

PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement (this "Agreement") is made and entered into this _____ day of _____, 2018 ("Effective Date"), by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter "District", and PROTEA PROPERTY MANAGEMENT, INC., a California corporation, hereinafter "Manager" for that certain real property consisting of approximately 575,186 square feet of tideland area located at 849 West Harbor Drive in the City of San Diego, California, more particularly described and delineated on Drawing No. 3312-B attached hereto as Exhibit A and by this reference made a part hereof, together with any improvements located thereon (collectively, the "Property"). District and Manager may be individually referred to herein, as "Party" and collectively herein, as the "Parties".

RECITALS:

WHEREAS, the Manager is the successful proposer of that certain Request for Proposals (RFP 17-52ME, "Waterfront Retail Opportunity") ("RFP") for the interim management and operations of the Property;

WHEREAS, the Property is currently subject to that certain lease by and between the District and Seaport Village Operating Company, LLC, a Delaware limited liability company ("SVOC") filed in the Office of the District Clerk as Document No. 11337 (as amended, the "Seaport Lease");

WHEREAS, the Seaport Lease expires on September 30, 2018 ("Seaport Lease Termination Date");

WHEREAS, Terramar Retail Centers, LLC, a Delaware limited liability company ("TRC") currently manages the leasehold on behalf of SVOC;

WHEREAS, 1HWY1, LLC, a Delaware limited liability company ("1HWY1") is the successful proposer of RFP 16-04ME (World Class Waterfront Development Opportunity) for the redevelopment of approximately 70 acres, including the Property, on San Diego Bay ("Central Embarcadero");

WHEREAS, some or all of the principals of the Manager are also members of the entity Protea Waterfront Development, LLC, a California limited liability company ("Protea"), which is the manager of 1HWY1;

WHEREAS, the District and Protea are parties to that certain Exclusive Negotiating Agreement dated as of October 2, 2017 filed with the Office of the District Clerk as Document No. 67343 ("ENA");

WHEREAS, 1HWY1 has informed the District that due to the complexity of the redevelopment of Central Embarcadero, the commencement of the construction of the redevelopment of Central Embarcadero ("Commencement of Redevelopment") is not likely to commence for another four to six years;

WHEREAS, the District desires to hire a property manager for the interim management and operations of the Property until the Commencement of Redevelopment; and

WHEREAS, the District desires to hire the Manager to perform the interim management and operations of the Property and the Manager desires to perform the interim management and operations of the Property based on the following terms and conditions.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto mutually agree as follows:

1. **RECITALS:** The Recitals are hereby incorporated by reference.
2. **TERM:** The term of this Agreement shall commence on the Effective Date, and end on June 30, 2021, unless sooner terminated or extended as permitted herein (as extended, the "Term").
 - 2.1. **TERM EXTENSION:** The Executive Director of the District or her designee, in his/her sole and absolute discretion, may administratively extend the Term of this Agreement by up to two (2), one year periods (each, an "Extension") by delivering to Manager written notice of his/her election to exercise an Extension at least ninety (90) days prior to the expiration of the Term, in the case of the first Extension ("First Extension"), and at least ninety (90) days prior to the expiration of the First Extension, in the case of the second Extension ("Second Extension"), upon which the Term shall be automatically extended to include such First Extension or Second Extension, as applicable; provided that this Agreement may be terminated by Manager (a) as of the end of the Term by delivering to District one hundred eighty (180) days' prior written notice of his/her election to terminate on or before Operating Period 4; and (b) as of the end of the First Extension by delivering to District one hundred eighty (180) days' prior written notice of his/her election to terminate on or before Operating Period 5, in which case the District shall have no further right to Extensions of the Term. The District undertakes no commitment or obligation to the Manager to grant any Extension and shall incur no liability to the Manager resulting from the District's election not to extend the Term. Each Extension granted by the District shall commence at the expiration of the immediately preceding Term or First Extension, as applicable. If the District does not exercise the First Extension, the Second Extension shall thereafter be and become null and void and of no further force and effect.

2.2. **OPERATING PERIODS:** The term of this Agreement shall be divided into the following operating periods:

Transition Period:	Effective Date – September 30, 2018
Operating Period 1:	October 1, 2018 – June 30, 2019
Operating Period 2:	July 1, 2019 – June 30, 2020
Operating Period 3:	July 1, 2020 – June 30, 2021

If the District elects to exercise the First Extension and Second Extension as described in Section 2.1, the operating period for each Extension exercised by the District shall be as follows:

Operating Period 4:	July 1, 2021 – June 30, 2022
Operating Period 5:	July 1, 2022 – June 30, 2023

Operating Period 1, Operating 2, Operating 3, Operating 4, and Operating 5 shall collectively be referred to as, the “Operating Periods” and may be individually referred to as, an “Operating Period”.

3. **OPERATION:** The Manager shall manage, operate, maintain and service the Property as a tourist oriented shopping village and the District and the Manager hereby agree that, as of the date hereof, the Property is in a good and usable condition and constitutes a first-class tourist oriented shopping village comparable to other similar first-class retail centers (the “First-Class Retail Center”) in the immediate vicinity of the Property and all appurtenances and personal property of the District located at the Property are in a good and sanitary condition (the “First Class Standard”). Pursuant to this Agreement, Manager shall manage, operate, maintain and service the Property consistent with the First Class Standard, including restaurants, retail shops, artisan activities, special events (except that special events shall not be held on the pedestrian promenade along the waterfront), and incidental uses, and manage, operate and maintain second-floor professional office space (including an approximately 1,655 square foot portion of the second-floor professional office space located in Suite D of 849 West Harbor Drive as described in Section 5), limited to no more than ten percent (10%) of the total development project floor space and for no other purposes whatsoever without the written consent of District (collectively, the “Operating Use”).

4. **SERVICES:** Manager shall devote commercially reasonable efforts to perform the following services in accordance with the terms of this Agreement and the Maintenance Standards defined in Section 16 to ensure the Property is managed, operated, maintained and serviced as a First Class Retail Center in accordance with the Operating Use and First Class Standard defined in Section 3, which shall collectively be referred to herein, as the “Services”:

4.1 ON AND BEFORE SEAPORT LEASE TERMINATION DATE (Transition Period):

- (a) **Operating Budget:** For each of the Operating Periods, Manager shall prepare, for the District's review and approval, a proposed operating budget in the format set forth in Exhibit B attached hereto and incorporated herein by reference, setting forth in such detail as may be requested by the District the estimated receipts and the estimated expenses of the Property, on a cash basis, for each month and quarter of such Operating Period, including, without limitation, the amount of any assessments, insurance premiums and maintenance and other expenses relating to the Property, whether for operations or capital improvements, and a narrative explaining each of the line items in the operating budget; that will provide the Services for such Operating Period (collectively, the "Operating Budget"). Manager shall deliver to the District, for the District's review and approval, the Operating Budget for Operating Period 1 and a Parking Implementation Plan (as defined in Section 4.1(e)) not later than thirty (30) days following the Effective Date of this Agreement in the District's sole and absolute discretion and Manager shall revise the Operating Budget and Parking Implementation Plan until approved by the District. Upon approval by the District, the Manager shall implement the Operating Budget for Operating Period 1. Not later than thirty (30) days after the Operating Budget has been approved, Manager shall deliver to the District, for the District's review and approval, a quarterly Marketing and Activation Program (as defined in Section 4.1 (g)); and a schedule of the Approved Personnel (as defined in Section 19). The District may reject, amend, or modify the quarterly Marketing and Activation Program and schedule of the Approved Personnel until approved by the District. The Manager shall provide such other financial data and other information as may be reasonably requested by the District.
- (b) **Property Management Responsibilities:**
- i. **End of Seaport Lease Obligations:** Manager shall coordinate some or all of the end of Seaport Lease obligations with the current operator of the Property, SVOC, and/or TRC, as applicable, including without limitation any physical and environmental inspections, as directed by the District.
 - i. **Property Inspections:** Manager shall perform quarterly comprehensive inspections of the Property in accordance with the Maintenance Standards defined in Section 16, and report the results of such inspections to the District. Such inspections may include, without limitation, a thorough evaluation of SVOC's compliance with the Seaport Lease.
 - ii. **Transition:** Manager shall perform and coordinate all transition planning and implementation with the current operator of the Property, SVOC, and/or TRC in order to ensure the timely transition

of the Property to District; provided that the District shall coordinate with SVOC and TRC and Manager.

- (c) Financial Accounting and Management Services:
 - i. Budgeting: Manager will implement the Operating Budget approved by the District for Operating Period 1 and shall report to the District on a quarterly basis any changes to the Operating Budget for the District's review and approval.

- (d) Reporting Responsibilities:
 - i. Lease Abstracts: The District shall provide Manager with a copy of each new lease entered into by the District for the Property ("Lease") and any amendment to any Lease ("Amendment") within ten (10) business days of the full execution of the Lease or Amendment, as applicable. Manager shall prepare a lease abstract for each new Lease and update the abstract with each Amendment received. The Lease abstract shall be in a form acceptable to the District and shall outline the major terms of each Lease, as amended from time to time.
 - ii. Review of current reports and prepare templates for District approval: Manager shall review all reports related to the Property and prepare templates necessary for Manager to perform the Services. Without limitation, templates shall include move-in and move-out worksheets, inspection reports, maintenance reports, and service contract forms, and all templates shall be subject to the District's review and approval prior to implementation by Manager.

- (e) Parking Responsibilities:
 - i. Reciprocal License and Use Agreement between District and SVOC, on file in the Office of the District Clerk as Document No. 64492 ("Parking License"): Manager shall prepare an abstract of the Parking License and prepare a parking implementation plan for the Term for the District's review and approval ("Parking Implementation Plan"). District may reject, amend, or modify the Parking Implementation Plan in the District's sole and absolute discretion and Manager shall revise the Parking Implementation Plan until approved by the District. Once approved the District, Manager shall implement the Parking Implementation Plan;

- (f) Approved Personnel: Manager shall oversee and shall be solely responsible for any Approved Personnel hired by Manager to perform the Services.

- (g) Marketing and Activation Responsibilities: The following marketing and activation responsibilities shall be subject to the restrictions set forth in Schedule 1 attached hereto and incorporated herein by reference:

- i. Prepare for District review and approval a quarterly marketing and activation program for attracting visitors and the community to the Property ("Marketing and Activation Program");
- ii. Coordinate Marketing and Activation Program;
- iii. Coordinate any marketing and activation program for attracting visitors and the community to the Central Embarcadero ("CE Marketing and Activation Program") with 1HWY1 and the District.

(h) **Additional Services:** Such additional services as the District may reasonably request in connection with the Property, including without limitation, any property management responsibilities, financial accounting and management services, reporting responsibilities and parking responsibilities, necessary to manage, operate, maintain and service the Property in accordance with the Operating Use.

