

Attachment E to Agenda File No. 2016-0476

AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 2

THIS AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 2 ("Lease Amendment No. 2"), made and entered into this _____ day of _____, 20____, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and CAHUENGA ASSOCIATES II, a California limited partnership, hereinafter called "Lessee," WITNESSETH:

WHEREAS, Lessor and SD Marina, LLC, a California limited liability company ("Initial Lessee"), heretofore on the 25th day of May 2004 entered into a Lease of certain tidelands located adjacent to 1551 – 1901 Shelter Island Drive in the city of San Diego, California, which Lease is on file in the Office of the Clerk of Lessor bearing Document No. 47503 ("Original Lease"); and,

WHEREAS, by Assignment and Assumption of Lease dated March 28, 2007 ("Prior Lessee Assignment"), Initial Lessee assigned Original Lease to Lessee, which Prior Lessee assignment is on file in the Office of the Clerk of Lessor bearing Document No. 51586, which; and

WHEREAS, Lessor and Lessee, on the 13th day of March 2007, entered into an Agreement to amend the Original Lease, which agreement is on file in the Office of the Clerk of Lessor bearing Document No. 51591 ("Amendment No. 1"); and,

WHEREAS, pursuant to Resolution 2007-44, Lessor consented to an encumbrance of Lessee's leasehold estate of Cahuenga Associates II by a Deed of Trust in favor of Allstate Life Insurance Company securing a Twenty Five Million Dollar (\$25,000,000) loan ("Loan 1") ("Consent to Encumbrance No. 1"); and,

WHEREAS, pursuant to Resolution 2007-83, Lessor further consented to an additional encumbrance of Lessee's leasehold estate for a Three Million One Hundred Fifty Thousand Dollar (\$3,150,000) loan ("Loan 2") ("Consent to Encumbrance No. 2", together with the Original Lease, Prior Lessee Assignment, Amendment No. 1, and Consent to Encumbrance No. 1, the "Lease"); and,

WHEREAS, Lessor and Lessee are mutually desirous of amending the Lease; and,

NOW THEREFORE, for valuable consideration, the Lease is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants and conditions of the Lease shall remain in full force and effect:

A. Paragraph 3.2 is hereby deleted in its entirety and replaced with the following Paragraph 3.2 in its place:

3.2 RENT REVIEW

- (a) At least two hundred seventy (270) days prior to the beginning of the Rental Period which commences July 1, 2027 and at least two hundred seventy (270) days prior to the beginning of each Rental Period thereafter as described in Paragraph 3(a) herein, Lessor and Lessee shall attempt to reach mutual agreement on the rent as specified in Paragraphs 3(b) and 3(c) herein; provided, however, that the rent shall not be less than the "Rent Requirements" set forth in Paragraph 3.2(c) below.
- (b) If Lessor and Lessee shall fail to reach agreement on the rent as specified in Paragraphs 3(b) and 3(c) for the next Rental Period at least two hundred ten (210) days prior to the beginning of the next Rental Period ("Outside Agreement Date"), then either party may elect to require that the rent specified in Paragraphs 3(b) and 3(c) be determined by the appraisal process described in this Paragraph 3.2(b) by delivery of written notice of such election to the other party within ten (10) days following the Outside Agreement Date. Such written notice of the election to initiate the appraisal process shall specifically refer to this Paragraph 3.2(b) and shall expressly state that the parties have sixty (60) days after the Outside Agreement Date to submit their Rent Proposals (as defined below) and to appoint their appraisers. If the parties have failed to reach agreement on the rent by the Outside Agreement Date, and if neither party delivers written notice to the other party within ten (10) days following the Outside Agreement Date of its election to have the rent determined by an appraisal process, then the rent specified in Paragraphs 3(b) and 3(c) shall be deemed to be the greater of (i) the Minimum Annual Rent and the percentage rent categories then currently in effect (but with the Minimum Annual Rent increased by any increase in the CPI from the immediately prior Adjustment Date), or (ii) the Rent Requirements set forth in Paragraph 3.2(c) below.

If either party elects to require that the rent be determined by the appraisal process described in this Paragraph 3.2(b) by delivery of written notice of such election to the other party within ten (10) days following the Outside Agreement Date, then each party shall make a separate, written determination of the Minimum Annual Rent and the percentage rent categories ("Rent Proposal"). No Rent Proposal shall include terms requiring Lessor to provide any economic concessions, incentives, abatements, allowances, subsidies, discounts or other similar benefits to Lessee and no Rent Proposal shall provide for Minimum Annual Rent or percentage rent categories that are less than the Rent Requirements. Each written Rent Proposal shall be concurrently submitted by Lessor and Lessee to each other within sixty (60) days after the Outside Agreement Date and such determinations of Minimum Annual Rent and the percentage rent categories shall then be submitted to the appraisal process in accordance with the

following items:

- (1) Lessor and Lessee shall each appoint, within sixty (60) days of the Outside Agreement Date, one appraiser who shall by profession be a current MAI real estate appraiser well familiar with commercial properties in the immediate vicinity of the Leased Premises, and who has been active in such field over the last five (5) years. The determination of the appraisers shall be limited solely to the issue of whether Lessor's or Lessee's submitted Rent Proposal is the closest to the actual fair market rent of the Leased Premises as determined by the appraisers, (i.e., the appraisers may only select Lessor's or Lessee's Rent Proposal and shall not be entitled to make a compromise determination). Nothing herein shall be construed to prohibit a party from appointing an appraiser who has assisted such party in the preparation of such party's Rent Proposal.
- (2) Notice of the appointment of an appraiser shall be given by each party to the other party when made. Should either party fail to appoint its appraiser within said time period, then the party that has appointed its appraiser shall provide written notice ("Second Notice") to the other party expressly stating as follows: "PURSUANT TO PARAGAPH 3.2(b) OF THE LEASE, UNLESS YOU APPOINT YOUR APPRAISER FOR THE DETERMINATION OF RENT AND PROVIDE WRITTEN NOTICE THEREOF TO THE UNDERSIGNED WITHIN TEN (10) DAYS FOLLOWING RECEIPT OF THIS NOTICE, THEN THE RENT SHALL BE DEEMED TO THAT SET FORTH IN THE RENT PROPOSAL PREVIOUSLY SUBMITTED BY THE UNDERSIGNED." If the other party does not appoint its appraiser and provide written notice thereof within ten (10) days following receipt of the Second Notice, then the rent specified in Paragraphs 3(b) and 3(c) shall be deemed to be that set forth in the Rent Proposal submitted by the party that has appointed its appraiser and provided the Second Notice.
- (3) If both appraisers are appointed as provided above, then the two appraisers shall immediately choose an independent, third appraiser who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) appraisers to act with them. The third appraiser shall not have assisted either party in the evaluation or preparation of its Rent Proposal. The fact that an appraiser may have, in the past, acted as an independent, third appraiser in an appraisal process similar to that provided in this Paragraph 3.2(b) involving Lessor or Lessee shall not, in itself, disqualify such appraiser from acting as the third appraiser under this Lease. If the two appraisers fail to select a third appraiser within fifteen (15) business days following the appointment of the second appraiser, on application by either party, the third appraiser shall be promptly appointed by the then-current president of the Appraisal Institute, San Diego Chapter, or if such person fails or refuses to make such appointment or there is no longer a San Diego Chapter of the Appraisal Institute, such third

appraiser shall be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his/her individual capacity. The party making the application shall give the other party notice of its application.

(4) The appraisers shall consider the following (collectively, the "Rent Determination Factors"):

- (i) the Leased Premises as if vacant of Lessee-owned improvements and available for new construction but with street access, utility services, and shoreline protection (if the Leased Premises are located on the waterfront) regardless of who paid for the installation of the street improvements, utility services and/or shoreline protection;
- (ii) the Leased Premises as having all regulatory entitlements and development rights for the types of uses permitted in Paragraph 2 above which includes, but is not restricted to, the design, construction and size of the existing improvements;
- (iii) the highest and best use of the Leased Premises as if available for new leasing purposes under optimal development assumptions that are consistent with the uses provided in Paragraph 2 and to the other terms, conditions and restrictions of the Lease;
- (iv) as if held by a private party in fee simple with all of the rights to sell, lease or transfer the owner's interest, and shall disregard any limitation resulting from public ownership;
- (v) as if offered for lease in the open market, and;
- (vi) the appraisers shall not reduce or discount the rent by reason of, or otherwise consider, any economic concessions, incentives, abatements, allowances, subsidies, discounts or other benefits granted by the San Diego Unified Port District or other governmental entity or agency to any other tenant. No diminution in value shall be taken as a result of any existing Hazardous Materials, as herein described, or improvements, or lack of improvements, on the Leased Premises. The appraisers shall use and analyze only the market data that is found in the marketplace, such as is demanded and received by other lessors for the same or similar types of uses allowed on the Leases Premises. In all cases, the appraisal decision shall be based upon recognized real estate appraisal principles and methods, unless otherwise specified in this Paragraph 3.2(b).

(5) Within thirty (30) days following the selection of the third appraiser, the

three appraisers shall exchange information and discuss the Rent Proposals. If the third, independent appraiser believes that expert advice would materially assist him or her, the third appraiser may retain one or more qualified persons to provide expert advice. The fees of the third appraiser and the fees and expenses of any expert consultants retained by the third appraiser shall be shared equally by Lessor and Lessee. The decision of the majority of the appraisers shall control. The decision of the appraisers shall be strictly limited to determining whether Lessor's or Lessee's submitted Rent Proposal is the closest to the actual fair market rent of the Leased Premises.

