for all purposes. Signatures of the parties transmitted by electronic mail (e.g., in .PDF format) will be deemed to be their original signatures for any purpose whatsoever. Without limiting the foregoing, the words "execution," "execute," "signed," "signature," and words of like import in or related to this Second Amendment shall be deemed to include electronic signatures (e.g., through DocuSign© or other similar electronic e-signature application), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

4. **Sublease in Effect.** Sublessor and Sublessee hereby agree that the Sublease, as hereby amended, remains in full force and effect in accordance with its terms.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Sublessor and Sublessee have executed this Second Amendment to Sublease as of the date set forth above.

SUBLESSOR:

FERRY LANDING ASSOCIATES, LLC,
a California limited liability company

By: _____
Name: Arthur E. Engel
Title: Managing Member

SUBLESSEE:

ISLAND TIMES, LLC,
a California limited liability company

By: _____
Name: Brendan Huffman
Title: Managing Member

Attachment E



Port of San Diego

and Lindbergh Field Air Terminal

(619) 686-6200 • P.O. Box 488, San Diego, California 92112-0488

Document No. **36851**
Filed **DEC 18 1997**
SD UNIFIED PORT DISTRICT CLERK'S OFFICE

COASTAL DEVELOPMENT PERMIT

Applicant: Arthur Engle
Port Coronado Associates / Ferry Landing Associates
P.O. Box 13308
San Diego, CA 92170-3308

Agent: George Palermo, General Manager
Ferry Landing Associates, LLC
1511 Marine Way
Coronado, CA 92118

Project: THE FERRY LANDING EXPANSION

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Development Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-243, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a Emergency Non-appealable Appealable Coastal Development Permit.

Date of Board Action: October 21, 1997

BPC Resolution No. 97-248

Date of Permit: November 18, 1997

Application No. 97018-62-42

Permit No. CDP-97-3

The project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Section 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District, and subject to the terms, conditions, and provisions hereinafter stated:

DEVELOPMENT

Construction of two restaurants with a total of approximately 18,500 square feet of gross floor area, extension of the bicycle path along the waterfront, approximately 6,500 square feet of offices, parking for approximately 255 vehicles, rip-rap and revetment shoreline protection, and landscaping. The project is further described in the Environmental Assessment for the Ferry Landing Expansion dated July 20, 1995, and in current plans on file with the San Diego Unified Port District.

STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the San Diego Unified Port District.
5. Permittee shall commence development within two years following the date of permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
6. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. This permit shall not be valid until two copies of the permit have been returned to the Planning and Environmental Management Department of the San Diego Unified Port District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations and provisions of the permit.

SPECIAL PROVISIONS

1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm, (b) keep construction equipment as far as possible from sensitive receptors, and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.

COASTAL DEVELOPMENT PERMIT NO. CDP-97-3

- 2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular wetting.
- 3. To minimize nuisance effects from lights or glare during construction, the contractor will use sodium vapor lights, and will shield and direct night lighting away from residences.
- 4. To minimize noise from normal operations, the permittee will relocate the access/egress driveway west of A Street (extended).
- 5. To minimize noise, a sound attenuation wall will be constructed at the property line on the south and east side of the project site. The height of the wall will be no higher than 8 feet, however it may be less than 8 feet if agreed to, in writing, by the abutting property owner.
- 6. The permittee will arrange for pick-up of trash dumpsters between 7:00 am and 7:00 pm.

If you have any questions concerning this permit, please contact the Planning and Environmental Management Department of the San Diego Unified Port District.

LAWRENCE M. KILLEEN, Executive Director

By: John Wehbring
 JOHN L. WEHBRING, Senior Environmental
 Planner

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

AKL
 Signature of Permittee

11/26/97
 Date

36851

Re Coastal Development Permit -]
The Ferry Landing Expansion, Coronado]
_____]

RESOLUTION 97-248

WHEREAS, pursuant to Ordinance 1926, adopted on October 21, 1997, the Board granted a lease to Ferry Landing Associates for the construction and operation of Two (2) restaurants in Coronado, east of the Ferry Landing Marketplace; and

WHEREAS, on June 7, 1995, the Board of Port Commissioners (Board) granted conceptual approval for The Ferry Landing Expansion Project (Project) located on tidelands in the City of Coronado; and

WHEREAS, the San Diego Unified Port District is trustee of said tidelands; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for the construction of said Project; and

WHEREAS, the Board held a noticed public hearing on the Coastal Development Permit on October 21, 1997; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the Port District Master Plan and the public access requirements of the California Coastal Act; and

WHEREAS, the Board has certified the Final Environmental Impact Report entitled "Coronado Boatyard Plan Amendment, The Wharf Development" (UPD No. 83356-EIR-143), NOW, THEREFORE,

BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Board further finds:

97-248

1. The Project, in general, consists of the construction of Two (2) restaurants with a total of approximately 18,500 square feet of gross floor area, an extension of the bicycle path along the waterfront, approximately 6,500 square feet of offices (existing building on site), parking for approximately Two Hundred Fifty Five (255) vehicles, riprap and revetment shoreline protection and landscaping, the existing piers will be rebuilt in their current configuration and location on the waterfront and will be integrated with the riprap shoreline revetment; said Project is located in Planning District 6 of the Port District Master Plan, the Precise Plan for which provides for use as "Commercial Recreation".

2. The proposed use for the Project is consistent with the use and development concept for the Coronado Bayfront area as provided in said Port District Master Plan and, as such, is an Appealable Development which conforms to the certified Port District Master Plan. The proposed Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea, and said Project is consistent with Public Resources Code Sections 30604(c) and 30210-30224, and the Coastal Act public access and recreation policies referenced therein because it maximizes pedestrian and bicyclist access and recreational opportunities to and along the Bay within the framework of the Port District's Bay Access Plan.

3. The proposed Project which is entitled "The Ferry Landing Expansion" is consistent with and conforms to the Port District Master Plan, and, accordingly, the Executive Director or his authorized representative is hereby authorized and directed to issue a Coastal Development Permit for said Project after the Ten (10) day appeal period as described in the Coastal Development Permit Regulations of the District has passed.

ADOPTED this 21st day of October, 1997.

sw
10/21/97

DRAFT

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE xxxx

ORDINANCE GRANTING AN OPTION TO LEASE AGREEMENT TO FERRY LANDING ASSOCIATES, LLC, WHICH OPTION INCLUDES AN AMENDED AND RESTATED LEASE, A FIFTH AMENDMENT TO LEASE, A MEMORANDUM AND QUITCLAIM DEED, AND A PARKING AND ACCESS EASEMENT AGREEMENT, AND ALSO CONDITIONALLY APPROVING A 20-YEAR LONG-TERM SUBLEASE WITH ISLAND TIMES, LLC

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

WHEREAS, Section 21 of the Port Act requires that all grants, franchises, leases, permits or privileges for more than five (5) years shall be made by ordinance; and

WHEREAS, in 1997, the District and Ferry Landing Associates, LLC, a California limited liability company (FLA), entered into a 40-year Lease for approximately four acres of land and three acres of water area on the bayfront in Coronado, south of the Ferry Landing Marketplace (Current Lease)¹; and

WHEREAS, the leasehold, which is located at 1311 First Street in the City of Coronado (Property) as shown on Attachment A to the corresponding agenda sheet to which this Ordinance relates, includes a restaurant, a small office building, and a vacant restaurant pad; and

WHEREAS, the Current Lease, which is scheduled to expire on August 31, 2037, requires the development of two restaurant buildings and a small office building; and

¹ Lease recorded in the Office of the District Clerk on March 26, 1998 as Document No. 36616, as amended by Amendment No. 1 recorded on April 2, 2002 as Document No. 42938, Amendment No. 2 recorded on August 11, 2005 as Document No. 49282, Amendment No. 3 recorded on July 2, 2008 as Document No. 53657, and Amendment 4 recorded on September 1, 2016 as Document 65563.

XXXX

WHEREAS, pursuant to the Current Lease, the two restaurants were to be constructed by December 31, 2008; and

WHEREAS, the small office building and one restaurant building, which is currently occupied by Il Fornaio, were completed in 1999; however; the second restaurant was never built; and

WHEREAS, in 2018, FLA received Concept Approval from the Board of Port Commissioners (Board) for the development of a new proposed 7,500 square foot restaurant building on the vacant pad adjacent to Il Fornaio restaurant; and

WHEREAS, after extensive negotiations, District staff and FLA have agreed on an approach that if approved by the Board, would enable FLA to: (1) develop the vacant restaurant pad with the previously approved 7,500 square foot restaurant; (2) upon completion of the new restaurant, obtain an additional 12 years of lease term; and (3) provide for the vacant restaurant parcel to be turned over to the District if FLA is unsuccessful in developing the parcel; and

WHEREAS, the recommended approach includes the following transaction components:

- Enter into an Option to Lease Agreement (Option) in the form of Attachment B to the corresponding agenda sheet to which this Ordinance relates for the entire current leasehold, that contains four exhibits: (i) an Amended and Restated Lease as Exhibit A (A&R Lease); (ii) a Fifth Amendment to the Current Lease as Exhibit B (Fifth Amendment); (iii) a Memorandum and Quitclaim Deed as Exhibit C (Memorandum and Quitclaim); and (iv) a Parking Easement Agreement as Exhibit D (Parking Easement);
- Concurrently with the execution of the Option, FLA to deliver to the District executed counterparts of the Fifth Amendment, the Memorandum and Quitclaim, and the Parking Easement;
- If FLA timely completes the pre-development conditions set forth in the Option, FLA would be entitled to enter into the A&R Lease with District;
- If FLA timely develops the new restaurant pursuant to the terms of the A&R Lease, and provided the other conditions in the A&R Lease are met, FLA would be entitled to extend the term of the A&R Lease by 12 years through August 31, 2049 upon payment of \$1,000,000 to be paid over 10 years commencing in 2039; and
- If FLA fails to timely satisfy the preconditions in the Option, the Current Lease would remain in effect, the Fifth Amendment and Memorandum and Quitclaim would become effective and remove the vacant restaurant pad and adjacent waterside parcel from the premises under the Current Lease, and the Parking Easement would become effective to provide for the shared use between FLA and the District (or future tenant of the vacant restaurant parcel) of the parking lot and drive aisles located on the Property; and

XXXX

WHEREAS, the A&R Lease, the execution of which is conditioned on FLA successfully satisfying the preconditions in the Option, also contains numerous deadlines and penalties in order to incentivize FLA to successfully construct and open the new restaurant; and

WHEREAS, in the event the new restaurant is not timely completed within 2.5 years of the A&R Lease's effective date, then the District has the option to exercise a streamlined remedy of removing the vacant restaurant parcel and adjacent waterside parcel from the leasehold; and

WHEREAS, construction and operation of the proposed approximately 7,500 square foot single story restaurant located on the vacant restaurant pad adjacent to the Il Fornaio was analyzed in a Second Addendum to the Final Environmental Impact Report for the Coronado Boatyard Plan Amendment - The Wharf Development Project adopted by the Board on July 17, 2018 pursuant to Resolution No. 2018-131; and

WHEREAS, construction of the new restaurant will require the issuance of Amendment No. 2 of Appealable Coastal Development Permit 97-3; and

WHEREAS, the potential 12-year lease term extension under the A&R Lease will facilitate a 20-year sublease with Island Times, LLC dba Social Syndicate, a local restaurant group which operates several community focused concepts such as Rosie O'Grady's and The Rabbit Hole in Normal Heights, La Doña and OB Surf Lodge in Ocean Beach, The Local Pacific Beach, and the Monarch Ocean Pub in Del Mar, the latter of which will be the proposed concept for the Property; and

WHEREAS, as part of the proposed Board action, staff recommends the Board approve of FLA's sublease with Island Times, LLC (Sublease) in the form of Attachment C to the corresponding Agenda Sheet to which this Ordinance relates, provided that such approval is conditioned upon FLA and Island Times executing a Second Amendment to Sublease substantially in the form of Attachment D to the corresponding agenda sheet to which this Ordinance relates, which Second Amendment contains the District's standard terms and conditions included in consents to subleases; and

WHEREAS, FLA has demonstrated a strong desire to develop the vacant parcel into an exciting new restaurant concept, and the Option and associated documents would incentivize FLA to successfully complete construction, while a failure to timely do so would permit the District to remove the vacant pad and accompanying waterside parcel from the leasehold under a streamlined procedure to allow the District to select a new developer for the parcel; and

WHEREAS, staff believes that FLA successfully developing the restaurant and having it operated by Social Syndicate would likely benefit the District by

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introducing an exciting new concept to the District's restaurant portfolio, increasing rent, and resulting in improvements with an extensive useful life beyond the extended term of the A&R Lease; and

WHEREAS, for the reasons set forth in this Ordinance and in the accompanying agenda sheet, staff recommends the Board approve of the Option to Lease as well as approve of the Sublease conditioned upon FLA and Island Times executing the Second Amendment to Sublease.

NOW, THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

1. The Option to Lease Agreement to Ferry Landing Associates, LLC is hereby approved in substantially the same form attached as Attachment B to the corresponding agenda sheet to which this Ordinance relates.

2. The Sublease between Ferry Landing Associates, LLC and Island Times, LLC, is hereby approved in substantially the same form attached as Attachment C to the corresponding agenda sheet to which this Ordinance relates; provided such approval is conditioned on the full execution by Ferry Landing Associates, LLC and Island Times, LLC and effectiveness of the Second Amendment to Sublease in substantially the same form attached as Attachment D to the corresponding agenda sheet to which this Ordinance relates.

2. The Executive Director or their designated representative is hereby authorized to administratively approve and execute said Option to Lease Agreement to Ferry Landing Associates, LLC.

3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy General Counsel

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****RESOLUTION xxxx****RESOLUTION AUTHORIZING ISSUANCE OF
AMENDMENT NO. 2 OF APPEALABLE COASTAL
DEVELOPMENT PERMIT 97-3 TO FERRY LANDING
ASSOCIATES LLC FOR THE FERRY LANDING
ASSOCIATES SECOND RESTAURANT BUILDING
PROJECT AT THE FERRY LANDING IN CORONADO**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Section 21 of the Port Act authorizes the Board of Port Commissioners (Board) to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, in 1997, the District and Ferry Landing Associates, LLC, a California limited liability company (FLA), entered into a 40-year Lease for approximately four acres of land and three acres of water area on the bayfront in Coronado, south of the Ferry Landing Marketplace (Lease)¹; and

WHEREAS, the leasehold, which is located at 1311 First Street in the City of Coronado, as shown on Attachment A to the corresponding agenda sheet to which this Resolution relates, includes a restaurant, a small office building, and a vacant restaurant pad; and

WHEREAS, the Lease, which is scheduled to expire on August 31, 2037, requires the development of two restaurant buildings and a small office building; and

WHEREAS, pursuant to the Lease, the two restaurants were to be constructed by December 31, 2008; and

WHEREAS, in 1989 prior to execution of the Lease, a larger commercial development project, within which leased premises are located, was analyzed pursuant to CEQA in the Final EIR (SCH #88062222; UPD #83356-EIR-143; District Clerk Document No. 24647) for The Wharf Development Project (Final EIR); and

WHEREAS, the Final EIR analyzed full-scale redevelopment including up to three full-service restaurants, other food and beverage services shops, retail and management

¹ Lease recorded in the Office of the District Clerk on March 26, 1998 as Document No. 36616, as amended by Amendment No. 1 recorded on April 2, 2002 as Document No. 42938, Amendment No. 2 recorded on August 11, 2005 as Document No. 49282, Amendment No. 3 recorded on July 2, 2008 as Document No. 53657, and Amendment 4 recorded on September 1, 2016 as Document 65563.

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office space, a marina, and an underground parking garage, and on December 19, 1989, the Board certified the Final EIR (Resolution No. 89-382; District Clerk Document No. 24647); and

WHEREAS, on October 21, 1997, the Board authorized issuance of an appealable CDP to Port Coronado Associates/FLA for The Ferry Landing Expansion Project, and the CDP was issued on November 18, 1997 (CDP-97-3; Clerk's Document No. 36851); and

WHEREAS, the Ferry Landing Expansion Project involved construction of two restaurants with a total of approximately 18,500 square feet of gross floor area, extension of the bicycle path along the waterfront, approximately 6,500 square feet of offices, parking for approximately 255 vehicles, riprap and revetment shoreline protection, and landscaping; and

WHEREAS, an office building and one restaurant building, which is currently occupied by Il Fornaio, were completed in 1999; and

WHEREAS, in 2008, an Addendum to the Final EIR was prepared for the proposed construction of a second restaurant (District Clerk Document No. 53309) and a CDP amendment was issued (Amendment No.1 to CDP-97-3, District Clerk Document No. 53487); however, due to market conditions, the second restaurant was not constructed, and the CDP amendment expired; and

WHEREAS, on July 17, 2018, FLA received Concept Approval from the Board for the development of a new proposed 7,500 square foot restaurant building on the vacant pad adjacent to Il Fornaio restaurant (Project); and

WHEREAS, a Second Addendum to the Final EIR, dated July 2018, was prepared to analyze changes to The Wharf Development Project, and to document that none of the conditions in CEQA Guidelines Sections 15162 and 15163, triggering preparation of a subsequent or supplemental EIR, occurred; and

WHEREAS, On July 17, 2018, by Resolution No. 2018-131 the Board approved the Second Addendum to the Final EIR (Clerk's Document No. 68850); and

WHEREAS, a CDP amendment is still needed to entitle the Project, and the proposed draft Amendment No. 2 of CDP-97-3 (see Attachment E to the corresponding agenda sheet to which this Resolution relates) includes construction and operation of the second single-story restaurant with outdoor seating areas and landscaping, lighting, and stormwater bio-infiltration, among other improvements; and

WHEREAS, in accordance with Section 14.d of the District CDP Regulations, the Development Services Director determined that CDP-97-3 Amendment No. 2 is necessary, that the proposed amendment would be a material change due to the nature and extent of the proposed changes, and that material amendments are to be considered

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by the Board, along with consideration of consistency with the Port Master Plan (Plan); and

WHEREAS, the proposed development is located within Planning District 6, Coronado Bayfront, which is delineated on Precise Plan Map Figure 17 of the certified PMP; and

WHEREAS, the PMP land use designation within the limits of the Project is Commercial Recreation, and therefore, since a restaurant is an allowable use within this land use designation, the proposed CDP-97-3 Amendment No. 2 involving construction of a restaurant, is consistent with the certified PMP; and

WHEREAS, pursuant to the District's CDP Regulations, a public hearing is required for all appealable CDPs and material appealable CDP amendments, and in accordance with Section 11.d. of the CDP Regulations, on August 28, 2024 notices were mailed to certain property owners and occupants surrounding the project site, City of Coronado Mayor, City of Coronado Manager, California Coastal Commission, and certain interested parties to inform them that a public hearing will be conducted on CDP-97-3 Amendment No. 2; and

WHEREAS, a public hearing was held on September 10, 2024, and the Board found the terms of CDP-97-3 Amendment No. 2 to be in compliance with applicable policies and District's requirements, and applicable mitigation measures from the Second Addendum to the Final EIR's Mitigation, Monitoring and Reporting Program; and

WHEREAS, approval of CDP-97-3 Amendment No. 2 and construction of the Project is not a separate project for CEQA purposes but are a subsequent discretionary approval related to a previously approved project (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.); and

WHEREAS, the previously approved project was analyzed in the Second Addendum to the Final EIR, and accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no further environmental review is required; and

WHEREAS, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, the Final EIR and Addenda, the District finds that the proposed Project would not require further environmental review and no supplemental or subsequent CEQA has been triggered; and

WHEREAS, the Board actions comply with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental,

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necessary, or convenient, for the promotion and accommodation of commerce and navigation; and

WHEREAS, the Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine, and consequently, the proposed Board actions are consistent with the Public Trust Doctrine; and

WHEREAS, the proposed Board actions conform with the Coastal Act process for the Project; and

WHEREAS, as described in the corresponding agenda sheet to which this Resolution relates, District staff and FLA have agreed on an approach that would enable and incentivize FLA to develop the Project; and

WHEREAS, for the reasons set forth in this Resolution and the corresponding agenda sheet to which this Resolution relates, District staff recommends the Board adopt a resolution to authorize issuance of appealable CDP-97-3 Amendment No. 2 to FLA to allow for construction and operation of a restaurant.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners (Board) of the San Diego Unified Port District, as follows:

1. The Board finds the facts recited above are true and further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution.

2. The current Board action, including without limitation authorizing the issuance of CDP-97-3 Amendment No. 2 to CDP to Ferry Landing Associates for The Ferry Landing Expansion Project (CDP-97-3; Clerk's Document No. 36851), are not a separate project for CEQA purposes but are a subsequent discretionary approval related to a previously approved project (CEQA Guidelines § 15378(c); Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist. (2012) 206 Cal.App.4th 1036.). The previously approved project was analyzed in an Addendum (Second Addendum, Clerk's Document No. 68850) to the Final EIR for The Wharf Development Project (SCH #88062222; UPD #83356-EIR-143; District Clerk Document No. 24647). Accordingly, the Board action is merely a step in furtherance of the original project for which environmental review was performed and no further environmental review is required. Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, the Final EIR and Addenda, the Board finds that the proposed Project would not require further environmental review and no supplemental or subsequent CEQA has been triggered.

3. The Board finds that CDP-97-3 Amendment No. 2 to CDP to Ferry Landing Associates, LLC for The Ferry Landing Expansion Project (CDP-97-3; Clerk's Document No. 36851) complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works,

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buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

4. Based on the entire record available to the Board and the findings set forth in this Resolution, the Executive Director or their designated representative is hereby authorized to issue CDP-97-3 Amendment No. 2 to CDP to Ferry Landing Associates, LLC for The Ferry Landing Expansion Project (CDP-97-3; Clerk's Document No. 36851). Said Amendment No. 2 shall require compliance with all the conditions set forth in Amendment No. 2; provided, however, as a condition of this approval, Ferry Landing Associates, LLC shall indemnify and hold the San Diego Unified Port District harmless against all third-party legal challenges, claims, lawsuits, proceedings, and the like, including reimbursement of all District attorneys' fees, costs and other expenses incurred by the District, related to the District's approval of Amendment No. 2 to CDP and any development undertaken thereunder. Said indemnity and hold harmless condition is independent of any agreements by and between Ferry Landing Associates, LLC and the District.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy General Counsel

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

FILE NUMBER: 2024-336

DATE: Tuesday, September 10, 2024

SUBJECT: Sheraton San Diego Hotel and Marina Preliminary Project Review for Ballroom Expansion

DESCRIPTION: (A) Preliminary Project Review Presentation for Proposed Redevelopment and Expansion of the Ballroom and Outdoor Event Space at Sheraton San Diego Hotel and Marina Located at 1380 Harbor Island Drive in San Diego, California by SSD Holdings, LLC, a Delaware Limited Liability Company dba Sheraton San Diego Hotel and Marina Located at 1380 Harbor Island Drive in San Diego, California; and (B) Resolution Authorizing Staff to Commence Environmental Review in Accordance with the California Environmental Quality Act for the Proposed Project

EXECUTIVE SUMMARY:

The District holds a 66-year Lease with SSD Holdings, LLC, a Delaware limited liability company dba Sheraton San Diego Hotel & Marina (“SSD Holdings”), for the operation of the Sheraton San Diego Hotel and Marina on Harbor Island (“Sheraton Hotel”). The Sheraton Hotel is operated by KSL Resorts through its subsidiary, SSD Management, LLC. SSD Holdings operates the 705-room Sheraton Hotel and 40-slip marina located at 1380 Harbor Island Drive in San Diego, California (Attachment A – Location Map). Existing amenities include cafés, bars, restaurants, ballroom and meeting space, full-service spa, bicycle rentals, boat rentals, charter operations, heated outdoor swimming pools, fitness center, tennis courts, and an airport shuttle.

SSD Holdings is proposing an expansion of the hotel ballroom meeting space with a new modern and spacious facility, contiguous to existing meeting rooms, and spectacular views of San Diego Bay (“Ballroom Project”) and will be further described in the discussion section below. Since acquiring the leasehold in 2019, SSD Holdings’ goal has been to modernize and upgrade the hotel to a resort level destination with an elevated hotel guest experience, and to reposition the property more competitively in the hospitality market. Improvements already completed by KSL include renovations to the hotel meeting space, lobby, restaurant with new deck area, pool area upgrades, and other improvements.

As a result of the Board’s recent updates to Port Code Section 3.02, tenant projects that do not require both a California Environmental Quality Act (“CEQA”) document and a Coastal Development Permit (“CDP”) may proceed with project processing without requiring a Preliminary Project Review presentation to the Board. Based on staff’s assessment of the materials received from SSD Holdings, it is anticipated that the Ballroom Project could qualify for a CEQA Infill Exemption and would also require issuance of an appealable CDP. Therefore, under Port Code Section 3.02 the Ballroom Project does not require a Preliminary Project Review presentation prior to commencing project processing. However, due to the project budget of approximately \$50 million, and prominent visibility of the project, staff has elected to proceed with a Preliminary Project

Review presentation and to seek the Board's authorization to commence environmental review for the Ballroom Project.

RECOMMENDATION:

SSD Holdings, LLC dba Sheraton San Diego Hotel and Marina located at 1380 Harbor Island Drive, San Diego, California

- (A) Receive the Preliminary Project Review Presentation for Proposed Redevelopment and Expansion of the Ballroom and Outdoor Event Space at Sheraton San Diego Hotel and Marina; and
- (B) Adopt a Resolution Authorizing Staff to Commence Environmental Review in Accordance with the California Environmental Quality Act ("CEQA") for the proposed project.

FISCAL IMPACT:

Preliminary project review and authorization from the Board to commence environmental review in accordance with CEQA will not have a direct fiscal impact to the District. The proposed Project is expected to increase future revenues to the District which will be evaluated by staff as part of the due diligence process and will be presented at a future meeting.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

The Sheraton Hotel began operations on Harbor Island in June 1972, was acquired by Host San Diego Hotel LLC in 2006, and was later assigned to SSD Holdings in 2019. SSD Holdings is a subsidiary of KSL Capital Partners V, which specializes in travel and leisure enterprises. Sheraton Hotel is managed by SSD Management, LLC, a subsidiary of KSL Resorts. SSD Holdings' 66-year lease with the District expires on October 31, 2078, covers approximately 948,352 square feet of land area and 103,070 square feet of water area, and is located at 1380 Harbor Island Drive in the City of San Diego. The Lease is summarized in Attachment B – SSD Holdings Lease Information Summary.

SSD Holding's proposed Ballroom Project will enhance and modernize the hotel's offerings, furthering the goal of elevating the property to a premier resort level destination in San Diego. Resort status denotes a hospitality establishment that transcends the

traditional model of a hotel by offering a comprehensive array of amenities and recreational facilities designed to create a vacation destination experience.