4.2 AFTER SEAPORT LEASE TERMINATION DATE (October 1, 2018 to Expiration Date):

(a) Property Management Responsibilities:

- i. **Operating Budget:** No later than December 1 of each year of the Term, or such date as specified by the District by written notice to Manager, Manager shall deliver to the District a proposed Operating Budget for the following Operating Period for the District's approval, which the District may reject, amend, or modify in the District's sole and absolute discretion, and the Manager shall revise the Operating Budget until approved by the District. Upon approval by the District, the Manager shall implement the Operating Budget. Not later than thirty (30) days after the Operating Budget has been approved, Manager shall deliver to the District, for the District's review and approval, a quarterly Marketing and Activation Program (as defined in Section 4.1 (g)); and a schedule of the Approved Personnel (as defined in Section 19), which the District may reject, amend or modify in the District's sole and absolute discretion, and the Manager shall revise the quarterly Marketing and Activation Program and schedule of the Approved Personnel until approved by the District. If written approval or disapproval for the proposed Operating Budget for a particular Operating Period has not been received by Manager by June 30 of said Operating Period, such Operating Budget shall be deemed to be disapproved by the District. If the District disapproves a proposed Operating Budget or is deemed to have disapproved a proposed Operating Budget, Manager shall continue to operate the Property in accordance with the last approved Operating Budget until a new proposed Operating Budget is approved by the District.
- ii. **On-site management representation:** Manager shall be responsible for the day-to-day operations of the Property and the management of all of the Leases. Manager shall establish an effective and reliable system of communication for the tenants of the Property (each, a

"Tenant" and collectively, the "Tenants") to submit requests, inquiries, and complaints to the Manager twenty-four (24) hours a day, seven (7) days a week. Manager shall designate at least one of the Approved Personnel to serve as the primary contact for Tenants and be available twenty-four (24) hours a day, seven (7) days a week and one back up person from the Approved Personnel to be available if the primary contact is not available. Manager shall respond to each Tenant request, inquiry or complaint within twenty-four (24) hours of receipt, except in the case of an emergency as defined in Section 11, where Manager shall respond within one (1) hour. Manager shall perform daily inspections of the Property and, at a minimum, monthly inspections of the leaseholds on the Property to ensure compliance by the Tenants with the Leases, including without limitation, any obligations relating to maintenance and the use, generation, storage or disposal of hazardous wastes and materials. The Manager shall inform the District within twenty-four (24) hours of any Lease violation that is occurring or that may occur with the passage of time. Manager shall obtain and maintain all documentation required to be provided by each Tenant under each Lease, including without limitation, all insurance certificates, permits and approvals.

- iii. Building Inspections: Manager shall perform periodic comprehensive inspections of the Property, and report on such inspections to the District at least annually. Such inspections shall include, without limitation, a thorough evaluation of the condition of the Property, any deferred maintenance, and any violations of any Leases or laws or regulations applicable to the Property. The Manager shall also inspect on a monthly basis the roofs of buildings within the Property, the HVAC systems, and any gutters on the Property.
- iv. Prepare and Implement Emergency Response Requirements: Manager shall prepare a written plan for emergency response administration for the District's review and approval which shall include, but shall not be limited to: instructions; recovery preparedness; emergency response team alert list and meeting; disaster staging area(s); team responsibilities; emergency equipment and evacuation kit location; emergency preparedness checklist for critical infrastructure, communication, emergency information, personnel; reunion center location, team recovery steps, recovery box, critical resources to be retrieved, critical vendor notification, key customer notification, etc. (collectively, the "Emergency Response Plan"). Manager shall implement the Emergency Response Plan approved by the District.
- v. Utilities: Manager shall manage all common area utilities, including, but not limited to, electricity and water. Manager shall also manage any utilities required by the Leases to be managed by the District;

- vi. Security: Manager shall take all necessary measures to ensure that the Property is secure at all times. Manager shall hire security personnel to patrol the Property twenty-four (24) hours per day, seven (7) days a week at a cost to be approved by the District through the Operating Budget;
 - vii. Tenant conflict resolution: Manager shall assist District with resolving any complaints presented by Tenants;
 - viii. Transition: Manager shall perform and coordinate all transition planning and implementation with any future operator of the Property;
 - ix. Daily Tenant management and Tenant relations services: Manager shall perform the daily management services required of a Manager for a First-Class Retail Center. Manager shall coordinate events and meetings with Tenants to foster Tenant relationships;
 - x. Coordinate move-ins and move-outs by Tenants: Manager shall schedule and coordinate all move-ins and move outs of Tenants. Prior to the move-ins or move outs, Manager shall perform walk throughs with the Tenants. Manager shall coordinate and assist the District with any evictions of any Tenants, as directed by the District in writing.
 - xi. Tenant Improvements: Manager shall coordinate and supervise the construction of Tenant improvements with the Tenants.
 - xii. Construction: Manager shall coordinate and supervise any construction on the Property.
 - xiii. Maintenance of the Property: Manager shall maintain the Property in accordance with Section 16.
 - xiv. Approved Personnel: Manager shall oversee and be solely liable for any Approved Personnel hired by Manager to perform the Services as provided in Section 19. Manager shall also coordinate with Approved Personnel, third parties, and any District employees, consultants, and independent contractors to perform work, studies, and investigations on the Property required by the District at a cost to the District, if approved through the Operating Budget.
- (b) Financial Accounting and Management Services:
- i. Reports: Manager shall prepare accounting of rents and other income reports for the Property in a form to be approved by the District;
 - ii. Accounting and Management: Manager shall perform accounting and management of all accounts and expenses as described in Section 4.2(b)(i);
 - iii. Operating Budget: Manager shall propose revisions to the Operating Budget for the District's consideration and approval, and provide monthly reports to the District showing any variances in the Operating Budget.

- iv. Other statements and services: Manager shall prepare and provide all other statements and services described in Section 9.
- (c) Reporting Responsibilities: Manager shall prepare and provide the following reports to the District, in a form to be approved by the District:
- i. Occupancy and availability reports;
 - ii. Statements of receipts and disbursements;
 - iii. Rent Roll;
 - iv. Itemization of expenses, bills and invoices;
 - v. Cash balances due to the District;
 - vi. Operating Budget comparison and variance report (e.g. YtD, YoY);
 - vii. Reporting of material management and maintenance issues and recommendations to resolve problems;
 - viii. All reports listed in Section 9; and
 - ix. Any other reports requested by the District.
- (d) Parking Responsibilities: Implement the Parking Implementation Plan approved by the District.
- (e) Marketing and Activation Responsibilities: The following marketing and activation responsibilities shall be subject to the restrictions set forth in Schedule 1 attached hereto and incorporated herein by reference:
- i. Prepare for District review and approval a quarterly Marketing and Activation Program;
 - ii. Coordinate and implement the Marketing and Activation Program;
 - iii. Coordinate and implement regular marketing events at the Property;
 - iv. Coordinate any CE Marketing and Activation Program with 1HWY1 and the District;
 - v. Implement any portion of the CE Marketing and Activation Program related to the Property;
 - vi. Coordinate all marketing and activation programs with the District.
- (f) Additional Services: Such additional services as the District may reasonably request in connection with the Property, including without limitation, any property management responsibilities, financial accounting and management services, reporting responsibilities and parking responsibilities, necessary to manage, operate, maintain and service the Property pursuant to the Operating Use.

The Manager shall serve in a fiduciary capacity only with respect to the collection, delivery, use, proper protection of and accounting of the District's monies. District shall use its commercially reasonable efforts to respond promptly to all written requests submitted by the Manager in connection with its performance of the Services.

5. **ACCESS:** Subject to the rights of any Tenants, SVOC and the Subtenants prior to the Seaport Lease Termination Date, the Manager and the Approved Personnel shall

have the non-exclusive right to enter the Property to perform the Services during the Term. Manager shall have the non-exclusive right to use the interior of an approximately 1,655 square foot office commonly known as Suite D located on the second floor of the building located at 849 West Harbor Drive, to be used only for the purpose of managing the Property in accordance with the terms of this Agreement, and for no other purpose whatsoever ("Office Space"). Manager acknowledges and agrees that Manager only has a temporary license to non-exclusively use the Office Space, which is revocable at any time, and is not, and shall not become, a tenancy of any kind between the District and Manager. Manager agrees that it has examined the Office Space and the condition thereof, that the improvements thereon in their present condition are satisfactory and usable for Manager's purposes, and that no representations as to value or condition have been made by or on behalf of the District and Manager accepts the Office Space in its as-is condition. The District shall have no obligation to maintain, repair or improve the Office Space, except to reimburse Manager for repairs and operating expenses associated therewith from time to time at a cost to the District if approved through the Operating Budget. Upon thirty (30) days' prior written notice to Manager, District shall have the right to relocate the Office Space to another location on the Property. Manager may have the non-exclusive right to use parking spaces on the Property as approved in the Parking Implementation Plan as needed to perform the Services. The Manager acknowledges and agrees that Manager does not have any possessory interest or rights to the Property through this Agreement or otherwise, except as expressly set forth herein.

6. **MANAGER'S COMPENSATION:** For performing the Services under this Agreement, in a form and manner acceptable to the District, in its commercially reasonable discretion, the Manager shall receive a management fee ("Management Fee") on the following dates and in the following amounts:

- (a) Payment of Management Fee:
 - i. Effective Date – September 30, 2018: Provided the Manager has performed the Services under this Agreement, in a form and manner acceptable to the District, in its commercially reasonable discretion, the District shall pay the Manager the Management Fee for Services performed prior to the Seaport Lease Termination on the first date of the month of each month of the Term during the Transition Period.
 - ii. October 1, 2018 – Expiration Date: Provided the Manager has performed the Services under this Agreement, in a form and manner acceptable to the District, in its commercially reasonable discretion, the District shall pay the Manager the Management Fee in arrears on the following dates for Services performed on and after the Seaport Lease Termination Date: December 1, 2018 and on the first date of the month of each month of the Term thereafter.

- (b) Type of Management Fee:
- i. Effective Date – September 30, 2018: A Management Fee equal to \$10,000 per month; provided, however, if the Effective Date is not the first date of a month, the Management Fee for the first month shall be prorated based upon the number of days in the applicable calendar month.
 - ii. October 1, 2018 – Expiration Date: A Management Fee equal to 1.7% of the Gross Revenue generated by the Property, but in no event less than \$10,000 per month, payable in arrears and calculated on the Gross Revenue actually received by the District during the previous month of the Term.

As used in this section "Gross Revenue" shall include payments received by the District from Tenants for: (i) rent payable under the Leases; (ii) use of parking spaces; (iii) common area expenses; and (iv) late charges collected by Manager (unless excluded by the Gross Revenue Exclusions below).

Notwithstanding the foregoing, Gross Revenue shall not include payments received by the District from Tenants for: (i) reimbursements for repair of any damage to the Property, including without limitation, any repair to any leasehold; (ii) any payment made by a Tenant to reimburse the District for costs or damages, including without limitation, any litigation or arbitration costs, or attorneys' fees; (iii) any costs or expenses resulting from Manager's performance of this Agreement, including without limitation, the Management Fee; (iv) any Tenant security deposits, whether in the form of a Letter of Credit or cash, unless applied by the District to pay for rent payable under a Lease; (v) any portion of the rent attributable to amortization of Tenant improvements or other capital investments paid by District; (vi) proceeds from a casualty or condemnation; (vii) proceeds from a sale of any or all of Tenant's interest in a Lease; and (viii) insurance proceeds other than business interruption insurance. Items (i) – (viii) shall collectively referred to as, the "Gross Revenue Exclusions".

The Management Fee is intended to fully compensate the Manager for the costs and expenses of all of Manager's obligations under this Agreement, including without limitation the Services, except for those costs and expenses which are provided for under the Operating Budget.

The District shall not be obligated to pay, or reimburse the Manager, for any costs or expenses not expressly agreed to by the District in this Agreement, regardless of whether such costs or expenses is incurred by the Manager in the performance of this Agreement.

7. **LEASING:** The District shall prepare and enter into all Leases and Amendments. Manager shall not have the authority to negotiate with any person or entity for the Property or enter into any Lease or Amendment with any person or entity on the District's behalf. Once any Lease or Amendment is executed by both the District and the Tenant, the District shall deliver the Lease or Amendment to the Manager within ten

(10) business days of the full execution of the Lease or Amendment, as applicable, for implementation in accordance with this Agreement.

8. COLLECTION AND DISBURSEMENTS:

- (a) Commencing on October 1, 2018, the District shall collect all rents and other payments due from Tenants and any sums otherwise payable to the District with respect to the Property. The District authorizes the Manager to request and demand, on behalf of the District all past due and delinquent rent and other charges.