- (i) The determination of the appraisers shall be effective and retroactive to the first day of the Rental Period to which such appraisal relates. The determination shall be in writing and shall be made no later than forty-five (45) days following the selection of the third appraiser. The determination shall be either Lessor's Rent Proposal or Lessee's Rent Proposal. The appraisers shall not possess any right or authority to propose a compromise between Lessor's Rent Proposal and Lessee's Rent Proposal or the modification of either Rent Proposal. Within ten (10) days of the date the determination is made, the underpayment of the rent, if any, shall be paid by Lessee to Lessor, with interest at the rate of ten percent (10%) per annum from the commencement of the relevant Rental Period until paid. Any overpayment of the rent shall be credited to the next payment of rent owed by Lessee under the Lease following the determination. Subject to Paragraph 3.2(b)(7) below, the new rent as of the commencement of the relevant Rental Period shall be the Rental Proposal selected pursuant to such appraisal process.
- (ii) Notwithstanding any determination of the appraisers, in no event shall the rent as so adjusted be less than the Rent Requirements described in Paragraph 3.2(c) below.
- (6) The Minimum Annual Rent determined pursuant to this Paragraph 3.2(b) shall be subject to further adjustment to reflect increases in the CPI on each subsequent Adjustment Date as provided in Paragraph 3.1(b).
- (7) Lessor and Lessee shall each pay for the cost of its appointed appraiser. Lessor and Lessee shall equally share the third appraiser's fee and expenses.
- (c) The following "Rent Requirements" shall apply to all rent adjustments and in no event shall the Minimum Annual Rent or any percentage rent category be adjusted to less than any of the following "Rent Requirements": (i) the Minimum Annual Rent at the commencement of each Rental Period shall not be less than the greater of (A) exactly 80% of the average total percentage

rents payable during the last three accounting years of the immediately preceding Rental Period, or (B) the Minimum Annual Rent in effect for the immediately preceding Rental Period (as increased by any increase in the CPI from the immediately prior Adjustment Date); and (ii) no percentage rent category described in Paragraph 3(c), as adjusted, shall be less than the then current percentage rent category rate most recently adopted by the Board of Port Commissioners. However, in no event shall the percentage rent rate for any percentage rent category increase by more than the greater of (i) two hundred fifty (250) basis points from the relevant percentage rent category originally set forth in Paragraph 3(c) of this Lease, or (ii) the percentage change in the CPI from the calendar month which is three months prior to the Commencement Date as compared to the CPI for the calendar month which is three months prior to the commencement of the relevant Rental Period. LESSEE ACKNOWLEDGES THAT THE TERMS OF THIS PARAGRAPH HAVE BEEN SPECIFICALLY REVIEWED BY LESSEE AND LESSEE ACCEPTS THE PARAMETERS FOR CHANGE IN THE PERCENTAGE RENT RATES SET FORTH IN THIS PARAGRAPH AND AGREES THAT SUCH PARAMETERS REFLECT COMMERCIALLY REASONABLE TERMS FOR THE ADJUSTMENT OF PERCENTAGE RENT RATES AND CATEGORIES BY THE BOARD OF PORT COMMISSIONERS FROM TIME TO TIME DURING THE TERM OF THIS LEASE.

B. Paragraph 4 is hereby amended by adding the following Paragraphs 4(g) and 4(h) as follows:

- (g) In the event Lessee proposes a redevelopment of the Leased Premises ("Redevelopment Project") to Lessor, if a California Environmental Quality Act ("CEQA") document and/or Port Master Plan Amendment ("PMPA") and/or appealable Coastal Development Permit ("CDP") are deemed necessary for the Redevelopment Project in Lessor's determination, Lessee agrees to reimburse Lessor for all costs and expenses incurred by Lessor in obtaining the necessary entitlements for the Redevelopment Project, including but not limited to, the preparation and certification of the CEQA document by the Board of Port Commissioners of Lessor, the preparation and approval of the PMPA by the Board and the California Coastal Commission ("CCC"), the preparation and issuance of an appealable CDP by the Board or, if appealed, the CCC, and any other costs and expenses arising out of the entitlement process in Lessor's determination.
- (h) For tenant development projects pursuant to Board of Port Commissioners' Policy No. 357 – Policy For Approval of Tenant Project Plans with a project cost of \$5,000,000 or more, Lessee shall allocate no less than one percent of the Lessee improvement's total project cost on artwork for the project pursuant to Board of Port Commissioners' Policy No. 608 – Tenant Percent for Art. All commissions or purchases of artwork in fulfillment of the tenant percent for art requirement or otherwise must be approved in writing by

Lessor before installation on the Leased Premises. Lessee acknowledges and understands that all commissions or purchases of artwork or otherwise in fulfillment of the tenant percent for art requirement or installed on the Leased Premises shall comply with Board of Port Commissioners' Policy No. 608 – Tenant Percent for Art and Board of Port Commissioners' Policy No. 609 – Public Art, respectively, in effect at the time the Tenant Project Plan is deemed complete by the Lessor.

Lessee shall enter into a tenant art agreement with the Lessor to outline the parties' responsibilities related to fulfilling the requirement in compliance with Board of Port Commissioners' Policy No. 608 – Tenant Percent for Art, including but not limited to: artist, artist concept proposal, final design, artwork, representations and warranties, ownership and rights, Lessee obligations, public safety, maintenance and conservation, removal, disposition, signage and time schedule. Alternatively, Lessee shall deposit into the public art fund, payment of an in-lieu contribution in accordance with Board of Port Commissioners' Policy No. 608 – Tenant Percent for Art.

C. Paragraph 7 is hereby deleted in its entirety and replaced with the following Paragraph 7 in its place:

7. LIENS

Lessee shall defend, indemnify, and hold harmless Lessor against all claims and liens for labor, services, or materials in connection with improvements, repairs, or alterations made by Lessee or Lessee's sublessees, contractors, and agents on the Leased Premises, and the costs of defending against such claims and liens, including reasonable attorneys' fees.

In the event any such claim or lien (other than the lien of a Permitted Leasehold Deed of Trust (as hereafter defined)), or any other claim(s), lien(s) or levy(ies) whatsoever of any nature caused by Lessee or Lessee's sublessees, contractors, and agents, is filed against the Leased Premises or the leasehold interests of Lessee therein, Lessee shall, upon written request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien(s) or levy(ies) have been filed. Such bond shall be acknowledged by Lessee, as principal, and by an entity licensed by the Insurance Commissioner of the state of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this Lease in default in the event the bond required by this Paragraph has not been deposited with Lessor within ten (10) days after written request has been delivered to Lessee.

This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if the encumbrance has previously received Lessor consent in accordance with Paragraph herein.

D. Paragraph 8 is hereby deleted in its entirety and replaced with the following Paragraph 8 in its place:

8. LEASE ENCUMBRANCE

(a) Lessor's Consent to Encumbrance. Lessee shall not encumber the Lease, leasehold interest, and the improvements thereon by a deed of trust, mortgage, or other security instrument to assure the payment of Lessee's promissory note, without Lessor's prior written consent, in each instance. If Lessee enters into any deed of trust, mortgage, or other security instrument that encumbers the Lease, leasehold interest, or the improvements thereon without Lessor's prior written consent, Lessor shall have the right to declare this Lease in default.

In the event Lessee requests Lessor's consent to any Lease encumbrance, hereinafter referred to as a "transaction" in this Paragraph 8, Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

In the event Lessor consents to any Lease encumbrance of this Lease, said consent shall be conditioned upon the following: (i) if, on the effective date of such proposed encumbrance, but subject to the conditions herein, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; (ii) if deemed necessary by Lessor, a Lease amendment shall be executed which will include new or revised lease provisions; (iii) the maximum loan proceeds shall not be in excess of the greater of 75% loan-to-value as determined by lender's appraisal, or the amount of repayment of existing financing that encumbers the leasehold; (iv) the loan shall have an amortization term that is less than the remaining term of the ground lease; and (v) the Lessee shall acknowledge in writing that it will not seek rent relief as a result of not being able to meet its debt repayment obligations. Upon the effective date of any said consented-to-encumbrance, Lessee shall thereafter pay to Lessor the market rent as referenced herein, subject to adjustments and rent reviews as provided in Paragraph(s) 3.1 and 3.2 herein

In the event of a consented-to encumbrance, if the parties cannot agree to an amount that is equal to the market rent, the rent shall be determined by the procedure described in Paragraph 3.2 herein, except that the award shall be effective and retroactive to the effective date of the consented-to encumbrance. ‘

(b) Definition of "Consented-to-Lender". The term "Consented-to-Lender" as hereinafter used in this Lease, means the lender holding an encumbrance consented to by Lessor. It may include one or more lenders holding obligations of the Lessee secured by a single deed of trust, mortgage, or other security instrument.

- (c) Voluntary Lease Surrender. Without the prior written consent of the Consented-to-Lender, should Lessee owe the Consented-to-Lender any amounts under any security instrument encumbering this Lease, leasehold interest, or the improvements thereon, Lessor will not accept the voluntary surrender, cancellation, or termination of this Lease before the expiration of the term thereof.

Prior to the execution of any change, modification or amendment to the Lease, Lessor shall provide written notice of any such proposed change, modification or amendment, including all CPI adjustments and changes to rent pursuant to rent reviews, to each Consented-to-Lender; provided, however, if Lessor fails to provide such notice, such failure shall not (i) constitute a default by Lessor under the Lease or (ii) invalidate or render void any such change, modification or amendment taken without the knowledge or consent of such Consented-to-Lender.

- (d) Loan Default. If a Permitted Leasehold Deed of Trust is in default at any time, the Consented-to-Lender shall, as provided by law, have the right, without Lessor's prior consent, to:

- (1) Accept an assignment of the Lease in lieu of foreclosure; or
- (2) Cause a foreclosure sale to be held pursuant to either judicial proceedings or power of sale as provided in its deed of trust, mortgage, or other security instrument.

Provided, however, with the exception of said Consented-to-Lender, no assignment to the successful bidder shall be effective without Lessor's prior written consent, not to be unreasonably withheld.

- (e) Assume Lease Obligations. Before said Consented-to-Lender, or any other future consented-to assignee, acquires the leasehold interest, it shall, as an express condition precedent, agree in writing to assume each and every obligation under the Lease. Furthermore, before any said Consented-to-Lender, or any other future consented-to assignee or purchaser, may subsequently assign or sublease all or substantially all of the leasehold interest, it shall, in each instance, obtain Lessor's prior written consent.

Further, a Consented-to-Lender that has: (i) acquired the leasehold interest and assumed the Lessee's obligations, or (ii) entered into a new lease pursuant to Paragraph 10 herein, concurrently with a termination of this Lease, shall be released from all further obligations under this Lease after it assigns the leasehold interest to an assignee consented to by Lessor, in accordance with this Paragraph 8.

- (f) Lessor's Consent to Assignment. Whenever a Consented-to-Lender is required by the provisions of this Paragraph 8 to obtain Lessor's prior consent

to an:

- (1) Assignment to the successful bidder upon a foreclosure by said Consented-to-Lender; or
- (2) Assignment or sublease of all or substantially all of the Leased Premises by said Consented-to-Lender should it become the lessee by reason of: (i) being the successful bidder upon said foreclosure, or (ii) an assignment in lieu of foreclosure, or (iii) under a new lease entered into pursuant to Paragraph 10 herein; then Lessor will grant such consent if:
 - (i) The principal(s) of such assignee, purchaser, or sublessee are reputable (meaning the absence of reputations for dishonesty, criminal conduct, or association with criminal elements -- "reputable" does not mean "prestigious," nor does the determination of whether one is reputable involve considerations of personal taste or preference);
 - (ii) The principal(s) of such assignee, purchaser, or sublessee possess sufficient business experience and financial means to perform Lessee's obligations under this Lease--according to the then-current standards for business experience and financial means that Lessor generally requires of new or renewed lessees at the time of the request; and
 - (iii) The assignee, purchaser, or sublessee agrees in writing to assume each and every obligation under this Lease.

Further, Lessor will not unreasonably or arbitrarily withhold such consent. Provided, however, no such assignee, purchaser, or sublessee shall subsequently: (i) assign, transfer, or sublease any or all of the Leased Premises without Lessor's prior written consent, in accordance with Paragraph 9 herein; or (ii) encumber the Lease, leasehold interest, and improvements thereon without Lessor's prior written consent, in accordance with this Paragraph 8.