Proposed Ballroom Project

The Ballroom Project includes the demolition of an existing temporary event tent structure in the southwestern corner of the parking lot, which has been used for weddings and other group events over the past two decades. The demolition will be followed by the construction of a new, approximately 71,706 square foot, 46-foot tall, tri-level facility, contiguous to the existing ten-story main hotel structure. The new three-story building will house a 20,000 square foot grand ballroom on the first level, to include the elements listed below, all of which will be built on the existing leasehold location and depicted on the attached Attachment C – Ballroom Project Renderings:

- Three new viewing decks for event patrons
- Pre-function space wrapping around the ballroom
- Support and back of house space
- Additional small conference rooms
- Lobby access
- New restrooms

SSD Holdings has provided staff with a Pre-Design package including the attached conceptual renderings and schematic drawings, which include the details of the proposed Ballroom Project. To ensure seamless integration with the existing hotel, the main access to the ballroom will be at the southwest end of the current ballroom, maintaining the same floor height for pedestrian access. The physical separation between existing buildings and the new ballroom will create an outdoor pre-function space and preserve views to the marina and the bay.

Aesthetically, the proposed Ballroom Project adopts a warm material palette featuring texturized concrete panels, wood, and stone. The pre-function space will maximize bay views, and a louvered structure will provide shade while evoking the movement of sailboats. The upper level will be capped by a roof element mimicking the hull of a ship. In terms of site enhancements, existing pavement around the southern edge of the hotel will be demolished, and access drives to the subsurface event space will be reconfigured. The main drive access to the grand ballroom will be through the existing hotel entry road, leading to a newly constructed drop-off area for events.

The proposed Ballroom Project also includes the construction of a new event lawn along the southwestern corner of the site, with direct access to the ballroom. The existing parking lot along the southeastern edge will be replaced by expanded pedestrian access to the building and lawn. Landscaping throughout will incorporate stormwater features that comply with local and state guidelines, low water vegetative screening for back-of-house areas, and new planting areas highlighting entrances to the proposed ballroom. The Harbor Island waterfront promenade along the entire shoreline perimeter of the leasehold will be widened to 15 feet providing improvements in public access. Other public access improvements include art installations and sitting areas. The existing Sheraton Hotel facilities are open to the public inside and out for the public to enjoy, and

the proposed new event lawn will provide public access as well when events are not taking place.

Project benefits include improved vehicular and pedestrian access, accessibility features, enhanced overall guest experience, widened public access promenade, modernization and expansion of group meeting space, enhanced competitiveness in the San Diego hospitality market attracting more visitors to the area, new job creation and other enhancements.

Review of Board of Port Commissioners Policy No. 355 and Ordinance 3076

Board of Port Commissioners Policy No. 355 Real Estate Leasing Policy provides for tenant investments that may qualify for lease term extensions along with project submittals that are presented to the Board for consideration of the project and term extensions. Since SSD Holdings is not requesting any lease term extension in connection with the Ballroom Project, it will not qualify for any future term extension in connection with their investment in this project.

District Ordinance 3076 sets forth requirements for Project Labor Agreements and Labor Peace Agreements which are applicable only to construction and development meeting the specified criteria. The proposed Ballroom Project is not subject to the Ordinance requirements because it does not involve a new lease or a lease amendment.

Next steps

If the Board authorizes staff to commence environmental review, the next step will be to conduct a pre-application meeting with the tenant in accordance with District Code Section 3.02. Then, in accordance with District Code Section 3.03, the tenant will be required to submit a project application. Once the project application is deemed complete and a detailed project description has been developed, preparation of the CEQA document or exemption and a CDP will commence. Based on the Pre-Design package (see Attachment C – Ballroom Project Renderings) submitted by the tenant, staff anticipates the project may qualify for an Infill Exemption under Section 15332 of the CEQA Guidelines. It is also anticipated that an appealable CDP will be required for the project. Once complete, staff will return to the Board to request consideration of the CEQA document, as applicable, and authorization for issuance of the CDP.

Other next steps will include presenting the proposed Ballroom Project to the Accessibility Advisory Committee for review of the accessibility elements of the project, and to provide any committee recommendations to the applicant.

Conclusion

SSD Holdings is a tenant in good standing and has demonstrated the willingness and capacity to operate a successful hotel and marina, which provides enjoyable experiences to its patrons and visiting public. The proposed Ballroom Project would provide expanded and modern event spaces seamlessly integrated with the existing hotel infrastructure, emphasizing aesthetic appeal, sustainability, and an enhanced guest experience, which

will improve a District tidelands and attract more visitors to the waterfront. Staff recommends that the Board authorize staff to commence environmental review for SSD Holdings' proposed Ballroom Project.

General Counsel's Comments:

The Office of the General Counsel has reviewed the agenda sheet and attachments, as presented to it, and approves them as to form and legality.

Environmental Review:

The proposed action, including without limitation, a preliminary project review presentation regarding the proposed redevelopment and expansion of the ballroom and outdoor event space at the Sheraton San Diego Hotel and Marina and obtaining Board authorization for staff to commence environmental review for the Ballroom Project is consistent with and in compliance with CEQA Guidelines Section 15060, which authorizes a lead agency to conduct preliminary review of an application for permits or other entitlements for use before commencing formal environmental evaluation of a project. Any project, including the proposed Ballroom Project, requiring the District or the Board's discretionary approval resulting in a physical change to the environment shall be analyzed in accordance with CEQA prior to such approval.

The current Board action is not to approve the Ballroom Project, including the design, project description, any leases or any other approvals required to carry forward the Ballroom Project. The Board reserves its sole and absolute discretion to approve or disapprove the Ballroom Project and adopt the environmental document and any mitigation measures, if applicable, as well as any and all other permits or entitlements for use that may be required. Therefore, no further CEQA review is required for the current Board action with respect to the preliminary project review presentation.

The Board action complies with Section 35 of the Port Act, which authorizes the Board to do acts necessary and convenient for the exercise of its power. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the Board action is consistent with the Public Trust Doctrine.

The Board action and authorization to commence CEQA does not construe as approval or disapproval of the Ballroom Project and does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's CDP Regulations. However, development within the District requires processing under the District's CDP Regulations. Future development would remain subject to its own independent review pursuant to the District's certified CDP Regulations, Port Master Plan, and Chapters 3 and 8 of the Coastal Act. The Board's direction in no way limits the exercise of the District's discretion under the District's CDP Regulations. An Appealable CDP will be required for the Ballroom Project and will be presented to the Board for its consideration in the future.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Liz Maclin
Asset Manager, Real Estate

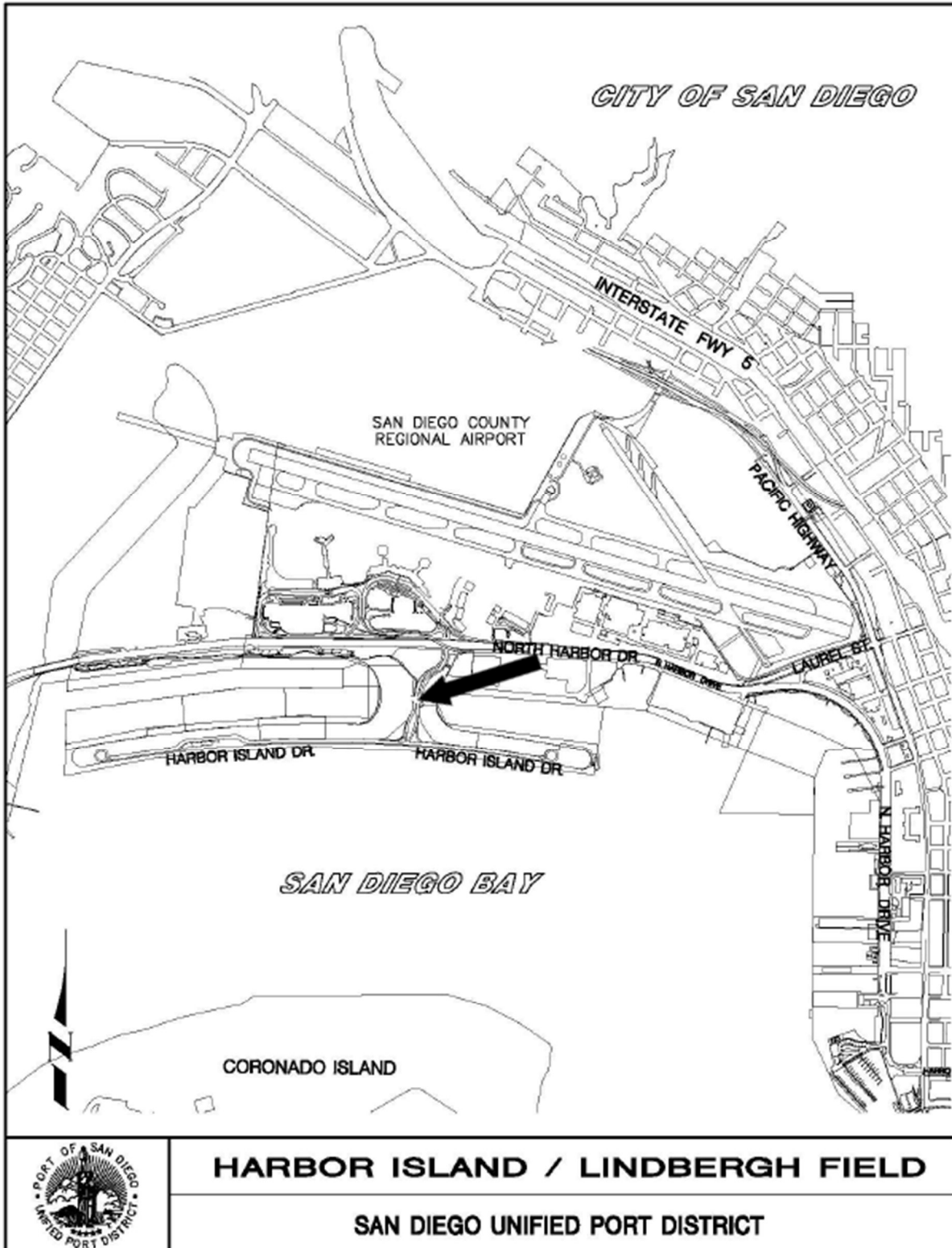
Attachment(s):

Attachment A: Location Map
Attachment B: SSD Holdings Lease Information Summary
Attachment C: Ballroom Project Renderings

¹San Diego Unified Port District Lease to Host San Diego Hotel LLC dba Sheraton San Diego Hotel & Marina (Marina Tower) dated March 1, 2013, on file in the Office of the District Clerk bearing Document No. 60317

²San Diego Unified Port District Lease to Host San Diego Hotel LLC dba Sheraton San Diego Hotel & Marina (Bay Tower) dated March 1, 2013, on file in the Office of the District Clerk bearing Document No. 60316

Location Map



SSD Holdings Lease Information Summary

TENANT:	SSD Holdings, LLC, a Delaware limited liability company, dba Sheraton San Diego Hotel and Marina (“ Marina Tower ”)								
LOCATION:	1380 Harbor Island Drive, San Diego, CA 92101								
AREA:	Approximately 1,116,593 square feet of tideland and water area								
USE:	Hotel and marina								
TERM:	11/01/2012 thru 10/31/2078 (66 years)								
MINIMUM ANNUAL RENT:	\$2,169,558								
PERCENTAGE RENTAL RATES:		Current	2022	2027	2032	2042	2052	2062	2072
	Rooms	7.00	7.00	7.125	7.25	7.50	7.75	8.00	8.25
	Food	3.00	3.00	3.00	3.25	3.50	3.75	4.00	4.25
	Beverage	5.00	5.00	5.00	5.25	5.50	5.75	6.00	6.25
	Banquet	7.00	7.25	7.25	7.50	7.75	8.00	8.25	8.50
	Parking	10.00	10.00	10.00	12.50	15.00	15.00	15.00	15.00
	Slips	20.00	22.00	22.00	22.00	22.50	22.50	23.00	23.00
RENTAL REVIEWS:	Next rent review due 11/1/2032; No further rent reviews.								



Sheraton San Diego Hotel & Marina Ballroom Project Renderings

ATTACHMENT "C" TO AGENDA FILE NO. 2024-336

Existing & Proposed Event Space



EXISTING CONDITIONS: 21,121 SF

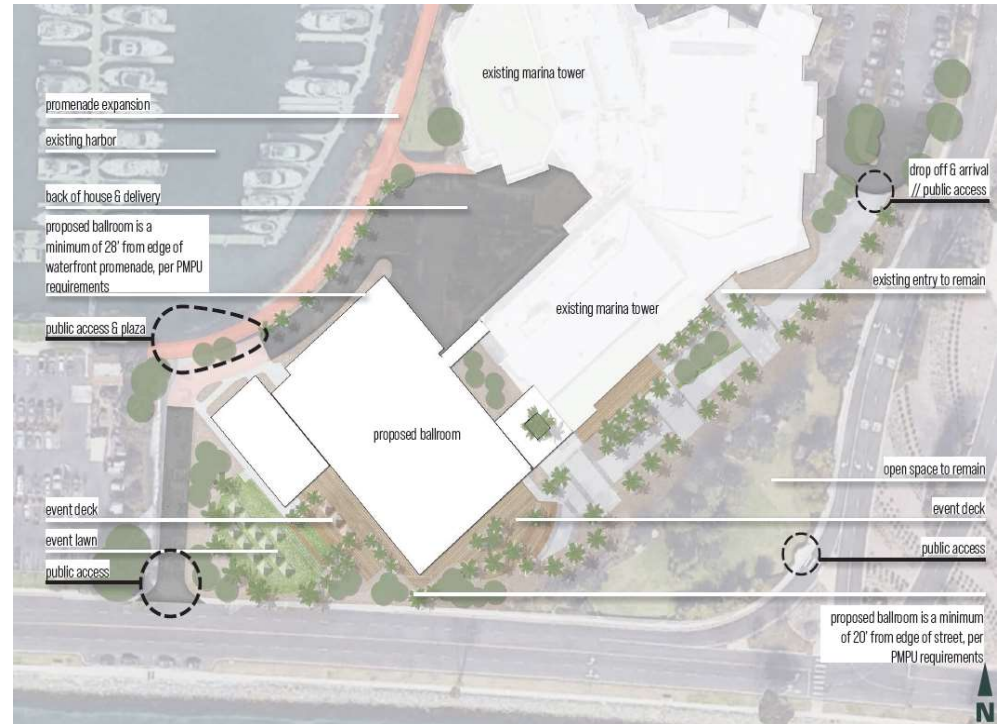
PROPOSED BALLROOM PROJECT: 71,700 SF total



Existing & Proposed Site Plan

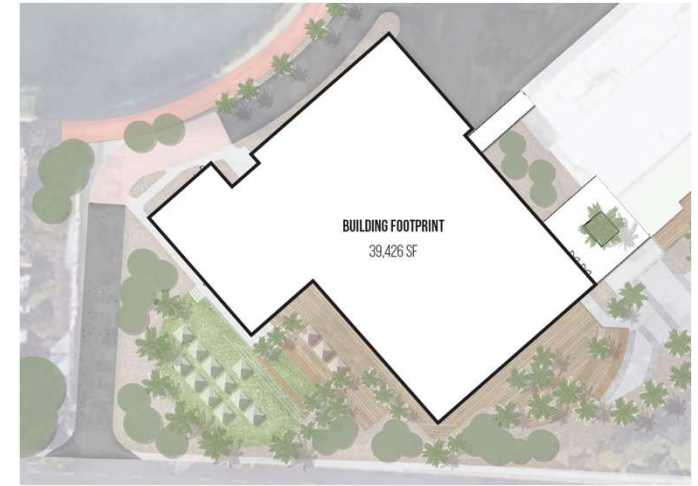


EXISTING CONDITIONS



PROPOSED SITE PLAN

Sheraton Ballroom Project Renderings



Sheraton Ballroom Project Aesthetic Design



PRE-CAST CONCRETE PANEL
OFF-WHITE



STOREFRONT GLAZING SYSTEM
CLEAR



CAST-IN-PLACE BOARD FORM
ARCHITECTURAL CONCRETE



HORIZONTAL ALUMINUM FIN SYSTEM
WHITE ANODIZED



WOOD SLAT WALL

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING STAFF TO COMMENCE ENVIRONMENTAL REVIEW IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE REDEVELOPMENT AND EXPANSION OF THE BALLROOM AND OUTDOOR EVENT SPACE FOR THE SHERATON SAN DIEGO HOTEL AND MARINA**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, SSD Holdings, LLC, a Delaware limited liability company dba Sheraton San Diego Hotel & Marina (“SSD Holdings”) has a 66-year Lease, which expires October 31, 2078, for the District property located at 1380 Harbor Island Drive (Attachment A – Location Map, attached to corresponding agenda sheet on file with the Office of the District Clerk), on which SSD Holding operates the Sheraton San Diego Hotel and Marina on Harbor Island (“Sheraton Hotel”); and

WHEREAS, existing amenities of the 705-room Sheraton Hotel and 40-slip marina include cafés, bars, restaurants, ballroom and meeting space, full-service spa, bicycle rentals, boat rentals, charter operations, heated outdoor swimming pools, fitness center, tennis courts, and an airport shuttle; and

WHEREAS, SSD Holdings is proposing an expansion of the hotel ballroom meeting space with a new modern and spacious facility (“Ballroom Project”); and

WHEREAS, the Ballroom Project would include replacement of an existing temporary event tent structure with an approximately 71,706 square foot, 46-foot tall, tri-level facility to include a 20,000 square foot grand ballroom on the first level, viewing decks for event patrons, pre-function space wrapping around the ballroom, support and back of house space, small conference rooms, lobby access, new restrooms, a new event lawn, and expanded pedestrian access; and

WHEREAS, project benefits would include improved vehicular and pedestrian access, accessibility features, enhanced overall guest experience, modernization and expansion of group meeting space, enhanced competitiveness in the San Diego hospitality market, new job creation, and other enhancements; and

WHEREAS, staff recommends that the Board authorize staff to commence environmental review in accordance with the California Environmental Quality Act (“CEQA”) for the proposed Ballroom Project.

20xx-xxx

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District (District) that District Staff is hereby directed to commence environmental review in accordance with the California Environmental Quality Act (“CEQA”) for the proposed redevelopment and expansion of the ballroom and outdoor event space for the Sheraton San Diego Hotel and Marina.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

FILE NUMBER: 2024-330

DATE: Tuesday, September 10, 2024

SUBJECT: Progress Report on an Interagency MOU to Support Implementation of the MCAS and Portside CERP

DESCRIPTION: Presentation and Direction to Staff Regarding a Preliminary Memorandum of Understanding (MOU) Between the San Diego Unified Port District and the San Diego County Air Pollution Control District to Support Further Implementation of the Maritime Clean Air Strategy (MCAS) and Portside Community Emission Reduction Plan (CERP)

EXECUTIVE SUMMARY:

Assembly Bill 423 (AB 423) directed the San Diego County Air Pollution Control District (APCD) to consider the development of indirect source rules (ISRs) to address pollution from mobile sources including ports, warehouses, and distribution centers. Following the directive from AB 423, APCD staff researched potential ISR concepts for the San Diego Unified Port District (District). In place of an ISR focused on ports, APCD staff recommended to their Governing Board to pursue a Memorandum of Understanding (MOU) with the District. An MOU can be developed more quickly than a rule, forge a stronger partnership between the District and APCD, and potentially improve public health through emissions reductions more rapidly than a rule. The APCD Governing Board agreed to the staff recommendation to pursue an MOU with the District and return to the Governing Board no later than September 2024 with a progress report.

Staff from APCD and the District have been discussing Preliminary MOU Measures that would support shared goals captured in the Maritime Clean Air Strategy (MCAS) and the Portside Community Emission Reduction Plan (CERP). The Preliminary MOU Measures currently address:

- Funding for equipment, vehicles, and supportive infrastructure;
- Infrastructure planning and construction at the marine terminals;
- Public participation opportunities for Maritime Industrial projects within the Portside Community area;
- Existing programs to reduce emissions, offset maritime industrial impacts, and support environmental recognition programs;
- Education and outreach as well as new funding opportunities; and
- Assessment of implementation and reporting.

District staff are seeking direction from the Board regarding the Preliminary MOU Measures.

RECOMMENDATION:

Receive the presentation and provide direction to staff, on the potential for a Memorandum of Understanding between the San Diego Unified Port District and the San

Diego County Air Pollution Control District to support further implementation of the MCAS and CERP.

FISCAL IMPACT:

This agenda has no fiscal impact. Future years' funds will be included in their corresponding budget year and are subject to Board approval upon adoption of each year's budget.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

Air pollution control districts and air quality management districts (Air Districts) in California are responsible for regional air quality planning, monitoring, and stationary source and facility permitting. A primary function of Air Districts is to protect public health and attain stringent federal and state standards for air quality. APCD administers these duties in the San Diego Air Basin which represents all of San Diego County. In 2019, California AB 423 (Gloria, 2019) amended state law to restructure and expand the Governing Board of APCD (Attachment A). In addition, AB 423 amended the California Health and Safety Code to add specified duties to APCD, including direction to "Consider adopting an indirect source rule to address pollution from mobile sources that is associated with stationary sources, such as ports, warehouses, and distribution centers." An indirect source is generally defined as any facility that attracts mobile sources of emissions. As ports, warehouses, and distribution centers attract mobile sources which emit pollution including trucks, equipment, and vessels, these facilities are considered indirect sources of pollution.

The California Air Resources Board sets regulations for mobile sources of pollution in the state. It is relatively uncommon for regional Air Districts to enact ISRs which target pollution reduction from mobile sources. However, examples of air districts adopting ISRs do exist. Notably, the South Coast Air Quality Management District (SCAQMD), which is the air district for Orange County and the urban areas of Los Angeles, Riverside, and San Bernadino counties, recently adopted Rule 2305 to reduce pollution associated with warehouses as well as Rule 2306 to reduce pollution from freight rail yards.

Following the directive from AB 423, APCD staff researched potential ISR concepts, met with District staff, numerous stakeholders, and evaluated indirect sources such as ports,

warehouses, and distribution centers located throughout San Diego County. From this research, APCD staff concluded a port-specific ISR would require navigating complex international and federal regulations, be expensive to develop and even more expensive to implement. As an alternative approach, APCD staff recommended to the APCD Governing Board in June of 2023, the pursuit of an MOU with the District in place of a Port-specific ISR. The APCD Board agreed with the June 2023 staff recommendation. However, APCD staff is still considering both regulatory and non-regulatory options for warehouses and distribution centers through San Diego County.

Following the APCD June 2023 Governing Board meeting, staff from APCD and the District developed potential MOU concepts. District staff presented these concepts to the Board of Port Commissioners on December 5, 2023, and APCD staff presented the concepts to their Governing Board on December 14, 2023. The concepts included enhancing and expanding access to incentive funding, actions to support electrification of the District's two cargo marine terminals, continuation and improvement of a zero emission truck pilot program, and prioritized access to funding for the acquisition of zero emission cargo handling equipment and infrastructure. While keeping their comments conceptual to inform negotiations on the MOU, the APCD Governing Board expressed desire to limit pollution from port-related activities, include measurable milestones and annual assessments, develop alternative emission reduction opportunities should the milestones not be achieved, and confer with Portside Community Steering Committee regarding the allocation of incentive funding. Furthermore, the APCD Governing Board directed their staff to return no later than September 2024 with a status update.

Staff from both agencies have been refining the initial MOU concepts into Preliminary MOU Measures, further discussed below.

Preliminary MOU Measures

The MOU would serve as a non-regulatory, collaborative agreement between the District and APCD (the Agencies) to work together to support implementation of the CERP and MCAS . Staff from the Agencies have reached tentative alignment on several Preliminary MOU Measures that will support the MCAS and CERP resulting in air pollution reduction. The MOU would generally include the following areas of focus to reduce air pollution with the details and logistical processes largely worked out, with room for improvement with input from the Agencies Commissioners, stakeholders, and potential implementation partners. The Preliminary MOU Measures currently address:

- Funding for equipment, vehicles, and supportive infrastructure;
- Infrastructure planning and construction at the marine terminals;
- Public participation opportunities for Maritime Industrial projects within the Portside Community area;
- Existing programs to reduce emissions, offset maritime industrial impacts, and support environmental recognition programs;
- Education and outreach as well as new funding opportunities; and
- Assessment of implementation and reporting.

A brief summary of these Preliminary MOU Measures is provided below.

Funding for Equipment, Vehicles, and Supportive Infrastructure

This Preliminary MOU Measure proposes to provide prioritized funding to the District, its maritime tenants, and/or service providers with an initial allocation of \$7M from APCD's Community Air Protection Program. The funding would be focused on acquisition of electric cargo handling equipment and electric heavy-duty trucks. Additionally, the District would support APCD's funding with \$1.08M of its Economic Recovery Program funds for zero emission trucks or infrastructure and a Zero Emission Vehicle Incentive program in new agreements with carriers and/or customers visiting the marine terminals. The Zero Emission Vehicle Incentive program could provide fee reductions for carriers and/or customers conducting trucking operations with zero emission fleets.

Infrastructure Planning and Construction at the Marine Terminals

As part of this Preliminary MOU Measure, the District will continue planning and designing the necessary electrical infrastructure improvements to support electrification at its marine terminals. To date, the District has committed \$40M with \$7.9M allocated in its current FY25 budget. Through this proposed Preliminary MOU Measure, the District would continue its planning efforts and provide updates to APCD. As currently structured, the District and APCD would commit to jointly and/or separately pursue funding opportunities for design, environmental analysis, and construction of plans.

Public Participation with Proposed Maritime Industrial Projects

Building off the recently adopted Article 3 of the Port Code (San Diego Unified Port District Code) that establishes, among other things, the process for Preliminary Project Review, the MOU supports opportunities for the public to become informed and involved in the discretionary review process for Maritime Industrial projects which may occur on District Tidelands within the Portside Community area. Preliminary review by the Board is required when a proposal would require the issuance of a Coastal Development Permit (CDP) and the project would not be exempt from further CEQA analysis (e.g. if the project requires a Mitigated Negative Declaration or Environmental Impact Report). The California Environmental Quality Act (CEQA) has clear prescriptions for public meetings and review/comment periods. This Preliminary MOU Measure would support additional opportunities, early and throughout the discretionary review process leading up to the public hearing during which the Board of Port Commissioners would consider a project for approval. These public participation opportunities have been examined to be sure they would not impair the long-established CEQA process for environmental analysis and engaging the interested public. The potential MOU would formalize these public participation opportunities and provide process certainty for the interested public and possibly result in a more community friendly project than what otherwise may be completed.

Existing Programs to Reduce Emissions, Offset Maritime Industrial Impacts, and Support Environmental Recognition Programs

This Preliminary MOU Measure includes three existing programs which support emission reduction, offset impacts from Maritime Industrial activities, and support environmental programs.

The District's Voluntary Vessel Speed Reduction Program was updated in 2021 to expand the geographic boundary of the vessel speed reduction zone from 20 nautical miles to 40

nautical miles. In addition, the VSR program was updated to increase participation from 80 percent to 90 percent. The program calls for vessel speeds as follows:

- 12 knots for cargo vessels; and
- 15 knots for passenger cruise vessels

Roughly 70 percent of vessels calling to the District's marine terminals voluntarily participate in the program. Through the potential MOU, the District could aim to increase participation to 90 percent by better publicizing the program and developing a rewards and recognition program for those vessels participating.

Secondly, the District's Maritime Industrial Impact Fund (MIIF) offers an opportunity to invest in projects off of District Tidelands within the Portside Community to help implement the CERP. Through the potential MOU the District could contribute an initial \$500,000 from the FY25 budget with an opportunity for more funding in future fiscal years (pending availability). The funding would be disbursed in accordance with the existing BPC Policy 773. To ensure the funding is appropriated, APCD may work with the Portside Community Steering Committee to identify eligible projects and apply to the District for funding.