All sums collected by the District (or by Manager, if applicable) shall be deposited each business day in a Federal Deposit Insurance Corporation-insured account, established in the District's name, in a bank which has been approved by the District, hereinafter "Seaport Village Rent" bank account. If required by law, the District shall establish separate accounts for holding Tenants' security deposits, and funds in such accounts shall not be commingled with other funds of the District.

- (b) Within ten (10) business days after the District's receipt of the Property Management Report as defined in Section 9, the District shall cause to be disbursed to the Manager funds, hereinafter "Allowance" in the amount set forth in the Operating Budget approved by the District to perform the Services from a District bank account (other than any account(s) established for the deposit of Tenants' security deposits or Seaport Village Rent bank account) to a Federal Deposit Insurance Corporation-insured joint account, established in the District's and Manager's name, with District as primary account owner, in a bank which has been approved by the District, hereinafter "Seaport Village Expense" bank account. The Allowance for October 2018 shall include a 10% contingency or other approved amount that may be established in the Operating Budget for emergency purposes or as otherwise determined by and approved in writing by the District. Upon written request from Manager for all of the months following October 2018, up to a 10% contingency may be included in the Allowance if Manager demonstrates in the monthly Property Management Report as defined in Section 9 that Manager has used the previously disbursed contingency. Notwithstanding the foregoing and provided that the Manager is not in Default (as defined in Section 30) under this Agreement, the Allowance for the months of October 2018 and November 2018 shall be paid to the Manager on October 1, 2018 and November 1, 2018, respectively.

- 9. ACCOUNTING AND REPORTING:** On or before the twenty-fifth (25th) day of each month commencing November 1, 2018, the District shall deliver to the Manager, a schedule of all rents and other payments collected from Tenants by the District.

Manager shall account for all Gross Revenue for the Property. Such accounting shall be accomplished in a manner to be approved expressly in writing by the Executive Director of the District or her designee, and such aforesaid accounting shall be subject to change by express written direction from the Executive Director of District or her designee. Manager further agrees that it will maintain for District true, accurate, and complete records in a form satisfactory to District of all expenses for the Property and Gross Revenue. District shall have the right at any and all reasonable times to examine and audit said records without restriction for the purpose of determining the accuracy thereof and of the daily and monthly records of expenses for the Property and Gross Revenue. All records kept by Manager shall be maintained in a location satisfactory to District and accessible in real-time to the District twenty-four (24) hours a day, seven (7) days per week through a password protected, online portal.

Not later than the fifth (5th) business day following the close of each calendar month, Manager shall deliver the following statements, prepared on a cash basis, for the preceding month: a statement of Gross Revenue for the preceding calendar month, a profit and loss statement showing the results of operations of the building for the preceding calendar month and for the year-to-date, with comparisons (for the month and year-to-date) to the approved Operating Budget, occupancy and availability reports, and a sources and use of cash flow statement for the month and for the year-to-date, including statements of receipts and disbursements, rent roll, itemization of expenses, bills, and invoices, cash balances due to the District, Operating Budget comparison and variance report (e.g. Ytd, YoY), reporting of material management and maintenance issues and recommendations to resolve problems, and any other reports requested by the District hereinafter collectively, the "Property Management Report". Such Property Management Report shall be certified, after reasonable review and inquiry, by an authorized representative of Manager to be, true, correct and complete. Manager shall submit with such monthly Property Management Report copies or originals of all invoices paid by the Manager during the previous month.

10. EXPENSE OF THE DISTRICT: District may elect to reimburse Manager for an expense incurred by the Manager in the performance of the Services provided the District approves such expense in writing, pursuant to the Operating Budget prior to Manager incurring such expense and Manager provides the District with written evidence that such approved expense was actually incurred by Manager. In addition, the District shall not be obligated to pay or reimburse the Manager for any expenses incurred by the Manager for office equipment or office supplies of the Manager, for any software or hardware used to perform the Services, general overhead expense of the Manager, for any salaries of any executives of Manager or supervisory, bookkeeping, accounting or data processing employees of the Manager, for any salaries, wages and expenses for any employees of the Manager (other than the salaries approved in the Operating Budget for certain Approved Personnel), or for any record keeping, book-keeping, accounting or data processing services in connection with the Property.

To the extent that contracts for capital improvements at the Property are entered into following the Effective Date, the District and Manager agree that no supervision fee

shall be payable to the Manager unless provided for in the Operating Budget approved by the District and as may be negotiated on an individual, case-by-case basis depending on the length of the contract and the scope of supervisory services. No supervision fee shall be payable to the Manager for supervising Tenant improvements under the Leases.

11. PAYMENT BY THE MANAGER: Commencing October 1, 2018, the Manager shall make all payments that are authorized by the District through the approved Operating Budget, but only if such payments will not cause the annual aggregate expenditure of an Operating Budget to exceed the approved aggregate Operating Budget by 10% or more. In the case of a casualty, or other similar emergency, Manager shall contact the District's project manager, to be assigned by the District from time to time during the Term immediately after discovery or notification of such emergency. If Manager does not receive a response from the District within one (1) hour after contacting the District's project manager, Manager may make payments for repairs and maintenance, in excess of any emergency authorization amount included in the approved Operating Budget if, in the reasonable opinion of the Manager, emergency action is necessary to prevent damage to the Property or to person(s) or entity(ies) or to prevent a default on the part of the District as landlord under a Lease; provided, however, in no event shall the expenditure for an Emergency (as defined below) exceed five thousand dollars (\$5,000), per occurrence. In such cases, such authority shall terminate upon the cessation of the Emergency and the Manager will provide written notice to the District of the expenditure within two days after such expenditure. For purposes of this Section 11, "Emergency" shall be defined as the actual or threatened existence of conditions such as any hurricane, tornado, storm, high water, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion, civil disturbance, other catastrophe, or threat that causes or may cause substantial damage or injury to any person or entity or the Property, including without limitation, failure of electrical, plumbing, communications or network systems or devices, which may cause an immediate threat to health and safety.

12. SOURCE OF PAYMENT: Any authorized payments made by the Manager on behalf of the District shall be made out of said Seaport Village Expense bank account as the Manager may from time to time hold for the account of the District or as may be provided by the District. The District shall maintain in the Seaport Village Expense bank account pursuant to this Agreement the amount approved by the District in the approved Operating Budget to cover the costs and expenses for the Manager to perform the Services hereunder, and the Manager shall notify the District at least five (5) days, in advance, of any foreseeable deficiency of the funds in said account. If the Manager shall advance voluntarily for the District's account any amount for the payment of any expense previously authorized by the District in writing, and not in excess of 10% of the approved Operating Budget the District shall, upon written notice from the Manager and submission of an original of the invoice paid by Manager for such previously authorized expenses, reimburse the Manager within thirty (30) days of receipt of the notice from the Manager, without interest.

13. **REPRESENTATIONS AND WARRANTIES:** Manager represents and warrants to the District that:

- (a) Manager is duly organized, validly existing and in good standing as a corporation under the laws of the State of California;
- (b) Manager, and the authorized representative of Manager signing on Manager's behalf, have the full power and authority to execute and deliver this Agreement and to enter into the transactions contemplated herein, and have duly authorized the execution, performance and delivery of this Agreement;
- (c) This Agreement is a legal, valid and binding obligation of Manager, enforceable against Manager in accordance with its terms; and
- (d) Neither the execution and delivery of this Agreement and the consummation of the transactions contemplated herein, nor the fulfillment of or compliance with the terms and conditions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any existing legal restriction, Manager's incorporation or bylaws, any existing agreement or any instrument to which Manager is a party or by which Manager is bound, or will constitute a Default under any of the foregoing.

As of the Effective Date, District represents and warrants to the Manager that:

- (e) District, and the authorized representative of District signing on District's behalf, have the full power and authority to execute and deliver this Agreement and to enter into the transactions contemplated herein, and have duly authorized the execution, performance and delivery of this Agreement as evidenced by the Resolution of the Board provided to Manager.
- (f) This Agreement is a legal, valid and binding obligation of District, enforceable against District in accordance with its terms.

14. **ASSIGNMENT-ENCUMBRANCE:** Neither the whole nor any part of this Agreement, nor any of the rights or privileges granted by this Agreement to Manager, shall be assigned, transferred, or encumbered in any way, voluntarily or involuntarily, by Manager during the Term. Neither the whole nor any part of the Property shall be assigned, transferred or encumbered in any way by Manager during the Term. Manager shall not grant any permission to any person or entity to occupy any portion of the Property without the prior written approval of the District. Any such purported assignment, transfer, encumbrance, tenancy, license or permission given by Manager without the express written consent of the District shall be void as to District and shall

result in a Default under this Agreement and, at District's election, shall result in the immediate termination of this Agreement without further notice to Manager.

15. **IMPROVEMENTS:** Manager shall make no changes or alterations to the Property, nor make, erect, install or remove any buildings, structures, signs, machines, or other improvements therein without the prior express written consent of the District.

16. **MAINTENANCE:** Manager shall maintain (i) those portions of the Property not subject to a Lease, unless the District agrees to maintain a leasehold subject to a Lease, in which case the Manager shall also maintain that portion of the Property; and (ii) Manager shall also maintain all appurtenances and any personal property of the District on the Property; in each case, in a good and sanitary condition and free and clear of any debris, litter or waste at all times, consistent with the First-Class Retail Center and First Class Standard in accordance with the Operating Use and any maintenance standards to be prepared by the Manager and approved by the District as the "Maintenance Standards". Manager shall submit proposed Maintenance Standards within sixty (60) days of the execution of this Agreement for the District's review and approval in its sole and absolute discretion. Manager shall provide proper containers for trash. District shall at no time during the Term be required to maintain or to make any improvements or repairs to the Property.

17. **SERVICE CONTRACTS:** The Manager may enter into one or more agreements with a third party to perform the Services (each, a "Service Contract"), provided the District preapproves the contract in writing, in its sole and absolute discretion. Each Service Contract (i) must be assignable to the District or a person or entity designated by the District (at the District's option and without cost to the District), (ii) must not exceed the Term, and (iii) must be terminable, at no cost to the District, upon written notice to the third party, as provided for in the Service Contract that was previously approved by the District.

18. **APPROVAL OF CONTRACTS:** Notwithstanding any term or provision of this Agreement to the contrary, no contract or agreement for equipment, supplies, services or any other item shall be entered into by the Manager on behalf of the District unless first approved by the District in writing.

19. **PERSONNEL:** Concurrently with its delivery of the proposed Operating Budget pursuant to Sections 4.1 and 4.2 and no later than December 1 of each year of an Operating Period, Manager shall deliver to the District a list of Manager's representatives, agents, employees, consultants, or contractors with their personnel titles and salaries that will perform the Services for that respective Operating Period ("Manager's Personnel"). It is anticipated that there will be sufficient personnel on the Property consistent with the First Class Standard. Manager shall designate in the list

delivered to the District which of the salaries of the Manager's Personnel it proposes that the District reimburse Manager for through the Operating Budget. By requesting that the District pay for the salary of any of the Manager's Personnel, the Manager represents and warrants that such member of the Manager's Personnel will dedicate 100% percent of its time to the Services for the Property. The District may object to the Manager's Personnel in its sole and absolute discretion at any time during the Term. The list of Manager's Personnel that are approved by the District to perform the Services during an Operating Period shall be referred to as, the "Approved Personnel". The Manager shall employ such Approved Personnel as employees of the Manager and not of the District. Manager shall include the names, titles, and salaries of any of the Approved Personnel Manager proposes to have the District reimburse it for in the proposed Operating Budget for Operating Period 1. Manager shall be responsible for ensuring that any Approved Personnel for whom the District is paying for the salary through the approved Operating Budget dedicate 100% of his/her time to the performance of the Services on the Property. Manager shall pay for any and all wages, salaries, fringe benefits, salary expenses and payroll taxes with respect to each of the Approved Personnel and the District shall not be responsible for any cost or expense related to the Approved Personnel, other than those salaries expressly agreed to by the District in writing and included in the approved Operating Budget for the Property. The Manager shall comply with all Laws relating to the employment of the Approved Personnel and the District shall have no obligation or liability with respect to any Approved Personnel.