Provided further, if said Consented-to-Lender becomes the lessee by reason of: (i) being the successful bidder upon foreclosure, or (ii) an assignment in lieu of foreclosure, or (iii) being the lessee of a new lease entered into pursuant to Paragraph 10 herein, then said Consented-to-Lender may, upon a subsequent assignment or subleasing of all or substantially all of the Leased Premises, take back from its assignee, purchaser, or sublessee, a purchase money deed of trust, mortgage, or security instrument. Provided, however, said Consented-to-Lender must execute and submit to Lessor documentation substantially in the same form and content as was originally submitted to Lessor when consent was granted to the earlier encumbrance. Only said Consented-to-Lender or the successful bidder upon said foreclosure may enforce the provisions of this Paragraph 8. Further, no other

third party shall have the rights or remedies, as third-party beneficiaries, or otherwise, hereunder.

The burden of producing evidence and the burden of proof showing Lessor that a prospective assignee, purchaser, or sublessee meets each and all of the aforesaid qualifications and standards shall be on said Consented-to-Lender or successful bidder upon foreclosure. Lessor's decision shall be based upon Lessor's high duty of care in administering a valuable public resource, which it holds in trust for the people of the state of California. In the absence of fraud or arbitrary or unreasonable action in applying or failing to apply said standards, Lessor's decision shall be final.

(g) If Lessor Rejects Lease Transferee. In the event Lessor rejects: (i) the successful bidder upon foreclosure, or (ii) a proposed assignee or sublessee of the Consented-to-Lender (said successful bidder or Consented-to-Lender being sometimes referred to hereinafter as the "Aggrieved Party," and said successful bidder, or proposed assignee or sublessee from the Consented-to-Lender being sometimes referred to hereinafter as the "Applicant"), the sole remedy of the Aggrieved Party shall be to seek relief in the nature of specific performance through the arbitration procedure hereinafter established. Further, in no event shall Lessor be liable to the Aggrieved Party or Applicant, or any person or entity whatsoever, for money damages. Provided, however, the Aggrieved Party shall be entitled to recover such damages, if any, it may sustain as a result of Lessor's failure or refusal to comply with a Superior Court order confirming an award in favor of the Aggrieved Party in said arbitration.

The issue to be submitted to arbitration shall be whether Lessor's Board of Port Commissioners' record contains substantial evidence to support the decision to reject the Applicant in accordance with the standards of reputation, business experience, and/or financial means, as provided herein. The Aggrieved Party may submit said issue to arbitration.

The arbitration shall be conducted pursuant to Title 9 of Part 3 of the California Code of Civil Procedure (section references herein shall be to the Code of Civil Procedure), as amplified and modified by the following provisions:

- (1) Arbitration shall be initiated by the Aggrieved Party filing a written demand for arbitration with Lessor no later than thirty (30) days following Lessor's adoption of a resolution rejecting the Applicant. If the Aggrieved Party so elects, Lessor shall be deemed to have adopted a resolution rejecting an Applicant if Lessor has not acted within ninety (90) days after the Aggrieved Party files a written application for Lessor to approve the Applicant;
- (2) Said arbitration shall be conducted by a single neutral arbitrator who shall not be a County of San Diego resident;

- (3) If the parties have not agreed on the selection of the arbitrator within five (5) days after said demand for arbitration is filed, either party may petition the Superior Court of the state of California, county of San Diego, to select the arbitrator pursuant to Section 1281.6;
- (4) Each party shall submit its nominees, if any, to the court within five (5) days after said petition is served and filed;
- (5) Said arbitrator shall not conduct a trial de novo, but shall consider only said record before Lessor's Board of Port Commissioners. Provided, however, said arbitrator may consider evidence outside said record if the arbitrator believes that the Board's decision was affected by Lessor's fraudulent action which was not reasonably discoverable prior to the Board's decision;
- (6) Said arbitrator shall make the award in writing within forty-five (45) days of being appointed;
- (7) The right of any party to take depositions for discovery purposes, as provided in Section 1283.05, shall be waived;
- (8) Certain time periods established in said Title 9 shall be shortened as follows:
 - (i) Sections 1284, 1288.4, 1290.2, and 1290.6--halved;
 - (ii) Section 1288--four years to 30 days and 100 days to 15 days; and
 - (iii) Section 1288.2--100 days to 15 days;
- (9) San Diego, California shall be the venue of the arbitration hearing and any court proceedings;
- (10) The decision of the Superior Court in any proceeding to confirm, correct, or vacate the award shall be final, and the parties to said arbitration waive any rights to appeal therefrom, as provided in Sections 1294 and 1294.2, or otherwise; and
- (11) The parties shall bear their costs, fees, and expenses incurred in connection with said arbitration, in accordance with the provisions of Section 1284.2.

(h) Notice of Foreclosure Sale. Said Consented-to-Lender shall include a statement in any Notice of Foreclosure Sale covering the foregoing requirements for Lessor's consent to an assignment upon said foreclosure.

(i) Subsequent Encumbrance. Except for subleases, utility easements, and other necessary rights-of-way, Lessor shall not expressly consent to a

subsequent lien or encumbrance against the Leased Premises without said Consented-to-Lender's prior written consent, not to be unreasonably withheld.

(j) Assignment of Security Interest. Said Consented-to-Lender shall not assign its security interest in the Leased Premises in whole or in part without Lessor's prior written consent, in each instance. Provided, however, Lessor's consent to such an assignment shall be deemed granted (and such assignee will for all purposes of this Lease be deemed to be a Consented-to-Lender) if the assignment is to:

- (1) A Financial Institution in good legal standing under the laws of its jurisdiction of incorporation having assets exceeding Two Hundred and Fifty Million Dollars (\$250,000,000); or
- (2) The United States of America or any state thereof, or any agency thereof; or
- (3) An assignee by operation of law; e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender.

Provided, however, for purposes of the foregoing provisions "Financial Institution" shall mean: (i) an insurance company qualified to do business in the state of California; or (ii) a federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof; e.g., the California State Teachers' Retirement System; or (iv) a finance company; or (v) an investment company, money management firm, or "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended; or (vi) a real estate investment trust; or (vii) a combination of two or more of the preceding entities; or (viii) an entity controlled by, controlling or under common control with one or more of the preceding entities (provided that at least one participant, constituent, member or partner thereof meets the \$250,000,000 threshold set forth above). In this context "controlled" "controlling" or "under common control" shall be deemed to be either or both (i) the ownership of more than fifty percent (50%) of the stock or other voting interest of the subject entity or the ownership of beneficial interests in the subject entity, or (ii) the power to direct the management of the subject entity with respect to major decisions of the subject entity, whether through voting interests or by way of agreement.

Provided, further, no subsequent assignment by such assignee will be permitted unless:

- (1) The assignment conforms to all requirements of this Paragraph 8;

- (2) A duplicate original(s) of such assignment is furnished Lessor; and
- (3) In case of an assignment where Lessor's consent is deemed granted:
 - (i) assignee promptly furnishes Lessor reasonably satisfactory evidence that said assignee complies with the foregoing requirements, and
 - (ii) said assignee expressly agrees to take such assignment subject to all Lessor's rights under this Lease.

E. Said Lease is hereby amended by adding Paragraph 8.1 "Lessor's Participation in Refinance Proceeds" as follows:

8.1 LESSOR'S PARTICIPATION IN REFINANCE PROCEEDS:

Upon Lessor's consent to a Lease encumbrance other than the construction financing of the initial development of the Improvements, Lessee shall pay to Lessor a fee (the "Financing Participation Fee") in an amount equal to two and one-half percent (2.5%) of the Net Proceeds of such transaction. Prior to Lessor's consent to any Financing Transaction, Lessee shall deliver to Lessor a written statement showing the calculation of the Financing Participation Fee owed to Lessor from Lessee based on the terms of the Financing Transaction. The statement of the calculation of the Financing Participation Fee shall contain such detail as may be reasonably requested by Lessor to verify the calculation of the Financing Participation Fee. The Financing Participation Fee due Lessor shall be payable in full to Lessor concurrent with the completion of the Financing Transaction. When owed, the Financing Participation Fee shall constitute additional rent.

For the purposes of this Paragraph 8.1, the term "Net Proceeds" shall mean with respect to a Financing Transaction, the difference between (a) the loan amount and (b) the total of the outstanding indebtedness being paid off by the Financing Transaction and the portion (if any) of the debt under the Financing Transaction to be expended on improving the Improvements, less any customary costs or fees of the Financing Transaction payable by Lessee [provided that the total amount of such costs and fees shall not exceed two percent (2%) of the actual gross proceeds of the subject transaction].

F. Paragraph 9 is hereby deleted in its entirety and replaced with the following Paragraph 9 in its place:

9. ASSIGNMENT – SUBLEASE:

Lessee shall not, without the prior written consent of Lessor:

- (a) Assign or transfer the whole or any part of this Lease or any interest therein;
- (b) Sublease (which shall also include management and/or operating agreements covering the Leased Premises) the whole or any part of the Leased Premises;

- (c) Permit transfer of the Lease or possession of the Leased Premises by merger, consolidation, or dissolution of Lessee;
- (d) Permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein other than to a Consented-to-Lender; or
- (e) Permit the occupancy of the whole or any part of the Leased Premises by any other person or entity other than a Consented-to-Lender.

Notwithstanding the foregoing, nothing herein shall be construed to prevent the occupancy of said Leased Premises by any employee or business invitee of Lessee.

Further, Lessee shall not, without the prior written consent of Lessor:

- (a) Permit assignment, hypothecation, withdrawal, admittance, dissolution, change, pledge, encumbrance, transfer or sale, in whole or in part, including without limitation as a result of an election or action by the parties comprising Lessee, whether voluntary or involuntary, by operation of law or otherwise, of the Lessee or the general partner(s) of Lessee;
- (b) Contract for the management or operation of the whole or any part of the Leased Premises; or
- (c) Permit the transfer of the Lease or possession of the Leased Premises by any changes in the respective interests of the parties comprising Lessee.

It is mutually agreed that the personal qualifications of the parties controlling Lessee, specifically including, but not limited to, members of the limited liability company, are a part of the consideration for granting this Lease. Said parties do hereby specifically agree to maintain active control and supervision of the operations conducted on the Leased Premises.

In the event Lessee requests Lessor's consent to any Lease assignment, Lease transfer, Lease amendment, and/or sublease, Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with such Lease assignment, Lease transfer, Lease amendment, and/or sublease. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such Lease assignment, Lease transfer, Lease amendment, and/or sublease, regardless of whether such Lease assignment, Lease transfer, Lease amendment, and/or sublease is consummated.