Lastly, the District would commit to maintaining our Green Marine certification. Green Marine is the leading environmental certification program for North America's maritime industry. It is a voluntary initiative that helps its participants to improve their environmental performance beyond regulations. Green Marine targets key environmental issues related to biodiversity protection air, water and soil quality, and community relations.

Ongoing Collaboration on Education, Outreach, and Funding Opportunities

The potential MOU would support the ongoing collaboration between the District and APCD to provide education and outreach to various stakeholders such as the commercial harbor craft community. Efforts like this help to promote compliance with state regulations and may seek opportunities for funding to transition vessels to cleaner engines and technologies. Collaborative efforts would also involve mutually providing letters of support for funding applications, including support for the San Diego Association of Governments (SANDAG) to finalize the design and begin construction of the Harbor Drive 2.0 project that will revolutionize this critical transportation corridor for goods movement, public transportation and Naval Base San Diego operations.

Assessment of Implementation and Reporting

While every effort has been made to include Preliminary MOU Measures that can be successfully executed, factors beyond the Agencies' control may hinder implementation. If the Preliminary MOU Measures are agreed to via an MOU and do not progress as planned, the Agencies may commit to assessing the challenges and/or barriers to determine what factors are disrupting their implementation. If feasible, additional actions could be taken, such as increasing or identifying supplemental funding, identifying an equivalent, but different, emission reduction project or action(s), or potentially identify additional MIIF eligible projects within the Portside Community. The Agencies would commit to annually present progress on MOU implementation to their respective Boards, the public, and interested stakeholders.

Stakeholder Involvement and Next Steps

The District and APCD staff have met with members of the San Diego Working Waterfront, the Portside Community Steering Committee, and the District's Maritime Forum to obtain feedback on the Preliminary MOU Measures.

Staff from APCD will provide a presentation on the Preliminary MOU Measures to their Governing Board on September 12, 2024. Both agencies will proceed following direction from their respective boards. If there is support to proceed with the Preliminary MOU Measures, staff can memorialize these Preliminary MOU Measures in greater detail and bring a draft MOU to the Board for consideration in Spring 2025.

General Counsel's Comments:

The General Counsel's Office reviewed this agenda as presented to it as to form and legality.

Environmental Review:

This Board item does not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of its projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, this Board item complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, this update is consistent with the Public Trust Doctrine.

Finally, this Board item does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations.

Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board's direction in no way limits the exercise of the District's discretion under the District's CDP Regulations.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

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Attachment(s):

Attachment A: California AB 423 (Gloria, 2019)

Assembly Bill No. 423

CHAPTER 744

An act to amend, repeal, and add Sections 40100, 40100.5, and 40701.5 of, and to add Sections 40100.6 and 40100.6.5 to, the Health and Safety Code, relating to the San Diego County Air Pollution Control District.

[Approved by Governor October 11, 2019. Filed with Secretary of State October 11, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 423, Gloria. San Diego County Air Pollution Control District: members and duties.

(1) Existing law provides for the establishment of air pollution control districts and air quality management districts.

This bill would require, as of March 1, 2021, the San Diego County Air Pollution Control District to have a specified membership. The bill would require the San Diego air district to appoint a specified liaison to consult with the United States Navy, the United States Marine Corps, and the United States Coast Guard, as specified; create and maintain an internet website separate from the County of San Diego internet website and post specified information, including, among others, the agendas and minutes of the governing board of the San Diego air district and all current and pending permit information and settled enforcement actions; apply for statewide grant and incentive programs; evaluate the current public complaint process, as specified; develop a plan for a comprehensive air monitoring program, as specified; publish an annual air quality report, as specified; and consider adopting an indirect source rule, as specified. The bill would require the San Diego air district, by July 1, 2020, to post all applications for an authority to construct or permit to operate within 3 business days of their receipt and to accept and consider all public comments received before taking final action on the applications. The bill would require the San Diego air district to prepare a report for consideration by the governing board summarizing all actions taken on applications in the 2020 calendar year and to consider, based upon the report, amendments to the district rule to ensure adequate opportunity for public comment on applications. By requiring local governments to appoint members to the San Diego County Air Pollution Control District governing board in a specified manner and by adding to the duties of the San Diego air district, this bill would impose a state-mandated local program.

This bill, no later than June 1, 2021, would require the State Air Resources Board to complete a program audit of the San Diego air district for the years 2013 through 2018.

This bill would specify the continuing funding sources for the San Diego air district, as specified.

(2) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would make legislative findings and declarations as to the necessity of a special statute for the San Diego County Air Pollution Control District.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that the County of San Diego employees who currently work for the San Diego County Air Pollution Control District will not be affected by the governing board's expansion and their jobs will be safe.

SEC. 2. Section 40100 of the Health and Safety Code is amended to read:

40100. (a) Except as provided in Section 40100.5, a county board of supervisors shall be ex officio the county district board of the county.

(b) This section shall become inoperative on March 1, 2021, and, as of January 1, 2022, is repealed.

SEC. 3. Section 40100 is added to the Health and Safety Code, to read:

40100. (a) Except as provided in Sections 40100.5 and 40100.6, a county board of supervisors shall be ex officio the county district board of the county.

(b) The section shall become operative on March 1, 2021.

SEC. 4. Section 40100.5 of the Health and Safety Code is amended to read:

40100.5. (a) The membership of the governing board of each county district shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the county and the cities within the district, and shall

be approved by the county and by a majority of the cities that contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) (1) The members of the governing board who are mayors or city council members shall be selected by the city selection committee. When selecting a member of the governing board, the city selection committee may also select a mayor or another city council member as an alternate to serve and vote in place of the member who is absent or disqualified from participating.

(2) In districts where the county and the cities have agreed that each city shall be represented on the governing board, each city shall select its own representative to the governing board. When selecting a member of the governing board, each city may also select its mayor or another city council member as an alternate to serve and vote in place of the member who is absent or is disqualified from participating.

(3) The members of the governing board who are county supervisors shall be selected by the county.

(e) This section does not apply to any district in which the population of the incorporated area of the county is 35 percent or less of the total county population, as determined by the district on June 30, 1994, or to a county district having a population of more than 2,500,000 as of June 30, 1990.

(f) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(2) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(3) The number of those members shall be determined as provided in subdivision (b), and the members shall be selected pursuant to subdivision (d).

(4) For purposes of paragraphs (1) and (2), if any number that is not a whole number results from the application of the term “one-third,” “one-half,” or “two-thirds,” the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

(g) This section shall become inoperative on March 1, 2021, and, as of January 1, 2022, is repealed.

SEC. 5. Section 40100.5 is added to the Health and Safety Code, to read:

40100.5. (a) The membership of the governing board of each county district shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the county and the cities within the district, and shall be approved by the county and by a majority of the cities that contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) (1) The members of the governing board who are mayors or city council members shall be selected by the city selection committee. When selecting a member of the governing board, the city selection committee may also select a mayor or another city council member as an alternate to serve and vote in place of the member who is absent or disqualified from participating.

(2) In districts where the county and the cities have agreed that each city shall be represented on the governing board, each city shall select its own representative to the governing board. When selecting a member of the governing board, each city may also select its mayor or another city council member as an alternate to serve and vote in place of the member who is absent or is disqualified from participating.

(3) The members of the governing board who are county supervisors shall be selected by the county.

(e) (1) This section does not apply to any district in which the population of the incorporated area of the county is 35 percent or less of the total county population, as determined by the district on June 30, 1994.

(2) The membership of the governing board for the San Diego County Air Pollution Control District shall be determined pursuant to Section 40100.6.

(f) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(2) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(3) The number of those members shall be determined as provided in subdivision (b), and the members shall be selected pursuant to subdivision (d).

(4) For purposes of paragraphs (1) and (2), if any number that is not a whole number results from the application of the term “one-third,” “one-half,” or “two-thirds,” the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

(g) This section shall become operative on March 1, 2021.

SEC. 6. Section 40100.6 is added to the Health and Safety Code, to read:

40100.6. (a) The 11 members of the San Diego County Air Pollution Control District governing board shall be appointed as follows:

(1) (A) Two members representing the board of supervisors as appointed by a majority of the board of supervisors.

(B) One of the two members representing the board of supervisors pursuant to subparagraph (A) shall be the member of the board of supervisors who is currently serving as the San Diego County Air Pollution Control District's member on the state board, as required pursuant to paragraph (4) of subdivision (d) of Section 39510. That member of the board of supervisors shall continue to serve as one of the two members of the San Diego Air Pollution Control District pursuant to subparagraph (A) until that member is no longer the San Diego County Air Pollution Control District's member on the state board.

(2) The mayor or a city council member at large from the City of San Diego.

(3) (A) One city council member from each of the five supervisorial districts. Those five members shall be selected by city selection committees representing the cities of that supervisorial district.

(B) A city shall not have more than two members.

(4) Three public members shall be appointed by the members appointed pursuant to paragraphs (1) to (3), inclusive, at a public hearing. The public members shall be appointed according to the following:

(A) One public member shall be a physician or public health professional actively practicing within the boundaries of the San Diego County Air Pollution Control District. The member's speciality shall be in the health effects of air pollution on vulnerable populations.

(B) One public member shall be a person representing environmental justice interests and who works directly with communities within the boundaries of the San Diego County Air Pollution Control District that are most significantly burdened by, and vulnerable to, high levels of pollution, including communities with diverse racial and ethnic populations and communities with low-income populations. This member may be a resident of that community and have a demonstrated record of community leadership.

(C) One public member shall be a person with a scientific or technical background in air pollution, such as an environmental engineer, chemist, meteorologist, or air pollution specialist.

(b) All members shall be appointed on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with the air pollution problems of the San Diego Air Basin.

(c) All members shall reside within the boundaries of the San Diego County Air Pollution Control District.

(d) Each member of the San Diego County Air Pollution Control District shall serve a four-year term and until that member's successor is appointed.

(e) Each member of the San Diego County Air Pollution Control District governing board appointed pursuant to paragraph (4) of subdivision (a) shall receive compensation of one hundred dollars (\$100) for each day, or a

portion thereof, but not to exceed one thousand dollars (\$1,000) per month, while attending meetings of the district governing board or any committee of the district governing board or, upon authorization of the district governing board, while on official business of the San Diego County Air Pollution Control District, and the actual and necessary expenses incurred in performing the member's official duties.

(f) (1) A vacancy on the San Diego County Air Pollution Control District governing board shall be filled by appointment in the same manner as the vacating member was appointed.

(2) A member of the San Diego County Air Pollution Control District governing board may be removed at any time in the same manner as the member was appointed.

(g) (1) The San Diego County Air Pollution Control District governing board shall consult with the United States Navy, the United States Marine Corps, and the United States Coast Guard on all permitting, rules, regulations, and planning issues that have the potential to impact the mission of the United States Navy, the United States Marine Corps, and the United States Coast Guard.

(2) The San Diego County Air Pollution Control District governing board shall designate one member appointed pursuant to paragraph (1) of subdivision (a) to serve as the liaison to the United States Navy, the United States Marine Corps, and the United States Coast Guard. The liaison shall report to the San Diego County Air Pollution Control District governing board as necessary to inform the governing board of any issues with the activities described in paragraph (1) and of any potential resolution to those issues.

(h) This section shall become operative on March 1, 2021.

SEC. 7. Section 40100.6.5 is added to the Health and Safety Code, to read:

40100.6.5. (a) The San Diego County Air Pollution Control District, in addition to all other duties required of the San Diego County Air Pollution District pursuant to this division and any other law, shall do all of the following:

(1) Create and maintain an internet website separate from the County of San Diego internet website and migrate all of the existing data by December 2021, including all of the following:

(A) Agendas and minutes of the governing board of the San Diego County Air Pollution Control District.

(B) All current permit information in a format that allows that information to be downloadable and searchable by address, facility name, pollutant, permit number, and equipment or process. Permitted potential maximum emissions shall be included along with actual emissions if available.

(C) (i) All applications for an authority to construct or a permit to operate.

(ii) By July 1, 2020, the San Diego County Air Pollution Control District shall post all applications for authority to construct or a permit to operate within three business days of their receipt and shall accept and consider all public comments received before the district takes final action on approval

of the applications. This clause does not require the San Diego County Air Pollution Control District to respond to comments except as otherwise provided by law.

(D) All settled enforcement actions in a format that allows that information to be downloadable and searchable by address, facility name, pollutant, permit number, and equipment or process.

(E) (i) The face sheets of notices of violation or notices to comply.

(ii) The district shall post the face sheets 30 days after the issuance of the notices. Notices found to be issued in error within 30 days of issuance shall not be posted.

(F) All documents related to the Air Toxics “Hot Spots” Information and Assessment Act of 1987 (Part 6 (commencing with Section 44300)), including all of the following:

(i) Air toxics emissions inventory reports and plans submitted by each facility pursuant to Chapter 3 (commencing with Section 44340) of Part 6 that are completed and approved by the district.

(ii) Completed health risk assessments submitted by each facility pursuant to Chapter 4 (commencing with Section 44360) of Part 6.

(iii) A copy of the public notification provided by facility, as required by the San Diego County Air Pollution Control District’s rules and guidelines, and documentation of the required notice to exposed persons.

(iv) Airborne toxic risk reduction audit and plans submitted by each facility pursuant to Chapter 6 (commencing with Section 44390) of Part 6 that are completed and approved by the district.

(G) The San Diego County Air Pollution Control District budget, including revenue and expense projections and actuals.

(2) Apply for statewide grant and incentive programs, including, but not limited to, all of the following:

(A) Programs allocating moneys from the Greenhouse Gas Reduction Fund, created pursuant to Section 16428.8 of the Government Code.

(B) Programs administered by the state board.

(C) Programs administered by the United States Environmental Protection Agency.

(D) Enhanced Fleet Modernization Program (Article 11 (commencing with Section 44124) of Chapter 5 of Part 5).

(3) Evaluate the current public complaint process and provide, by December 2021, a recommended plan for updating that public complaint process, including all of the following components:

(A) A 24-hour hotline.

(B) Response to complaints within 48 hours or less.

(C) Whistleblower and public complainant protections.

(D) (i) The posting of complaints and their resolution on the San Diego County Air Pollution Control District internet website, required pursuant to paragraph (1).

(ii) Information regarding the complaints that are posted shall consist of all the following:

(I) The date and time of the complaint.

- (II) The general nature of the complaint.
- (III) The closest intersection to the site of the complaint.
- (iii) The name of the company or facility that is the subject of the complaint shall not be posted.

(4) (A) Develop, no later than December 2021, a plan for a comprehensive air monitoring program. The plan shall include an evaluation of monitor locations in the most impacted communities and the monitoring of other air pollutants, such as speciated carbon particulate matter and toxic air contaminants, including metals.

(B) Air monitoring data shall be made available to the public on the district's internet website within a reasonable period of time not to exceed 14 months from the date of collection. The governing board of the San Diego County Air Pollution Control District shall establish an air monitoring data program that will define reasonable timeframes for posting all air monitoring data based on testing methodology and ensure data is accessible and understandable to the public.

(5) Publish an annual air quality report that includes all of the following:

(A) Levels of criteria and noncriteria air pollutants, air toxics from monitors, and other sources of information.

(B) Enforcement actions.

(C) Revenue secured.

(D) Program outcomes.

(E) Emissions reduction progress.

(6) Consider adopting an indirect source rule to address pollution from mobile sources that is associated with stationary sources, such as ports, warehouses, and distribution centers.

(7) (A) Prepare, no later than July 1, 2021, a report for consideration by the San Diego County Air Pollution Control District governing board that summarizes all of the actions taken on applications for authority to construct or a permit to operate in the 2020 calendar year, including the number of applications, timing of actions on applications, and number of public comments submitted.

(B) Consider, based upon the report prepared pursuant to subparagraph (A), amendments to San Diego County Air Pollution Control District's rules to ensure adequate opportunity for public comment on applications within the district's deadline for action on those applications.

(b) No later than June 1, 2021, the state board shall complete a program audit of the San Diego County Air Pollution Control District for the years 2013 to 2018, inclusive.

SEC. 8. Section 40701.5 of the Health and Safety Code is amended to read:

40701.5. (a) Funding for a district may be provided by, but is not limited to, any one or any combination of the following sources:

(1) Grants.

(2) Subventions.

(3) Permit fees.

(4) Penalties.

(5) A surcharge or fee pursuant to Section 41081 or 44223 on motor vehicles registered in the district.

(b) Expenses of a district that are not met by the funding sources identified in subdivision (a), shall be provided by an annual per capita assessment on those cities that have agreed to have a member on the district board for purposes of Section 40100.5, 40152, 40322.5, 40704.5, or 40980 and on the county or counties included within the district. Any annual per capita assessment imposed by the district on those cities and counties included within the district shall be imposed on an equitable per capita basis.

(c) Subdivision (b) does not apply to the San Joaquin Valley Unified Air Pollution Control District or, if that unified district ceases to exist, the San Joaquin Valley Air Quality Management District, if that district is created.

(d) This section shall become inoperative on March 1, 2021, and, as of January 1, 2022, is repealed.

SEC. 9. Section 40701.5 is added to the Health and Safety Code, to read:

40701.5. (a) Funding for a district may be provided by, but is not limited to, any one or any combination of the following sources:

- (1) Grants.
- (2) Subventions.
- (3) Permit fees.
- (4) Penalties.

(5) A surcharge or fee pursuant to Section 41081 or 44223 on motor vehicles registered in the district.

(b) Expenses of a district that are not met by the funding sources identified in subdivision (a) shall be provided by an annual per capita assessment on those cities that have agreed to have a member on the district board for purposes of Section 40100.5, 40100.6, 40152, 40322.5, 40704.5, or 40980 and on the county or counties included within the district. Any annual per capita assessment imposed by the district on those cities and counties included within the district shall be imposed on an equitable per capita basis.

(c) Subdivision (b) does not apply to the San Joaquin Valley Unified Air Pollution Control District or, if that unified district ceases to exist, the San Joaquin Valley Air Quality Management District, if that district is created.

(d) (1) Notwithstanding subdivision (b), expenses of the San Diego County Air Pollution Control District that are not met by the funding sources identified in subdivision (a) shall be provided by an annual per capita assessment imposed on an equitable per capita basis on each city and county included in the San Diego County Air Pollution Control District by the governing board of the San Diego County Air Pollution Control District created pursuant to Section 40100.6.

(2) At least 30 days before the assessment is imposed, the governing board shall hold a public hearing which shall include data supporting the annual per capita assessment and any schedule that may apply.

(e) This section shall become operative on March 1, 2021.

SEC. 10. The Legislature finds and declares that Section 7 of this act, which adds Section 40100.6.5 to the Health and Safety Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of

the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

By requiring the San Diego County Air Pollution Control District to post specified information on its internet website, this act increases public access to public records, and thereby furthers the purposes of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 11. If the Commission on State Mandates determines that certain provisions of this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

No reimbursement is required by certain provisions of this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

No reimbursement is required by certain provisions of this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 12. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the growing population of the County of San Diego and its goal of addressing climate change and air pollution.

FILE NUMBER: 2024-322

DATE: Tuesday, September 10, 2024

SUBJECT: Zero Emission Truck Stop

DESCRIPTION: A. Receive Preliminary Project Review Presentation and Project Update on the Proposed Zero Emission Truck Stop in National City Pursuant to Maritime Clean Air Strategy (MCAS) Truck Goal 2
B. Resolution Authorizing Staff to Commence Environmental Review in Accordance with the California Environmental Quality Act for the Development of a Zero Emission Truck Stop in National City

EXECUTIVE SUMMARY:

The Maritime Clean Air Strategy (MCAS) includes a vision of “Health Equity for All” with nearly 40 objectives, several of which aim to reduce emissions from maritime-related activities and industries. Importantly, the MCAS aspires to achieve 40 percent zero emission (ZE) heavy-duty (HD) truck trips to and from the District’s marine cargo terminals by June 30, 2026, and 100 percent ZE HD truck trips by December 31, 2030. Additionally, MCAS Truck Goal 2 focuses on facilitating the deployment of infrastructure to support the transition to ZE trucks, which is critical in achieving the goals set forth in our MCAS.

To advance progress on MCAS Truck Goal 2, in November 2022, the Board of Port Commissioners (Board) adopted a resolution authorizing staff to issue a Request For Proposal (RFP) to develop a ZE Truck Stop for HD trucks on Tidelands located at the intersection of 19th Street and Tidelands Avenue in National City.

The RFP was open from April to August 2023 and staff received six proposals, interviewed four of the proposal teams, and narrowed it down to two finalists: Gage Zero LLC and Skychargers LLC (collectively the finalists). The finalists presented to the Board on November 14, 2023 and received feedback on their proposals. The finalists then submitted revised proposals which were received by staff on December 22, 2023.

Based on review of the revised proposals, staff returned to the Board on March 12, 2024 to recommend the Board select Skychargers LLC (Skychargers) under the RFP to develop the ZE Truck Stop. Staff’s review concluded that Skychargers is best suited to develop the ZE Truck Stop given the development team’s experience developing and operating electric vehicle charging facilities. Further, the size of Skychargers’ proposal, including electric vehicle supply equipment (EVSEs, or chargers) and distributed energy resources, would provide the infrastructure needed to support the District’s MCAS goals. Furthermore, the Skychargers proposal offers a trucking as a service program (TaaS), a robust community benefits package, and a significant financial return to the District. The Board selected Skychargers under the RFP and authorized staff to enter into an Exclusive Negotiating Agreement (ENA) with Skychargers to develop and operate the ZE Truck Stop (Project).

Since the March 12, 2024 Board meeting, staff and Skychargers have worked together diligently to continue to advance the Project to fruition. Overall, the Project components remain largely same from the March 12, 2024 Board meeting, although the site plan has been further refined for operational efficiency and still includes a total of 70 chargers suitable for overnight charging and opportunity charging, solar array canopies, a battery energy storage system (BESS), convenience store, and landscape area on approximately 4.8 acres located north of the intersection of 19th Street and Tidelands Avenue in National City (Attachment A – Site Plan). At the September 10, 2024 Board meeting, staff will present the proposed Project for preliminary project review and provide a project status update, which the Board may provide feedback on.

In addition to feedback on the Project, staff will also be seeking authorization from the Board to commence California Environmental Quality Act (CEQA) environmental review for the Project. Staff intends to have a series of studies and/or memorandums prepared to inform the level of CEQA analysis required, which may determine an Exemption from further CEQA analysis or additional analysis, is warranted. With direction from the Board to proceed with CEQA, staff will be in a position to advance CEQA analysis as appropriate once the results of these initial inquiries are produced.

RECOMMENDATION:

- A. Receive preliminary project review presentation and project update on the proposed zero- emission truck stop; and
- B. Adopt a Resolution authorizing staff to commence environmental review in accordance with the California Environmental Quality Act for the development of a zero-emission truck stop in National City

FISCAL IMPACT:

This Board action has no fiscal impact to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

MCAS Truck Goal 2 seeks to facilitate the deployment of infrastructure to support the transition to ZE truck trips to the District’s marine cargo terminals. At the March 12, 2024 Board meeting, staff select Skychargers under the RFP to develop a ZE Truck Stop in

National City to support ZE trucks calling both the District's marine cargo terminals; the Board voted in favor of this recommendation.

Staff's review of proposals concluded that Skychargers is best suited to develop the ZE Truck Stop not only because of the team's experience developing electric vehicle charging facilities and proposed project elements, but also because of their TaaS program, which significantly benefits District tenants and truck operators. Trucking as a Service (TaaS) is a "term of art" in the ZE trucking world used to describe an opt-in business model for truck drivers to pay a monthly program fee for the truck lease, charging, and maintenance, equal or less than the actual cost. The TaaS program would include a 90-day "Try before you Buy" program and a five-year path to ownership.

As a prospective participant to programs such as the California Air Resources Board's (CARB) Innovative Small E-Fleets (ISEF), Skychargers' proposed TaaS program is eligible to receive vouchers for \$288,000 per new ZE truck, among other public funding assistance sources aimed at expediting the adoption of ZE trucks. Additionally, on August 14, 2024, the California Energy Commission (CEC) awarded Skychargers a \$10 million grant for the Project; staff is committed to requiring that Skychargers use the equivalent of the \$10 million to purchase trucks for the TaaS program in order to support District ZE drayage operations. These programs allow the TaaS program to offer ZE trucks to drivers with a lower total cost of ownership (TCO) than the diesel trucks they are replacing. Staff is finding that truck drivers and fleet operators are hesitant to make the transition to ZE trucks from diesel-powered trucks due to the upfront cost and uncertainty about where the ZE trucks can be charged. Staff is hopeful that the combination of operating the ZE Truck Stop and TaaS program will be the right solution to get drivers in ZE trucks and meet the MCAS's truck goals.

Project Update Since March 12, 2024 Board Meeting

Since the March 2024 Board Meeting, staff and Skychargers have coordinated on the following:

ENA

On August 14, 2024, the District and Skychargers entered into an ENA for the Project. The term of the ENA is for a one-year period, with the ability to extend in 90-day increments. During the term, the parties intend to negotiate the final design, layout, operations, business terms and other terms of the Project.

Feasibility and Market Analysis

At the March Board Meeting, the Board directed staff to conduct a Feasibility and Market Analysis (Study) for Skychargers' Project. Staff retained JLL consulting firm to conduct the Study. JLL has been working with staff since the development of the RFP in Spring 2023 and has a deep understanding of the proposed project and the emerging technologies, so they were able to commence this work immediately and efficiently. The scope of services included JLL performing a "deep dive" and stress test of the Skycharger business model and core assumptions, with an emphasis on analyzing ZE truck adoption rates and charger utilization rate assumptions while also closely looking at real estate needs, financing, costs, and revenue assumptions.

The Study was completed in August 2024 and ultimately found the Skychargers proposed project and financials to be in line with the market, and that their assumptions generally appear conservative. Although the charging utilization rate in early years appear to be slightly optimistic, Skychargers' longer-term utilization assumptions are consistent with recent ZE truck adoption studies produced by San Diego Association of Governments (SANDAG) and the CEC. Additionally, the MCAS Truck goals will drive utilization demand along with Skychargers' TaaS program. Lastly, JLL has proposed ways to mitigate lower than anticipated utilization in the early years which may include allowing non-District serving trucks to access the ZE Truck Stop (Port trucks still having priority) and by potentially repurposing opportunity chargers to overnight chargers, which would allow flexible charging solutions for District tenants and their operations. The complete Study is attached to this agenda sheet as Attachment B – Feasibility and Market Analysis Study.

Site Due Diligence

Since the March Board Meeting, staff and Skychargers have been engaged in conducting several predevelopment activities to inform final design of the Project. In the coming weeks, Skychargers will conduct numerous predevelopment activities such as conducting soil assessments, surveys, and utilities validation.