20. **TITLE TO IMPROVEMENTS:** Structures, installations, or improvements of any kind placed on the Property by Manager, as approved by the District in accordance with the Operating Use, shall at the option of District be removed by Manager at the earlier termination or expiration of this Agreement. District may exercise said option as to any or all of the structures, installations, and improvements either before or after the expiration or earlier termination of this Agreement. If District exercises such option, Manager shall remove such structures, installations, or improvements within three (3) days (or such longer period as is reasonably necessary under the circumstances not to exceed thirty (30) days) after the expiration or earlier termination of this Agreement. Manager shall repair any and all damage caused by the removal of any structures, installations, or improvements upon removal thereof. If Manager fails to remove such structures, installations, or improvements within said three (3) days (or such longer period as is reasonably necessary under the circumstances not to exceed thirty (30) days), District shall have the right to have such structures, installations, or improvements removed at the expense of Manager. Structures, installations, or improvements of any kind placed on the Property by Manager on behalf of 1HWY1 for the CE Marketing and Activation Program, shall at the option of District be removed by Manager at the expense of Manager. As to any or all structures, installations or improvements that District does not exercise said option for removal, at the election of

the District, title thereto shall vest in District without cost to District and without payment to Manager.

Machines, appliances, equipment, and trade fixtures of any kind placed in the Office Space by Manager shall be removed by Manager within three (3) days after the expiration or earlier termination of this Agreement. Manager shall repair any and all damage caused by the removal of any machines, appliances, equipment, and trade fixtures upon removal thereof. If any such machines, appliances, equipment, and trade fixtures are not removed within three (3) days after the expiration or earlier termination of this Agreement, the same may be considered abandoned and shall, at the election of the District, thereupon become the property of District without cost to District and without payment to Manager; except that District shall have the right to have the same removed at the expense of Manager.

21. EARLY TERMINATION:

- (a) Termination by the District: Notwithstanding anything in this Agreement to the contrary, the Executive Director or his/her designee shall have the right to administratively terminate this Agreement, with or without cause, and without incurring any liability whatsoever to Manager for any damage or loss, including without limitation, lost profits, by giving Manager one (1) day prior written notice if (a) the ENA expires or is terminated and a Definitive Agreement (as defined in the ENA) is not executed by the District and 1HWY1 prior to or concurrently with the expiration or termination of the ENA; (b) the District and 1HWY1 enter into a Definitive Agreement (as defined in the ENA) and the Definitive Agreement expires or is terminated; or c) there is an Uncured Default, as defined in Section 30. If at any time, the Executive Director or his/her designee determines in his/her sole and absolute discretion that he/she does not desire to proceed with this Agreement for any reason whatsoever, with or without cause, the Executive Director shall seek the direction of the Board of Port Commissioners ("Board") to terminate this Agreement. If the Board approves the request of the Executive Director to terminate this Agreement, this Agreement shall terminate on the date such direction is received from the Board and the Parties shall each be relieved and discharged from all obligations under this Agreement, except for those that expressly survive the earlier termination of this Agreement. If the Board approves the termination of this Agreement, Manager shall not be entitled to receive, recoup or demand any damages or losses, including without limitation, lost profits resulting from such termination; provided, however, Manager shall be entitled to receive any Management Fee that has not been paid to Manager up to the date of the termination of this Agreement.

If the District terminates this Agreement for any reason other than an Uncured Default, as defined in Section 30, the District shall pay the Manager a Management Fee for the Termination Services (defined below); provided, however, the Management Fee shall not exceed \$10,000 per month, shall be prorated based upon the number of days in the applicable calendar month(s), and shall not exceed sixty (60) days.

- (b) Termination by Manager: Manager may at any time terminate this Agreement immediately, or upon a date otherwise specified by Manager, in the event that: (i) District has defaulted its monetary obligations to Manager under this Agreement, and such default continues for thirty (30) days after receipt of written notice by District; (ii) a receiver, liquidator or trustee of District is appointed by court order, or a petition to liquidate or reorganize District is filed against District under any bankruptcy, reorganization or insolvency law, and such order or petition is not vacated or dismissed within sixty (60) days, or District files a petition in bankruptcy or requests reorganization under any provision of the bankruptcy, reorganization or insolvency laws, or if District makes an assignment for the benefit of its creditors, or if District is adjudicated a bankrupt; or (iii) the District no longer holds the Property in trust; or (iv) following any condemnation, damage or destruction of the Property which allows for termination of Leases or if the District elects not to rebuild or continue to operating the Property. Any such termination shall be effective upon receipt of written notice of termination given by Manager to District or thereafter upon such other date as specified by Manager in such written notice. The Manager also expressly reserves the right to terminate this Agreement, without cause and without incurring any liability whatsoever to District for any damage or loss, including without limitation, lost profits, by giving District one hundred eighty (180) days' prior written notice if the ENA expires or is terminated and a Definitive Agreement (as defined in the ENA) is not executed by the District and 1HWY1 concurrently therewith.

21.1 MANAGER'S OBLIGATIONS AFTER EXPIRATION OR EARLIER TERMINATION: Except as provided in Section 21, upon the expiration or earlier termination of this Agreement, the Manager shall, at no cost or expense to the District:

- (a) Deliver to the District, or to such other person(s) or entity(ies) designated by the District, copies of all books and records of the Property and all monies collected by the Manager on behalf of the District;
- (b) Deliver to the District, or such person(s) or entity(ies) designated by the District, all materials, supplies, keys, leases, contracts, documents, plans,

- specifications, promotional materials and any other materials related to the Property and prepared or caused to be prepared by, for, or as a result of this Agreement;
- (c) At the election of the District, assign, transfer or convey to the District, or such person(s) or entity(ies) designated by the District, all Service Contracts;
 - (d) Assign, transfer or convey to the District, or such person(s) or entity(ies) designated by the District, all personal property relating to or used to perform the Services. The Manager shall, at its sole cost and expense, remove all signs placed at the Property indicating that it is the Manager of the Property and repair and restore any damage resulting therefrom;
 - (e) For a period of sixty (60) days after the expiration or earlier termination of the Agreement, cooperate with the District to transition the Property and the Services to the District, or to such other person(s) or entity(ies) designated by the District;
 - (f) Remove from the Office Space and repair and restore any damage resulting therefrom;
 - (g) Return any monies in the accounts to District; Return any portion of the Allowance applicable on or after the termination of this Agreement for any service agreements that the District elects not to assign, transfer or convey.
 - (h) Execute any other documents required by District to effectuate Items (a)-(g).

Items (a) – (h) shall collectively be referred to as, the “Termination Services”.

22. INDEPENDENT CONTRACTOR: Manager and any agent, employee, or contractor of Manager, including without limitation, the Approved Personnel, shall act in an independent capacity and not as agents, officers or employees of District. District assumes no liability for the actions and performance of Manager or its agents, employees or contractors, including without limitation, the Approved Personnel, nor assumes responsibility for any taxes, bonds, payments, or other commitments, implied, or explicit, made by or for Manager. Manager shall not have authority to act as an agent on behalf of District unless specifically authorized to do so in writing. Manager acknowledges that it is aware that because it is an independent contractor, District is making no deduction from any amounts paid to Manager pursuant to this Agreement and the District is not contributing to any fund on Manager’s behalf. Manager disclaims the right to any fee or benefits except for the management fee expressly provided in Section 6 of this Agreement payable to Manager only upon the satisfactory completion of the Services set forth in this Agreement. Manager shall make clear to third parties that Manager is an independent contractor and not an agent or employee of the District.

Nothing in this Agreement shall be deemed to create any form of business organization between the Parties, including, without limitation, a joint venture or partnership.

23. NO AGREEMENTS WITH THIRD PARTIES: Manager acknowledges and agrees that this Agreement does not grant, convey, or provide Manager with any interest, including without limitation, a possessory interest, in any portion of the Property. Manager shall not enter into or cause or direct any person or entity to enter into, any agreement with any person or entity related to the Property or this Agreement that (i) binds, or has the effect of binding, the District or any portion of the Property; (ii) clouds, or has the effect of clouding, title to the Property, including without limitation, any encumbrances or liens; or (iii) continues beyond the expiration of or earlier termination of this Agreement. Manager shall indemnify the District for all costs and expenses, including without limitation, any and all damages and/or monetary relief (whether based in contract or in tort), including, without limitation, any right by third parties to claim direct, compensatory, reliance, special, indirect or consequential damages with respect to or arising out of Manager's breach of this Section 23. This Section 23 shall survive the expiration or earlier termination of this Agreement.

24. TAXES: This Agreement may result in a taxable possessory interest and be subject to the payment of property taxes. Manager agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Manager related to or arising from this Agreement.

25. HOLD HARMLESS: Manager shall, except for Claims (as that term is defined below) arising from the sole negligence or willful misconduct of District and except for Claims covered by insurance maintained by the District under Section 26, defend, indemnify and hold harmless the District and its officials, officers, representatives, agents, and employees from any litigation, claim, action, proceeding, loss, damage, cost, expense (including, without limitation, all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment (collectively, "Claims") arising directly or indirectly out of, from, or in connection with: (a) the performance or nonperformance of the terms of this Agreement to be performed by Manager ; (b) the performance of the Services; (c) possession, use, occupancy, operation or development of the Property by Manager, the Approved Personnel or Manager's representatives, agents, employees, consultants, contractors, invitees, successors, assigns or similar users/affiliates (collectively, "Manager Affiliate"); (d) the possession, use, or occupancy of the Office Space by Manager, the Approved Personnel or Manager Affiliate; (e) the approval of this Agreement, or other permits or approvals granted to Manager or Manager Affiliate related to the Property, including, but not limited to, approvals or permits for the development of any structures, buildings, installations, and improvements on the Property, or use or operation of the Property (collectively, "Related Approvals"); (f) PWL (defined below); and (g) environmental documents, mitigation and/or monitoring plans, or determinations conducted and adopted pursuant to the California Environmental

Quality Act or the National Environmental Policy Act for this Agreement or any Related Approvals.

The District may, in its sole and absolute discretion and in good faith, participate in the defense of any Claims and the Manager shall reimburse District for said defense, including, but not limited to, reimbursement for outside attorneys' and experts' fees, and other costs. The District's participation shall not relieve the Manager of any of its obligations under this Paragraph. The District shall provide reasonable notice to the Manager of its receipt of any Claims.

District shall, defend, indemnify and hold harmless the Manager and Manager Affiliates for Claims ") suffered or incurred by Manager arising directly or indirectly out of, from, or in connection with (i) the performance of or failure to perform any services, covenants, or agreements in this Agreement to be performed by District to the extent of the sole negligence or willful misconduct of District, (ii) injury to person or property or from loss of life sustained in, on, or about the Property resulting from sole negligence or willful misconduct of the District or of its employees, or from any act or omission of the District or of its employees which is contrary to applicable laws or regulations.

Each party waives for itself and for its insurance carriers any rights of subrogation which such party's insurance carriers may have against the other parties. In the event that it should be finally determined in any legal proceeding that the indemnity was not entitled to indemnification, then the indemnitee shall, upon demand, reimburse the indemnitor for all sums paid or incurred on behalf of the indemnitee. This Paragraph and the other obligations of the parties under this Agreement are independent of, and in addition to, the obligations under any existing lease(s), agreement(s) or permits with or granted by the District, and are binding upon Manager, and its agents, representatives, successors and assigns. This Paragraph shall survive the expiration or earlier termination of this Agreement.