In the event Lessor consents to any Lease assignment or transfer, said consent shall be conditioned upon the following: (i) if, on the effective date of such proposed assignment or transfer, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; (ii) assignee shall agree and assume

each and every obligation under the Lease; (iii) if deemed necessary by Lessor, a Lease amendment shall be executed which will include new or revised lease provisions; and (iv) assignee shall comply with other conditions and qualifications determined by the Board of Port Commissioners of Lessor. Notwithstanding, items (i), (iii), and (iv) shall not apply in the event of: (a) a Lease assignment or transfer to a third party from a Consented-to-Lender which acquired title to the Lease by foreclosure or deed in lieu of foreclosure or a new Lease pursuant to the provisions of Paragraph 10 herein, or (b) assignment or transfer of the Lease to a Consented-to-Lender by deed in lieu of foreclosure, or to a Consented-to-Lender or a third party as the successful bidder at a foreclosure sale. Upon the effective date of any said consented-to Lease assignment or transfer, assignee shall thereafter pay to Lessor the market rent as referenced herein, subject to adjustments and rent reviews as provided in Paragraph(s) 3.1 and 3.2 herein.

In the event Lessor consents to any sublease, said consent shall be conditioned upon the following: (i) if, upon the effective date of any said consented-to sublease, the rent being paid for the sublease area is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent for the sublease area as long as said sublease is in effect; (ii) if deemed necessary by Lessor, a Lease amendment shall be executed which shall include new or revised lease provisions; and (iii) Lessee shall comply with other conditions and qualifications determined by the Board of Port Commissioners of Lessor. Furthermore, as long as said sublease is in effect, rent for the sublease area shall be subject to adjustments and rent reviews as provided in Paragraph(s) 3.1 and 3.2 herein. For purposes of this Paragraph 9, the term sublease shall not include the temporary and intermittent rental of boat slips and dock lockers to transient boaters (it is being understood that Lessor's consent shall not be required with respect hereto).

In the event of a consented-to assignment or sublease, if the parties cannot agree to an amount that is equal to the market rent, the rent shall be determined by the arbitration procedure described in Paragraph 3.2 herein, except that the award shall be effective and retroactive to the effective date of the assignment or sublease. Because of this provision, underpayment of rent, if any, shall be paid to Lessor within ten (10) days of the date that the market rent is determined by said arbitration procedure.

G. Said Lease is hereby amended by adding Paragraph 9.1 "Assignment Participation Fee" as follows:

9.1 ASSIGNMENT PARTICIPATION FEE:

- (a) Upon each (i) Assignment of this Lease pursuant to Paragraph 9 to a Third Party (as defined below), (ii) a change in the composition of the direct or indirect ownership of Lessee by which a Third Party (as defined below) acquires any direct or indirect interest in Lessee other than pursuant to a transfer of ownership interests traded on a recognized public exchange, and (iii) Sublease of all or substantially all of the Premises to a Third Party,

Lessee shall pay to Lessor a fee (the "Assignment Participation Fee") in an amount equal to two and one-half percent (2.5%) of the Gross Proceeds of such transaction. Prior to Lessor's consent to any transaction subject to an Assignment Participation Fee, Lessee shall deliver to Lessor a written statement showing the calculation of the Assignment Participation Fee owed to Lessor from Lessee based on the terms of the transaction. The statement of the calculation of the Assignment Participation Fee shall contain such detail as may be reasonably requested by Lessor to verify the calculation of the Assignment Participation Fee. The Assignment Participation Fee due to Lessor shall be payable in full to Lessor concurrent with the completion of the transaction and shall be a joint and several obligation of the transferee and transferor. When owed, the Assignment Participation Fee shall constitute Additional Rent.

- (b) For the purposes of this Paragraph 9.1, the term "Third Party" shall mean any person or entity other than (i) Cahuenga Associates II, a California limited partnership (the "Approved Parent") or an entity who is directly or indirectly controlled by, [one or more of] the Approved Parent[s], (ii) a Consented-to-Lender or (iii) an assignee of a Consented-to-Lender (whether the Consented-to-Lender acquires the leasehold interest under this Lease by foreclosure or deed-in-lieu of foreclosure or pursuant to a new lease); provided, however, that if the Gross Proceeds paid by the assignee exceed the Aggregate Debt Amount (as defined below), then such assignee of the Consented-to-Lender shall be a Third Party. The term "Aggregate Debt Amount" shall mean the aggregate amount of the outstanding principal, interest and other amounts secured by the applicable Permitted Encumbrance at the time of acquisition by the Consented-to-Lender of the leasehold interest in the Premises.
- (c) For the purposes of this Paragraph 9.1, with respect to an assignment of this Lease or sublease of all or substantially all of the Premises or a change in the composition of the direct or indirect ownership of Lessee, the term "Gross Proceeds" shall mean the purchase price or other consideration paid (either in cash or by an assumption of debt or other consideration and, if paid over time, the present value of the total consideration using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%)) to the Lessee and/or holders of direct or indirect interests in Lessee in connection with the subject transaction less the sum of (x) any prorations, closing costs or other customary deductions to the purchase price for which the seller is responsible [*provided that the total amount of such items shall not exceed two (2%) of the actual gross proceeds of the subject transaction*] and (y) if the Third Party is the assignee of a Consented-to-Lender, the Aggregate Debt Amount.

- (d) Upon the request of Lessor from time to time (which request shall be no more frequent than once per year), Lessee shall provide Lessor with a schedule listing the names and mailing address of all holders of direct or indirect (at all levels) interests in Lessee other than holders of interests traded on a recognized public exchange. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust.
- H. Paragraphs 10, 11, 15, 15.1, 18, 21, 25, 26, and 36 are hereby deleted in their entirety and replaced with the following Paragraphs 10, 11, 15, 15.1, 18, 21, 25, 26, and 36 in their place:

10. DEFAULTS AND REMEDIES:

- (a) Defaults. The occurrence of any one (1) or more of the following events shall constitute a default hereunder:
 - (1) Abandonment of the Leased Premises. Abandonment is herein defined to include, but is not limited to, any absence by Lessee from the Leased Premises for ten (10) consecutive days or longer.
 - (2) Failure by Lessee to pay, when due, any Lease-required rent, other payment, and/or charge herein, where such failure continues for a period of ten (10) days after written notice thereof. Provided, however, any such notice provided in this Paragraph 10(a)(2) or in subsequent Paragraph 10(a)(3) shall be in lieu of and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.
 - (3) Failure by Lessee to perform any other express or implied covenants, requirements, obligations, or conditions in this Lease (other than any breach under Paragraph 9, for which immediate notice of termination may be given), should such failure continue for thirty (30) days after written notice thereof.
 - (4) Subject to any restrictions or limitations placed on Lessor by applicable laws governing bankruptcy, Lessee's: (a) applying for, consenting to, or suffering the appointment of a receiver, trustee, or liquidator for all or a substantial portion of its assets; (b) making a general assignment for the benefit of creditors; (c) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (d) becoming unable to, or failing to, pay its debts as they mature; (e) being adjudged a bankrupt; (f) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization, or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (g)

convening a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium, extension, or composition of its debts; or (h) suffering, or permitting to continue unstayed and in effect for ten (10) consecutive days, any attachment, levy, execution, or seizure of all or a substantial portion of Lessee's assets or of Lessee's interest in this Lease.

This Paragraph 10(a)(4) shall not be applicable or binding on the beneficiary of any deed of trust, mortgage, or other security instrument on the Leased Premises which is of record with Lessor and is a Permitted Leasehold Deed of Trust, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously and timely pays to Lessor all rent due or coming due under the provisions of this Lease and the Leased Premises are continuously and actively used in accordance with Paragraph 14 of this Lease, and provided that said beneficiary agrees in writing to assume and perform each and every obligation under the Lease.

- (b) Remedies. In the event of any default, Lessor may exercise the following remedies:
 - (1) Termination: Terminate Lessee's right to possession of the Leased Premises whereupon this Lease shall terminate and Lessee shall immediately surrender possession of the Leased Premises to Lessor. In such event, Lessor shall be entitled to recover from Lessee:
 - (i) The "Worth at the Time of Award", as hereinafter defined, of the unpaid rent which had been earned at the time of termination;
 - (ii) The "Worth at the Time of Award" of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided;
 - (iii) The "Worth at the Time of Award" of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided; and
 - (iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease, or which would ordinarily be likely to result therefrom, including but not limited to the cost of recovering possession of the Leased Premises, expenses of reletting (Including necessary repair, renovation and alteration

of the Leased Premises), reasonable attorneys' fees, and any other reasonable costs.

The "Worth at the Time of Award" of the amounts referred to in Paragraphs 10(b)(1)(i) and 10(b)(1)(ii) shall be computed by charging interest at ten percent (10%) per annum from the dates such amounts accrued to Lessor. The "Worth at the Time of Award" of the amount referred to in Paragraph 10(b)(1)(iii) shall be computed by discounting such amount at one (1) percentage point above the Discount Rate of the Federal Reserve Bank of San Francisco at the time of the award.

- (2) Reletting: Without terminating or effecting a forfeiture of the Lease, or otherwise relieving Lessee of any obligation herein, Lessor may, but need not, relet the Leased Premises or any portion thereof, at any time or from time to time, for such terms and upon such conditions and rent as Lessor, in its sole discretion, deems proper. Regardless of whether the Leased Premises are relet, Lessee shall continue to pay to Lessor all Lease-required amounts up to the date that Lessor terminates Lessee's right to possession of the Leased Premises; provided, however, following a default, Lessor shall not unreasonably withhold its consent to any Lessee-requested assignment of this Lease or subletting of the Leased Premises, unless Lessor shall also elect to terminate this Lease and Lessee's right to possession of the Leased Premises, as provided in Paragraph 10(b)(1). Such payments shall be due at the times provided in this Lease and Lessor need not wait until the termination of the Lease to recover said amounts. If Lessor relets the Leased Premises, or any portion thereof; such reletting shall not relieve Lessee of any obligations herein, except that Lessor shall apply the rent or other proceeds actually collected for such reletting against amounts due from Lessee herein, to the extent such proceeds compensate Lessor for Lessee's nonperformance of any obligation herein. Lessor may execute any lease made pursuant thereto in its own name. Further, Lessor shall be under no obligation to reveal to new lessee how these proceeds were applied, nor shall said new lessee have any right to collect any such proceeds. Lessor shall not, by any reentry or other act, be deemed to have accepted Lessee's surrender of the Leased Premises or Lessee's interest therein, nor be deemed to have terminated this Lease or to have relieved Lessee of any obligation herein, unless Lessor shall have furnished Lessee with express written notice of Lessor's election to do so, as set forth herein.
- (3) Other: Any and/or all other rights or remedies of Lessor specified elsewhere in this Lease or provided by law.

