

SUBLEASE AGREEMENT

between

**FERRY LANDING ASSOCIATES, LLC,
a California limited liability company**

(Sublessor)

and

**ISLAND TIMES LLC,
a California limited liability company**

(Sublessee)

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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
If to Sublessee:	Brendan Huffman Managing Member 5083 Santa Monica Avenue, Suite 2c San Diego, California 92109 Email: B@socialsyndicate.com

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.

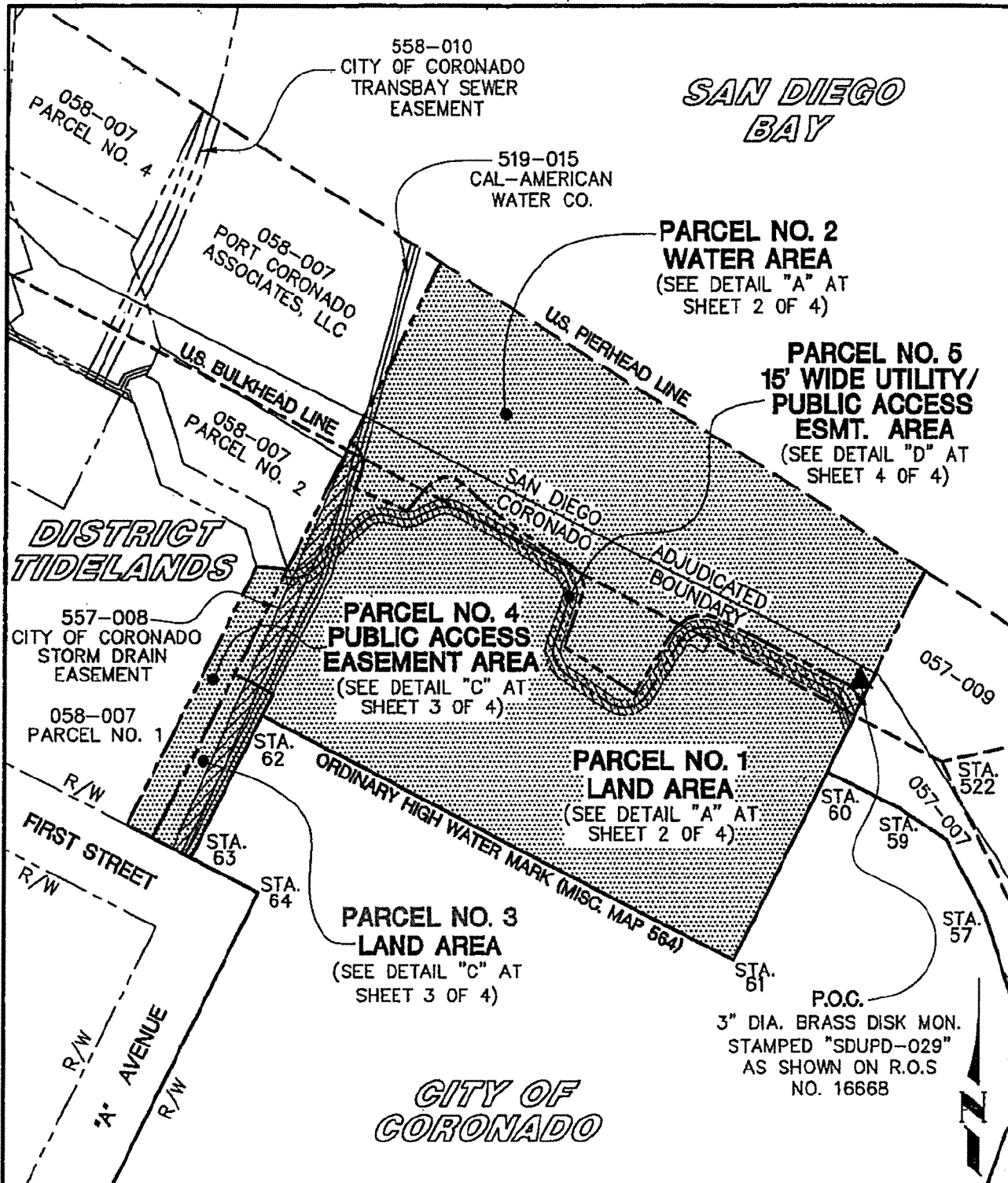
All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.