26. DISTRICT INSURANCE: District shall maintain the following types of insurance from Operating Period 1 through the expiration of the Term:

(a) Forms of Coverage

"OCCURRENCE" form Commercial General Liability ("CGL") covering the Property. The liability policy shall name the Manager, its employees, agents and Approved Personnel as Additional Insureds for any matters arising from the sole negligence of District. CGL shall include terrorism coverage in a form acceptable to Landlord in its sole and absolute discretion.

All Risk Property Coverage covering Real Property, Improvements, Business Personal Property and Rental Income, including water damage and debris cleanup provisions, but excluding the Business Personal Property of Manager, its agents, employees and Approved Personnel, in an amount not less than either the full replacement value or actual cash value of all District-owned Improvements located within the Property, as elected by the District in its commercially reasonable discretion throughout the Term. In obtaining any policies of insurance required under this clause (ii), District shall require all insurers to waive any rights of subrogation against Manager.

All insurance premiums, deductibles and/or self-insured retentions associated with the CGL and All Risk Property coverage policies set forth in this Section 26 shall be the responsibility of the District.

27. MANAGER INSURANCE: Manager shall maintain insurance acceptable to the District in full force and effect throughout the Term. The policies for said insurance shall, as a minimum, provide the following:

Forms of Coverage

"OCCURRENCE" form CGL Insurance covering any act or activities of Manager, the Approved Personnel and Manager Affiliates under this Agreement, including without limitation, the Services, and in the amount of not less than Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage suffered or alleged to be suffered by any person(s) or entity(ies) whatsoever resulting directly or indirectly from any act or activities of Manager, the Approved Personnel, Manager Affiliates, or any person acting for them or under their control or direction, or any person or entity authorized by them to perform any act or activity under this Agreement, including without limitation, the Services, or use or occupy the Property. Either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit.

Workers' Compensation, statutory limits, (or be a qualified self-insured) is required of the Manager under the applicable Laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Professional Liability Insurance in the amount of One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate.

Fidelity Insurance – Employees of the Manager who handle or are responsible for the monies of the District shall be covered under Fidelity Insurance in an amount equal to ninety (90) days' rental income from the Property.

Insurance Covering Business Personal Property – Manager shall obtain insurance covering the Business Personal Property of Manager and its Approved Personnel located in the Office Space or elsewhere on the Property in an amount to be determined by Manager and at a cost and expense to Manager. District shall not be responsible for any loss or damage caused to the Business Personal Property of Manager or its Approved Personnel.

All coverages under this section shall be effective as of the Effective Date or provide for a retroactive date of placement that coincides with the Effective Date; except that the Manager's business personal property insurance coverage shall not be required until Manager takes possession of the Office Space. In obtaining any policies of insurance required under this Section 27, Manager shall require all insurers to waive any rights of subrogation against District. All insurance companies must be satisfactory to District, and the cost of all required insurance shall be borne by Manager except for the premium for workers' compensation insurance required for Approved Personnel, which shall be paid by the District in the amount set forth in the approved Operating Budget. Manager may maintain such coverage through the use of "blanket coverage". Certificates in a form acceptable to District evidencing the existence of the necessary insurance policies, and original endorsements effecting coverage required by this clause, shall be kept on file with District during the entire Term. Certificates for each insurance policy are to be signed by a person authorized by that insurer to issue evidence of coverage on its behalf. Endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The District reserves the right to require complete, certified copies of all required policies at any time.

All liability insurance policies will name, or be endorsed to name, District, its officers, officials and employees as additional insureds and protect District, its officers, officials and employees against any legal costs in defending claims. All insurance policies will be endorsed to state that coverage will not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to the District.

Any deductibles or self-insured retentions must be declared and acceptable to the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, and employees; or, the Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

District shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of District, the insurance provisions in this Agreement do not provide adequate protection for District and/or for members of the public, District may require Manager to obtain insurance sufficient in coverage, form and amount to provide adequate protection. District's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required.

District shall notify Manager in writing of changes in the insurance requirements and, if Manager does not deposit certificates evidencing acceptable insurance policies with District incorporating such changes within thirty (30) days of receipt of such notice, Manager shall be in default without further notice to Manager, and District shall be entitled to all legal remedies.

28. CONFORMANCE WITH RULES AND REGULATIONS: Manager agrees that, in the performance of the Services and all its activities on or in connection with the Property and this Agreement, and in all its uses thereof, including the making of any alterations, changes, installations, or other improvements, it shall abide by and conform to all federal, state, and local laws and regulations (collectively, the "Laws"). Said Laws shall include, but are not limited to those prescribed by the San Diego Unified Port District Act; any applicable ordinances of the city in which the above-described Property is located, including the Building Code thereof; any ordinances and general rules of District, including tariffs and Board of Port Commissioners' policies; and any applicable laws of the state of California and federal government, as any of the same now exist or may hereafter be adopted or amended. As of October 1, 2018, in particular and without limitation, Manager shall have the sole and exclusive obligation and responsibility to comply with the requirements of: (i) Article 10 of District Code entitled "Stormwater Management and Discharge Control," and (ii) in the performance of the Services and the making of any alterations, changes, installations, or other improvements to the Property, the Americans With Disabilities Act of 1990, including but not limited to regulations promulgated thereunder (the "ADA"), and District shall have no obligations or responsibilities for such compliance.

29. PREVAILING WAGE:

29.1 Manager acknowledges and agrees that:

- (a) Any construction, alteration, demolition, installation or repair work required or performed under this Agreement constitutes "public work" under California Prevailing Wage Law, including Labor Code §§ 1720 through 1815, et seq. ("PWL"), and obligates Manager to cause such work to be

performed as "public work," including, but not limited to, the payment of applicable prevailing wages to all persons or entities subject to the PWL.

- (b) Manager shall cause all persons and/or entities performing "public work" under the Agreement to comply with all applicable provisions of the PWL and other applicable wage laws.
- (c) District hereby notifies Manager and Manager hereby acknowledges that the PWL includes, without limitation, Labor Code § 1771.1(b) that provides that the requirements described in Labor Code § 1771.1(a), copied below, shall be included in all bid invitations and "public work" contracts: (a) A contractor or subcontractor shall not be qualified to bid on or be listed in a bid proposal, subject to the requirements of § 4104 of the Public Contract Code, or engage in the performance of any contract for "public work", as defined in this chapter, unless currently registered and qualified to perform "public work" pursuant to § 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by § 7029.1 of the Business and Professions Code or by § 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform "public work" pursuant to § 1725.5 at the time the contract is awarded.
- (d) Manager acknowledges that its obligations under the PWL include, without limitation, ensuring:
 - (i) Pursuant to Labor Code § 1771.1(b), a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform "public work" pursuant to § 1725.5.
 - (ii) Pursuant to Labor Code § 1771.4(a)(1) the call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations ("DIR").
 - (iii) Pursuant to Labor Code § 1771.4(a)(2) that it post or require the prime contractor to post job site notices, as prescribed by regulation.
 - (iv) Pursuant to Labor Code § 1773.3(a)(1) that it provide notice to the DIR of any "public works" contract subject to the requirements of this chapter, within five days of the award. Pursuant to Labor Code § 1773.3(a)(2) the notice shall be transmitted electronically in a format specified by the department and shall include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site

location, and any additional information the department specifies that aids in the administration and enforcement of this chapter. PWC-100 is the name of the form currently used by the DIR for providing the notice, but Manager shall determine and use whatever form the DIR requires.

(e) District is not responsible for Manager's failure to comply with any applicable provisions of the PWL, and

(f) Manager's violations of the PWL shall constitute a default under this Agreement.

30. **DEFAULT:** Failure by Manager to perform any of its obligations as provided in this Agreement shall constitute a default under this Agreement. District shall give written notice of a default to Manager, specifying the nature of the default and the action required to cure the default. If the default is not remedied within (a) three (3) business days of District's delivery of written notice to Manager of the default in the case of a default involving any monies of the District and/or that may result in damage or destruction to Property or any person or entity or (b) ten (10) business days of District's delivery of written notice to Manager of the default in the case of any other default, (provided that if such cure cannot be completed in ten (10) business days but Manager has diligently commenced such cure within such ten (10) business day period, then such cure period shall be extended by a reasonable period time as necessary to complete such cure up to a maximum of sixty (60) additional days), it shall be deemed an "Uncured Default", and, at the election of the District, the District may terminate this Agreement immediately without any further notice to Manager and Manager shall have no further rights hereunder and shall immediately remove from the Property in accordance with Section 21 of this Agreement. District shall further have all other rights and remedies as provided by Laws, including without limitation the right to recover damages from Manager in the amount necessary to compensate District for all the detriment proximately caused by Manager's failure to perform the terms and conditions under this Agreement or which in the ordinary course of things would be likely to result therefrom.

31. **LIENS:** Manager agrees that it will at all times save District free and harmless and defend and indemnify it against all claims and liens for labor, services or materials in connection with this Agreement, the Services, and all activities on or in connection with the Property, and in all uses thereof, including the making of any alterations, changes, repairs, installations, or other improvements performed or caused to be performed by Manager, and the costs of defending against such Claims, including, without limitation, reasonable attorneys' fees.

32. **BANKRUPTCY:** In the event Manager commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent, this Agreement shall at the option of District immediately terminate and all rights of Manager hereunder shall immediately cease and terminate.

33. **EASEMENTS:** This Agreement and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by District in, to, or over the Property for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits, and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by District to be in the best interests of the development of the tidelands.

34. **TITLE OF DISTRICT:** District's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said Act. This Agreement is granted subject to the terms and conditions of said Act.

35. **ENTIRE UNDERSTANDING:** This Agreement contains the entire understanding of the Parties, and Manager, by accepting the same, acknowledges that there is no other written or oral understanding between the Parties in respect to the subject matter of this Agreement. No modification, amendment, or alteration of this Agreement shall be valid unless it is in writing and signed by the Parties hereto.

36. **NONDISCRIMINATION:** Manager agrees 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. If the use provided for in this Agreement allows the Manager to offer accommodations or services to the public, such accommodations or services shall be offered by the Manager to the public on fair and reasonable terms. In complying with all such Laws, including, without limitation, the ADA, Manager shall be solely responsible for such compliance and required programs and there shall be no allocation of any such responsibility between District and Manager.

37. **ACCEPTANCE OF CONDITION OF PROPERTY:** PRIOR TO OCTOBER 1, 2018, THE DISTRICT WILL PROVIDE MANAGER WITH AN INSPECTION REPORT THAT REFLECTS THE CONDITION OF THE PROPERTY. BY SIGNING THIS AGREEMENT, MANAGER REPRESENTS AND WARRANTS THAT AS OF OCTOBER 1, 2018, IT ACCEPTS THE CONDITION OF THE PROPERTY AS OUTLINED IN THE INSPECTION REPORT. MANAGER IS NOT RESPONSIBLE FOR ANY DEFECTS FOUND IN THE REPORT. AS OF OCTOBER 1, 2018, MANAGER WILL BE RESPONSIBLE FOR IDENTIFYING AND REMEDYING ANY FUTURE DEFECTS. AS OF OCTOBER 1, 2018 MANAGER FURTHERMORE ACCEPTS, AND SHALL BE

RESPONSIBLE FOR, ANY RISK OF HARM TO ANY PERSON, ENTITY AND PROPERTY, INCLUDING WITHOUT LIMITATION EMPLOYEES OF MANAGER, DISTRICT IS REQUIRED TO COMPLY WITH THE TERMS AND CONDITIONS FOR INSURANCE AS STATED IN SECTION 26.

Initials _____
District _____ Manager 

38. **WARRANTIES-GUARANTEES:** District makes no warranty, guarantee, or averment of any nature whatsoever concerning the condition of the above Property, including the physical condition thereof, or any condition which may affect said Property, and it is agreed that District will not be responsible for any loss or damage or costs which may be incurred by Manager by reason of any such condition or conditions.