Stakeholder Coordination and Public Engagement

Staff continues to coordinate with stakeholders on the proposed project. Since the March Board Meeting, staff have held meetings with the following stakeholders:

- City of National City - March 13, 2024, May 29, 2024, and September 5, 2024
- Environmental Health Coalition - July 2, 2024 and August 7, 2024
- Maritime Stakeholders Forum – May 2, 2024
- Navy Region Southwest – July 25, 2024
- Site Visit to Port of LA/ Prologis ZE Truck Site – July 15, 2024
- SDG&E – June 28, 2024, August 6, 2024, and August 14, 2024
- Early Strategic Stakeholder Meeting – September 12, 2024

City of National City Coordination

Three meetings between staff and City of National City staff have occurred regarding this Project, most recently on September 5. Discussions have included concerns about potential project impacts, how these potential impacts could be mitigated, the community benefit package, and next steps for obtaining building and fire permits from the City. City concerns include impacts to roads, traffic, and battery fire prevention which staff plans to address during the environmental review process.

SDG&E Coordination

The three SDG&E meetings include: (1) June 28th Quarterly Executive Meeting where the importance of the Project and obtaining sufficient power to the site was discussed; (2) August 6th meeting where staff discussed lessons learned on BESS safety and what the utility is doing prevent and prepare for electrical fires; and (3) August 14th site visit for utility staff to view existing site infrastructure and plan for future development.

Beyond these three meetings, Skychargers and staff continue to be in close coordination with SDG&E. Skychargers has two applications in with the utility, one for EV Infrastructure Rule 45 and a second for the Power Your Drive (PYD) for Fleets Program. Skychargers is actively working with SDGE on the load analysis for the site.

Early Strategic Stakeholder Meeting

On Thursday September 12, 2024, two days after the Board Meeting, Skychargers is hosting an early strategic stakeholder meeting from 5 P.M. to 7 P.M. at the National City Public Library to provide a project overview, information on electric trucks, present their community engagement plan, and most importantly, gain stakeholder feedback. This is an opportunity for Skychargers and staff to discuss with National City and stakeholders about potential impacts from the Project. The feedback received during this evening will help inform the project as it moves forward and help us identify any community concerns or impacts. This will be the first in a series of stakeholder engagement meetings.

Environmental Review Process

Staff, with the assistance of consultants, are preparing initial planning, feasibility and technical studies in preparation for California Environmental Quality Act (CEQA) analysis on the proposed Project. These early evaluations help define the scope and viability of the proposed Project, which is necessary to prepare a stable project description and to support further analysis pursuant to CEQA. These studies include: feasibility and market analysis (discussed above), traffic, noise, air quality/greenhouse gas emissions, fire protection and evacuation, and hazardous materials. Please note that the second Environmental Review section in this report below refers specifically to this item's Board action, whereas this section, Environmental Review Process, and discussion immediately below refers to the subsequent and more comprehensive environmental review process which would be authorized by this item's Board action.

Project Description

The project is estimated to require a minimum investment of approximately \$32,000,000. The project components are further described below:

Location

The project would be constructed on approximately 4.8 acres of an approximately 8.2-acre paved site located at 1640 Tidelands Avenue in the City of National City. The site is immediately south of the District's General Services Building located at 1400 Tidelands Avenue in National City.

EV Charging

The project would contain 59 electric vehicle supply equipment (EVSEs) or "chargers" with a total of 70 ports with the ability to charge 70 trucks simultaneously. The EVSEs include:

- 11 dual port EVSEs at 160 kW for overnight charging (22 ports)
- 24 single port EVSEs at 240 kW for opportunity charging
- 24 single port EVSEs at 400 kW for opportunity charging

Up to 30 trucks are anticipated to use the site during the initial operating year. Additionally, the EVSEs/ charging infrastructure will be able to support public charging for truck fleets and passenger vehicles.

Solar Carports

Solar canopies would cover the truck parking spaces on the site; the project would include up to a 1,750-kW solar array.

Battery Energy Storage System (BESS)

The BESS is anticipated to have an up to 2.8-MW capacity and could store up to 6.8-MWh in a containerized storage system. The container is expected to include a battery, power and battery management system, and a power conditioning system for a conversion of AC to DC.

Green Space

A portion of the project would be landscaped or used as a stormwater retention basin and approximately 0.15 acres of the site will be green space.

Convenience Store with Restrooms

The project would also feature a 50'x100' (5,000-sqft) convenience store.

Additional Planning and Technical Studies – Fire Protection

As mentioned above, work on initial planning and technical studies for this project has begun. One subject area that has been identified as needing additional information and review is related to fire protection. Specifically, recent lithium-ion battery fires have raised both awareness and concerns about the fire risks associated with battery-related energy projects, including the BESS portion of this project.

For background, the proposed project includes a BESS which is a distributed energy resource and was a requirement in the RFP. Distributed energy resources, such as solar panels and batteries, are small-scale devices that generate and/or store electricity and are usually connected to a power grid. Distributed energy resources can help reduce reliance on a single energy source (the grid), which may be vulnerable during extreme weather events, and also keep energy costs down during peak usage periods from 4 P.M. to 9 P.M. Distributed energy resources are a project requirement in order to make the project more resilient and affordable, reducing the risk of downtime and peak pricing.

A brief summary of the coordination that has taken place to date related fire issues, along with additional fire-related information required to process the project, is further detailed below.

As a part of the project and environmental review, staff, in coordination with Skychargers, consultants, City of National City fire department, and SDG&E are conducting additional due diligence to ensure fire risk at the site is thoroughly planned, managed, protected, and mitigated. Based on direction from SDG&E, fire marshal/coordinators, and engineers, staff has requested that Skychargers prepare fire hazards, prevention, protection, and evacuation plans as part of the Project. These plans will comprehensively address the fire prevention and protection requirements for the facility and will evaluate and

recommend measures to minimize risk to the project and surrounding area. These plans will not only evaluate the fire safety of the proposed facility, the studies/plans will also evaluate and propose any recommendation to reduce fire risk to people and property. Such studies and plans are common and are based on the latest fire and building code requirements, as well as the latest best practices in fire management, and similar studies/plans will be prepared for this project.

Next Steps and Recommendation

Next steps include continued stakeholder outreach, negotiating the terms of the development and a future definitive agreement, and completing the entitlement process. Skychargers, consistent with the executed ENA, is committed to responding to feedback from the Board and continuing site due diligence as the project continues to progress through the entitlement process. The Board has the authority, in its sole and absolute discretion, to direct staff to proceed with environmental review, and if so directed, the Board's approval of such environmental review is a condition precedent to the Board's consideration.

Therefore, staff recommends that the Board receive the Preliminary Project Review presentation and project update and adopt a Resolution authorizing staff to commence environmental review in accordance with CEQA for the development of a ZE truck stop in National City.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda and its attachments, as presented to it, as to form and legality.

Environmental Review:

This proposed Board action, including, without limitation, receiving the preliminary project review presentation and update on the proposed ZE Truck Stop at 19th Street and Tidelands Avenue in National City and authorizing environmental review is consistent with and in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15060, which authorizes a lead agency to conduct preliminary review of an application for permits or other entitlements for use before commencing formal environmental evaluation of a project. Further, the proposed action does not constitute a "project" or an "approval" of a "project" under the definitions set forth in CEQA Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur, and the Board's selection and direction to staff do not constitute a binding commitment to implement or approve any project(s) submitted as a result of the development information and direction to staff. Pursuant to Section 15378(b)(4) of the CEQA Guidelines, a project does not include the creation of government funding mechanisms or other government activities which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment. Any project requiring the District or the Board's discretionary approval resulting in physical change to the environment shall be analyzed in accordance with CEQA prior to such approval. The current Board actions are not to approve any project, including the design, project description, any leases or any other approvals required to carry forward any

project. The Board reserves its sole and absolute discretion to approve or disapprove any project and adopt the environmental document and any mitigation measures, if applicable, as well as any and all other permits or entitlements for use that may be required. Therefore, no further CEQA review is required for the current Board actions with respect to the preliminary review presentation.

The proposed Board actions comply with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District’s CDP Regulations. Future development would remain subject to its own independent review pursuant to the District’s certified CDP Regulations, Port Master Plan, and the relevant chapter(s) of the Coastal Act. The exercise of the District’s discretion under the District’s CDP Regulations is in no way limited by the proposed Board actions.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

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Principal, Strategic Planning, Government & Civic Relations

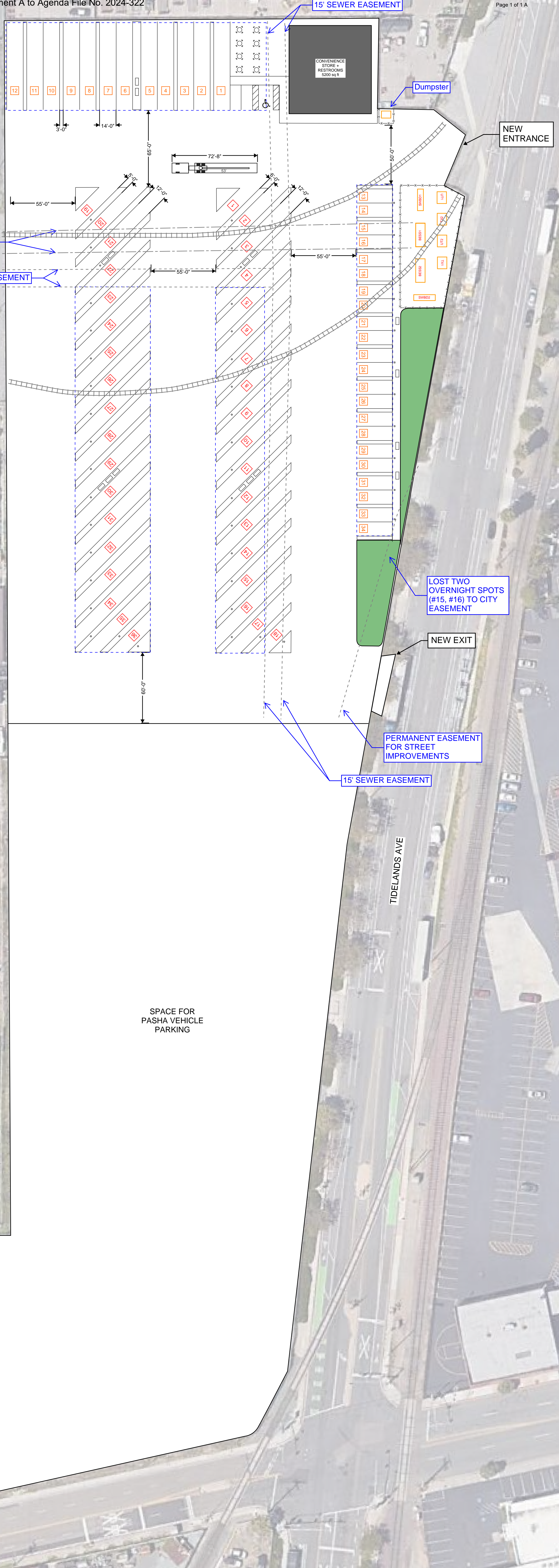
Attachment(s):
Attachment A: Site Plan
Attachment B: Feasibility and Market Study
Attachment C: Resolution

PHASE 1 BUILDOUT: (12) OPPORTUNITY WITH TRAILER + (7) OVERNIGHT WITH TRAILER & (16) OVERNIGHT WITHOUT TRAILER.

	CHARGERS:	PORTS:
OPPORTUNITY CHARGERS (350kW):	12	24
OVERNIGHT CHARGERS (150kW):	23	46
TOTAL:	35	70

Kempower solution

Charging Section	Stall	Ports	Qty 400kW	Qty 600kW	PM kW ea.	Sat. Type	Sat Qty	Total Power	Avg Port Power	Max Power 1 Port in use
Overnight - North Side	Truck + Trailer	14		2	450	Overhead	14	900	64	450
Overnight - West; N of Store	Truck Only	10	2		350	Dual-Port	5	700	70	350
Overnight - West; S of Store	Truck Only	14		2	450	Dual-Port	7	900	64	450
Opportunity - East Pull-Thru	Truck + Trailer	12		4	500	Single-Port LCC	12	2000	167	500
Overnight - East Pull-Thru	Truck + Trailer	4	1		250	Single-Port	4	250	63	250
Opportunity - East Pull-Thru	Truck + Trailer	12		4	500	Single-Port LCC	12	2000	167	500
Overnight - East Pull-Thru	Truck + Trailer	4	1		250	Single-Port	4	250	63	250
		70	4	12	140		58	7000	100	





Port of San Diego Regional Zero Emission Infrastructure for Heavy-Duty Trucks

Feasibility and Market Analysis

August 2024



Disclaimer

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Glossary

PoSD Port of San Diego

SC Skycharger

BET Battery Electric Truck

BEV Battery Electric Vehicle

MCAS Maritime Clean Air Strategy

ZET Zero-Emission Truck

LCFS Low-Carbon Fuel Standard

CEC California Energy Commission

CARB California Air Resources Board

SDG&E San Diego Gas & Electric

PYDFF Power Your Drive For Fleets

CPUC California Public Utility Commission

NCMT National City Marine Terminal

TaaS Trucking-as-a-Service

CPO Charge Point Operator

FCEV Fuel Cell Electric Vehicle

BESS Battery Electric Storage System

LD / MD / HD Light-duty / Medium-duty / Heavy-duty

EPC Engineering, Procurement and Construction

ITC Investment Tax Credit

ACF Advanced Clean Fleets

SANDAG San Diego Association of Governments

CEQA California Environmental Quality Act

COD Commercial Operation Date

CCS Combined Charging System

NACS North American Charging Standard

Agenda

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07	Capital Expenses	16	Charging revenue – utilization forecast (California)	26	Other assumptions
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01 Executive Summary (1/2)

Responding to a request from its Board of Commissioners, Port of San Diego (PoSD) staff contracted JLL to perform an analysis of Skycharger's (SC) proposal to assess reasonableness of assumptions, identify risks, and provide recommendations to mitigate risks.

Most estimates are in line with market, and assumptions generally appear conservative.

- JLL assessed the main financial, operational and reputational risks to the project, with a major focus on financial risks
- Financial risks are largely related to actual utilization levels, obtaining key incentives to finance the project and unplanned potential costs
 - Overall CAPEX assumptions are in line with market; cost estimates need to be completed and detailed as project design matures
 - No site remediation & interconnection costs are currently modeled, could pose financial & operational risks and delay development if materialized
 - Assumptions based on preliminary design stage. Assessment should be updated when SC provides refined cost estimates at the next design milestones
 - Overall OPEX estimates – the main driver of which is the cost of electricity – is in line with market
 - Project funding & economic performance depends heavily on obtaining various incentives, which appear likely to materialize
 - A \$10M grant plays a key role in funding the project. The CEC officially approved the grant at its August 2024 meeting
 - SC has proactively applied for additional grants which could improve project economics and provide a buffer if some incentives don't materialize as expected
 - No concerns were identified regarding the modeled utility rebate and tax credits
 - If too few incentives materialize, the project will require additional capital, which may result in SC requesting to renegotiate lease terms and capital structure
 - Uncertainty about early years' utilization brings some financial risks, which can be buffered with additional incentives
 - Due to a less mature technology & significant upfront costs, Battery Electric Truck (BET) adoption and charger utilization estimates appear optimistic in the project's early years
 - Driven by regulations, longer-term utilization assumptions are in line with available forecasts, suggesting expected utilization may materialize by early 2030s
 - PoSD's lease consideration is mostly tied to base rent payments; partially insulating PoSD from revenue-related risk (driven by charger utilization)

01 Executive Summary (2/2)

- Operational issues have the potential to create significant risks, which can be mitigated through the inclusion of specific lease provisions
 - Inadequate maintenance & lack of reliability often impact charging infrastructure, requiring clear performance and maintenance standards
 - Uncertainty around SDG&E's available infrastructure capacity may impact project design, construction schedule, operations, and cost
 - Project layout is currently optimized to use as little land as possible, which may lead to maneuverability issues and an inferior customer experience
- Performance of the truck stop presents some reputational risks, which can be mitigated with proactive engagement of local stakeholders
 - Under-utilization of charging assets may convey the image of a project not adapted to the needs of PoSD stakeholders and undermine support for Port's goals
 - PoSD & SC should communicate frequently with nearby communities about the project's role in reducing local air, noise & carbon pollution while also addressing existing concerns about increased truck traffic and fire risk
 - If the project succeeds, PoSD should be prepared to highlight its leadership role in supporting the transition to zero emission trucking
- JLL is ready to assist PoSD as the project moves forward with Term Sheet and Lease negotiations. JLL can support identification of risks and recommend appropriate mitigation measures.

02 Background

- 2021 [Maritime Clean Air Strategy](#) (MCAS), aiming for 40% heavy-duty truck trips to be zero-emission by mid-2026 & 100% by 2030
- PoSD commissioned WSP to prepare a [Heavy-Duty Zero-Emission Truck Transition Plan](#), released in June 2022
- RFI May 23 to July 25, 2022
 - Result: Focused approach on Tidelands site & Battery EVs
- RFP April 24 to August 10, 2023
 - 6 respondents, 4 responses deemed credible, Gage Zero & Skycharger shortlisted
 - Skycharger proposal approved at March 2024 board meeting
- PoSD Board requested a feasibility study and deeper dive of Skycharger's proposal
- Skycharger & PoSD executed the Exclusive Negotiation Agreement on August 15, 2024



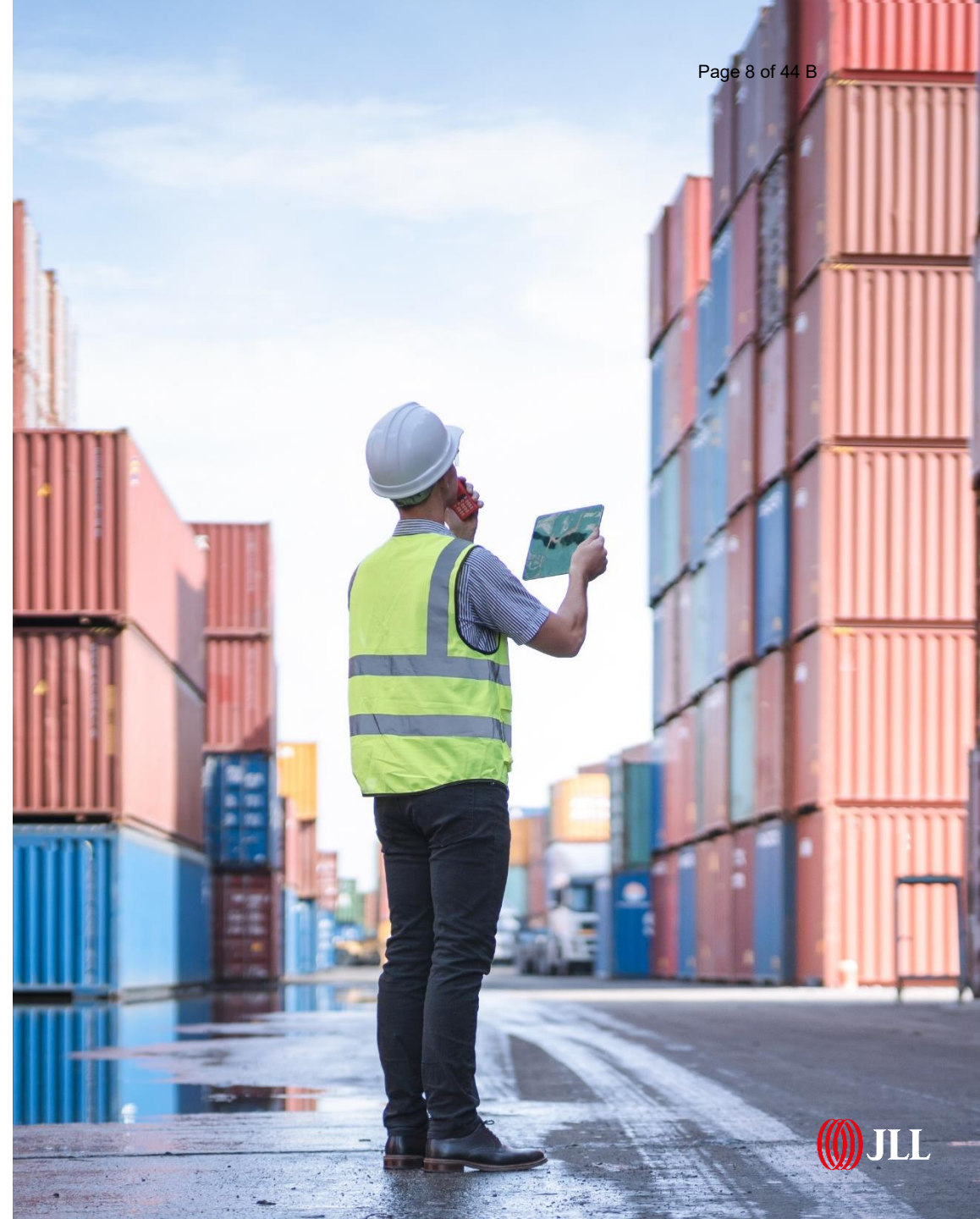
03 Scope of Work

In June 2024, PoSD appointed JLL to conduct a deep dive & stress test of Skycharger business model & core assumptions.

JLL previously supported PoSD with RFI review and its RFP process, including RFP drafting and proposal evaluation.

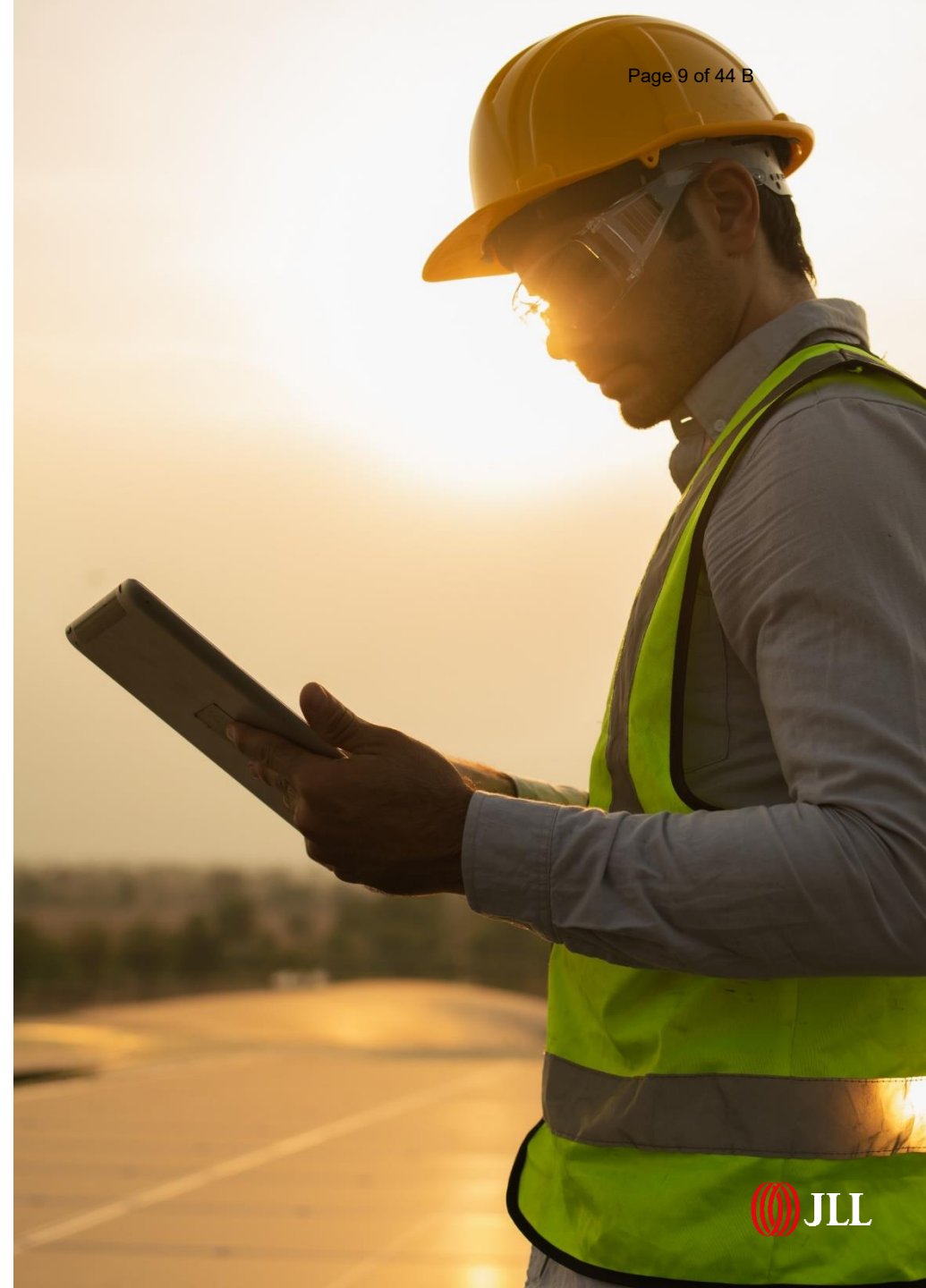
Areas of analysis include:

- Cost
 - CAPEX & OPEX, underlying cost components & evolution
- Financing
 - Equity, debt, state & utility incentives
 - Focus on the \$10M California Energy Commission (CEC) grant
- Revenue
 - Charger utilization, rates, LCFS, solar power sale
- Site adequacy
 - Site footprint & project design optimization
 - Utility infrastructure & availability to provide power

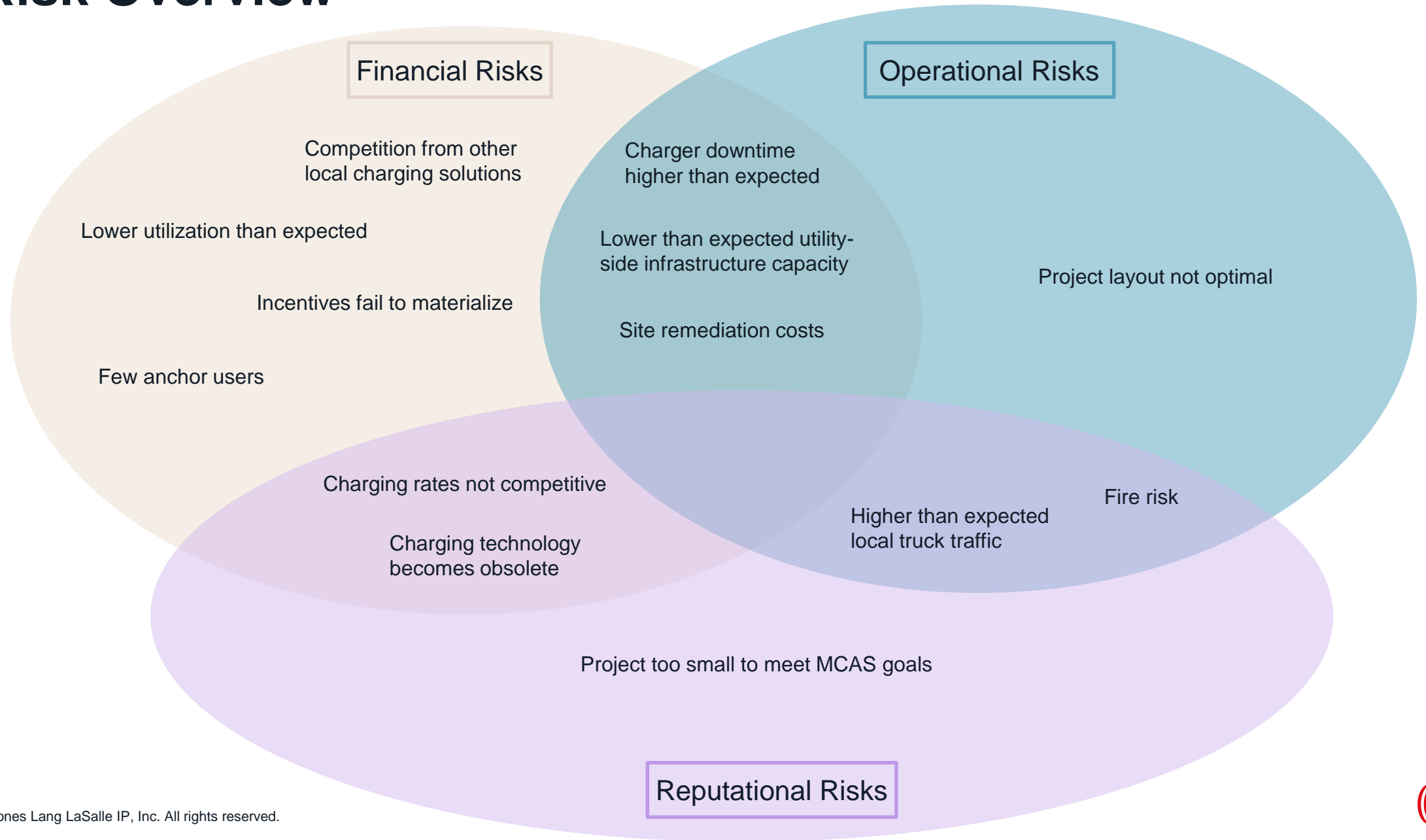


04 What we did

- Researched using public sources to independently confirm SC economic & technical assumptions
- Validated proforma results, including:
 - Charger utilization
 - LCFS revenue
 - Financing
 - CAPEX
 - OPEX
- Sent clarification questions to SC, regarding:
 - Assumption details
 - Assumption sources
 - Updates to correct identified proforma errors
- Interviewed key PoSD stakeholders & regional trucking firms
 - Assessed interest & plans relative to BET transition for potential users
 - Gauged interest in the Trucking-as-a-Service offer as envisioned by SC
- Performed Financial Sensitivity Analysis on key parameters



05 Risk Overview



06 Risk Mitigation

Due to the nature of the risks involved, PoSD would benefit from treating this transaction more akin to a Public-Private Partnership (P3), where the Port can expect rights beyond that of a typical lessor. The table below identifies key risks and potential mitigation solutions as well as specific risks that likely have applicable mechanisms that we recommend incorporating into the lease.