In the event Lessee has encumbered this Lease for security purposes in accordance with Paragraph 8 of this Lease, it is understood and agreed that Lessor shall furnish copies of all notice(s) of default(s) to the beneficiary or mortgagee under said encumbrance by certified mail (provided Lessee has delivered to Lessor written request, therefore, together with the name and address of any such beneficiary or mortgagee) contemporaneously with the

furnishing of such notices to Lessee. Furthermore, in the event Lessee fails to cure such default(s) within the time permitted herein, said beneficiary or mortgagee shall be permitted to cure such default(s) at any time within thirty (30) days following the expiration of the period within which Lessee may cure said default(s) if the default is monetary in nature, or within sixty (60) days following the expiration of the period within which Lessee may cure said default(s) if such default is non-monetary; provided, however, Lessor shall not be required to furnish any further notice(s) of default(s) to said beneficiary or mortgagee.

In the event this Lease is terminated pursuant to the provisions of this Paragraph 10, Lessor shall continue to have all rights provided in Paragraph 6 of this Lease.

Notwithstanding the foregoing, should a default not be cured within the cure periods referred to above, said Lease shall not be terminated as to said beneficiary or mortgagee unless Lessor first legally offers to enter into a valid lease with said beneficiary or mortgagee, and said offer is not accepted in writing within sixty (60) days after said offer is made. Furthermore, such new lease must be entered into as a condition concurrent with such termination for the then-remaining term of this Lease. Furthermore, the new lease must contain the same terms, conditions, and priority as this Lease, provided the mortgagee or beneficiary promptly cures all then-existing defaults under this Lease when and to the extent it is able to cure them. Such new lease may be entered into even though possession of the Leased Premises has not been surrendered by the defaulting Lessee. In such event, unless legally restrained, Lessor shall promptly proceed to obtain possession of the Leased Premises and to deliver possession to said mortgagee or beneficiary as soon as the same is obtained. Should the mortgagee or beneficiary fail to accept said offer in writing within said sixty (60) day period, or, having so accepted said offer, should it fail promptly to cure all existing defaults under this Lease when and to the extent it is able to cure them, then such termination shall also be effective as to said mortgagee or beneficiary. Furthermore, in the event this Lease is rejected in a bankruptcy proceeding, Lessor shall, within thirty (30) days thereafter, offer in writing to said beneficiary or mortgagee to enter into a valid lease in the same manner and under the same terms, covenants and conditions as provided for with respect to a new lease entered into in the event of a termination of this Lease as provided in the immediately preceding provisions.

11. BANKRUPTCY

If Lessor shall have the right to declare this Lease in default if Lessee: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) becomes the subject of a bankruptcy proceeding, reorganization arrangement, insolvency, receivership, liquidation, or dissolution proceeding; or in the event of any judicial sale of Lessee's leasehold interest.

The conditions of this Paragraph shall not be applicable or binding on: (1) Lessee; or (2) the beneficiary in any Permitted Leasehold Deed of Trust; or (3) the aforesaid beneficiary's successors in interest which Lessor has consented to in writing, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided Lessee, such beneficiary, or such beneficiary's successors in interest continuously

pay to Lessor all rent due or coming due under the provisions of this Lease, and the Leased Premises are continuously and actively used in accordance with Paragraph 14 herein.

15. MAINTENANCE AND REPAIR:

As part of the consideration for this Lease, Lessee shall assume full responsibility for operation and maintenance of the Leased Premises throughout the term and without expense to Lessor. Lessee shall perform all maintenance, which includes all painting, repairs, and replacements, including in-water dredging, necessary to maintain and preserve the Leased Premises in a good, safe, healthy, and sanitary condition, satisfactory to Lessor and in compliance with all applicable laws. Provided, however, prior to Lessee performing any extraordinary repairs, plans and specifications must first be submitted to Lessor and receive Lessor approval, pursuant to the procedures provided in Paragraph 4 herein. Further, Lessee shall provide approved containers for trash and garbage and keep the Leased Premises free and clear of rubbish, litter, and any other fire hazards. Lessee waives all rights to make repairs at the expense of Lessor, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of said Code.

For the purpose of keeping the Leased Premises in a good, safe, healthy, and sanitary condition, Lessor always shall have the right but not the duty to enter, view, inspect, determine the condition of, and protect its interests in the Leased Premises. Provided, however, Lessor or its representatives shall: (a) conduct such entry in a manner that causes the least inconvenience and disruption to Lessee's operation as practicable; and (b) comply with all safety and security requirements of Lessee. It is not intended, however, that Lessee's safety and security requirements be used to bar Lessor's right of inspection. Further, Lessee shall provide Lessor reasonable access to the Leased Premises for such purpose.

If inspection discloses the Leased Premises are not in the condition required herein, Lessee immediately must commence the necessary maintenance work, and complete said work within ten (10) days after written notice from Lessor. Further, if at any time Lessor determines the Leased Premises are not in the condition required herein, Lessor may require Lessee to file and pay for a faithful performance bond to assure prompt correction, without additional notice. The amount of said bond shall be adequate, in Lessor's opinion, to correct all unsatisfactory conditions.

Notwithstanding, Lessor shall not be required to perform any maintenance, including painting, repairs, or replacements; or to make any improvements whatsoever on or for the benefit of the Leased Premises.

The rights reserved in this Paragraph shall not create any obligations or increase any obligations for Lessor elsewhere in this Lease.

15.1 MARINA AUDITS

Commencing November 1, 2022, and every five (5) years thereafter, Lessee shall perform a maintenance audit in accordance with the following provisions (the "Audit Process"):

- (a) Lessee shall, at Lessee's cost, engage a reasonably qualified contractor or engineer (with experience in the development and/or maintenance of marinas), to be approved by Lessor, to provide Lessee with a written audit report that identifies in reasonable detail (i) any repair and maintenance items which the auditor reasonably determines must be completed immediately in order to cause such marina portion to be in the condition required by this Lease ("Required Work"), (ii) any repair and maintenance items which the auditor reasonably determines must be completed within a specified period of time in order for such marina portion to remain in such condition for at least five (5) years after the date of such audit report ("Recommended Work"), and (iii) any other repairs or maintenance items which the auditor suggests could improve the Marina operations ("Suggested Work").
- (b) Within thirty (30) business days after Lessee's receipt of Lessor's notice, Lessee shall provide to Lessor a copy of such written audit report. Lessee shall thereafter cause to be performed any work identified as Required Work in such report (unless Lessor waives such requirement) on a schedule consistent with such report's recommendations. If Lessee fails to perform such work, then Lessor can require Lessee to set up a Reserve Account, in which set aside funds are deposited into a "marina maintenance" account. Lessee will be required to deposit 3% of marina revenues annually. Such funds will be used to pay for Required Work. The Reserve Account will be held in Lessee's name at a qualified financial institution, as defined in Paragraph 8(j)(3) above.

Thereafter, Lessor may invoke such Audit Process (1) in the event of a transfer of Lessee's interest in this Lease which requires Lessor's consent pursuant to Paragraph 9 above or (2) at any time following the fifth anniversary of the last Audit Process request.

If the Lease is assigned, Lessor may require the Assignee to set up a Reserve Account as described in Paragraph 15.1(b) above.

18. CONFORMANCE WITH LAWS AND REGULATIONS

Lessee agrees that, in all activities on or in connection with the Leased Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it will abide by and conform to all Applicable Laws. Said Applicable Laws shall include, but are not limited to those prescribed by the San Diego Unified Port District Act; any ordinances of the city in which the Leased Premises are located, including the Building Code thereof; any ordinances and general rules of Lessor, including tariffs; 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. In particular and without limitation, Lessee shall have the sole and exclusive obligation and responsibility to comply with the requirements of: (i) Article 10 of Lessor Code entitled "Stormwater Management and

Discharge Control," and (ii) the Americans With Disabilities Act of 1990, as amended, including but not limited to regulations promulgated thereunder, and Lessor shall have no such obligations or responsibilities as to the Leased Premises.

Lessee acknowledges that on December 10, 2013 Lessor adopted a climate action plan, a copy of which is available on-line at <http://www.portofsandiego.org/environment/3414-port-of-san-diego-adopts-climate-action-plan.html>, (the "CAP") and that the CAP is a framework document which provides as one of its goals the adoption by Lessor of a Sustainable Leasing Policy (the "SLP"). Lessee also acknowledges that Lessor desires that leases and lease amendments that it enters into prior to adoption of a SLP include specific operations requirements which reflect the goals of the CAP and which are likely to be the types of operational requirements required under the SLP when adopted. At any time during the term of this lease, if an amendment to this Lease is required, Lessee and Lessor shall negotiate an amendment for the purpose of adding as a Tenant obligation the adoption, implementation and monitoring of specific operational requirements of the type generally described in the CAP and consistent with the objectives of the CAP provided, however, such requirements must be commercially reasonable and feasible and consistent with both the CAP and the allowable uses and terms and conditions of this Lease. The requirements agreed to by Lessor and Lessee may by their terms include a procedure for the review of the sustainability measures including their effectiveness and actual costs and, in connection with such review, Lessor may agree to modify such measures in its reasonable discretion. Such requirements will be distinct and separate from any environmental mitigation required under CEQA or other laws, rules, or regulations. Following the adoption of the SLP, Lessee agrees that the provisions of the SLP will be fully incorporated into the terms of any future amendments to this Lease.

21. HOLD HARMLESS:

Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor and its officials, officers, representatives, agents, and employees (collectively "Indemnitees") for any and all liability, claims, actions, losses, fines, penalties, judgments, damages, proceedings, orders, directives, costs, causes of action, suits, rights, expenses, provisional relief, fees (including reasonable attorneys' fees), or demands, including, without limitation, any and all claims for compensation, reimbursement, or contributions whatsoever, (collectively, "Claims") arising directly or indirectly out of the obligations undertaken in connection with this Lease, or Lessee's use, occupancy, possession or operation of the Leased Premises, except claims or litigation arising through the sole negligence or willful misconduct of Lessor. It is the intent of this Paragraph that Lessee indemnify and hold harmless Lessor and Indemnitees for any actions of Lessee or Lessor, including duties that may be legally delegated to Lessee or to third parties, except for those arising out of the sole negligence or willful misconduct of Lessor. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Lessor for liabilities arising out of Lessee's use, occupancy, possession or operation of the Leased Premises, or arising from any defect in any part of the Leased Premises.

In the event Lessee proposes a Redevelopment Project to Lessor, Lessee agrees to indemnify and hold harmless Lessor and Indemnitees from any and all Claims arising directly or indirectly out of Lessor's review, analysis or approval(s) related to the Redevelopment Project, including, but not limited to, all specifications, plans, and reports,

any third party challenges to an environmental document, mitigation and/or monitoring plan, or determinations conducted and adopted pursuant to CEQA for the Redevelopment Project, any third party challenges to any Lessor issued permits and other approvals, including, but not limited to, CDPs, PMPAs, concept design, working drawings, subleases, assignments and assumption agreements, letter agreements, memorandum of understanding, operating contracts, estoppel certificates, and any and all amendments or addendum to the same, and/ Lessee's development and operation of such Redevelopment Project.