39. **NOTICES:** All notices provided for by this Agreement or by Law to be given or served upon District or Manager shall be in writing and: (i) personally served upon District or Manager, or any person hereafter authorized by either Party in writing to receive such notice, or (ii) served by certified United States mail (return receipt requested) addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective Party:

To District
Executive Director
San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488

To Manager
Jeffrey Essakow
Protea Property Management, Inc.
3262 Holiday Court, Suite 100
La Jolla, CA 92037

Any notice or notices given or served as provided herein shall be deemed delivered on the date of personal delivery, or if delivered by certified letter, upon the date shown for delivery in the return receipt or three days after the deposit of the certified letter in the United States mail, whichever is earlier.

40. **ATTORNEYS' FEES:** In the event any suit is commenced to enforce, protect or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by District under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

41. **THIRD PARTIES:** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person or entity other than Manager and the District and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to any Party to this Agreement, nor shall any provisions give any third party, including without limitation, any Party's

insurance company, any right of subrogation or action over or against any Party to this Agreement.

42. **SECTION HEADINGS:** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

43. **GOVERNING LAW:** This Agreement and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of California.

44. **NO WAIVER:** The waiver or failure to enforce any provision of this Agreement by a Party will not operate as a waiver of such Party's right to enforce future defaults or breaches of any such provision or any other provision of this Agreement.

45. **PARTIAL INVALIDITY:** If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion will be deemed severed from this Agreement and the remaining parts of this Agreement will remain in full force as fully as though the invalid, illegal, or unenforceable portion had never been part of this Agreement.

46. **AMBIGUITIES NOT HELD AGAINST THE DRAFTER:** This Agreement has been freely and voluntarily negotiated by all Parties and the Parties are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

47. **LIMITATION ON DAMAGES.** Notwithstanding anything to the contrary contained in this Agreement, neither District nor Manager shall be liable for any lost or prospective profits or any indirect, consequential (except attorneys' fees and costs to be paid under an indemnity specifically undertaken under this agreement), special, incidental, punitive or other exemplary losses or damages, whether in tort, contract or otherwise, regardless of the foreseeability, prior notice, or cause thereof, that would not otherwise be covered under the standard liability or property insurance forms required of the parties hereunder. In addition, notwithstanding anything to the contrary contained in this Agreement, Manager shall have no responsibility for liability for (i) pre-existing conditions or non-compliance with applicable laws occurring prior to October 1, 2018, (ii) latent defects, (iii) events of force majeure beyond the reasonable control of

Manager, (iv) injury or damage to persons or property if the District declines to approve and authorize release of funds to pay for requests or recommendations made by Manager as part of its Services hereunder, and (v) areas to be maintained by tenants under Leases or licensees under the Parking License or other similar agreements approved by the District. Under no circumstances shall Manager's liability under this Agreement exceed Five Million Dollars (\$5,000,000) (including claims covered by insurance maintained under Sections 26 and 27).

48. **NO BROKER:** Manager acknowledges and agrees that Manager shall not be entitled to receive any compensation for any Lease, regardless of whether the tenancy exists prior to, during, or after the Term. Manager represents and warrants that it has not engaged any broker, agent, or finder in connection with this Agreement and Manager agrees to hold the District and its representatives harmless from any losses and liabilities arising from or in any way related to any claim by any broker, agent, or finder retained by Manager, regarding this Agreement, the RFP, or the lease or development of the Property.

49. **SIGNATURE OF PARTIES:** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by the Executive Director or her authorized designee on behalf of District and by the authorized representative of the Manager.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first written above.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: 
Assistant/Deputy

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Name
Director, Real Estate

PROTEA PROPERTY MANAGEMENT,
INC., a California corporation

By: 
Signature

PRINT NAME: JENNIFER ESSAIKOW

PRINT TITLE: PRESIDENT.

SCHEDULE 1

General Marketing and Special Events Guidelines

Special events shall be limited to the hours of 7:00 p.m. to 10:00 p.m. Sunday through Thursday, unless variances are authorized in writing by the District. All planned private special events to be held in the public areas of the Property shall require the Manager to post notices to the public a minimum of seventy-two (72) hours in advance of the special event at all public points of entry. Posted public notices shall state the date and times of the event and the areas of the Property which will be closed to public access. All retail shops and restaurants will remain open during special events, in event areas as well as in areas that remain open to public access. Manager shall be responsible for maintaining open, unhindered public access along the pedestrian promenade, which will be open to public access at all times. The pedestrian promenade areas will not be fenced off or utilized for special events and shall remain open to the general public at all times. Manager shall abide by all Laws, including without limitation, any ADA and Fire Marshall requirements and regulations for special events and City of San Diego noise ordinances for music or entertainment.

EXHIBIT A

Property

PARCEL NO. 1

Commencing at Harbor Line Station No. 458 on the U.S. Bulkhead Line, as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426," approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence north $39^{\circ}41'54''$ east a distance of 14.78 feet to a point on the southerly right of way line of Harbor Drive, as said Harbor Drive was established as and for a public street by the Documents of Conveyance on file in the Office of the District Clerk as Document No. 71, subsequently that portion of Harbor Drive being vacated by the City of San Diego, Resolution No. R-256818 adopted July 8, 1982, filed in the Office of the City Clerk and as more particularly delineated on Drawing Nos. 20372-1-D and 20372-2-D; thence along said former southerly right of way line of Harbor Drive north $50^{\circ}18'06''$ west a distance of 712.52 feet to the beginning of a tangent curve concave to the southwest having a radius of 439.88 feet (440.00 feet-Record), the center of which bears south $39^{\circ}41'54''$ west; thence along said 439.88 foot radius curve through a central angle of $18^{\circ}08'01''$ an arc distance of 139.22 feet to a point of cusp which bears north $21^{\circ}33'53''$ east from the center of said 439.88 foot radius curve, said point of cusp being on a curve concave to the southwest having a radius of 25.00 feet, the center of which bears south $44^{\circ}00'14''$ west, said point of cusp also being the TRUE POINT OF BEGINNING OF Parcel No. 1; thence leaving said former southerly right of way line of Harbor Drive and southeasterly along the arc of said 25.00 foot radius curve through a central angle of $62^{\circ}28'24''$ an arc distance of 27.26 feet to a point which bears south $73^{\circ}31'22''$ east from the center of said 25.00 foot radius curve; thence south $16^{\circ}28'38''$ west a distance of 200.89 feet; thence south $73^{\circ}31'22''$ east a distance of 4.50 feet to the beginning of a curve concave to the east having a radius of 291.13 feet, the center of which bears south $73^{\circ}31'22''$ east; thence southerly along the arc of said 291.13 foot radius curve through a central angle of $39^{\circ}04'48''$ an arc distance of 198.57 feet to a point on a tangent reverse curve the common radial of which bears south $67^{\circ}23'50''$ west from the center of said 291.13 foot radius curve, said tangent reverse curve being concave to the west having a radius of 101.66 feet; thence southerly along the arc of said 101.66 foot radius curve through a central angle of $30^{\circ}56'18''$ an arc distance of 54.89 feet to a point which bears south $81^{\circ}39'52''$ east from the center of said 101.66 foot radius curve; thence south $8^{\circ}20'08''$ west a distance of 55.81 feet; thence north $89^{\circ}06'03''$ west a distance of 16.66 feet to the beginning of a curve concave to the north having a radius of 103.00 feet, the center of which bears north $47^{\circ}24'48''$ west; thence southwesterly, westerly, and northwesterly along the arc of said 103.00 foot radius curve through a central angle of $110^{\circ}13'12''$ an arc

PAGE 1 of 4

REVISED:

DRAWN <u>BB/mn</u> CHECKED <u>BOURKE</u> REVIEWED <u>[Signature]</u> APPROVED <u>[Signature]</u> DIRECTOR OF ENGINEERING	SAN DIEGO UNIFIED PORT DISTRICT Within Corporate Limits of San Diego	DATE <u>27 March 1992</u> SCALE _____ REF. <u>3370</u> DRAWING NO. <u>3312-B</u>
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distance of 198.14 feet to a point which bears south 62°48'24" west from the center of said 103.00 foot radius curve; thence north 89°06'03" west a distance of 377.98 feet; thence north 40°10'10" west a distance of 327.63 feet; thence north 11°13'58" west a distance of 97.49 feet; thence north 61°55'09" east a distance of 386.05 feet to a point on the southerly right of way line of Harbor Drive as established by the above described Documents of Conveyance No. 71, subsequently that portion of Harbor Drive being vacated by the City of San Diego, Resolution No. R-270246 adopted January 26, 1988, filed in the Office of the City Clerk and as more particularly delineated on Drawing Nos. 23463-1-D and 23463-2-D, said point also lying north 89°26'10" west a distance of 36.04 feet from the point of intersection of the said southerly right of way line of Harbor Drive and the southerly prolongation of the easterly right of way line of Pacific Highway, as said Pacific Highway was established as and for a public street by the above described Documents of Conveyance No. 71, subsequently a portion of Pacific Highway was also vacated by the City of San Diego by the above described Resolution No. R-270246; thence south 89°26'10" east along said former southerly right of way line of Harbor Drive a distance of 331.44 feet to the beginning of a tangent curve concave to the southwest having a radius of 439.88 feet (440.00 feet-Record); thence southeasterly along the arc of said 439.88 foot radius curve through a central angle of 21°00'03" an arc distance of 161.23 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 365,003 square feet or 8.38 acres of tideland area.

PARCEL NO. 2

Commencing at the above described Harbor Line Station No. 458 on the U.S. Bulkhead Line; thence north 39°41'54" east a distance of 14.78 feet to a point on the above described former southerly right of way line of Harbor Drive; thence along said former southerly right of way line north 50°18'06" west a distance of 340.27 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence leaving said former southerly right of way line of Harbor Drive south 0°53'57" west a distance of 201.00 feet; thence north 89°06'03" west a distance of 346.58 feet; thence south 0°30'46" west a distance of 20.00 feet; thence north 89°06'03" west a distance of 57.56 feet; thence north 8°20'08" east a distance of 51.25 feet to the beginning of a tangent curve concave to the west having a radius of 136.66 feet, the center of which bears north 81°39'52" west; thence northerly along the arc of said 136.66 foot radius curve through a central angle of 30°56'18" an arc distance of 73.79 feet to a point on a tangent reverse curve the common radial of which bears north 67°23'50" east from the center of said 136.66 foot radius curve, said tangent reverse curve being concave to the east having a radius of 148.87 feet; thence northerly along the arc of said 148.87 foot radius curve

PAGE 2 of 4

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DRAWN <u>BR/mn</u> CHECKED <u>BOURKE</u> REVIEWED <u>[Signature]</u>	SAN DIEGO UNIFIED PORT DISTRICT Within Corporate Limits of San Diego	DATE <u>27 March 1992</u> SCALE _____ REF. <u>3370</u>
APPROVED <u>[Signature]</u> DIRECTOR OF ENGINEERING		DRAWING NO. 3312-B

through a central angle of 39°04'48" an arc distance of 101.54 feet to a point which bears north 73°31'22" west from the center of said 148.87 foot radius curve; thence north 16°28'38" east a distance of 92.38 feet; thence south 73°31'22" east a distance of 5.00 feet; thence north 16°28'38" east a distance of 5.00 feet; thence north 73°31'22" west a distance of 5.00 feet; thence north 16°28'38" east a distance of 145.84 feet to the beginning of a tangent curve concave to the southeast having a radius of 29.50 feet, the center of which bears south 73°31'22" east; thence northeasterly along the arc of said 29.50 foot radius curve through a central angle of 70°22'54" an arc distance of 36.24 feet to a point which bears north 3°08'28" west from the center of said 29.50 foot radius curve, said point being on the above described former southerly right of way line of Harbor Drive, said point also being on a curve concave to the southwest having a radius of 439.88 feet (440.00 feet-record), the center of which bears south 34°25'30" west; thence southeasterly along said former southerly right of way line and along the arc of said 439.88 foot radius curve through a central angle of 5°16'24" an arc distance of 40.49 feet to a point which bears north 39°41'54" east from the center of said 439.88 foot radius curve; thence south 50°18'06" east a distance of 191.05 feet; thence leaving said former southerly right of way line of Harbor Drive south 6°06'08" west a distance of 1.94 feet to the beginning of a tangent curve concave to the northwest having a radius of 19.50 feet, the center of which bears north 83°53'52" west; thence southwesterly along the arc of said 19.50 foot radius curve through a central angle of 28°08'15" an arc distance of 9.58 feet to a point on a tangent reverse curve the common radial of which bears south 55°45'37" east from the center of said 19.50 foot radius curve, said tangent reverse curve being concave to the northeast having a radius of 35.50 feet; thence southwesterly, easterly, and northeasterly along the arc of said 35.50 foot radius curve through a central angle of 186°11'41" an arc distance of 115.37 feet to a point which bears south 61°57'18" east from the center of said 35.50 foot radius curve, said point also being on the said former southerly right of way line of Harbor Drive; thence along said former southerly right of way line south 50°18'06" west a distance of 106.85 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 136,772 square feet or 3.14 acres of tideland area.