Risk	Category	Level	Potential Mitigation Solution(s)	Recommended focus in lease documents*
Charging rates not competitive	Financial & Reputational	Low risk	Proposed prices are currently competitive. If bundled with TaaS, overnight charging will be insulated from price competition. SC has a financial incentive to keep rates competitive.	X
Competition from other local charging infrastructure	Financial	Low risk	Local & regional charging infrastructure availability (especially very fast chargers) has consistently lagged EV adoption and it is expected to remain so due to utility infrastructure constraints and high capital costs. Project will be placed near the NCMT, a strategic location for BET charging. To keep the ZE truck stop competitive, SC can lower charging rates and improve the quality of the user experience.	
Lower utilization than expected	Financial	Significant risk	Truck stop can be opened to other users, for fleet charging or to other vehicle classes (MD/LD vehicles) until BET utilization ramps up. Opportunity chargers can be repurposed into overnight chargers as needed.	X
Few anchor users	Financial	Moderate risk	Open truck stop to non-Port serving trucks. Partner with nearby entities for fleet charging.	
Incentives fail to materialize	Financial	Low risk	SC applied for other grants. No concerns were identified in obtaining the utility rebate and capturing the tax credits modeled. Should key incentives not materialize, SC may request to negotiate proposed rent amounts.	X
Site remediation costs	Financial & Operational	Moderate risk	Although port sites often have remediation costs, no remediation costs modeled for project. Perform geotech study early to assess any remediation and adjust project expectations as needed.	X
Charger downtime higher than expected	Financial & Operational	Moderate risk	SC will partner with reputable CPO to operate and maintain the truck stop. Include lease provision to have uptime requirements and maintenance standards.	X
Lower than expected SDG&E infrastructure capacity	Financial & Operational	Moderate risk	Peak demand in early years may be lower than expected. Smart demand management using solar & BESS should help mitigate capacity issue. SC can install a temporary microgrid solution to avoid delaying the project with interconnection-related issues, at its cost.	X
Charging technology becomes obsolete	Financial & Reputational	Moderate risk	Chargers are expected to be replaced in Year 10. Competing FCEV technology is less mature and expected to be reserved for long-haul trucks. If power rating become insufficient to be used as opportunity chargers, chargers can re-purposed for overnight charging or targeted for other vehicle populations (e.g. MD trucks).	X
Project too small to meet MCAS goals	Reputational	Moderate risk	Project likely to have enough capacity to reach the 40% interim MCAS goal. Proceeding with a potential Phase 2 would help increase the number of trucks served, although will likely not be enough on its own to meet the ultimate 100% goal.	
Project layout not optimal	Operational	Low risk	Thorough preliminary review. Extra space available in the southern end of the parcel to expand the footprint of the truck stop if needed. Involve potential tenants in design review.	X
Higher than expected local truck traffic	Operational & Reputational	Low risk	Perform a traffic analysis to determine impact on surrounding roads of truck stop operating at maximum capacity. Communicate benefits of reduced local air & noise pollution while offering job training program to nearby communities.	X
Fire risk	Operational & Reputational	Low risk	SC is developing a Fire Prevention and Preparedness Plan in line with county, city & Port guidelines. Pursue grant funding for firefighting equipment identified by SC. Communicate to nearby communities on measures taken to address fire risks specific to batteries.	X

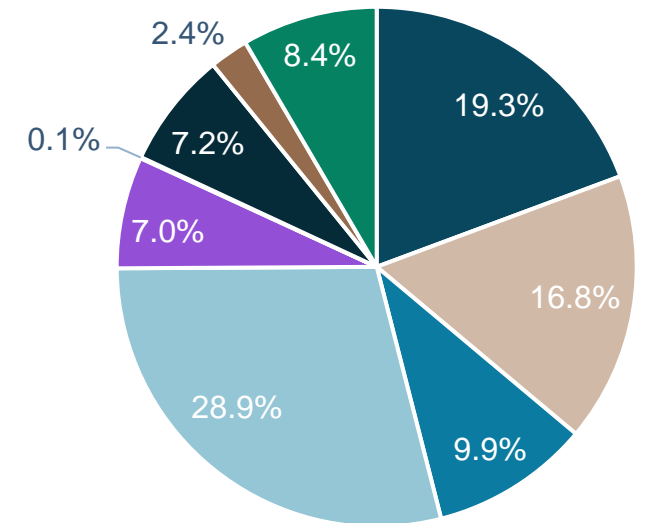
Cost assumptions

07 Capital Expenses

Based on SC's latest proposal*, overall CAPEX estimates are in line with market.
JLL recommends additional assessment(s) upon submission of subsequent design milestones

- Most CAPEX are site-level values (not broken down by unit cost & quantity)
 - CAPEX assumptions based on preliminary design stage and JLL recommends additional review when more detailed design has been submitted to PoSD
 - Next design milestones will provide greater cost granularity and firmer estimates
- Charger hardware costs varies
 - Overnight charger costs in line with cost estimates obtained by JLL
 - Opportunity charger costs appear underestimated and should be further assessed with the next design milestones
- No site remediation costs are currently modeled
 - Given past industrial uses, potential for remediation costs which will be responsibility of SC
 - Could pose financial & operational risks and complications if contaminants found requiring remediation
 - Potential costs unknown until geotech study completed
- No interconnection costs are modeled, assumes no significant upgrades on utility-side infrastructure
- Proposal doesn't include CAPEX related to the Trucking-as-a-Service (TaaS) offer envisioned by SC
- 10% contingency (\$3M) & ~15% capital reserves (\$4.5M) budgeted to address unexpected cost increase

Capital Expenditures



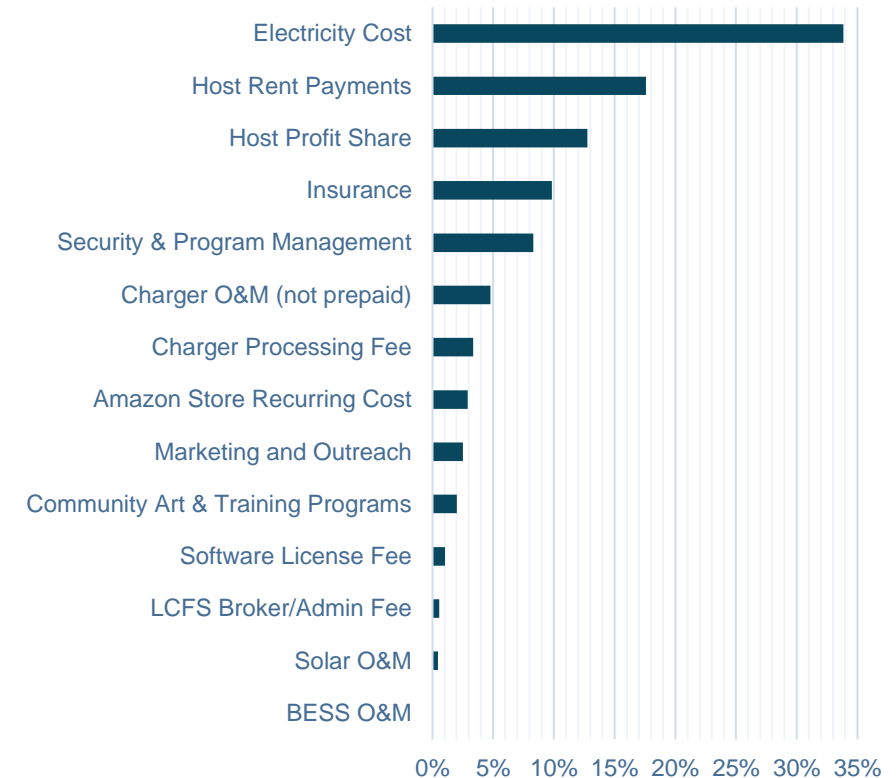
- Civil & Concrete Work
- Solar
- BESS
- Electrification
- Project Indirect Cost
- Community Engagement
- Equipment Replacement (Year 15)
- Amazon JWO Store
- Contingency

08 Operational Expenses

Based on SC's latest proposal*, overall OPEX estimates are in line with market

- Electricity is the biggest component of OPEX expenses
- SC modeled SDG&E rates are slightly higher than 2024 published rates (~\$6M savings over project lifetime)
- After initial 5-year O&M contract, SC assumes ~30% increase in annual charger O&M costs, likely conservative
- Standard 2% annual cost escalation for all OPEX (except Community Art & Training Programs & Host Profit Share), long-term inflation estimate
- Several OPEX values (e.g. Marketing and Outreach) were not detailed, but represent a small share of expenses

Operational expense breakdown (2024-2045, nominal \$)

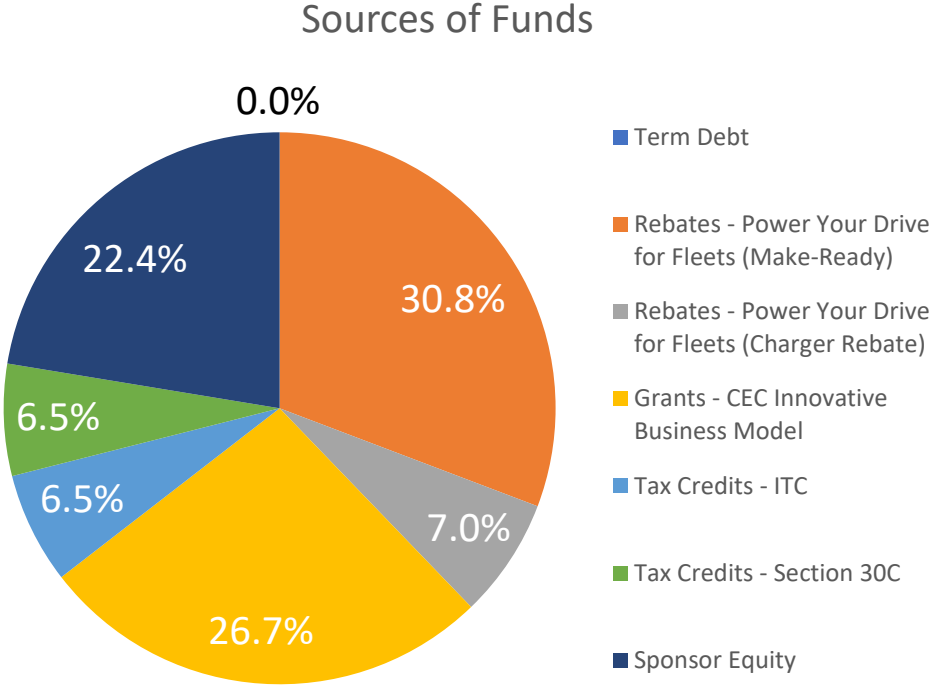


Financing assumptions

09 Source of Funds

This analysis reviews sources of funds leveraged by SC to fund the project, which is key to understand potential financial risks to completing the project

- Utility **rebates** (37.8%, \$14.1M), **grants** (26.7%, \$10M) and federal **tax credits** (13%, \$4.9M) **are expected to finance most of the project**
- Remainder (22.4%, ~\$8.4M) financed entirely with equity, **no debt expected**
- Equity provided by parent, Skyview Ventures
- SC revised initial proposal by replacing debt with a \$10M CEC grant
 - **CEC officially awarded the grant to SC at its August 2024 meeting**
 - Funding can be applied to infrastructure investments (e.g. charging equipment, customer-side infrastructure, solar dedicated to charging)
- **Relatively conservative approach, with some margin of error**
 - Captured value of tax credits is conservative (e.g. project likely eligible for the Energy Community bonus of the ITC but not modeled)
 - SC applied for other grants that are not priced in the proposal



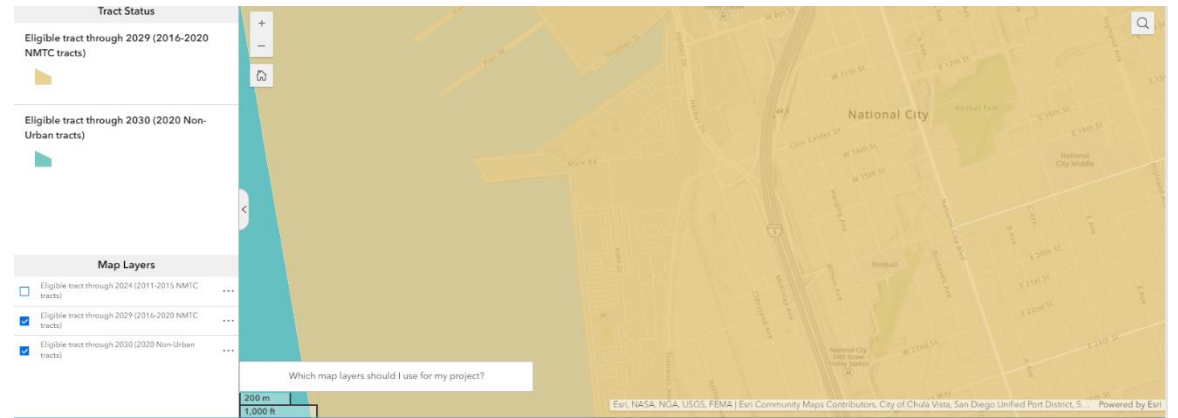
Not included: EPA Clean Ports (26.5%) & Carl Moyer (13.3%) grants

10 Tax credits

SC modeled tax credits conservatively and could potentially capture up to and additional \$2.44M (+49.8% value)

- Section 30C tax credit:
 - Covers 30% of capital costs, up to \$100k per charger
 - Project located in an eligible census tract
- Investment Tax Credit (ITC):
 - Covers 30% of capital costs for solar & BESS
 - Project located in an Energy Community, eligible for 10% bonus (**not assumed in Source of Funds**), worth ~\$957k
- SC plans to sell credits to the market
 - Tax credits priced at 70-85% of face value to account for Transferability (selling of credits)
 - Market rate for ITC is ~91%, may be lower for Section 30C
 - Potential to retain up to \$1.5M extra value depending on market price or if SC uses to offset its own tax liability
- Implies compliance with prevailing wages and apprenticeship provisions for both credits

Section 30C Tax Credit Eligibility map



Source: [30C Tax Credit Eligibility Locator, US Department of Energy](#)

Energy Community Tax Credit Bonus map

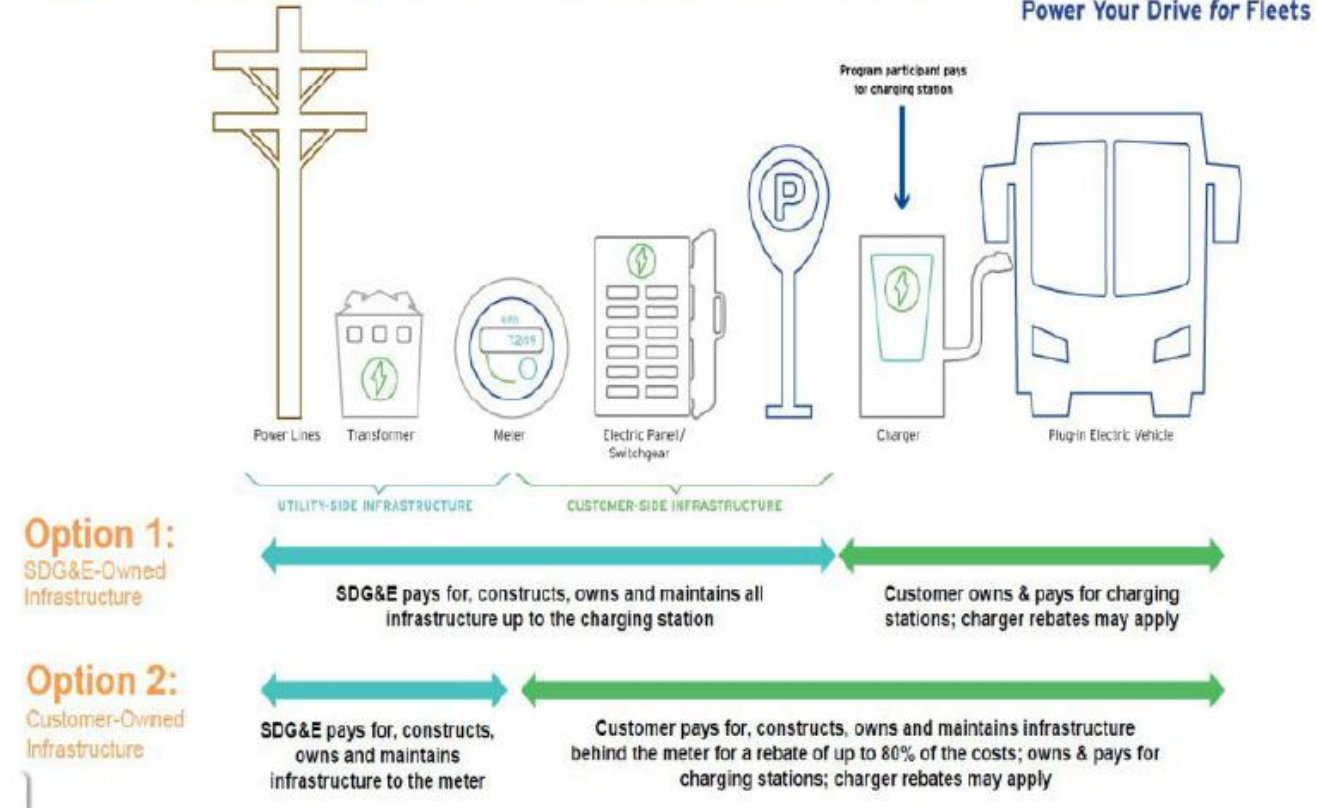


Source: [Energy Community Tax Credit Bonus map, US Department of Energy](#)

11 SDG&E Power Your Drive for Fleets

- SDG&E can install and finance electrical infrastructure between chargers and the electric grid (“make-ready”)
- SC required to pursue Make-Ready Option 2:
 - SC will build & own customer-side infrastructure
 - SDG&E provides a rebate for up to 80% of costs
 - **SC assumes max rebate obtained** (~\$11.5M rebate)
- Cost basis used by SC in line with eligibility under the program
- Charger rebates
 - Qualifies for charger rebates because located in a [SB535 Disadvantaged Communities census tract](#)
 - For 150.1+ kW chargers: 50% of charging hardware costs, up to \$75k (\$2.6M total)
- Project should easily meet program requirements
 - Own/lease property & maintain chargers for min 10 years
 - Send daily, 15-min interval utilization data to SDG&E
 - Procure at least 2 electric fleet vehicles
 - Long-term electrification growth & load increase

Program offers two options for installation & ownership



Source: [Power Your Drive for Fleets, SDG&E](#)

12 Other grants

- **Additional grants could result in more funding (~\$15M requested)**
 - Award considered less likely than other funding, but no major eligibility obstacles identified
 - **Not modeled in Source of Funds. If materialize, project economics will improve and could result in negotiation for increased rent for PoSD.**
- **EPA Clean Ports Program**
 - Available for customer-side infrastructure & ZE port equipment costs
 - Applied to charging equipment and solar & BESS costs (if dedicated to EV charging)
 - Need to comply with Build American, Buy American requirements
 - Project eligible to receive funds from the \$250M earmarked for small water ports
- **Carl Moyer Memorial Air Quality Standards Attainment Program**
 - Provides annual grants for cleaner-than-required equipment providing early or extra emission reductions
 - Can fund HD truck replacement & BEV charging infrastructure
 - Project eligible for funds earmarked for EJ areas (min 50%)
 - Project must be accessible on a 24-hour basis
 - Potential obstacles
 - Must be for emission reduction not mandated by any regulation
 - Min project life is 3 years, but maximum project life of 15 years

EPA Clean Ports Program grant range (ZE Technology Deployment Competition)

Tier	Port Type	Applicant Type	EPA Funding Range per Award	EPA Share of Total Project Cost (Maximum)	Mandatory Applicant Share of Total Project Cost (Minimum)	Anticipated Number of Awards
Tier A	Water ports only	Any eligible entity	\$150,000,000 - \$500,000,000	80%	20%	5-10
Tier B	Water or dry ports	Any eligible entity	\$10,000,000 - \$149,999,999 (Projects at small water ports: \$5,000,000 - \$149,999,999)	90%	10%	25-70
Tier C	Water or dry ports	Tribal applicants only	\$2,000,000 - \$50,000,000	100%	0%	2-10

Source: [Clean Ports Program: ZE Technology Deployment Competition Request for Application, US EPA, April 2024](#)

Maximum Percentage of Eligible Cost for Moyer Program Infrastructure Projects

Maximum Percentage of Eligible Cost ^(b)	Infrastructure Projects
50%	All Projects
60%	Publicly Accessible Projects
65%	Projects with Solar/Wind Power Systems ^(a)
75%	Publicly Accessible Projects with Solar/Wind Power Systems ^(a)
100%	Public School Bus Projects ^(c)

^(a) At least 50 percent of the total energy provided to covered sources by the project must be generated from solar/wind.

^(b) Additional 5% funding available to applicants of heavy-duty truck parking facilities that provide communal charging opportunities (e.g., truck yards, truck depot, truck stops etc.)

^(c) Also, may include solar/wind power systems.

Source: [Carl Moyer Guidelines Chapter 10 Infrastructure, CARB, January 2023](#)

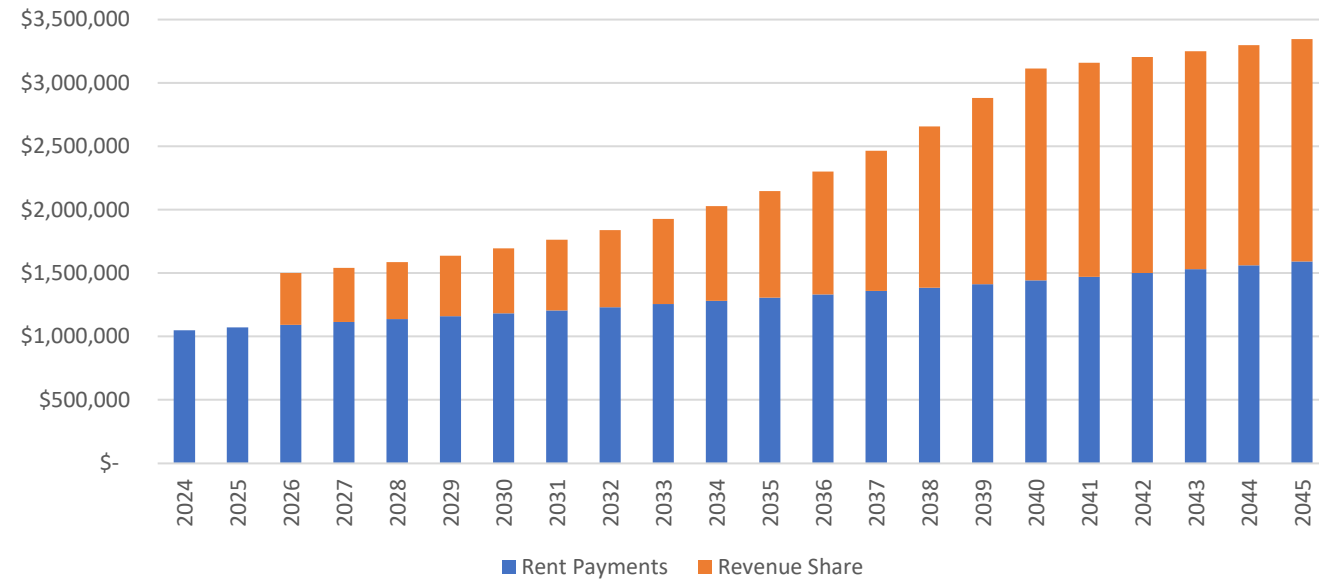


Revenue assumptions

13 PoSD Revenue

- SC proposes to compensate the PoSD with base rent and revenue share payments
- Rent payments: \$1,050,000/year, starting at lease inception (before project COD), increasing at 2%/year
- Revenue share: 10% of Project Operating Revenue
 - No minimum revenue or restrictive conditions are set
 - Revenue share is calculated before accounting for project expenses and financing costs
 - Depends heavily on charging revenue and charger utilization
- Rent payments are expected to comprise most of PoSD revenue until late in the project lifetime (around 2039)
 - PoSD revenue is mostly insulated from project revenue risk, especially in the first years of project operation
 - If project economics degrade, SC may struggle to pay rent and may seek to renegotiate lease terms

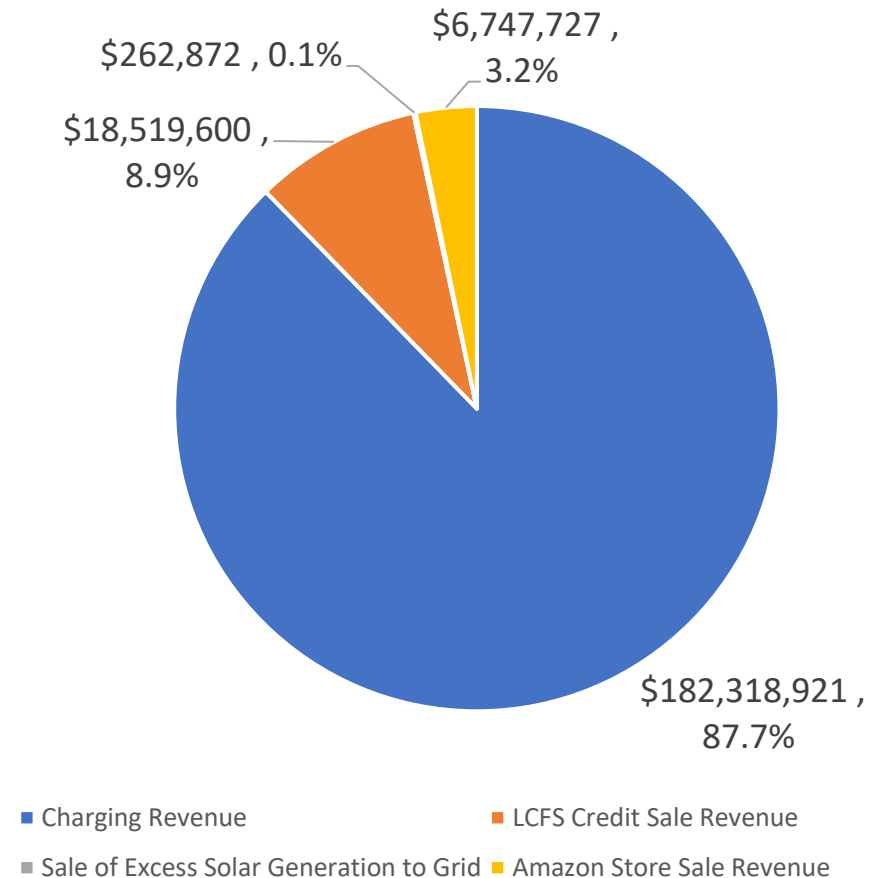
Evolution of PoSD revenue by component



14 Project Revenue Summary

- Charging revenue will determine the economic success of the project
 - Charger utilization rate is the most important metric impacting charging revenue. Comparing SC assumptions against the best available forecasts at the local, state and national levels was performed in order to assess risk.
 - Adequation of the project's equipment with projected charging needs is important to ensure the project will address the needs of potential customers.
 - Project charging rates must stay competitive with the local & regional offer.
 - Interviews of key PoSD tenants and local trucking companies provided valuable qualitative insights into interest for short-term acquisition of BETs and existing barriers to adoption.
 - Utilization may be lower in the early years of the project, highlighting the need to explore alternative approaches to shore up demand.
- Several factors impact the LCFS revenue, including the expected credit price curve and the evolution of the grid's carbon intensity.
- Determining the use case for the solar & BESS system is important for the efficient operation of the truck stop, although revenue from selling solar power is negligible.