In the event such Claims arise, Lessor may, in its sole and absolute discretion, participate in the defense of any Claims and the Lessee shall reimburse Lessor for said defense, including, but not limited to reimbursement for outside attorneys' and experts' fees and other costs. The Lessor's participation shall not relieve the Lessee of any of its obligations under this Paragraph 21. In the Lessor's sole and absolute discretion, the counsel of the Lessor or its Indemnitees may also jointly represent the Lessee. The Lessor shall promptly notify the Lessee of its receipt of any Claims.

25. INSURANCE:

Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policies for said insurance shall, as a minimum, provide the following:

(a) Forms of Coverage

- (1) "OCCURRENCE" form Commercial General Liability covering the Leased Premises, operations, and contractual liability assumed by Lessee in this Lease 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. The general aggregate shall be Ten Million Dollars (\$10,000,000) unless a Five Million Dollars (\$5,000,000) per location aggregate limit is provided separate by endorsement.

If alcoholic beverages are served or sold on the Leased Premises, Liquor Liability coverage in the amount of not less than Two Million Dollars (\$2,000,000) shall be obtained. If no alcoholic beverages are served or sold on the Leased Premises, the proof of insurance shall so state.

- (2) All Risk Property Coverage, including water damage and debris cleanup provisions, in an amount not less than the full replacement value of all improvements located within the Leased Premises without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include business interruption and extra expense for full recovery of the net profits and continuing expenses (including the rent to Lessor) for

the duration of the period of restoration, a vandalism and malicious mischief endorsement, and sprinkler leakage coverage. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of Lessor. It is agreed that any insurance proceeds in excess of One-Hundred Thousand Dollars (\$100,000) resulting from a loss under said policies shall be payable jointly to Lessor and Lessee to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Leased Premises and any damaged or destroyed improvements located thereon. However, if there is a consented-to-encumbrance held by a Financial Institution (as defined in Paragraph 8) encumbering the leasehold, then all proceeds from such policies of insurance shall be payable in trust with safeguards reasonably acceptable to Lessor to the Consented-to-Lender which is a Financial Institution (as defined in Paragraph 8) to be disbursed for the repair and restoration of the Premises (or, if there is no Consented-to-Lender, or the Consented-to-Lender declines to hold and disburse such proceeds, to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, which proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the parties, or if the parties fail to agree, then in the bank's regular passbook savings account). All interest shall be added to the trust funds to be disbursed with the principal. All proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of Lessor so as to ensure the application of such proceeds in compliance with this Lease.

- (i) In the event that this Lease is terminated with consent of both Lessor and said mortgagee or beneficiary, and the improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability, by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust. Furthermore, said mortgagee or beneficiary shall hold the balance thereof to restore the Leased Premises to a neat and clean condition. Any remaining funds shall lastly be paid to Lessor and Lessee, as their interests may appear.
- (3) In the event underground storage tanks are located on the Leased Premises, Lessee is required to comply with Code of Federal Regulations, Title 40, Chapter I, Subchapter H or Title 23, Division 3,

Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Lessee is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Lessee shall provide Lessor with a certified copy of its Certification of Financial Responsibility. If Lessee's program for financial responsibility requires insurance, then Lessee's policy(ies) shall name Lessor and its officers, employees, and agents as additional insureds, and all other terms of Subparagraph (b), below, shall apply. Should Lessee change its financial assurance mechanisms, Lessee shall immediately provide Lessor with a certified copy of its revised Certification of Financial Responsibility.

- (4) Marina operator liability insurance, in the amount of not less than Two Million Dollars (\$2,000,000).

(b) General Requirements

- (1) All required insurance shall be in force the first day of the term of this Lease, and shall be maintained continuously in force throughout the term of this Lease. In addition, the cost of all required insurance shall be borne by Lessee. During the entire term of this Lease, Lessee shall provide Lessor with certificates, in a form acceptable to Lessor, evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Paragraph. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the forgoing, Lessor reserves the right to require complete, certified copies of all required policies at any time.
- (2) All liability insurance policies shall name, or be endorsed to name Lessor and its officers, employees, and agents as additional insureds and protect Lessor and its officers, employees, and agents against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in coverage or in limits, except after Lessee has furnished Lessor with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that Lessee's insurance is primary and not excess or contributory to any insurance issued in the name of Lessor. Further, all insurance companies must be satisfactory to Lessor.
- (3) Any deductibles or self-insured retentions must be declared and acceptable to Lessor. If the deductibles or self-insured retentions are

unacceptable to Lessor, then Lessee shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Lessor and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- (4) Lessor shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and/or members of the public using the Leased Premises or using services connected with Lessee's use or occupancy of the Leased Premises, Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.
- (5) Lessor may require that Lessee obtain and maintain additional or increased insurance from time to time, if commercially reasonable. Lessor shall notify Lessee in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Lessee's then-existing insurance carrier, Lessee shall deposit certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then-existing insurance carrier, Lessee shall deposit certificates evidencing acceptable insurance policies with Lessor, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event Lessee fails to deposit insurance certificates as required herein, this Lease shall be in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Lessee agrees that if Lessee does not take out and maintain such insurance or furnish Lessor with renewals or binders in a timely manner, Lessor may (but shall not be required to), procure said insurance on Lessee's behalf and charge Lessee the cost thereof, which amount shall be payable by Lessee within thirty (30) days of written demand with interest at the Default Rate from the date such sums are expended. For purposes of this Subparagraph 25(b)(5), "Default Rate" shall mean an annual rate equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as Lessor and Lessee shall reasonably agree upon

if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.

- (6) If Lessee fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, Lessor has the right to declare this Lease in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.
- (7) The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease, or with the use or occupancy of the Leased Premises.
- (8) Lessee agrees not to use the Leased Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance Lessor may have on the Leased Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Leased Premises or adjoining premises. Lessee further agrees not to keep on the Leased Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Leased Premises. Lessee shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Leased Premises.

26. COMPLIANCE WITH PREVAILING WAGE LAWS:

Lessee acknowledges and agrees that:

- 1.1 Lessor makes no representation concerning the applicability of any wage laws, including, but not limited to California Labor Code §§ 1720 through 1815, et seq. (PWL) To the extent Lessee intends to perform any construction, alteration, demolition, installation or repair work (Construction) on the Premises, Lessee warrants and acknowledges that: (1) Lessor is not paying for or subsidizing, in whole or in part, any such Construction; and (2) Lessee shall make its own determination regarding the applicability of any PWL to such Construction. Lessee assumes any and all risk in connection with the application of PWL to any Construction performed on the Premises on behalf of Lessee. Lessee agrees that Lessor may direct Lessee to seek a determination from the California State Department of Industrial Relations as to the applicability of PWL for any Construction performed pursuant to the Lease, and that Lessor shall have the ability to fully participate in that process at no out of pocket expense to the Lessor. As required by Section 18 Lessee acknowledges its obligation to pay any and all costs including but not limited

to wages, interest, penalties and/or attorneys' fees and costs related to or arising out of PWL compliance.

1.2 Lessee's violations of PWL may constitute an Event of Default under this Lease.

36. NOTICES

All notices provided for by this Lease or by law to be given or served upon Lessor or Lessee shall be in writing and: (i) personally served upon Lessor or Lessee, or any person hereafter authorized by either party in writing to receive such notice, or (ii) served by certified letter addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party.

To Lessor

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

To Lessee

Cahuenga Associates II
600 6th Street South
Kirkland, WA 98033

Should any consented-to assignee, consented-to purchaser, or Consented-to-Lender notify Lessor in writing of its desire to receive notices, such party shall also be personally served, or served by certified letter at such appropriate address designated in writing by the respective party.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

I. Paragraph 45(e) is hereby deleted in its entirety and replaced with the following Paragraph 45(e) in its place:

45. (e). Release and Waiver.

(1) Release. Except to the extent of Claims (as defined below) against Lessor arising from any breach by Lessor of its covenants and obligations expressly provided in this Lease, Lessee, on behalf of Lessee, its successors and assigns, hereby fully and forever releases, acquits and discharges Lessor of and from, and hereby fully forever waives:

Any and all Claims, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that Lessee or any of Lessee's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (A) any act or omission of Lessor (or any person acting for or on behalf of Lessor or for whose conduct Lessor may be liable), whether or not such act be the active, passive or sole negligence of Lessor, in connection with prior

ownership, maintenance, operation or use of the Leased Premises; (B) any condition of environmental contamination or pollution at the Leased Premises (including, without limitation, the contamination or pollution of any soils, subsoil media, surface waters or groundwaters at the Leased Premises); (C) to the extent not already included in clause (B) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Leased Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Leased Premises or into any soils, subsoils, surface waters or groundwaters at the Leased Premises); (D) the violation of or noncompliance with, any Environmental Requirement or other Applicable Law now or hereafter in effect, however and whenever occurring; (E) the condition of the soil at the Leased Premises; (F) the condition of any Improvements located on the Leased Premises including, without limitation, the structural integrity and seismic compliance of such Improvements; (G) any matters which would be shown on an accurate ALTA land survey of the Leased Premises (including, without limitation, all existing easements and encroachments, if any); (H) all Applicable Laws now or hereafter in effect; (I) matters which would be apparent from a visual inspection of the Leased Premises; or (J) to the extent not already covered by any of the foregoing clauses (A) through (I) above, the use, maintenance, development, construction, ownership or operation of the Leased Premises by Lessor or any predecessor(s)-in-interest in the Leased Premises of Lessor.

(2) Waiver of Civil Code Section 1542. With respect to all releases made by Lessee under or pursuant to the Lease, as amended herein, Lessee hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor."

Lessee: _____

J. Paragraph 46 is hereby deleted in its entirety and replaced with the following Paragraph 46 in its place:

46. DISPUTE RESOLUTION:

Except for (i) a dispute or disagreement as to the amount of rent that Lessee is to pay Lessor or (ii) a default in the payment of rent, all other disputes or disagreements between or among the parties arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Lease, such parties shall first attempt to

resolve the dispute informally. In the event the dispute is not resolved informally, prior to and as a precondition to the initiation of any legal action or proceeding, the parties shall refer the dispute to mediation before a retired State or Federal judge mutually selected by the parties. The dispute shall be mediated through informal, nonbinding joint conferences or separate caucuses with an impartial third party mediator who will seek to guide the parties to a consensual resolution of the dispute. The mediation proceeding shall be conducted within thirty (30) days (or any mutually agreed longer period) after referral, and shall continue until any party involved concludes, in good faith, that there is no reasonable possibility of resolving the dispute without resort to a legal action or proceeding. All costs of the mediation shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation. In the event the parties are unable to resolve the dispute through mediation, in addition to any other rights or remedies, any party may institute a legal action.