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

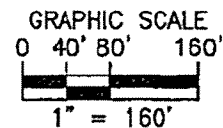
EXHIBIT B
PROJECT PLOT PLAN



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.

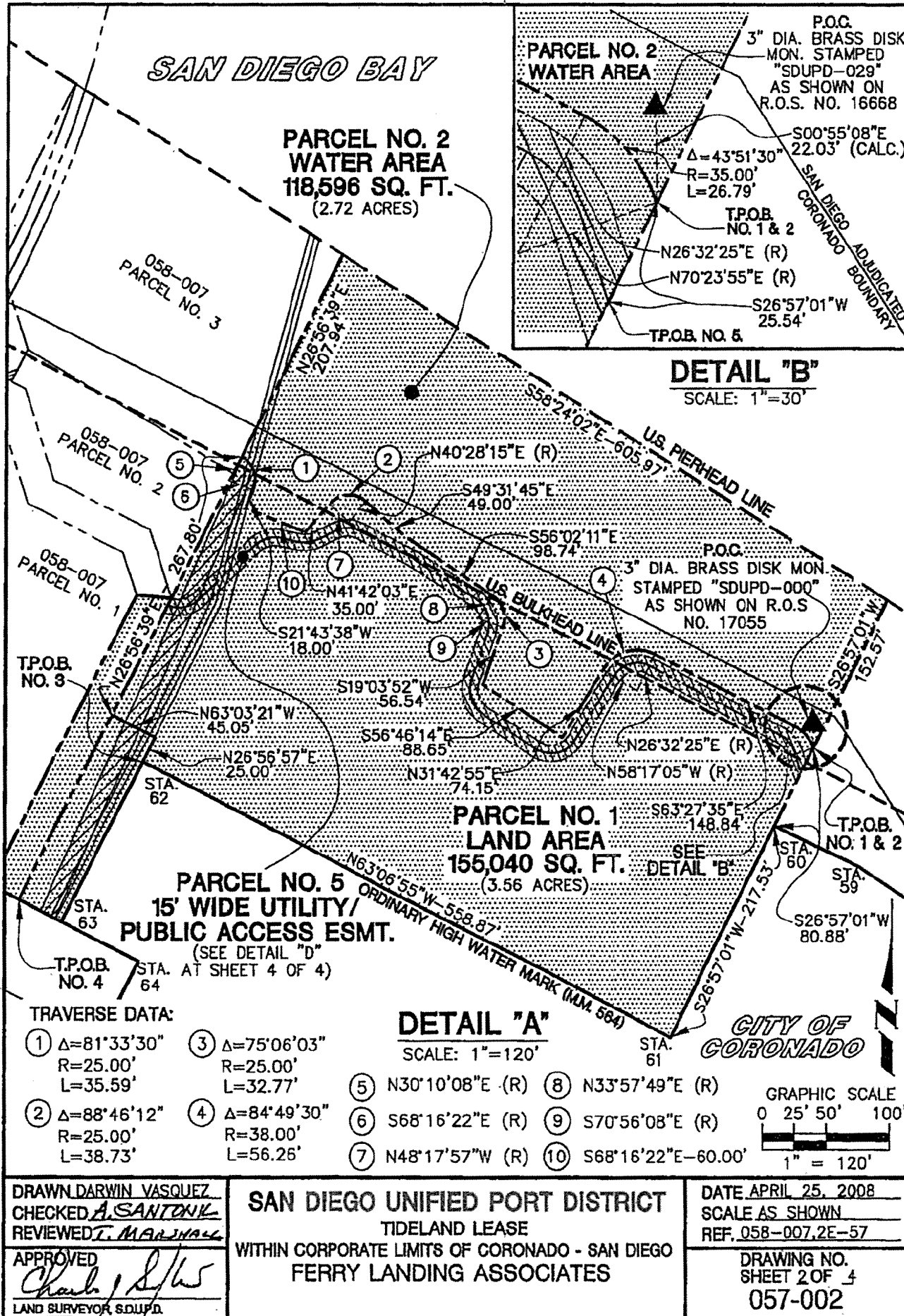
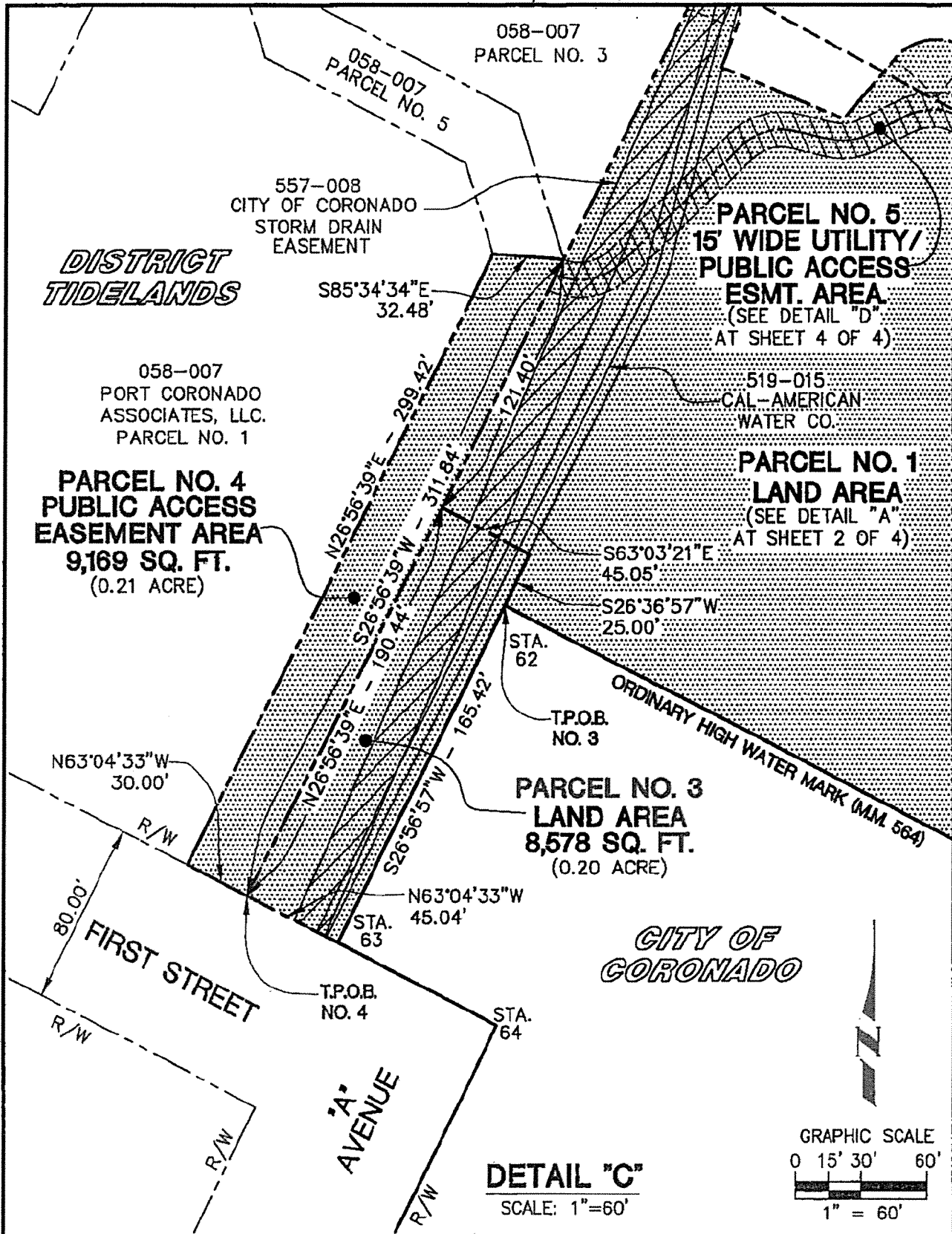
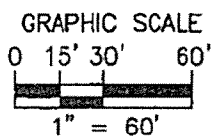