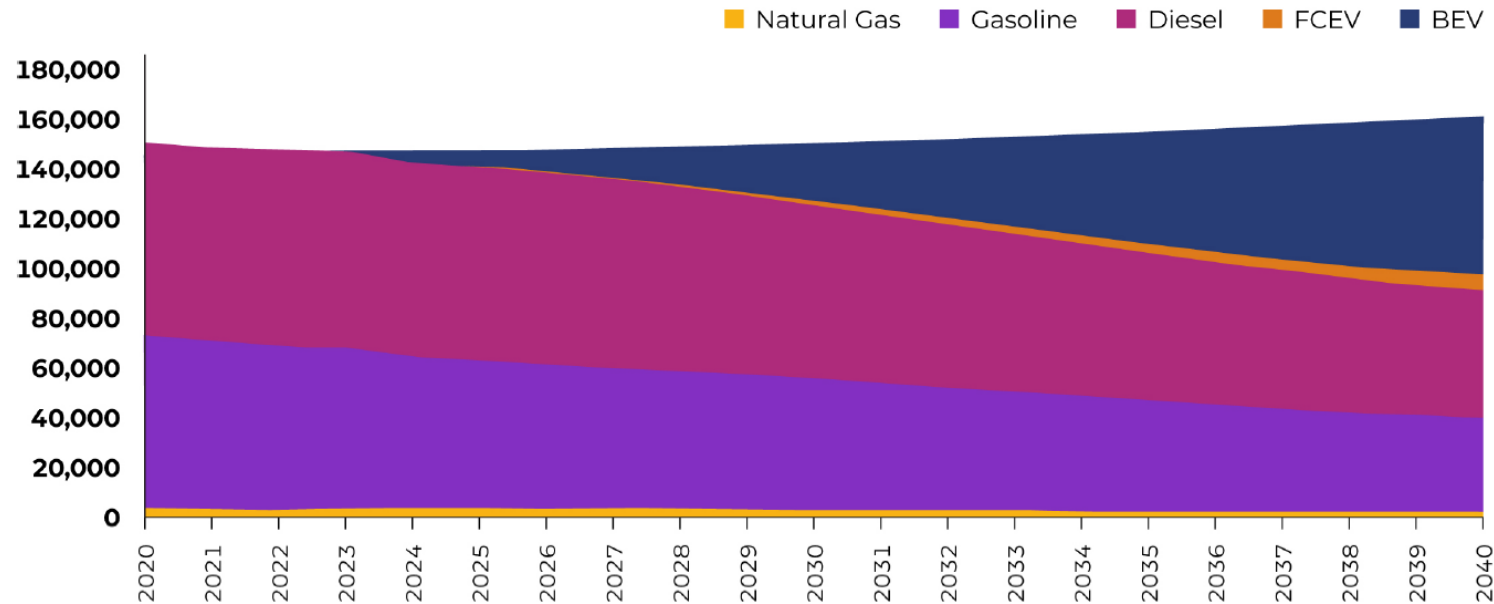
Revenue Breakdown (2026-2045, nominal \$)



15 Charging revenue – utilization forecast (San Diego)

- ZET adoption forecasts in the San Diego area:
 - San Diego Association of Governments (SANDAG) doesn't disaggregate data for HD BETs specifically
 - 5,282 ZE MD-HD in 2024 (assuming all BEVs)
 - 64,000 MD-HD BEVs in 2040
 - Average increase of ~17%/year for MD-HD BEVs
 - Assuming HD BETs grow at a similar rate, **this is roughly consistent with the 20% annual utilization increase assumed by SC for opportunity chargers over the same period**

Figure 5. San Diego Region's MD-HD Vehicle Population by Fuel Type



Source: [Medium-Duty and Heavy-Duty Zero Emission Vehicle Blueprint, SANDAG, January 2024](#)

16 Charging revenue – utilization forecast (California)

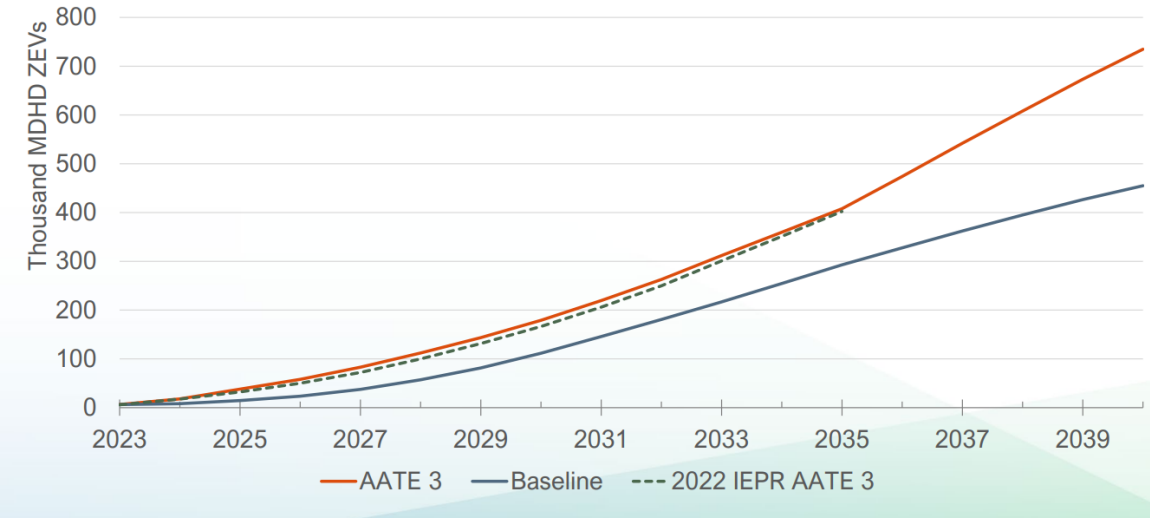
- Population of HD BETs in CA is estimated at 773 trucks in 2023 (~21.6% of MD-HD ZEVs)
- Transition to ZEV trucks driven by CA Air Resources Board's (CARB) Advanced Clean Fleets (ACF) rule, following the schedule below:

Zero-Emission Fleet Percentage	10%	25%	50%	75%	100%
Group 1: Box trucks, vans, 2-axle buses, yard trucks, light-duty package delivery vehicles	2025	2028	2031	2033	2035
Group 2: Work trucks, day cab tractors, 3-axle buses	2027	2030	2033	2036	2039
Group 3: Sleeper cab tractors and specialty vehicles	2030	2033	2036	2039	2042

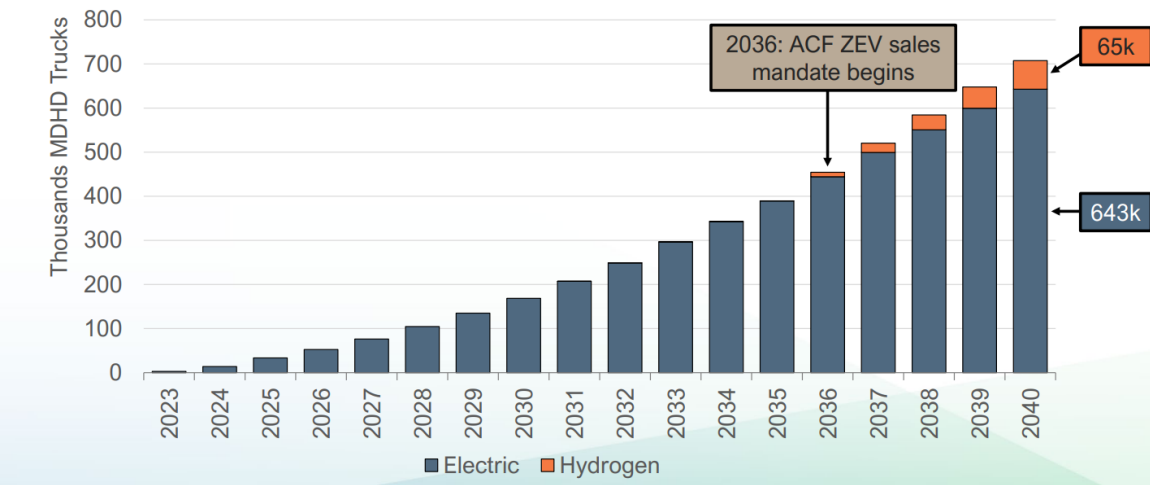
Source: [CARB ACF FAQ](#)

- CEC forecasts MD-HD ZEV trucks to reach 410k-643k in 2040
 - Assuming share of HD BETs among MD-HD ZEV population stays constant over time, this represents ~87k-139k HD BETs in 2040
 - Average increase of 32-35%/year over 2023-2040
 - Higher than the 20% annual utilization increase assumed by SC for opportunity chargers over the same period**

2023 IEPR MDHD ZEV Results Compared with 2022 IEPR AATE 3



IEPR 2023 AATE 3 Zero-Emission Freight Truck Stock



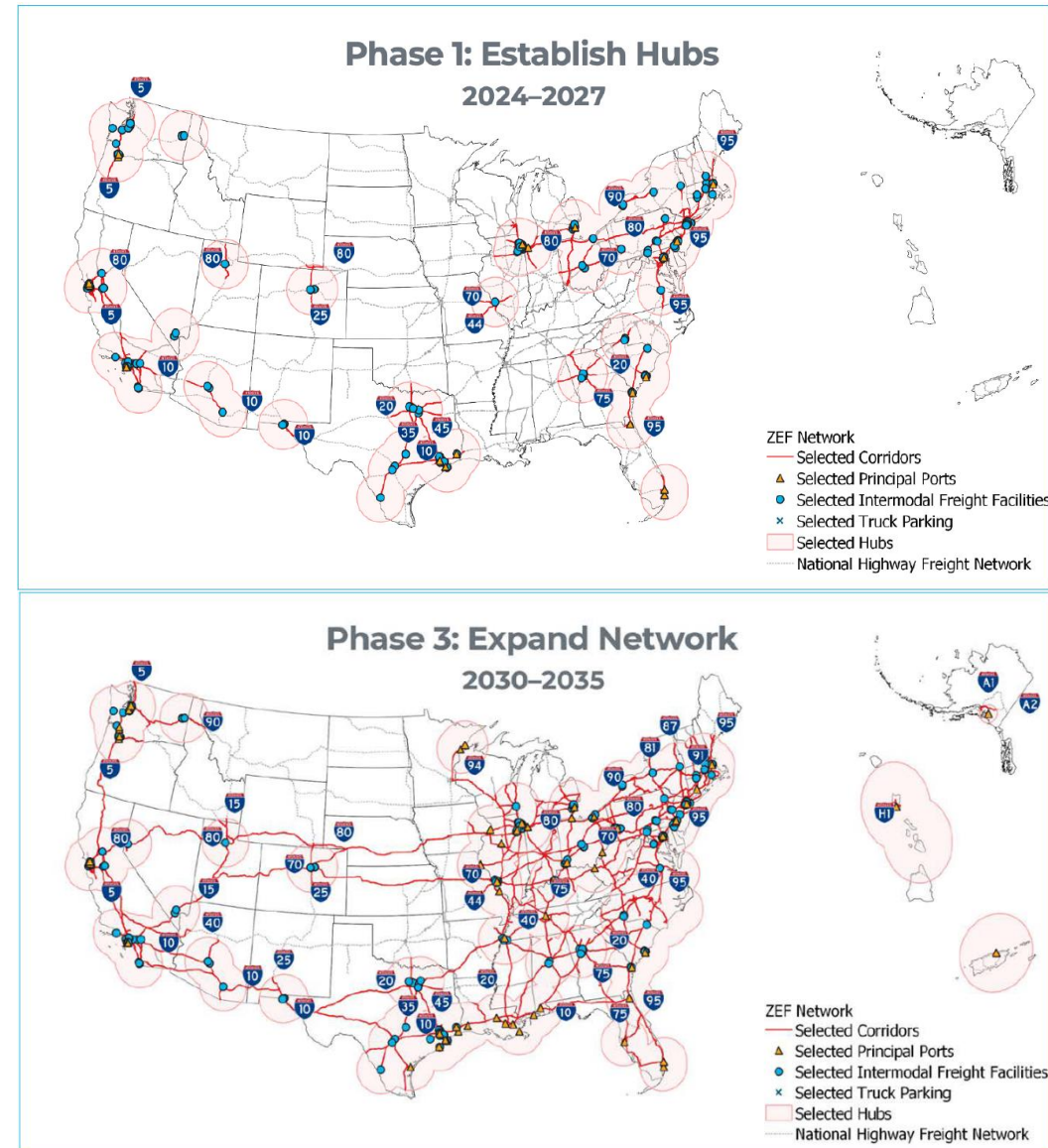
Details about the CEC scenarios presented here can be found in Appendix.

Source: [2023 Integrated Energy Policy Report, CEC, February 2024](#)



17 National ZE Freight Corridor Strategy

- **National strategy** identifies areas where ZE HD truck adoption has the best chances to grow & succeed first
- Used to focus federal investment & mobilize market activity to develop ZE charging infrastructure
- PoSD trucking ecosystem (100mi radius) identified as Phase 1 priority development
 - ZE Fuel corridors: I-5, I-15 & I-805
 - ZEF Hubs: PoSD Intermodal Freight facilities
- In line with project timeline
 - ZE truck stop to open during Phase 1 (2024-2027)
 - ZE truck stop utilization to ramp up as regional network consolidates in Phase 2 & 3 (2027-2035)
- **Favorable conditions exist for successful project**

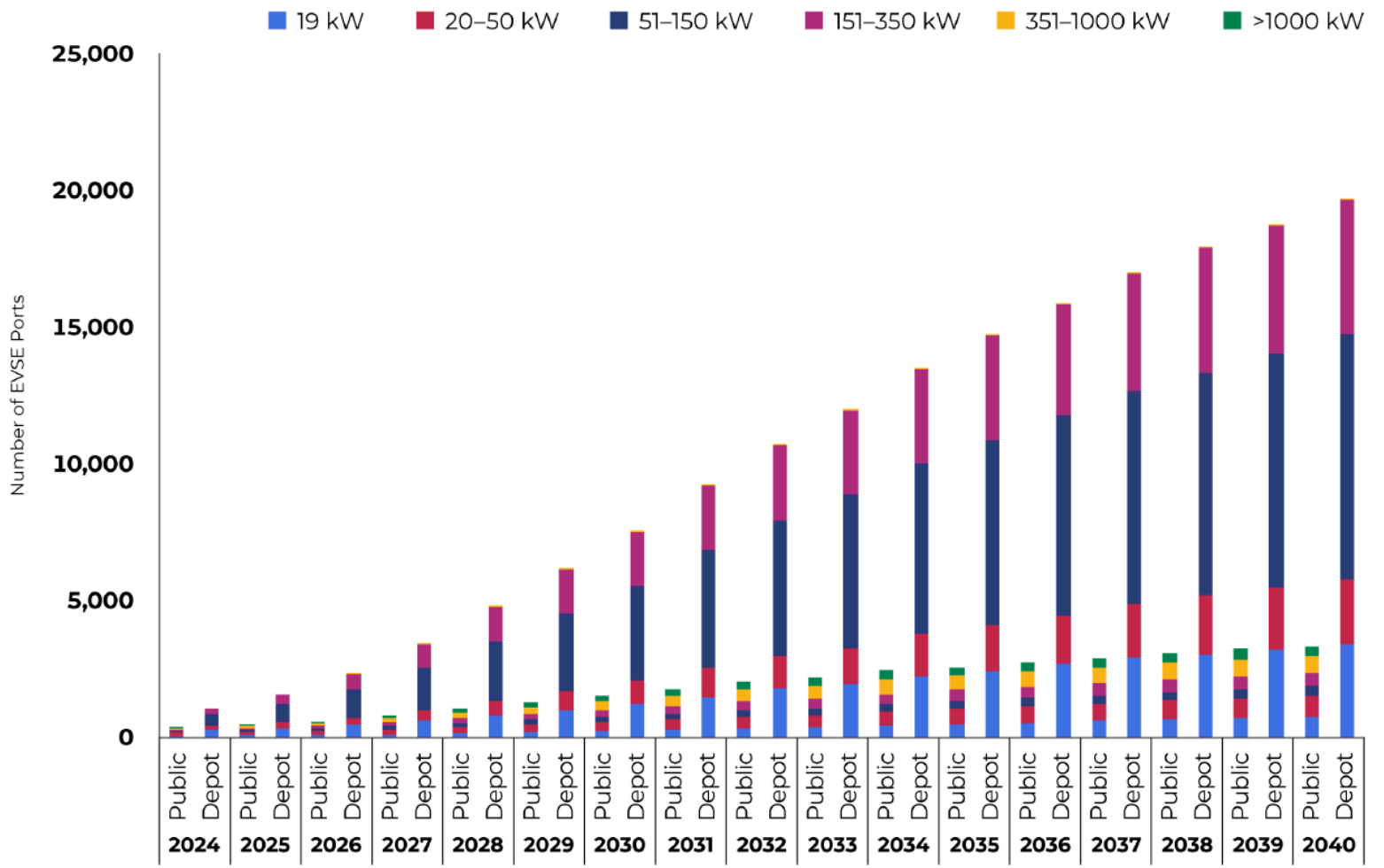


Source: [National Zero-Emission Freight Corridor Strategy, Joint Office for Energy and Transportation, March 2024](#)

18 Charging revenue – Charging needs forecast (San Diego) Page 26 of 44 B

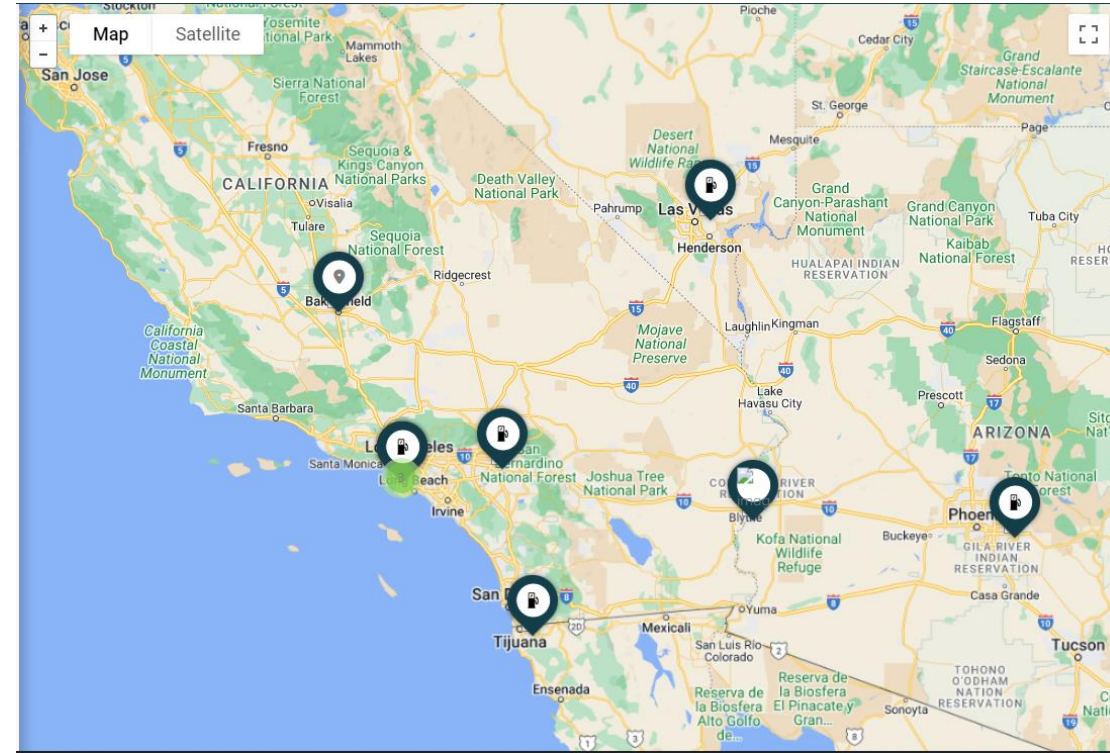
- **Project chargers are in line with SANDAG estimates for future charging needs in the San Diego region**
 - Much bigger need for Depot charging (i.e. similar to overnight charging)
 - Good fit for potential TaaS model
 - Power rating of project chargers (360 kW & 160 kW) in line with forecasted need, especially for the HD truck segment
 - Some uncertainty about the exact requirement for HD BETs, but overall charging need is massive, limited risk of charging infrastructure oversupply

Figure 8. Number of MD-HD Public and Depot Chargers by Power Level



19 Charging revenue – Charging rates

- SC will charge \$0.55/kWh for Opportunity chargers, \$0.45/kWh for Overnight chargers (+1%/year) to Port-serving trucks
 - Non-Port serving trucks will pay an estimated 10% premium (not priced in)
- **Rates appears competitive with existing truck charging stations in California**
 - WattEV charges \$0.49/kWh (off-peak) & \$0.86/kWh (on-peak) hours at its CA locations
 - Port of Long Beach: 360 kW: 24 ports
 - San Bernardino: 360 kW: 24 ports
 - Bakersfield: 240 kW: 15 ports; 360 kW: 32 ports; 1.2MW: 3 ports
 - TruckNet truck stop (San Diego-based) charges \$0.99/kWh (250 kW: 10 ports)



Source: [ZEV Lane](#)

20 Interview highlights (1/2)

- Conducted interviews with:
 - Key stakeholders at the National City Marine Terminal
 - Trucking companies servicing the PoSD and the surrounding region
- Obstacles to adoption of BEV trucks:
 - Limited range of available BEV trucks presents the biggest obstacle, usually insufficient to cover the typical regional route (200-250 mi/day)
 - Limited model & configuration availability, especially for specialized trucks (car carrier, refrigerated trucks)
 - Higher upfront cost can be a challenge, but incentives & financing exist
 - One respondent mentioned lack of availability of local qualified personnel for repairs & long delays to order BEV trucks
- Charging patterns:
 - Respondents tend to favor overnight charging, which integrates better with their operations
 - Several respondents currently have their own charging infrastructure on PoSD property (1 port assigned per vehicle)
 - Opportunity charging considered more disruptive & costly (possible extra downtime during shift, need to find charging off-Port)
 - Dedicated charging is a key requirement for tenants. If not available, tenants will likely continue investing in their own infrastructure
 - Many truckers are infrequent or one-off visitors to the PoSD, which could limit demand for opportunity charging at the ZE truck stop
 - Limited first-hand experience with BEV HD truck for delivery beyond some local routes

20 Interview highlights (2/2)

- Acquisition plans:
 - One respondent doesn't own & operate trucks (only BEV cargo handling equipment) and has no incentive to request BEV trucks
 - One respondent uses mostly long-haul trucks, subject to longer regulatory timeline to transition to ZEV under the ACF regulation, compared to drayage & off-road trucks
 - One respondent just renewed their diesel truck fleet lease and doesn't plan to acquire BEV trucks until the technology improves
 - One respondent thought FCEVs might be a better fit for their needs, expressed interest in a "truck swapping" solution that would avoid driver downtime
- Interest in Trucking-as-a-Service (TaaS):
 - Broadly similar to how stakeholders currently obtain trucks (leasing)
 - More interested if TaaS is bundled with dedicated charging
 - Would need to address transition costs (e.g. outstanding loans) to be viable
 - Difficult to accurately gauge interest since many future details are unknown