K. Said Lease is hereby amended by adding Paragraph 48.1 "Compliance with Employment and Labor Requirements" as follows:

48.1. COMPLIANCE WITH EMPLOYMENT AND LABOR REQUIREMENTS

Lessee shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, regarding employment and labor practices. Lessee shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize. Additionally, Lessee shall file a "statement of compliance" providing that Lessee shall comply with the above-referenced state and federal labor employment laws. Provided, however, Lessee is only required to file the statement when the average annual employment exceeds fifty (50) employees.

L. Said Lease is hereby amended by adding Paragraph 48.2 "Joint and Several Liability" as follows:

48.2 JOINT AND SEVERAL LIABILITY:

If Lessee, as a party to this Lease, is a partnership; joint venture; or is comprised of more than one party or entity, or a combination thereof; the obligations imposed on Lessee under this Lease shall be joint and several, and each general partner, joint venturer, party or entity of Lessee shall be jointly and severally liable for said obligations. Furthermore, nothing herein shall be deemed or construed as creating a partnership or joint venture between Lessor and Lessee, or between Lessor and any other entity or party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, or any other party or entity.

M. Said Lease is hereby amended by adding Paragraph 48.3 "USA Patriot Act" as follows:

48.3 USA PATRIOT ACT

Lessee represents and warrants that (i) Lessee and each person or entity owning an

interest in Lessee is not now, and shall not during the term of this Lease become, a person or entity with whom Lessor or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("Prohibited Persons") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list pursuant to any authorizing statute, executive order or regulation, nor a person or entity (also, a "Prohibited Person") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Lessee constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person, (iii) no Prohibited Person has any interest of any nature whatsoever in Lessee (whether directly or indirectly), (iv) none of the funds of Lessee have been derived from any unlawful activity with the result that the investment in Lessee is prohibited by law or that the Lease is in violation of law, and (v) Lessee has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

(ABSTRACT ON FOLLOWING PAGE)

DRAFT

ABSTRACT OF LEASE AMENDMENT NO. 2

ABSTRACT OF LEASE AMENDMENT NO. 2: ("Abstract") This is the final Paragraph and Abstract of Lease Amendment No. 2, dated _____, 20____, between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, Lessor, and CAHUENGA ASSOCIATES II, a California limited partnership, Lessee, concerning the Leased Premises described in Exhibits "A" and "B," attached hereto and by this reference made a part hereof.

For good and adequate consideration, Lessor leases the Leased Premises to Lessee, and Lessee hires them from Lessor, for the term and on the provisions contained in the Lease, and this Lease Amendment No. 2, including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Lessor in each instance, all as more specifically set forth in said Lease, as amended by this Lease Amendment No. 2, which are incorporated in this Abstract by this reference.

The term is forty (40) years, beginning July 1, 2004, and ending on June 30, 2044. This Lease Amendment No. 2 shall become effective as of _____, 2016.

This Abstract is not a complete summary of the Lease Amendment No. 2. Provisions in this Abstract shall not be used in interpreting the Lease Amendment No. 2 provisions. In the event of conflict between this Abstract and other parts of the Lease Amendment No. 2, the other parts shall control. Execution hereof constitutes execution of the Lease Amendment No. 2 itself.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

By: _____
Deputy

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Shaun Sumner
Assistant Vice President
Real Estate Development

**CAHUENGA ASSOCIATES II,
a California limited partnership**

By: Daytona Hilton Investors, L.P.
a Delaware limited partnership
its General Partner

By: DHI Resort Corp.
a Delaware corporation
its General Partner

By: _____
Patrick R. Colee, President

(FOR USE BY CAHUENGA ASSOCIATES II)

STATE OF WASHINGTON)
COUNTY OF KING)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMPRINT
OF SIGNER

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RIGHT THUMPRINT
OF SIGNER

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(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

----- **OPTIONAL** -----

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMPRINT
OF SIGNER

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Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMPRINT
OF SIGNER

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**Legal Description for
CAHUENGA ASSOCIATES, LLC
TIDELAND LEASE
Parcel / Drawing No. 001-032
Within Corporate Limits of San Diego**

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

Commencing at a 3" diameter brass disk monument stamped "S.D.U.P.D.-003" as shown on Record Of Survey Map No. 16668, filed in the Office of the San Diego County Recorder on July 25, 2000; thence leaving said monument North 00°39'12" West a distance of 539.83 feet (calc.) to the TRUE POINT OF BEGINNING; thence South 46°07'37" West a distance of 550.02 feet; thence South 43°52'23" East a distance of 10.00 feet; thence South 44°28'55" West a distance of 7.00 feet; thence North 47°10'14" West a distance of 10.00 feet; thence South 42°49'46" West a distance of 309.55 feet; thence South 41°17'31" West a distance of 360.28 feet; thence South 48°42'29" East a distance of 10.00 feet; thence South 41°17'31" West a distance of 7.00 feet; thence North 48°42'29" West a distance of 10.00 feet; thence South 41°17'31" West a distance of 350.28 feet; thence South 40°10'01" West a distance of 98.00 feet; thence South 46°33'13" West a distance of 60.77 feet; thence South 43°26'47" East a distance of 10.00 feet; thence South 46°33'13" West a distance of 7.00 feet; thence North 43°26'47" West a distance of 10.00 feet; thence South 46°33'13" West a distance of 70.77 feet; thence South 74°25'56" West a distance of 210.37 feet; thence South 79°36'54" West a distance of 145.13 feet; thence South 87°16'45" West a distance of 96.25 feet; thence North 00°01'12" West a distance of 613.00 feet to a point of intersection with the U.S. Pierhead Line, as said U. S. Pierhead 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 along said U.S. Pierhead Line North 47°27'48" East a distance of 1,785.14 feet; thence South 42°32'12" East a distance of 556.08 feet to the TRUE POINT OF BEGINNING, containing 1,235,218 square feet or 28.36 acres of water area.

The above described water area is delineated on the San Diego Unified Port District Drawing No. 001-032, dated 22 February 2007 and made a part of this agreement.

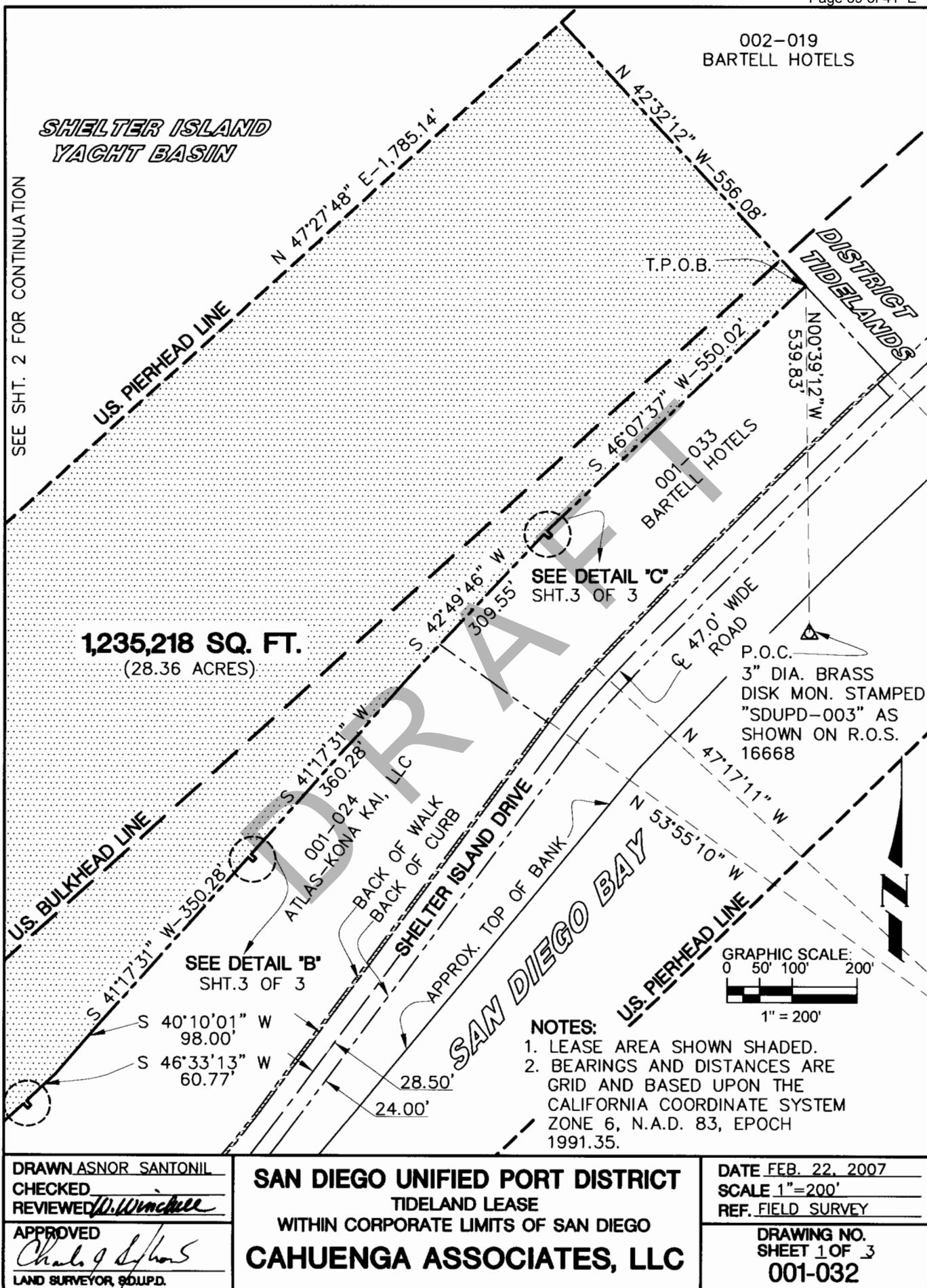
All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.