PARCEL NO. 3

Beginning at the most westerly corner point of the above described Parcel No. 1, said corner point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence along said Parcel No. 1 south 11°13'58" east a distance of 97.49 feet; thence south 40°10'10" east a distance of 327.63 feet; thence south 89°06'03" east a distance of 336.14 feet; thence leaving said Parcel No. 1 south 0°30'46" west a

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APPROVED <u>[Signature]</u> DIRECTOR OF ENGINEERING		DRAWING NO. 3312-B

distance of 20.00 feet; thence north 89°06'03" west a distance of 80.99 feet; thence south 0°30'46" west a distance of 80.00 feet; thence north 89°06'03" west a distance of 301.32 feet; thence north 40°10'10" west a distance of 373.13 feet; thence north 49°49'50" east a distance of 77.15 feet; thence north 11°13'58" west a distance of 102.50 feet; thence north 61°55'09" east a distance of 20.90 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 66,481 square feet or 1.53 acres of water covered area.

PARCEL NO. 4

Commencing at the True Point of Beginning of the above described Parcel No. 2; thence along the easterly line of said Parcel No. 2 south 0°53'57" west a distance of 201.00 feet to the most southeasterly corner point of said Parcel No. 2, said corner point also being the TRUE POINT OF BEGINNING of Parcel No. 4; thence leaving said Parcel No. 2 south 0°53'57" west a distance of 20.00 feet; thence north 89°06'03" west a distance of 346.45 feet; thence north 0°30'46" east a distance of 20.00 feet to a point on the southerly line of said Parcel No. 2; thence along said southerly line of Parcel No. 2 south 89°06'03" east a distance of 346.58 feet to the TRUE POINT OF BEGINNING of Parcel No. 4, containing 6,930 square feet or 0.16 acre of water covered area.

Reserving to the lessor a utility easement 10.0 feet in width, the center line of which lies 4.5 feet southerly, parallel and concentric with the concave portion centrally located along the northeasterly limit line of the above described Parcel No. 2.

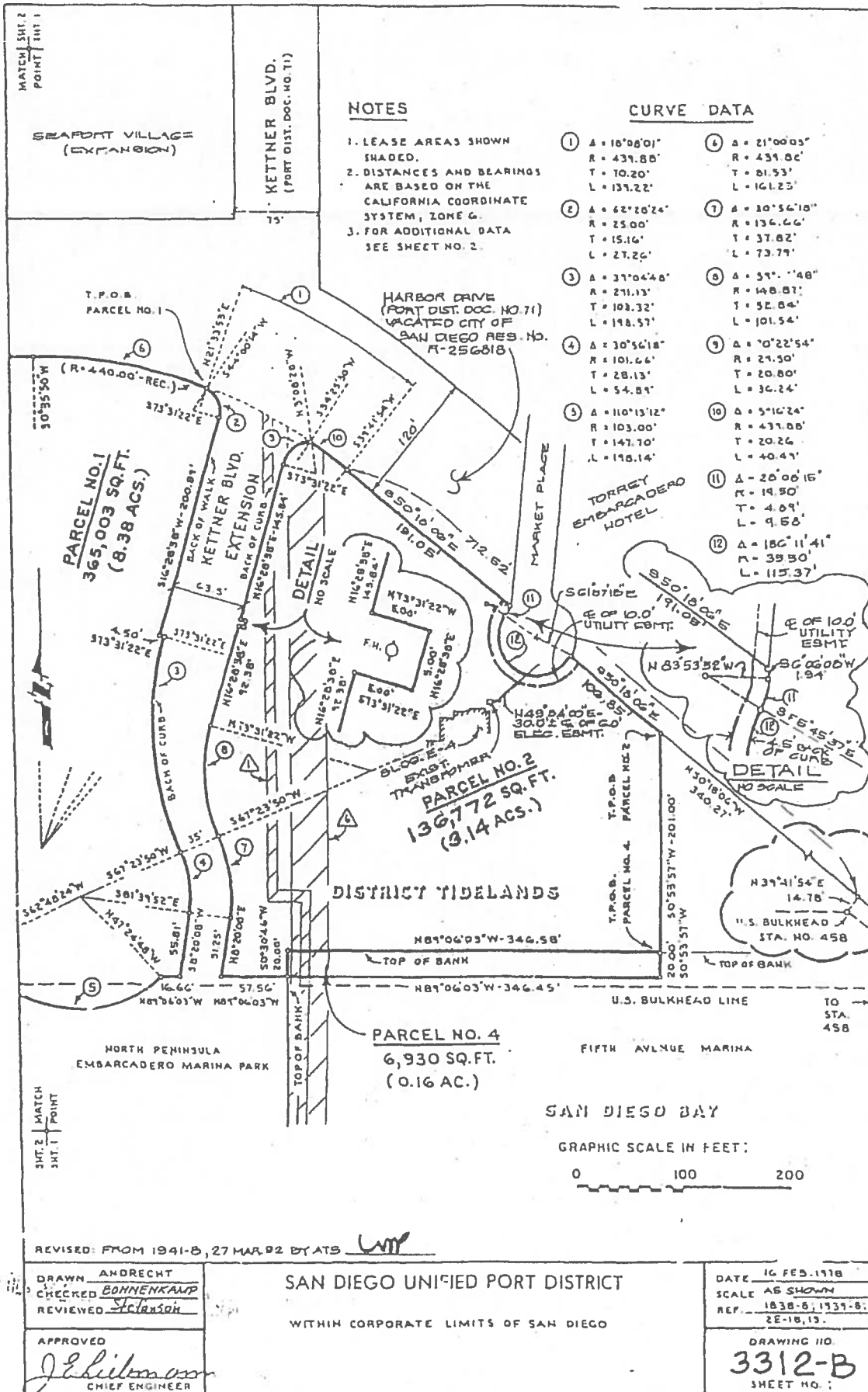
ALSO: Reserving an electrical easement 6.0 feet in width extending from the existing electrical transformer, adjacent to Building "E-4", in a northeasterly direction a distance of 30.0 feet, more or less, to a point of intersection with the above described 10.0 foot wide utility easement.

The above described areas are those delineated on Drawing No. 3312-B, dated 27 March 1992, as revised, and made a part of this agreement.

PAGE 4 of 4

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DRAWN <u>BB/mn</u> CHECKED <u>BOURKE</u> REVIEWED <u>[Signature]</u>	SAN DIEGO UNIFIED PORT DISTRICT Within Corporate Limits of San Diego	DATE <u>27 March 1992</u> SCALE _____ REF. <u>3370</u>
APPROVED <u>[Signature]</u> DIRECTOR OF ENGINEERING		DRAWING NO. 3312-B