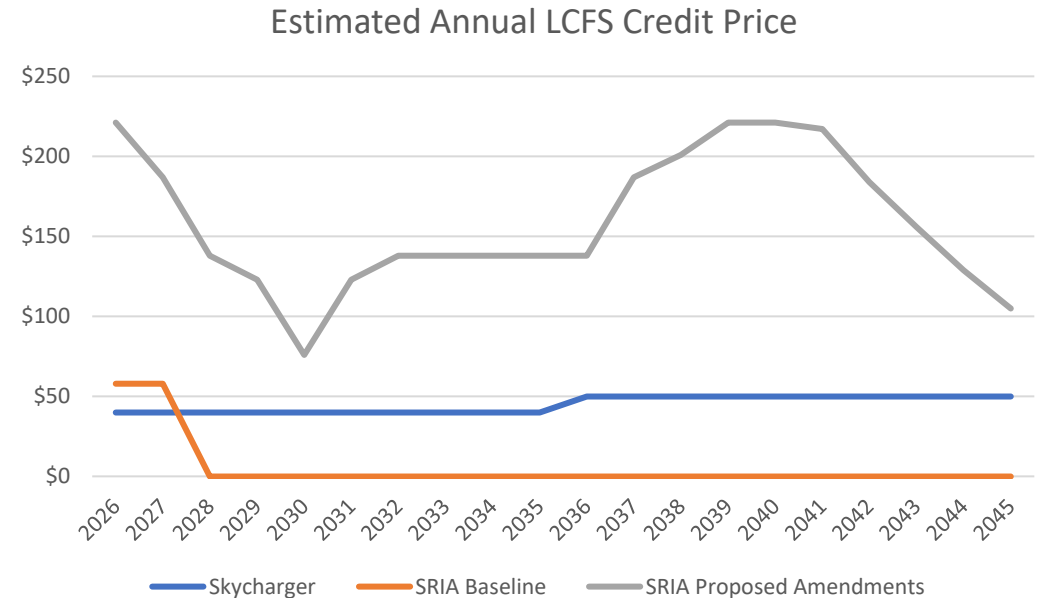
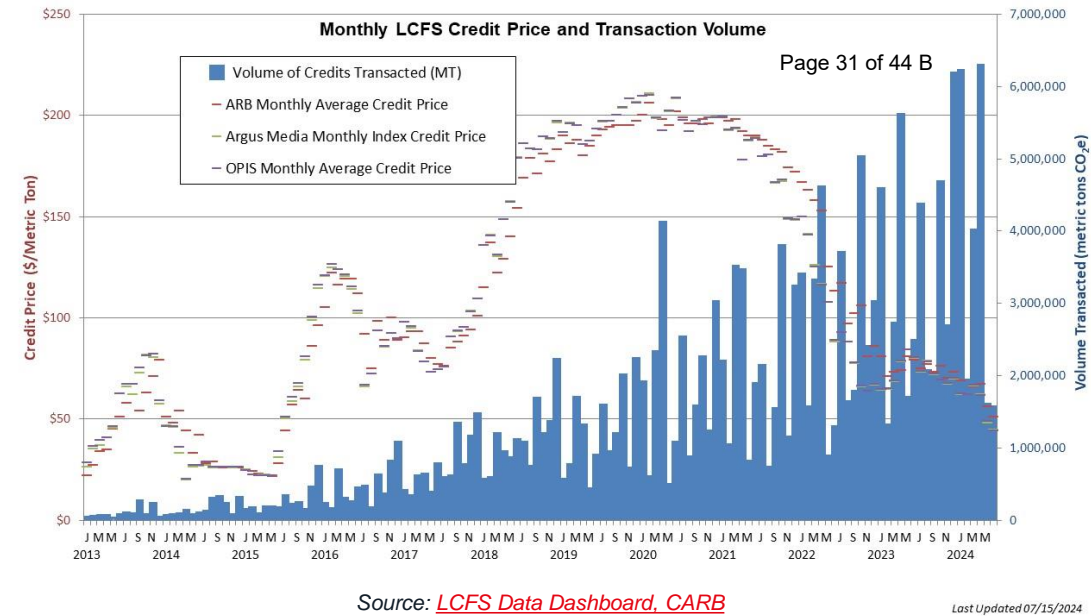
21 Charging revenue – Mitigation

- Opening to non-Port operators could help mitigate lower utilization in early years:
 - Partnership with National City & City of San Diego for fleet charging
 - NC have plans to transition their LD & MD fleet to EV
 - Good synergy since NC is likely to have issues to develop their own infrastructure
 - Consistent with MCAS goal of enabling nearby communities and advance emission reduction projects around the Tidelands
 - PoSD is a special district of the State and needs authorization from CA State Lands Commission for municipal use on PoSD property (currently under discussion)
 - Nearby distribution facilities might be interested in fleet charging for MD trucks
 - Opening to non-Port serving vehicles would be a temporary solution, until a predetermined utilization level is met
 - Non-Port utilization is not currently modeled in SC proforma
- Opportunity chargers can be temporarily repurposed for overnight use as needed, providing operational flexibility



22 LCFS revenue

- Credit price:
 - SC assumes the LCFS program will be amended in some way and continue beyond 2030
 - Amendments to the LCFS program are currently under consideration
 - Credit prices have shown to be volatile and hard to predict
 - SC proposes 100% of credits sold to SC's parent company under long-term fixed price contract **to shield project from price volatility**
- Grid Carbon Intensity (CI):
 - CA passed SB100 in 2018, mandating that 100% carbon-free electricity in 2045 => grid CI must reach 0 gCO₂e/MJ by 2045
 - SC assumes CA grid's average CI will decrease by just 2% annually, reaching -36% in 2045 compared to 2021 levels
 - LCFS credits are calculated by using the difference between diesel CI (fuel displaced) and grid electricity CI (fuel replaced)
- LCFS revenue also depends on utilization
- **LCFS credit & revenue estimates are likely conservative**



Source: [LCFS 2023 Amendments Standardized Regulatory Impact Assessment \(SRIA\), CARB, September 2023](#)



23 Solar revenue

- Solar & BESS assumptions aligned with market
- Solar & BESS use case:
 - Main use case is power demand management (peak shaving)
 - SC mentions that solar & BESS will also be used for resiliency & operation during grid outages
 - Could power all overnight chargers for a little over an hour on a full battery
 - Resiliency use implies reserved battery capacity, may not be compatible with other uses
 - Claim that the trucks charged will be “100% renewable energy powered” is at odds with the proforma which shows significant purchases of grid electricity.
- Extra solar generation may be sold to the grid in the first few years
 - Compensation for solar exported to the grid can vary widely by the hour
 - May bring more revenue by strategically shifting excess solar production to high value times (typically 4-9pm), especially if low utilization at peak times
 - **As assumed, revenue from solar sold to the grid is negligible overall (~0.13% of project lifetime revenue)**

		2026-2044 SDG&E Average Delivery Export Pricing (\$/kWh, all days)											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Hour of the day	0	0.00893	0.008991	0.008588	0.004829	0.00638	0.020391	0.033938	0.047714	0.010137	0.009506	0.009213	0.009183
	1	0.008906	0.009039	0.008379	0.004084	0.00587	0.014588	0.022539	0.023218	0.010226	0.009533	0.009259	0.009225
	2	0.008787	0.008926	0.008323	0.003732	0.005753	0.011785	0.011526	0.012822	0.010152	0.009466	0.009168	0.009108
	3	0.008738	0.008909	0.008318	0.003979	0.005851	0.008877	0.00908	0.009919	0.010177	0.009459	0.009138	0.009108
	4	0.008835	0.009029	0.008552	0.004252	0.005968	0.00895	0.009166	0.010043	0.010253	0.009571	0.009243	0.009192
	5	0.009174	0.009317	0.008856	0.00412	0.004681	0.008672	0.009195	0.01042	0.01055	0.009903	0.009513	0.009487
	6	0.009942	0.009613	0.008541	0.002763	0.000612	0.003809	0.007826	0.012131	0.009657	0.010469	0.009967	0.009835
	7	0.010052	0.008433	0.004426	0.000705	0.000759	0.006289	0.007276	0.012339	0.005189	0.009086	0.007979	0.010139
	8	0.008729	0.004989	0.002045	0.000252	0.000672	0.004679	0.005881	0.008059	0.0056	0.006728	0.007498	0.009691
	9	0.007934	0.00403	0.001881	0.000632	0.001305	0.005492	0.006455	0.008879	0.005752	0.006722	0.007603	0.008387
	10	0.007194	0.004033	0.0024	0.001309	0.002247	0.006755	0.007295	0.009813	0.006476	0.007238	0.007543	0.00816
	11	0.006917	0.003468	0.002889	0.001536	0.00277	0.008387	0.009015	0.012055	0.006776	0.007458	0.007706	0.008162
	12	0.006604	0.003247	0.003031	0.001501	0.002997	0.01232	0.012568	0.022633	0.007102	0.007746	0.008089	0.007798
	13	0.006201	0.003318	0.002831	0.001249	0.002569	0.017448	0.019646	0.134523	0.113554	0.008232	0.007726	0.007311
	14	0.005323	0.002984	0.002459	0.000906	0.002127	0.022566	0.024336	0.25958	0.227249	0.223636	0.006729	0.006301
	15	0.005204	0.002688	0.002726	0.000679	0.001646	0.025543	0.027801	0.502416	0.360826	0.341065	0.008266	0.007008
	16	0.010661	0.007417	0.004831	0.001534	0.001744	0.336131	0.149679	0.856817	0.41875	0.394603	0.024389	0.011485
	17	0.011841	0.010873	0.009945	0.006599	0.007168	0.349429	0.260948	0.906667	0.431784	0.429013	0.02495	0.011753
	18	0.011684	0.01084	0.011396	0.006421	0.007656	0.195653	0.182859	0.851527	0.434275	0.444948	0.025255	0.011373
	19	0.011511	0.010846	0.010832	0.005909	0.00783	0.142554	0.109122	0.56169	0.226752	0.112592	0.014438	0.011217
	20	0.011154	0.010686	0.010473	0.005574	0.007176	0.08093	0.082969	0.20732	0.067127	0.05841	0.012539	0.011016
	21	0.010565	0.010375	0.010081	0.005333	0.006719	0.049099	0.041541	0.094438	0.014657	0.020678	0.010715	0.010772
	22	0.009841	0.009647	0.009568	0.005638	0.006979	0.060721	0.074022	0.075822	0.026474	0.013034	0.010115	0.0102
	23	0.009329	0.009717	0.009334	0.006103	0.007385	0.04143	0.057668	0.063215	0.021414	0.010079	0.009959	0.00973

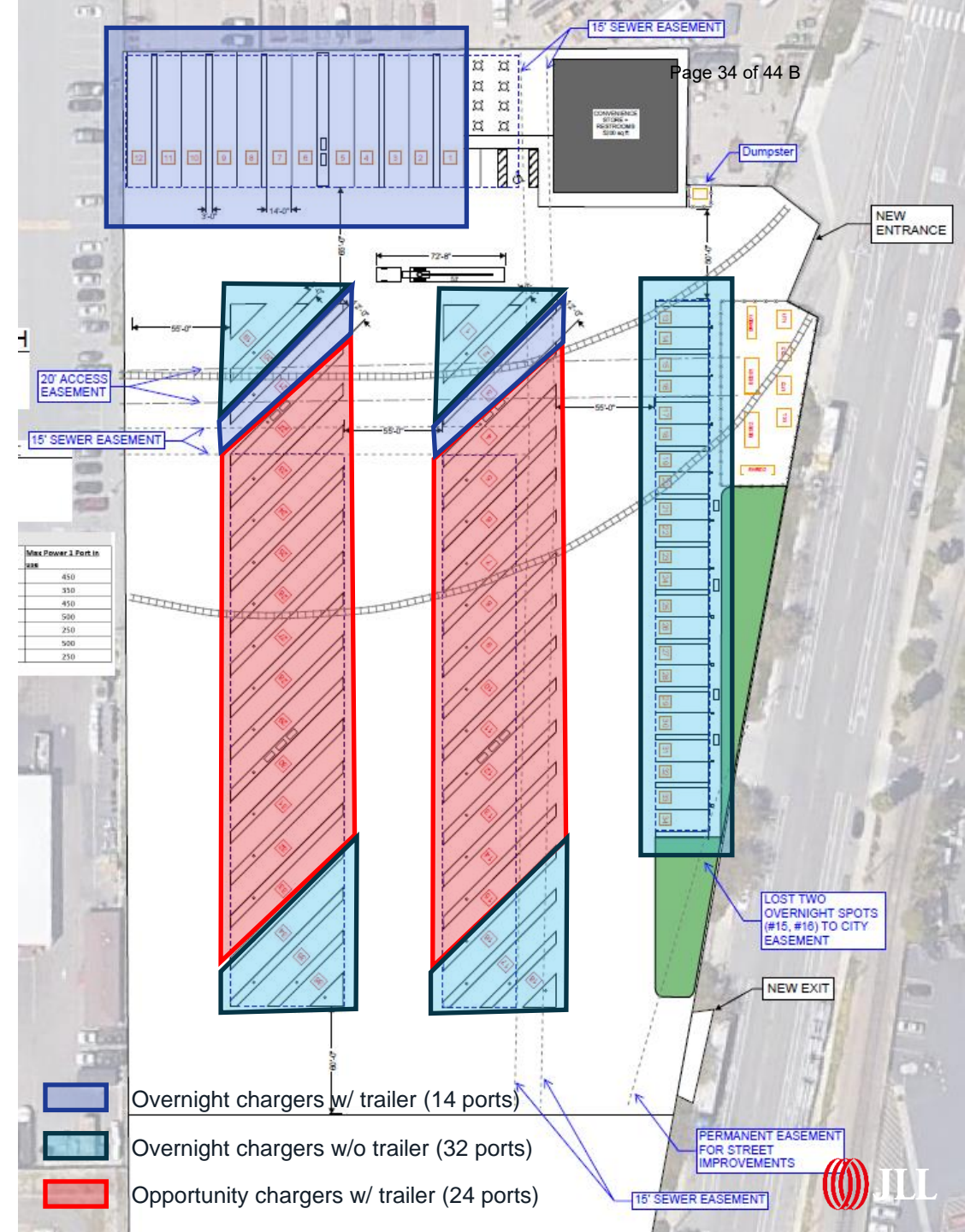
Source: [SDG&E Solar Billing Plan Export Pricing](#)

Site adequacy assumptions

24 Project design

JLL has reviewed the project's successive designs & site plans to assess feasibility and operational risks

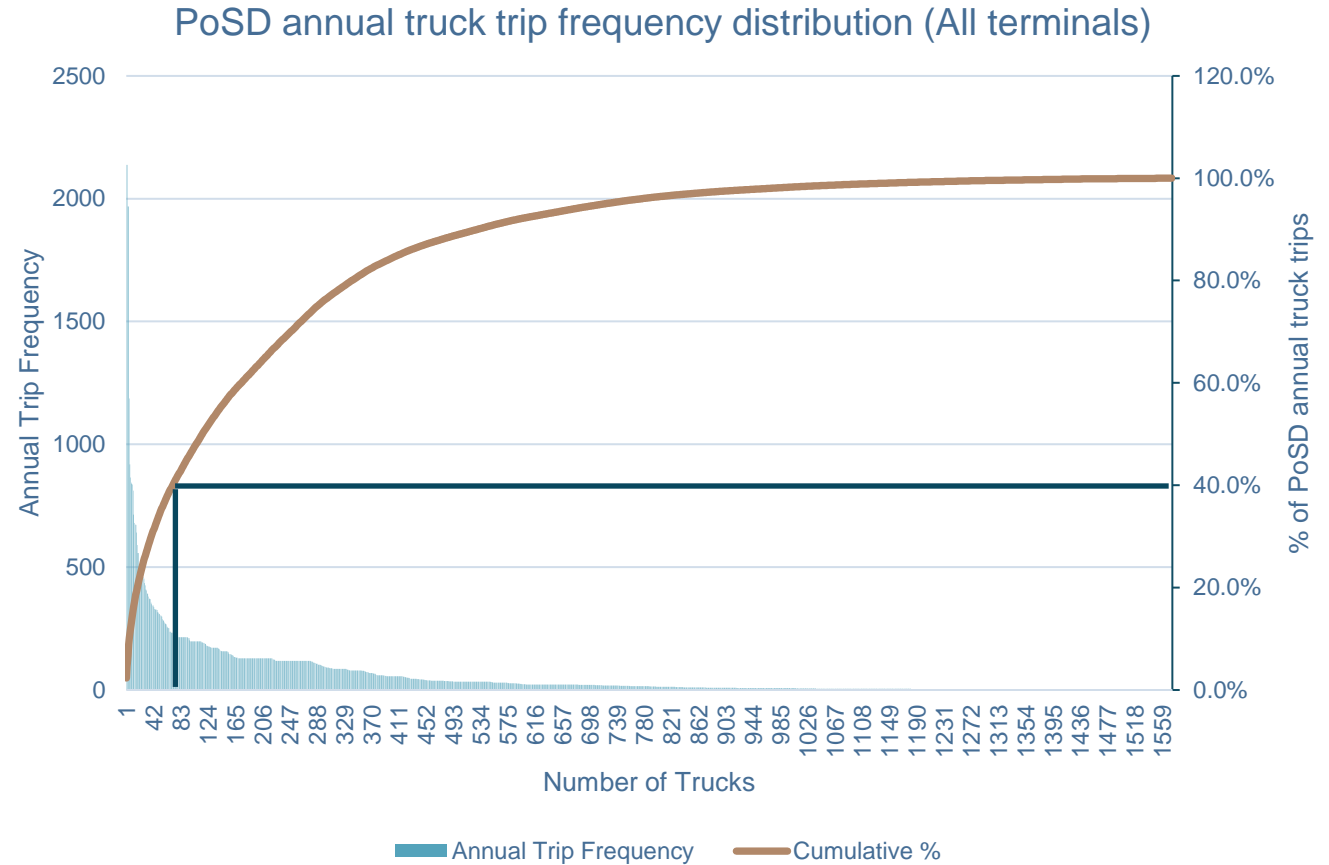
- Site layout revision under way
 - Need to account for recently discovered sewer and rail easements and their implications for the project layout are under review
 - Scaling back solar canopy, which can't be built above easements
 - Exploring cantilevered solution to make up for some lost capacity
 - A loss in solar capacity from new design unlikely to impact project economics
- Current design appears reasonable given the constraints
- Some potential concerns about truck circulation
 - Tight layout, makes truck maneuvering on site challenging => SC should provide a turning analysis to confirm all spots are accessible
 - Confirm no negative impact on parking & bike lanes on Tidelands Avenue
 - EPC is working on final design to incorporate these considerations
- Project footprint
 - Unlikely the project could deliver the same number of chargers on a smaller footprint
 - SC may need to expand design slightly to the south of the parcel



25 Adequacy with MCAS goals

JLL is validating SC’s statement that project could provide charging to the “40-45 trucks that make 40% of Port’s trips”, enabling the successful completion of the 2026 MCAS truck transition goal

- Port Plan, released on June 2022
 - Truck movement database from the study is the best available source of truck data
 - Sample truck population, based on 2021 & early 2022 data
 - Assuming trucks accounting for most of the PoSD’s trips (“frequent flyers”) are replaced by BETs first
 - Filtering out trucks that can’t be readily replaced by BETs (using battery size assumptions from the study) **means 83 EV-ready trucks account for 40% of PoSD trips**
 - Given its large capacity & makeup of opportunity & overnight chargers, **the ZE truck stop is expected to service enough trucks to help the PoSD reach its goal of 40%** of PoSD’s annual truck trips covered by ZE trucks (MCAS Truck Objective 1A).
 - The ZE truck stop is **unlikely to contribute significantly to meeting the 40% PoSD goal by its June 2026 deadline**, as project COD is expected in 2026 at the earliest.
 - Meeting the MCAS 100% goal would require serving thousands of trucks, which is beyond the capacity of any single charging facility



Source: [HD ZE Truck Transition Plan, Port of San Diego/WSP, June 2022](#)

26 Other assumptions

JLL reviewed many other assumptions from SC's proposal. Below are notable takeaways:

- Utility infrastructure availability
 - SC assumed 5MW of available utility infrastructure, based on information originally provided by SDG&E
 - SDG&E likely noncommittal until a formal interconnection application commences
- Schedule
 - Current COD end of 2025/early 2026 will likely not be met
 - Biggest risks to schedule are timeline for utility interconnection process & CEQA review
- Charger technology
 - Charger Power Ratings:
 - 360 kW is currently on the high end of readily available opportunity chargers but could fall on the low end if higher standards (e.g. Megacharger) become commonplace
 - 160 kW for overnight chargers expected to be sufficient for the foreseeable future
 - Connectors:
 - All dispensers will be equipped with one CCS type 1 and one NACS connector, the two most prevalent standards in use for BETs
 - Adaptors will be included for vehicles that are not equipped with CCS or NACS plugs



27 Next Steps

- JLL can participate in review process for subsequent design milestones
- JLL can participate in discussions to flesh out project risks and recommend contractual and commercial mechanisms to derisk project
- JLL can support Term Sheet and Lease Negotiations



Thank you



Bryan Thomas

Senior Vice President

Clean Energy and Infrastructure
Advisory Group, JLL



Gabriel Marty

Associate

Clean Energy and Infrastructure
Advisory Group, JLL




Appendices

Understanding Vehicle Weight Class

MEDIUM-DUTY WEIGHT CLASS




Weight class 3 vehicles have a gross vehicle weight rating between 10,001 pounds to 14,000 pounds.

Example Models: GMC Hummer EV, Navistar eStar, Workhorse C-Series Vehicles, and Chevy Silverado 3500 HD.

Class 3 10,001 lb to 14,000 lb	Large Panel Van	Heavy-Duty Pickup	Straight Truck
			




Weight class 4 vehicles have a gross vehicle weight rating between 14,001 pounds to 16,000 pounds.

Example Models: Cenntro City Porter and Ford F-450 Super Duty.

Class 4 14,001 lb to 16,000 lb	Step Van	Small Dump Truck	Medium Straight Truck
			




Weight class 5 vehicles have a gross vehicle weight rating between 16,001 pounds to 19,500 pounds.

Example Models: Chanje V8100 and Ford F-550.

Class 5 16,001 lb to 19,500 lb	Step Van	Large Maintenance Truck	Medium Straight Truck
			

Weight class 6 vehicles have a gross vehicle weight rating between 19,501 pounds to 26,000 pounds.





Example Models: BYD 6D Step Van, Xos SV, and U-Haul 26' Truck.

Class 6 19,501 lb to 26,000 lb	Large Step Van	Medium School Bus	Medium Straight Truck
			

HEAVY-DUTY WEIGHT CLASS

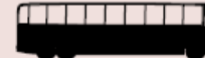




Weight class 7 vehicles have a gross vehicle weight rating between 26,001 pounds to 33,000 pounds.

Example Models: Freightliner eM2 108/106 and Blue Bird All American/All Canadian School Bus.

Class 7 26,001 lb to 33,000 lb	Class 7 School Bus	Transit Bus	Large Straight Truck	2-Axle Tractor
				

Weight class 8 vehicles have a gross vehicle weight rating of 33,001 pounds and greater.

Example Models: Volvo VNR Electric Tractor, Xos ET-One, New Flyer Xcelsior, and Proterra Catalyst.

Class 8 33,001 lb & Over	Coach Bus	Large Transit Bus	Large Straight Truck	Tractor	Refuse Truck
					

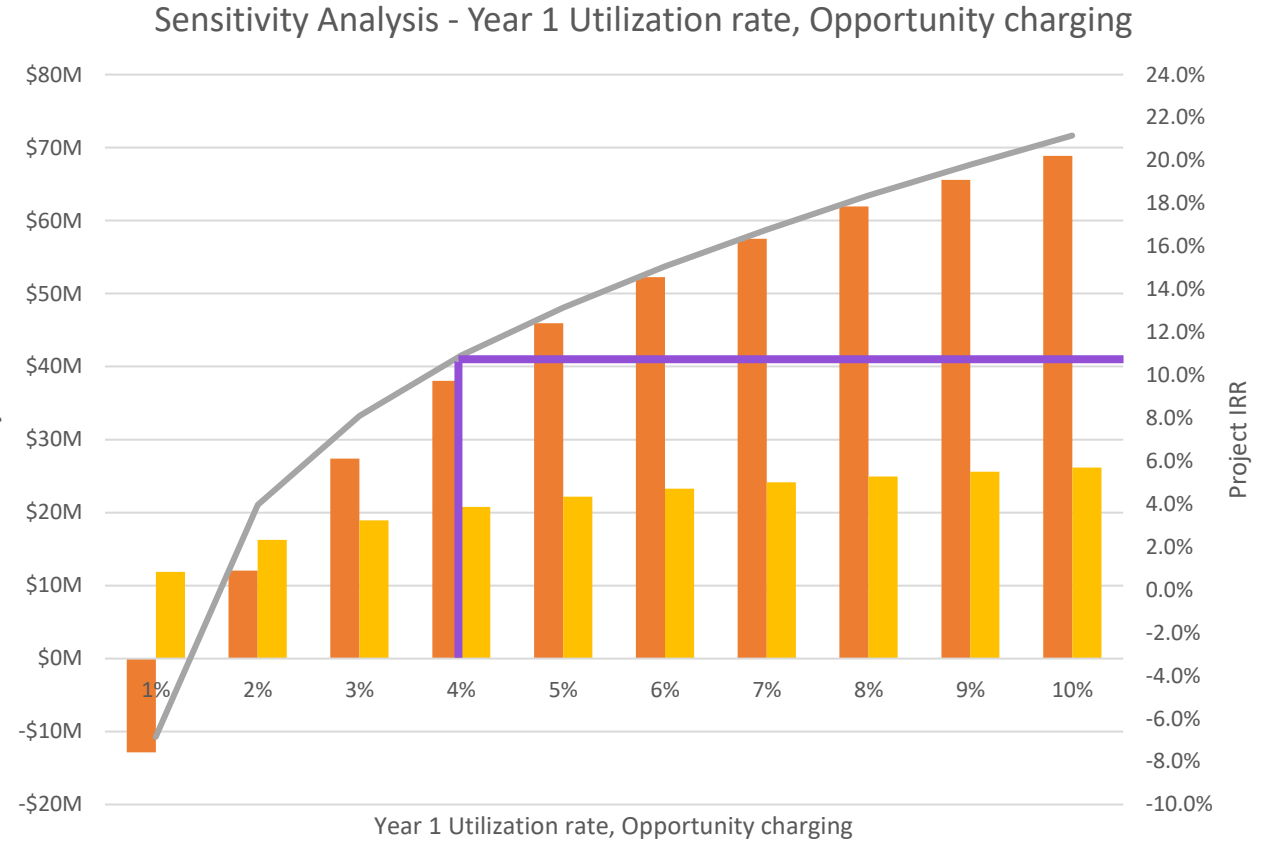
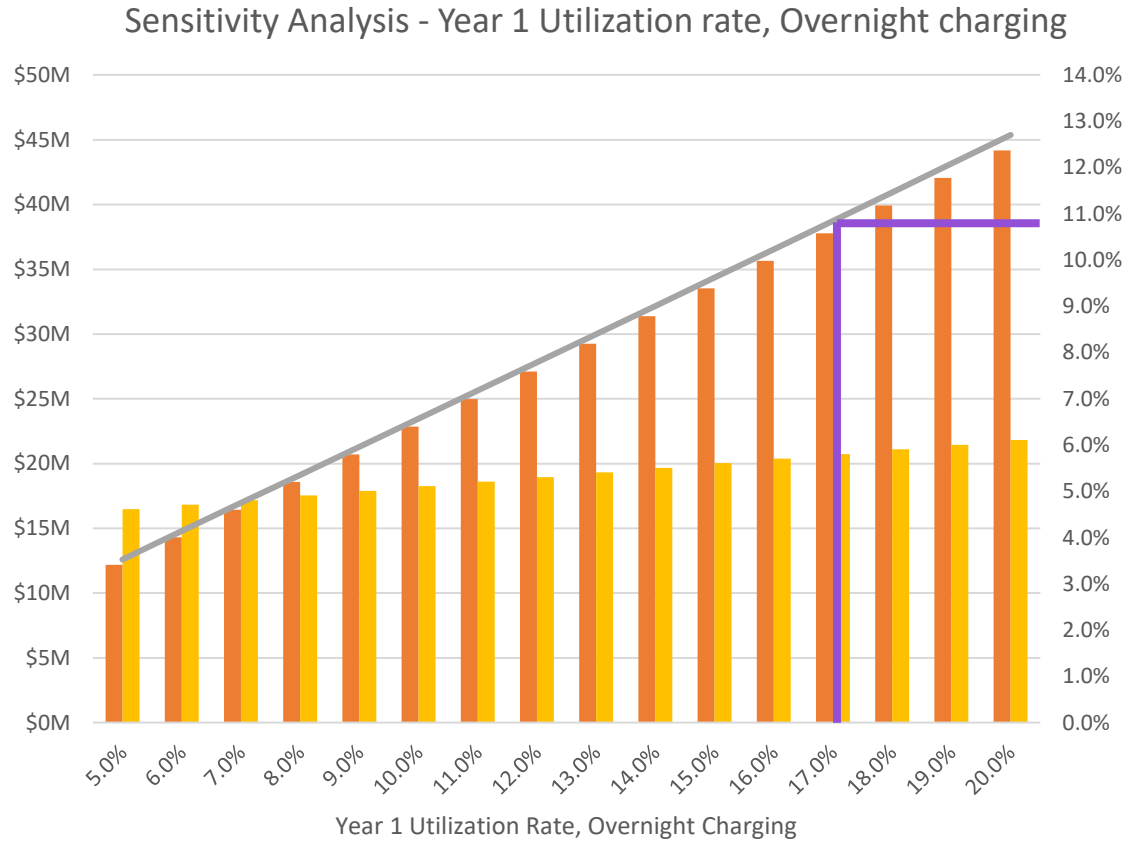
Source: [CEC Medium- and Heavy-Duty Zero-Emission Vehicles in California Dashboard](#)

TEDF Baseline Forecast	TEDF AATE Scenario 3 (Policies <u>in Addition to the Baseline Forecast</u>)
<ul style="list-style-type: none">▪ Advanced Clean Trucks (ACT)▪ Commercial Clean Vehicle Tax Credit (IRS code 45W)▪ California Hybrid and Zero-Emission Truck & Bus Voucher Incentive Project (HVIP)▪ California Innovative Clean Transit (ICT)▪ California Electric School Bus▪ Commercial Harbor Craft (public transit ferryboats only)▪ California In-Use Locomotives (passenger trains only)	<ul style="list-style-type: none">▪ Advanced Clean Fleets (ACF)<ul style="list-style-type: none">➢ Fleet ZEV requirements➢ 100 percent ZEV sales 2036+

Source: [2023 Integrated Energy Policy Transportation Energy Demand Forecast Results, CEC, November 15, 2023](#)

Sensitivity analysis – Utilization Rates

Utilization rates for opportunity chargers have a significant impact on project economics, while those for overnight chargers are less impactful.