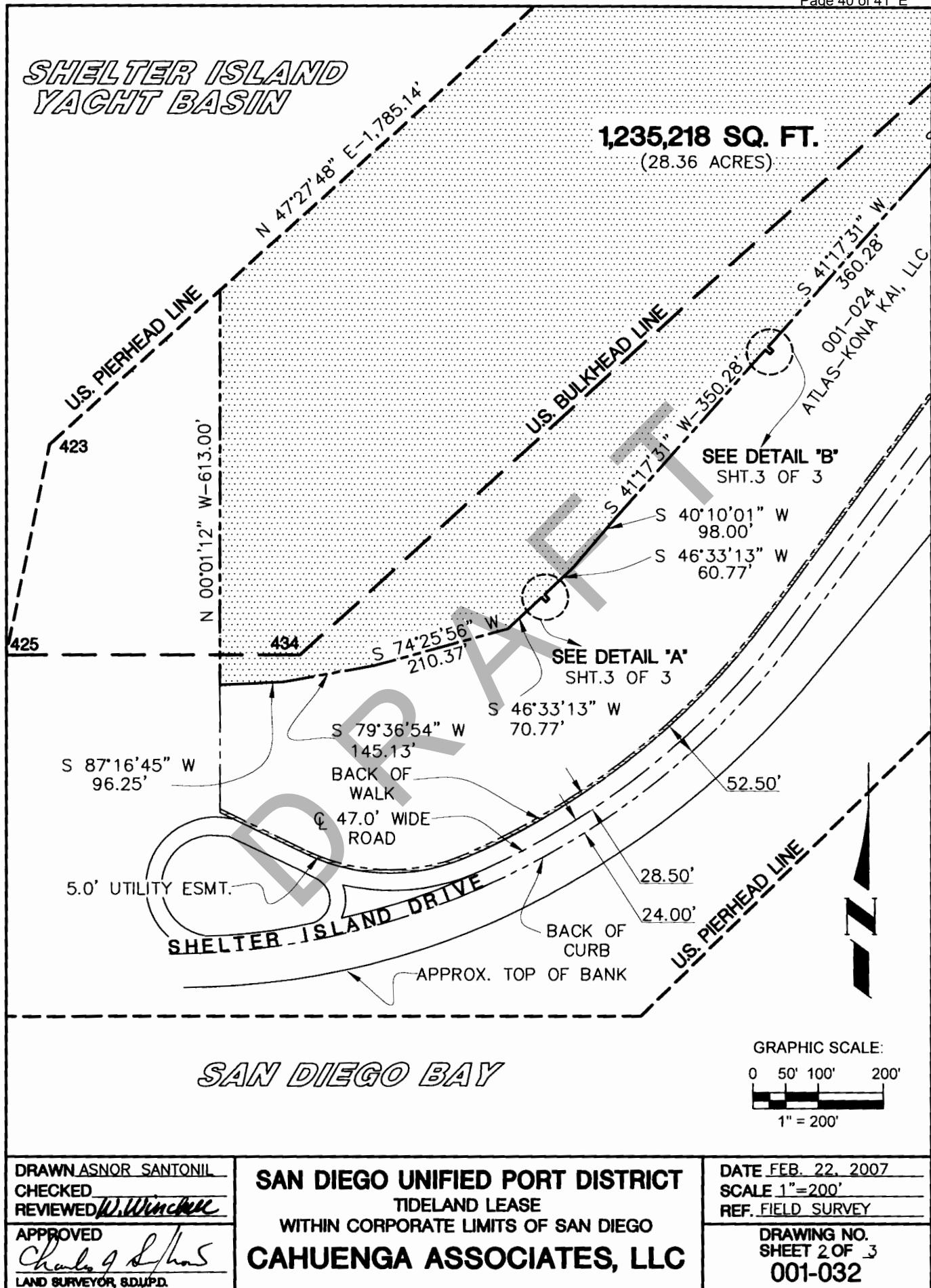
Charles J. Sefkow 2-22-07
Charles J. Sefkow Date
L.S. 7876 Expires 31 Dec. 2008
Land Surveyor
San Diego Unified Port District

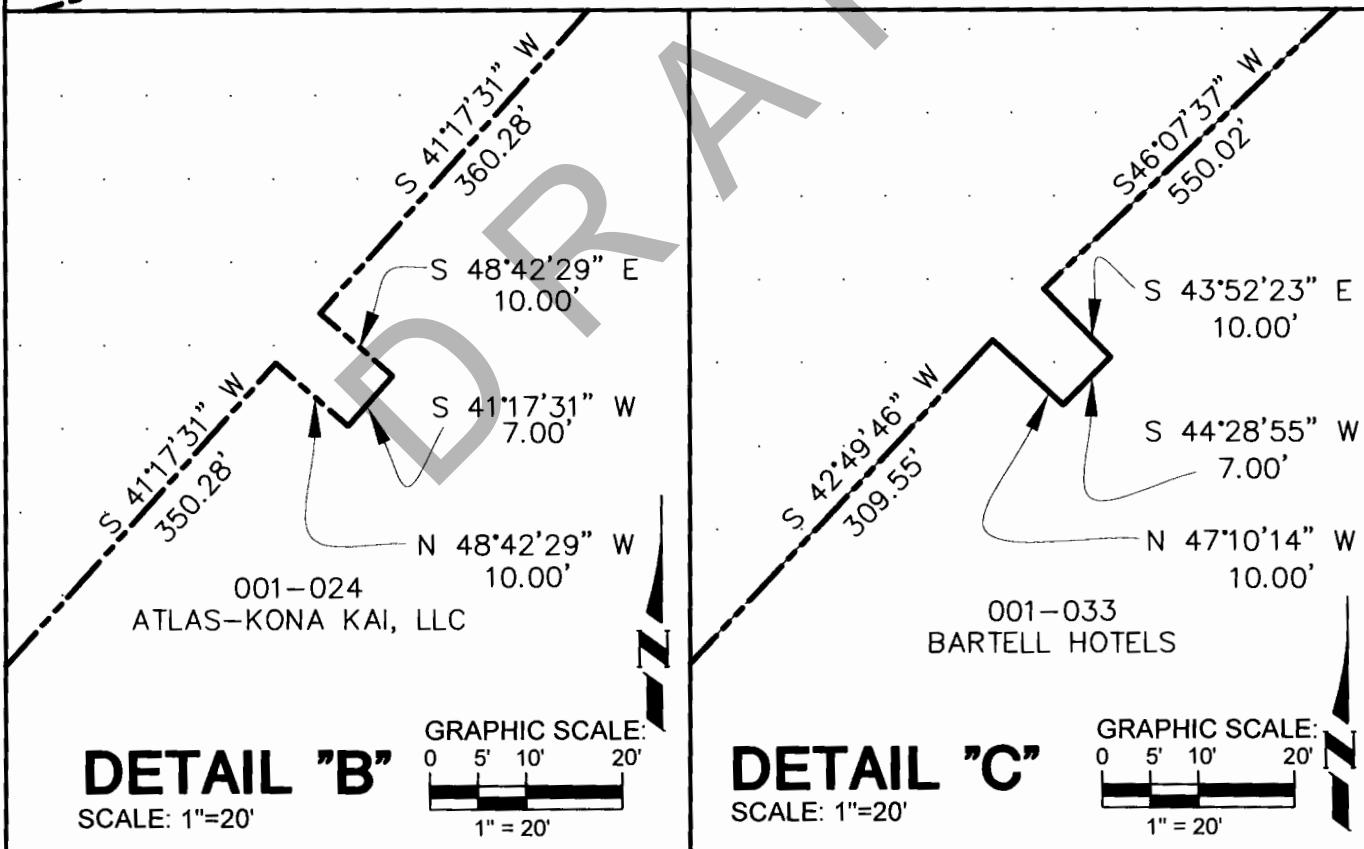
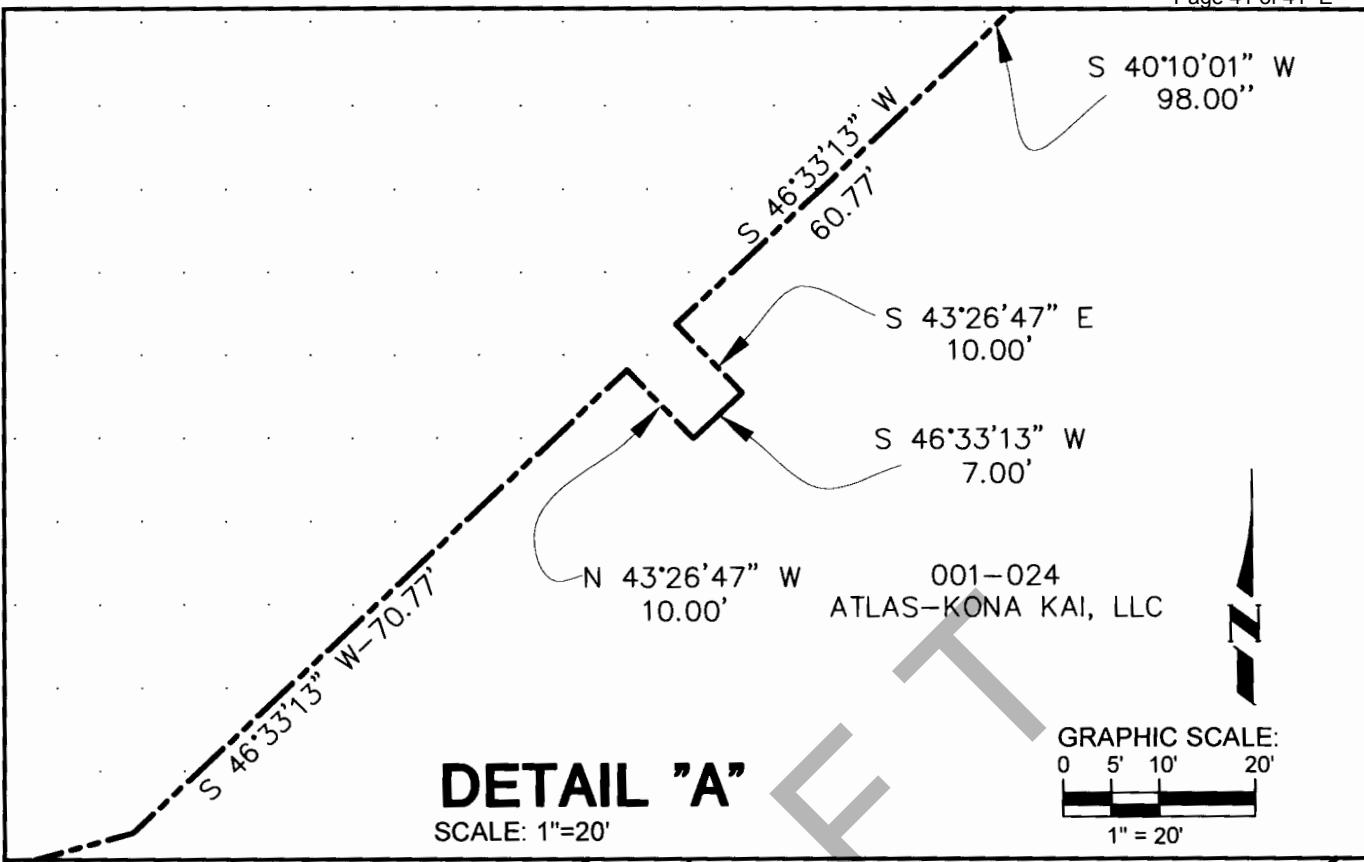


DRA

Sheet 2 of 2







DRAWN AS NOR SANTONIL
CHECKED W. Winchell
REVIEWED W. Winchell
APPROVED Charles J. Sylvers
LAND SURVEYOR, S.D.U.P.D.

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF SAN DIEGO
CAHUENGA ASSOCIATES, LLC

DATE FEB. 22, 2007
SCALE 1"=20'
REF. FIELD SURVEY
DRAWING NO.
SHEET 3 OF 3
001-032

DEVSERV\REMIN\E001\001-032