EXHIBIT "B"



DETAIL "C"
SCALE: 1"=60'



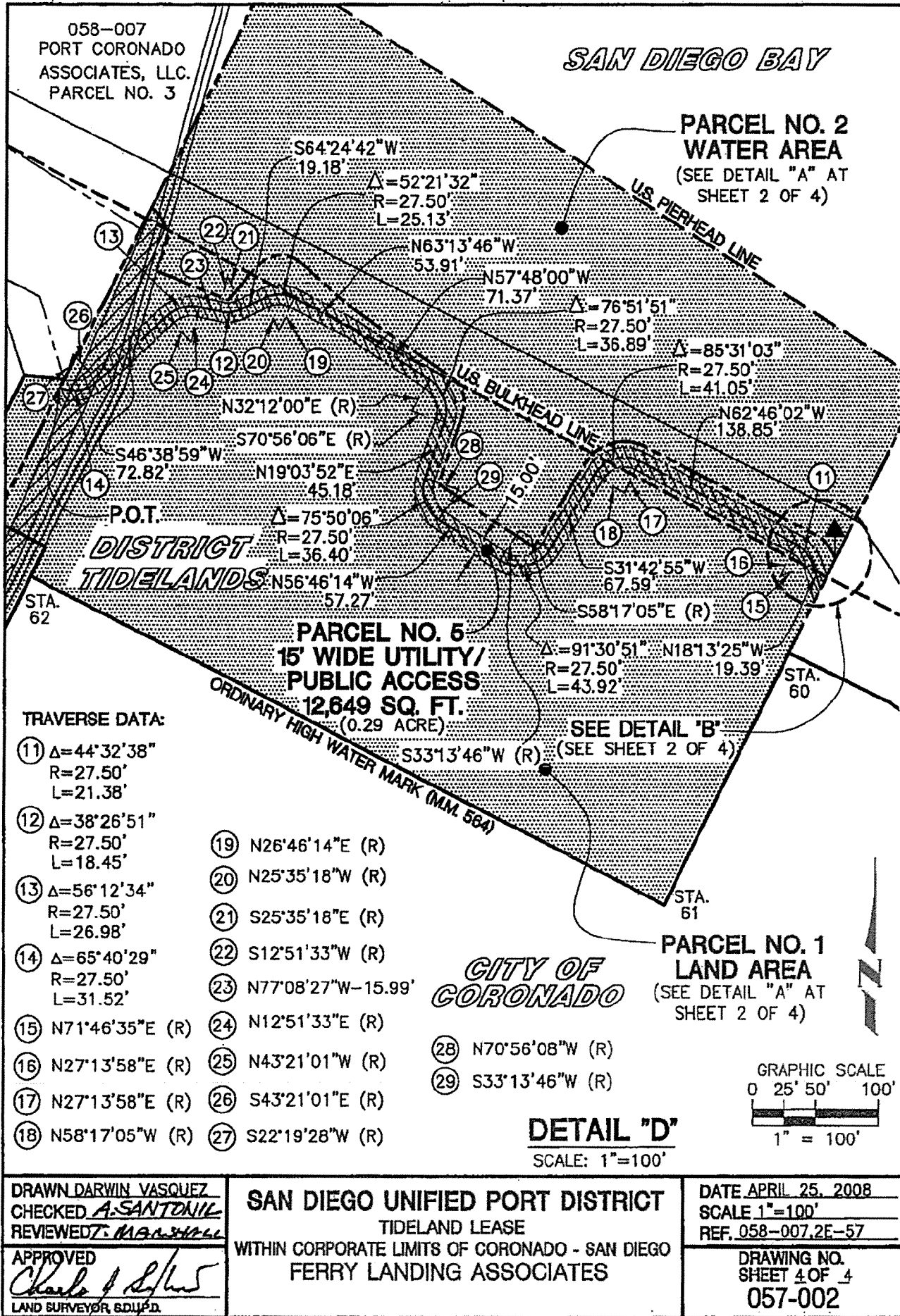
DRAWN DARWIN VASQUEZ
 CHECKED A. SANTONIL
 REVIEWED T. MASTON
 APPROVED
Charles J. Skins
 LAND SURVEYOR, S.D.U.P.C.

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"

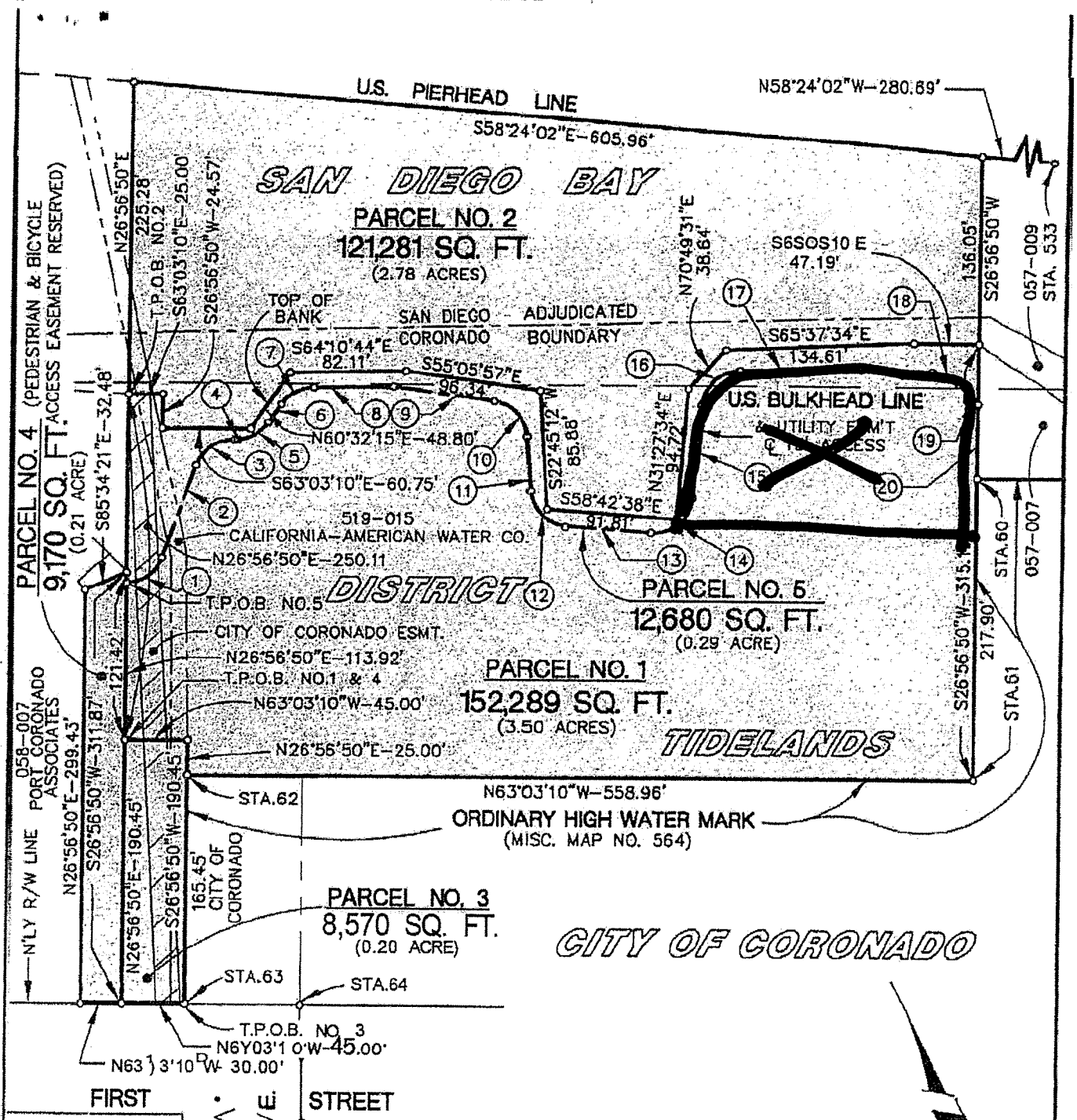


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EXHIBIT "B"

EXHIBIT C

EXHIBIT C
PREMISES PLOT PLAN



PARCEL NO. 4 (PEDESTRIAN & BICYCLE ACCESS EASEMENT RESERVED)
 9,170 SQ. FT. (0.21 ACRE)

PARCEL NO. 3
 8,570 SQ. FT. (0.20 ACRE)

PARCEL NO. 2
 121,281 SQ. FT. (2.78 ACRES)

PARCEL NO. 5
 12,680 SQ. FT. (0.29 ACRE)

PARCEL NO. 1
 152,289 SQ. FT. (3.50 ACRES)

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: --- ---

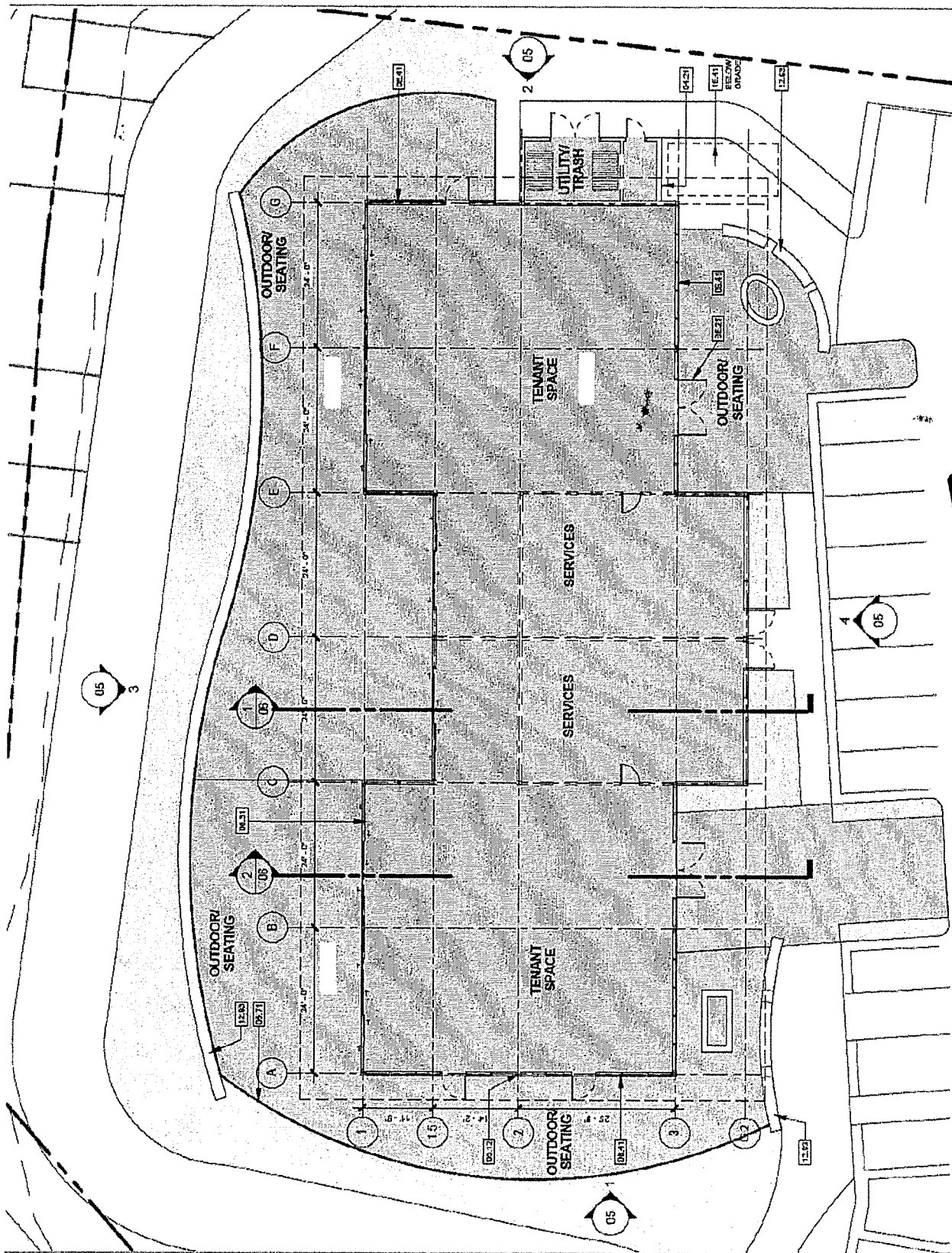
APPROVED

 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-B, 2E-57
 DRAWING NO.
057-002
 SHEET No. 1 OF 2

EX. C



Ex. C

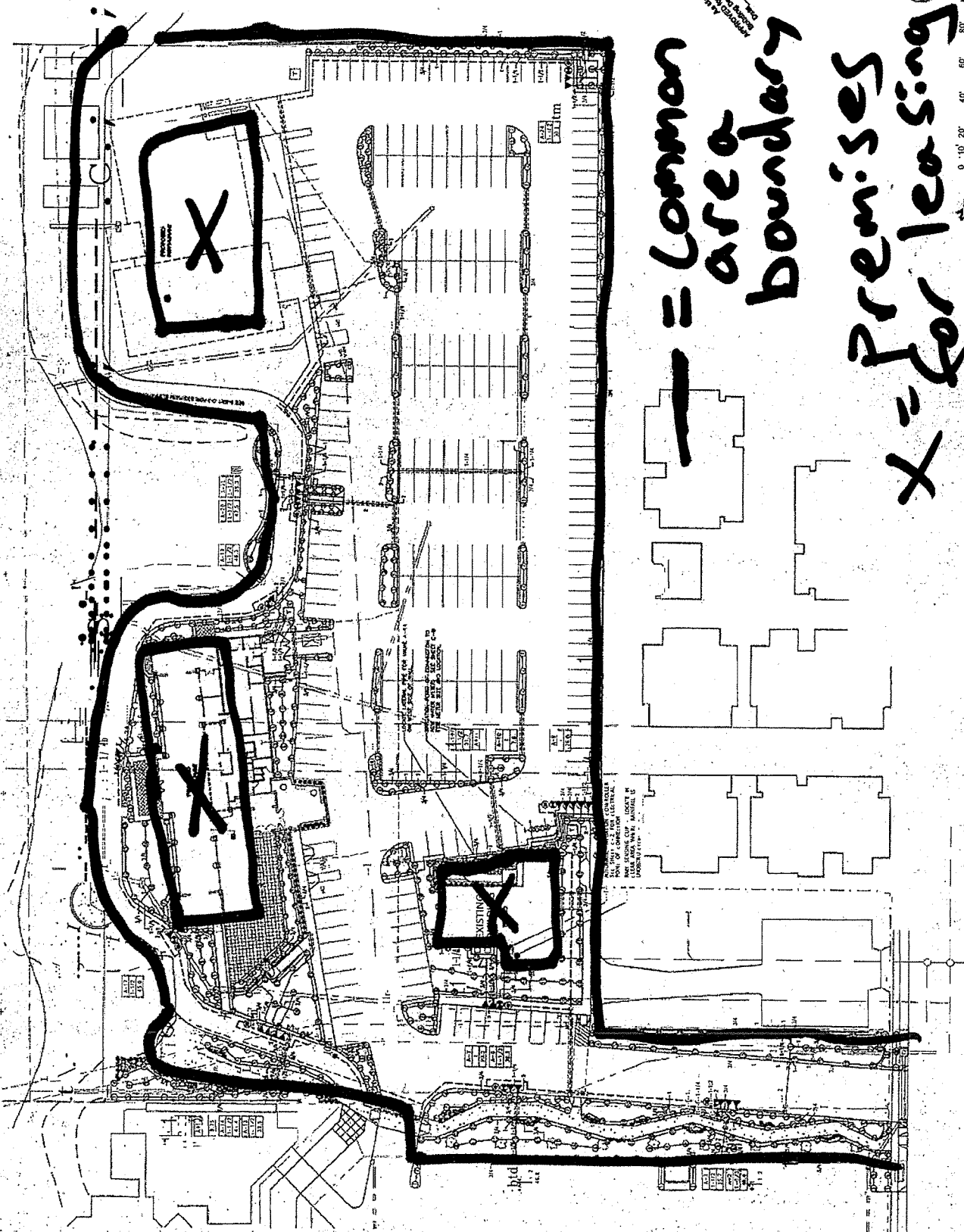
EXHIBIT D

EXHIBIT D
COMMON AREA

CARRIEN JOHNSON WP

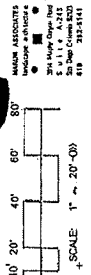
DATE: 08/12/11
PROJECT: FERRY LANDING EXPANSION
SHEET: 79 OF 95

SCALE: 1" = 20'-0"



— = Common
boundary

X = Premises
for leasing



ALL DATA, DIMENSIONS AND PLANS SHOWN ON THIS SHEET ARE BASED ON RECORDS OF THIS DISTRICT AND ARE SUBJECT TO THE PROVISIONS OF THE DISTRICT'S RECORDS. THE DISTRICT'S RECORDS ARE THE AUTHORITY IN THE EVENT OF A DISCREPANCY BETWEEN THE RECORDS AND THE PLANS. THE DISTRICT'S RECORDS ARE THE AUTHORITY IN THE EVENT OF A DISCREPANCY BETWEEN THE RECORDS AND THE PLANS.

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
 2023-07-13 - 2:34:10 AM GMT- IP address: 174.231.85.105
-  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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-  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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