REVISED: FROM 1941-B, 27 MAR 92 BY AT5 *WMP*

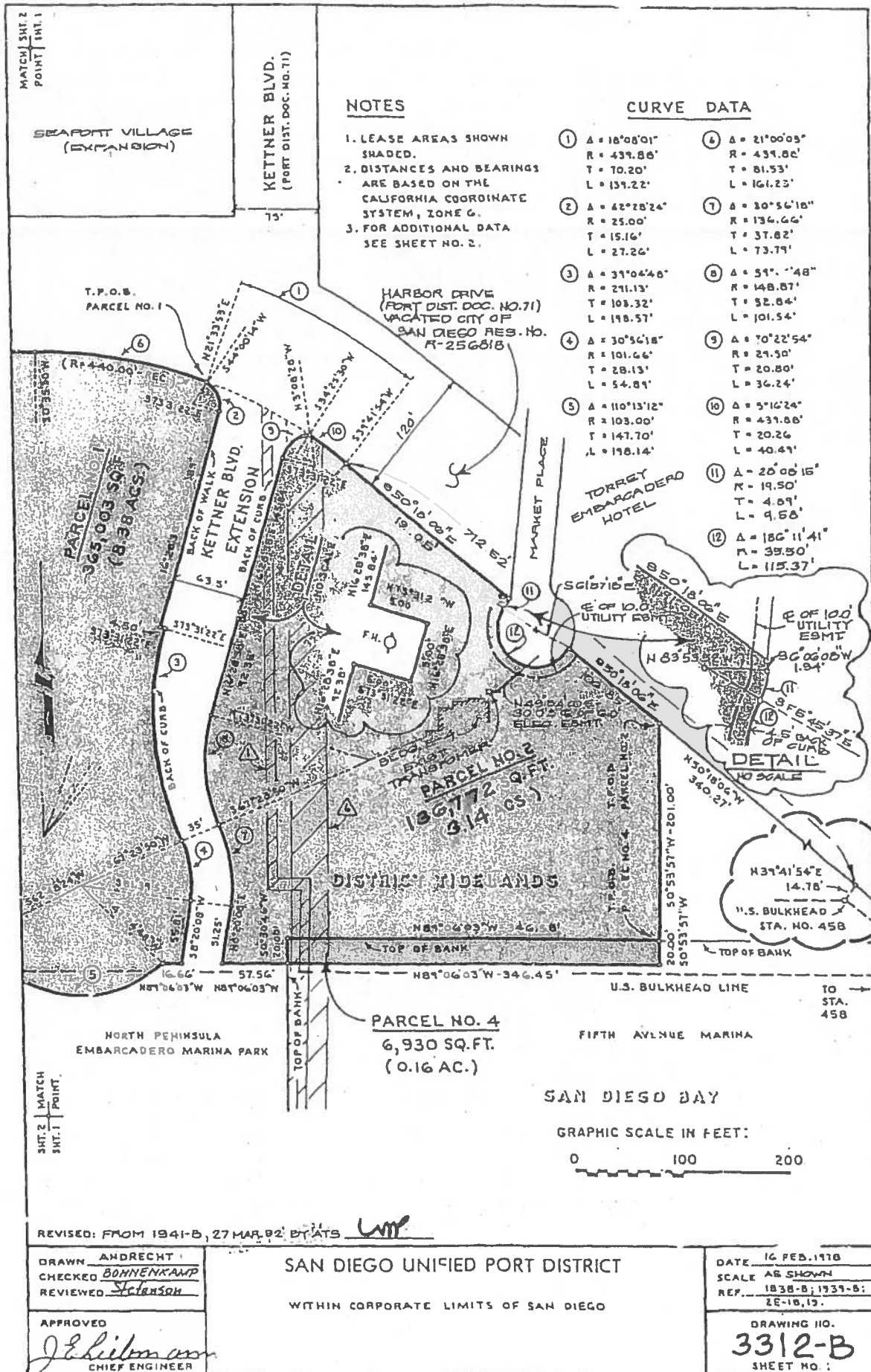
DRAWN ANDRECHT
 CHECKED BOHNERKAMP
 REVIEWED HELRAND

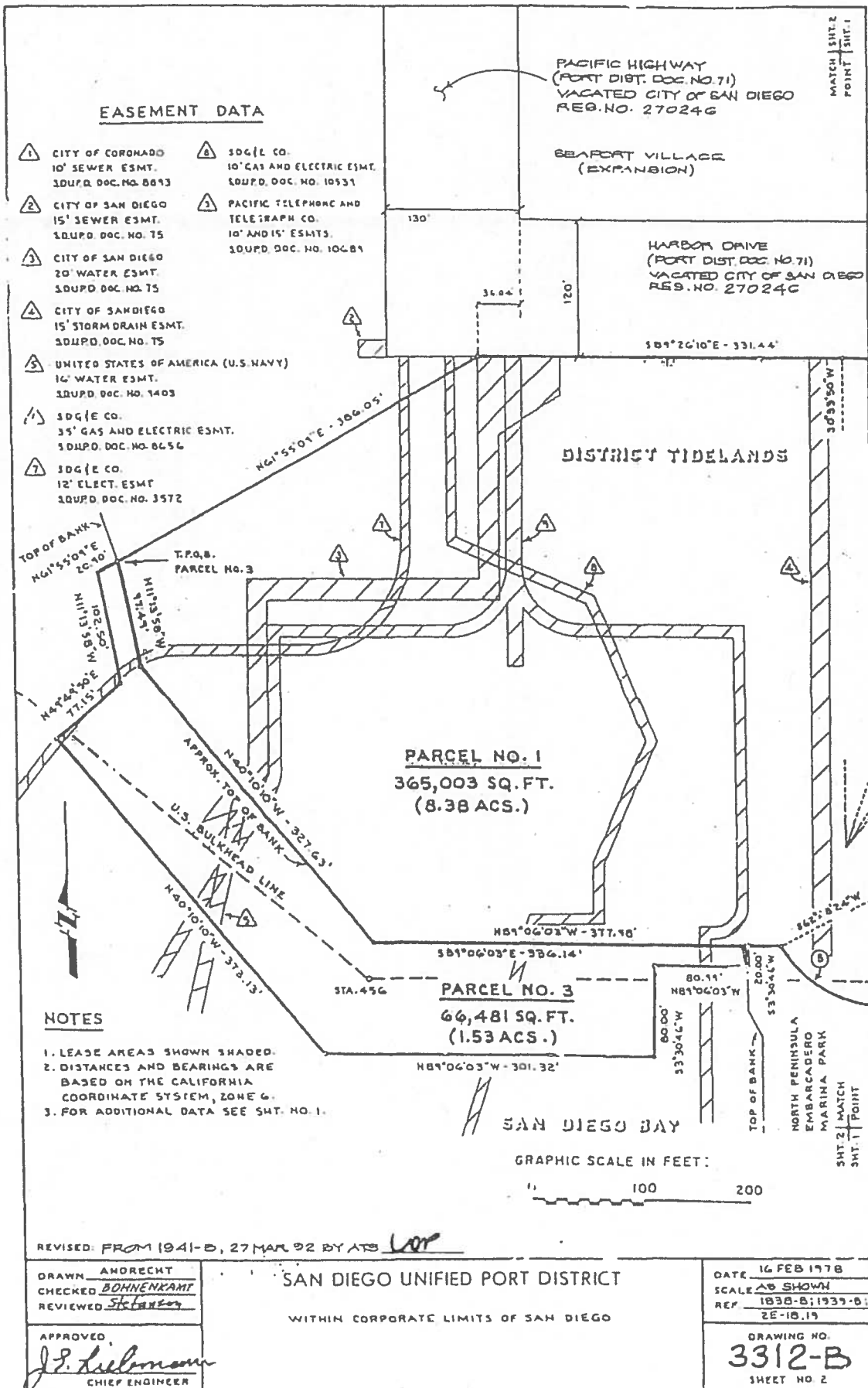
APPROVED
J. E. Hilborn
 CHIEF ENGINEER

SAN DIEGO UNIFIED PORT DISTRICT
 WITHIN CORPORATE LIMITS OF SAN DIEGO

DATE 16 FEB 1978
 SCALE AS SHOWN
 REF. 1838-B, 1937-B,
 2E-18, 19.

DRAWING NO
3312-B
 SHEET NO. :





EASEMENT DATA

- 1 CITY OF CORONADO
10' SEWER ESMT.
SDUPD. DOC. NO. 8893
- 2 CITY OF SAN DIEGO
15' SEWER ESMT.
SDUPD. DOC. NO. 75
- 3 CITY OF SAN DIEGO
20' WATER ESMT.
SDUPD. DOC. NO. 75
- 4 CITY OF SAN DIEGO
15' STORM DRAIN ESMT.
SDUPD. DOC. NO. 75
- 5 UNITED STATES OF AMERICA (U.S. NAVY)
16' WATER ESMT.
SDUPD. DOC. NO. 1403
- 6 SDG&E CO.
35' GAS AND ELECTRIC ESMT.
SDUPD. DOC. NO. 8656
- 7 SDG&E CO.
12' ELECT. ESMT.
SDUPD. DOC. NO. 3572
- 8 SDG&E CO.
10' GAS AND ELECTRIC ESMT.
SDUPD. DOC. NO. 10531
- 9 PACIFIC TELEPHONE AND TELEGRAPH CO.
10' AND 15' ESMTS.
SDUPD. DOC. NO. 10681

NOTES

1. LEASE AREAS SHOWN SHADED.
2. DISTANCES AND BEARINGS ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6.
3. FOR ADDITIONAL DATA SEE SHT. NO. 1.

REVISED FROM 1941-B, 27 MAR 92 BY ATB *LOP*

DRAWN ANDRECHT
CHECKED *BOHNENKAMP*
REVIEWED *Stark*

APPROVED
J.P. Sullivan
CHIEF ENGINEER

SAN DIEGO UNIFIED PORT DISTRICT

WITHIN CORPORATE LIMITS OF SAN DIEGO

DATE 16 FEB 1978
SCALE AS SHOWN
REF 1838-B; 1937-B;
2E-18.19

DRAWING NO.
3312-B
SHEET NO 2



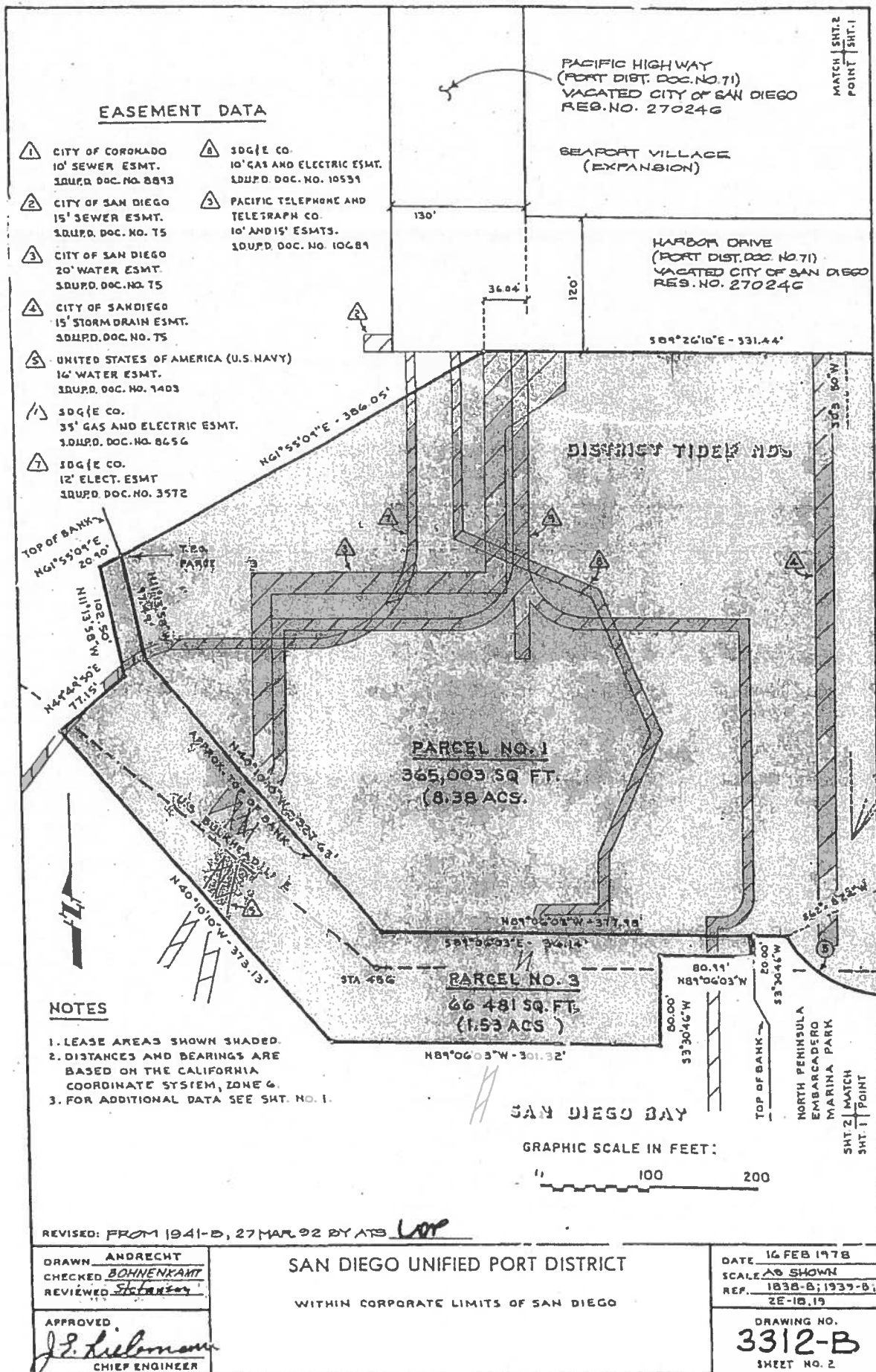


EXHIBIT B Operating Budget Template

Rental Income				
Tenant Rents				
Rental Income				
Percentage Rent				
CAM EXPENSE RECOVERIES				
PROPERTY TAX RECOVERIES				
INSURANCE RECOVERIES				
ELECTRIC RECOVERIES				
WATER/SEWER RECOVERIES				
MARKETING FUND RECOVERY				
Recovery Income				
Other Income				
PARKING REVENUE				
METER REVENUE				
OTHER REVENUE				
OTHER REVENUES - MSP FEES				
INTEREST INCOME-PROPERTY				
PORT RENT				
Other Income				
Bud Debt				
TOTAL REVENUE				
OPERATING EXPENSES				
Recoverable Expenses				
CAM Utilities				
CAM Janitorial				
CAM Repairs & Maintenance				
CAM Lot B, Landscaping				
CAM Security				
Security Consultant				
Real Estate Taxes				
Insurance				
Management Fee				
Transition & Set-Up Fee				
Site Office Expense				
Marketing & Promotions				
Total Recoverable Expenses				
Non-Recoverable Expenses				
Non-CAM Expenses				
BANK CHARGES				
UTILITIES - NON CAM				
BUSINESS TAX				
LICENSES/PERMITS/FEES				
PROFESSIONAL FEES				
PROFESSIONAL FEES-OTHER				
PORT RENT				
ACCOUNTING FEES				
LEGAL FEES				
MARKETING FEES				
CONSTRUCTION MANAGEMENT FEES				
LEGAL-MANAGEMENT				
LEASING COMMISSIONS				
TENANT IMPROVEMENTS				
ADA IMPROVEMENTS				
Total Non-Recoverable Expenses				
TOTAL OPERATING EXPENSES				
NET OPERATING INCOME				
NET TO PORT				