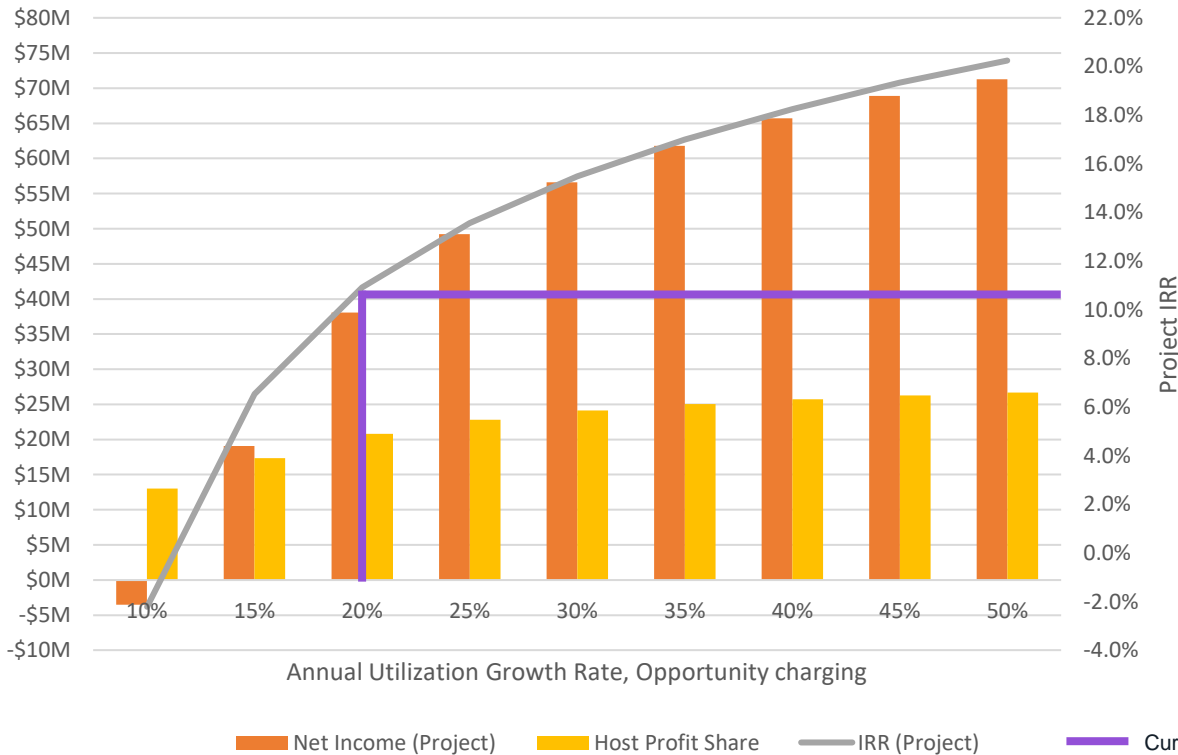
■ Net Income (Project)
 ■ Host Profit Share
 — IRR (Project)
 | Currently modeled values
 ■ Net Income (Project)
 ■ Host Profit Share
 — IRR (Project)



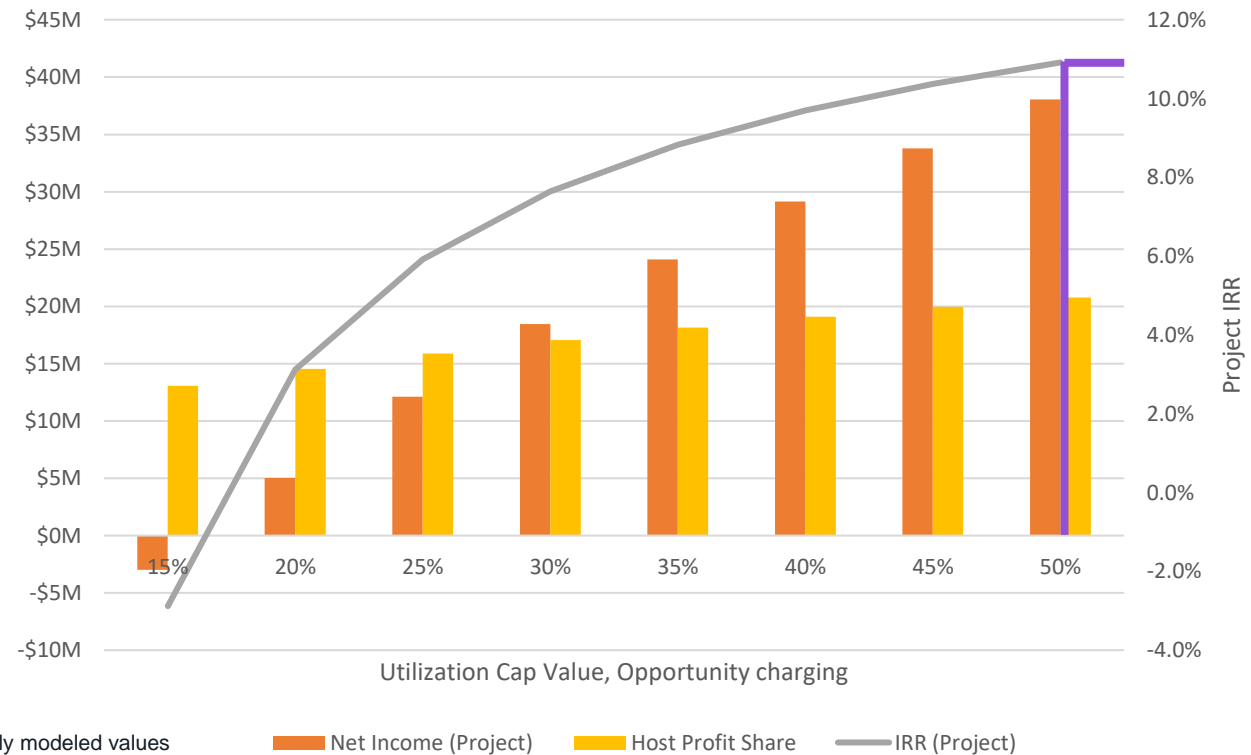
Sensitivity analysis – Utilization Growth & Cap

Annual Utilization Growth Rate is a key assumption with a significant impact of project economics
 Utilization Cap Value has a more modest impact on project economics, since this parameter only become more relevant in the project's later years.

Sensitivity Analysis - Annual Utilization Growth Rate, Opportunity charging



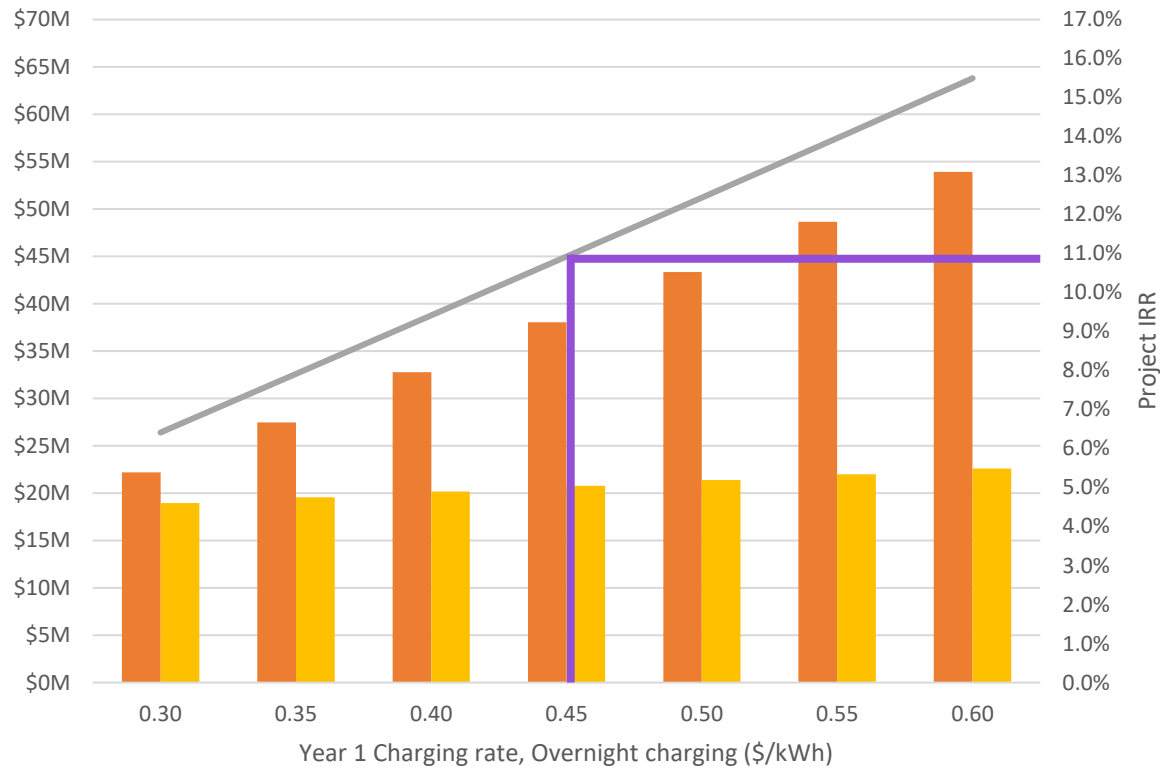
Sensitivity Analysis - Utilization Cap Value, Opportunity charging



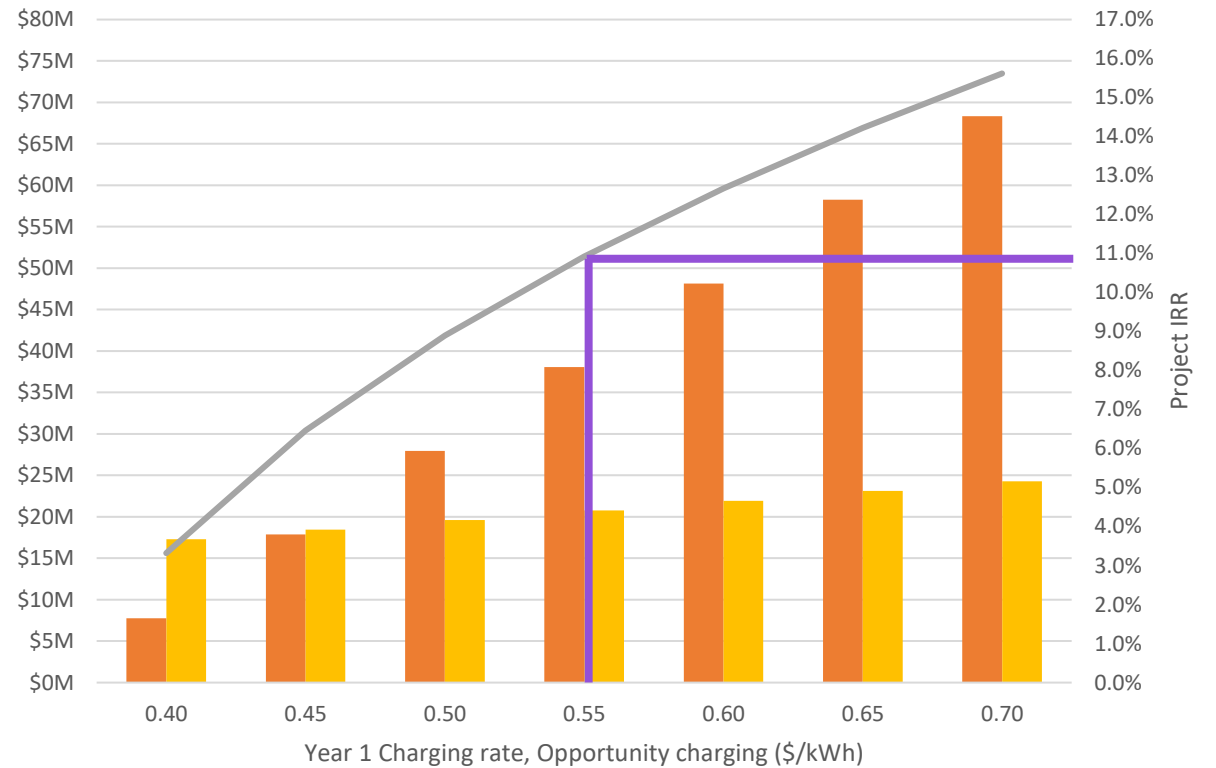
Sensitivity analysis – Charging Rates

Charging rates for opportunity & overnight charging have a similar, relatively important impact on project economics.

Sensitivity Analysis - Year 1 Charging rate, Overnight charging



Sensitivity Analysis - Year 1 Charging rate, Opportunity charging



■ Net Income (Project)
 ■ Host Profit Share
 — IRR (Project)
 | Currently modeled values

DRAFT

RESOLUTION 20xx-xxx

**RESOLUTION AUTHORIZING STAFF TO
COMMENCE ENVIRONMENTAL REVIEW IN
ACCORDANCE WITH THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT FOR THE
DEVELOPMENT OF A ZERO EMISSION TRUCK
STOP IN NATIONAL CITY**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, the Maritime Clean Air Strategy (MCAS) includes a vision of “Health Equity for All” with nearly 40 objectives, several of which aim to reduce emissions from maritime-related activities and industries; and

WHEREAS, the MCAS aspires to achieve 40 percent zero emission (ZE) heavy-duty (HD) truck trips to and from the District’s marine cargo terminals by June 30, 2026, and 100 percent ZE HD truck trips by December 31, 2030; and

WHEREAS, MCAS Truck Goal 2 focuses on facilitating the deployment of infrastructure to support the transition to ZE trucks, which is critical in achieving the goals set forth in our MCAS; and

WHEREAS, to advance progress on MCAS Truck Goal 2, in Summer 2023, staff issued a Request for Proposals (RFP) for development of a ZE Truck Stop for HD trucks to be located at the intersection of 19th Street and Tidelands Avenue in National City; and

WHEREAS, on March 12, 2024, the Board selected Skychargers LLC (Skychargers) under the RFP and authorized staff to enter into an Exclusive Negotiating Agreement (ENA) with Skychargers to develop and operate the ZE Truck Stop (Project); and

WHEREAS, the proposed Project includes a total of 70 truck charging ports suitable for overnight charging and opportunity charging, solar array canopies, a battery energy storage system, convenience store, and landscape area on approximately 4.8 acres located at 1640 Tidelands Avenue in National City (Attachment A – Site Plan, attached to the corresponding Agenda sheet on file with Office of the District Clerk); and

WHEREAS, staff recommends that the Board authorize staff to commence California Environmental Quality Act (CEQA) environmental review for the Project.

20xx-xxx

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District (District) that District Staff is hereby directed to commence environmental review in accordance with the California Environmental Quality Act (“CEQA”) for the development of a Zero Emission truck stop in National City.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote:

FILE NUMBER: 2024-331

DATE: Tuesday, September 10, 2024

SUBJECT: Review and Consideration of Draft Proposed Board Agenda for the October 8, 2024 Meeting

Please Note: At the time of official publication for the October Board meeting, the titles will change to indicate which items are exempt under the California Environmental Quality Act.

CONSENT AGENDA

2024-363

SUBJECT: Celebration of Arts Month 2024

DESCRIPTION: Resolution Proclaiming October 2024 as “Celebration of Arts Month” in Support of National Arts and Humanities Month
Parks & Recreation

2024-356

SUBJECT: Board of Port Commissioners’ Policy No. 115, Guidelines for Prudent Investments

DESCRIPTION: Resolution Authorizing the Required Annual Adoption of Board of Port Commissioners’ Policy No. 115, Guidelines for Prudent Investments, With Updates Pertaining to Public Funds Investments
Financial Services

2024-337

SUBJECT: Purchase of a New Marine Firefighting Vessel for the Harbor Police Department

DESCRIPTION: Resolution Authorizing a Purchase Agreement Not to Exceed \$1.43m With Metalcraft Marine Inc. for the Purchase of a New Marine Firefighting Vessel for the Harbor Police Department Utilizing \$975,000 in Port Security Grant Program (PSGP) Funding
Harbor Police Department

2024-362

SUBJECT: Conflict of Interest Code Amendment

DESCRIPTION: Ordinance Amending the Conflict of Interest Code of the San Diego Unified Port District
Office of the District Clerk

2024-354

SUBJECT: District Wayfinding and Regulatory Signage Improvements

A) Resolution Approving Transfer of Funds Within the FY 25 Other Capital Projects Appropriation From the Other Capital Projects Contingency to the District Wayfinding and Regulatory Signage Improvements-Harbor Island and Tidelands Park Project in the Amount of \$XXX,XXX Pursuant to BPC Policy No. 90

B) Resolution Approving Plans and Specifications and Awarding Contract No. 2024-05 to Contractor Name. In The Amount of \$XXX,XXX for the District Wayfinding and Regulatory Signage Improvements-Harbor Island and Tidelands Park Project, as Authorized by the Board in the FY25 Other Capital Projects Appropriation Engineering-Construction

2024-346

SUBJECT: Maintenance Dredging at B Street Cruise Ship Terminal

DESCRIPTION:

A) Resolution Approving an Amendment to the FY25 Major Maintenance Program to Add the \$2,280,000 Maintenance Dredging at B Street Cruise Ship Terminal Project

B) Ordinance Amending the FY25 Budget to Increase the Major Maintenance Budget by Allocating \$160,000 From the Harbor Maintenance Trust Fund to the FY25 Major Maintenance Program Engineering-Construction

2024-339

SUBJECT: Elevator Car Improvements at Bayfront Parking Garage – Contract Extension

DESCRIPTION: Resolution 1) Finding The Board Action Exempt Under The California Environmental Quality Act (CEQA), Including, but not Limited to, CEQA Guidelines Sections 15301, 15302, and 15303; and 2) Approving Change Order No. 3 With Schindler Elevator Corporation for Contract No. 2023-09, Elevator Car Improvements at San Diego Bayfront Parking Garage, for 100 Calendar Day Contract Time Extension With no Increase to Approved Project Budget, Pursuant to BPC Policy No.110. Engineering-Construction

2024-351

SUBJECT: Loading Dock Improvements at Tenth Avenue Marine Terminal (TAMT) Warehouse B – San Diego California

DESCRIPTION:

A) Resolution Approving Transfer of Funds Within the FY25 Major Maintenance Capital Budget Appropriation From Capital Major Maintenance Contingency to the Loading Dock Improvements at Tenth Avenue Maritime Terminal (TAMT) Warehouse B Project in the Amount of \$XXX,XXX Pursuant to BPC Policy No. 90

B) Resolution Approving Plans and Specifications and Awarding Contract No. 2023-21 to Contractor Name. In the Amount of \$XXX,XXX for the Loading Dock Improvements at Tenth Avenue Marine Terminal (TAMT) Warehouse B, as Authorized by the Board in the FY25 Major Maintenance Program
Engineering-Construction

2024-311

SUBJECT: Repairs at Shelter Island Boat Launch

DESCRIPTION: Resolution 1) Finding the Board Action Exempt Under the California Environmental Quality Act (CEQA), Including, but not Limited to, CEQA Guidelines Sections 15301 and 15302; 2) Approving Plans and Specifications and, 3) Awarding Contract No. 2024-07 to Harbour Constructors Company in the Amount of \$386,755 for the Repairs at Shelter Island Boat Launch Project, San Diego, CA as Authorized by the Board in the FY 2025 Major Maintenance Budget
Engineering-Construction

2024-344

SUBJECT: Security Improvements at Shelter Island Harbor Police Building

DESCRIPTION: Resolution 1) Finding the Board Action Exempt Under the California Environmental Quality Act (CEQA), Including Without Limitation CEQA Guidelines Sections 15301 and 15302; and 2) Approving Plans and Specifications and Awarding Contract No. 2024-02 to [Name Of Contractor] in the Amount of \$ [Recommended Award Amount] for the Security Improvements at Shelter Island Harbor Police Building, San Diego, CA Project, as Authorized by the Board in the FY 2025 Other Capital Project Program
Engineering-Construction

2024-345

SUBJECT: Utility Piping and Pile Replacement at Imperial Beach

DESCRIPTION: Resolution Approving a Change Order to Contract No. 2022-19 With Reyes Construction Inc., in the Amount of \$XXXXXX for Additional Metal Hardware, Utilities, Sewer Lateral, and New Safety Ladder Improvements for the Utility Piping and Pile Replacement at Imperial Beach Pier Project, Imperial Beach, as Authorized by the Board in the FY 2023-2024 Major Maintenance Program Appropriation.
Engineering-Construction

2024-313

SUBJECT: Continuance of a Local Emergency - Caulerpa Prolifera

DESCRIPTION: Adopt a Resolution Proclaiming the Continuance of a Local Emergency Due to the Presence of an Invasive Algae Caulerpa Prolifera
Environmental Conservation

2024-325

SUBJECT: Continuance of a Local Emergency – Tijuana River Valley Pollution Crisis

DESCRIPTION: Adopt a Resolution Proclaiming the Continuance of a Local Emergency Relating to the On-Going Tijuana River Valley Transboundary Pollution Crisis Environmental Protection

PUBLIC HEARING**2024-364**

SUBJECT: Update to San Diego Unified Port District Code – Vending and Expressive Activity

DESCRIPTION: Adopt a Resolution Finding the Following Board Action Exempt Under the California Environmental Quality Act (CEQA), Including but Not Limited to, CEQA Guidelines Section 15301 and 15304;

Conduct a Public Hearing and Adopt an Ordinance Amending San Diego Unified Port District Code Article 8, Section 8.05 Vending and Expressive Activity to Change Two (2) Commercial Vending Spaces in Designated Area 1 to Two (2) Expressive Spaces and Provide an Annual Update on the District's Vending and Expressive Activity Program Parks & Recreation

ACTION AGENDA**2024-361**

SUBJECT: Board of Port Commissioners 2025 Election of Officers

DESCRIPTION: Resolution Electing Chairperson, Vice Chairperson and Secretary of the Board of Port Commissioners for 2025
Office of the District Clerk

2024-360

SUBJECT: Review and Consideration of Draft Proposed Board Agenda for the November 13, 2024 Meeting
Office of the District Clerk

FILE NUMBER: 2024-369

DATE: Tuesday, September 10, 2024

SUBJECT: Amending the Board of Port Commissioners' October Meeting Date

DESCRIPTION: Adopt a Resolution Amending the Board of Port Commissioners' October 2024 Regular Meeting Date to October 15, 2024

EXECUTIVE SUMMARY:

Section 2 of Board of Port Commissioners (BPC) Policy No. 21 requires that the dates, time and location of the regular meetings of the Board of Port Commissioners of the San Diego Unified Port District be set annually by Resolution. By Resolution No. 2023-098, the BPC established the meeting dates for 2024, including October 8, 2024. Due to scheduling conflicts staff is recommending to change the regularly scheduled October open and closed session meetings to October 15, 2024.

RECOMMENDATION:

Adopt a Resolution amending the Board of Port Commissioners' October regular meeting date to October 15, 2024.

FISCAL IMPACT:

This agenda has no fiscal impact.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Establishing regular meeting dates for the year provides the Board of Port Commissioners, the public and other interested parties with advanced notice of upcoming meetings. By Resolution No. 2023-098, the BPC established the meeting dates for 2024, including October 8, 2024. Due to scheduling conflicts staff is recommending to change the regularly scheduled October open and closed session meetings to October 15, 2024.

Any additional meetings that may be necessary during the year will be scheduled and posted as special meetings.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda and proposed resolution, as presented, as to form and legality.

Environmental Review:

The proposed Board action, including without limitation amending the Board of Port Commissioners' October meeting date for calendar year 2024, does not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because there is not a potential to result in a direct or indirect physical change in the environment. Therefore, the proposed Board action is not subject to CEQA and no further action under CEQA is required.

The proposed Board action complies with Section 21 and 35 of the Port Act, which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or an exclusion finding is not required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Donna Morales
District Clerk, Office of the District Clerk

RESOLUTION 20xx-xxx

RESOLUTION AMENDING THE BOARD OF PORT COMMISSIONERS' OCTOBER 2024 REGULAR MEETING DATE TO OCTOBER 15, 2024

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to California Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Port Act § 18 requires that the Board of Port Commissioners (BPC) hold at least one regular meeting each month, and may hold any special meetings it deems necessary; and

WHEREAS, Section 2 of BPC Policy No. 21 requires that the dates, times, and locations of the regular meetings of the BPC of the San Diego Unified Port District be set annually by Resolution; and

WHEREAS, by Resolution No. 2023-098, the BPC established the meeting dates for 2024, including October 8, 2024; and

WHEREAS, due to scheduling conflicts staff is recommending to change the regularly scheduled October open and closed session meetings to October 15, 2024.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, the previously established BPC open and closed session regular meeting date of October 8, 2024, is hereby changed to October 15, 2024.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote: