

**Attachment C to Agenda File No. 2017- 0361**

**AGREEMENT FOR AMENDMENT OF LEASE  
AMENDMENT NO. 2**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and SILVER GATE YACHT CLUB, a California non-profit corporation hereinafter called "Lessee," WITNESSETH:

WHEREAS, Lessor and Lessee, on the 3rd day of March 2009,, entered into a Lease of certain tidelands in the city of San Diego, California, which Lease is on file in the Office of the Clerk of Lessor bearing Document No. 54626; and

WHEREAS, Lessor and SILVER GATE YACHT CLUB, on the 8<sup>th</sup> day of May, 2012 entered into an Agreement for Amendment of Lease, Amendment No. 1, which Amendment is on file in the Office of the Clerk of Lessor bearing Document No. 58985; and

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

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

**A. Paragraph 3(c) is deleted in its entirety and replaced with the following:**

The rent for each successive Rental Period, commencing with the Rental Period that begins January 1, 2017, shall consist of a minimum amount per year, hereinafter "Minimum Annual Rent," or the cumulative total of the percentage rents per year, whichever is greater. The percentage rents shall consist of a single percentage (as set forth below) as multiplied times Lessee's gross income for certain services and uses permitted under the terms of this Lease plus 20% multiplied times Lessee's gross income from any and all services or uses not permitted under the terms of the Lease. The Minimum Annual Rent and the percentage rents for each successive Rental Period commencing with the Rental Period that begins January 1, 2017, shall be adjusted as follows:

## (1) Percentage Rent

January 1, 2017 - December 31, 2026	11.0%
January 1, 2027 - December 31, 2036	11.5%
January 1, 2037 - December 31, 2046	11.75%
January 1, 2047 – March 31, 2049	12.0%

## (2) Minimum Annual Rent to be set each rental period shall be the greater of:

- a. the Minimum Annual Rent in effect immediately prior to the rental period, or
- b. 75% of the average gross income subject to rent during the previous three years ending three months prior to the new rental period, multiplied by the new percentage rent. No other criteria, including, but not limited to, Consumer Price Indices, will be used to determine the Minimum Annual Rent, regardless of whether or not any such criteria is in the present Lease.

**B. Paragraph 3(i) of the Lease is amended to add the following as the second to last paragraph with the remainder unchanged:**

- 3(i) In addition, effective January 1, 2017, only to the extent not already excluded from gross income pursuant to the above, gross income shall not include any amounts set aside by Lessee for dredging projects (including project management, project execution, and disposal associated with dredging) within the Leased Premises or the debt on such dredging projects, whether such amounts are collected as special assessments, dues, percentage of slip rents, or otherwise.

**C. A new Paragraph 3(j) shall be added to the Lease and shall state as follows:**

- 3(j) Commencing January 1, 2017 through the end of the Lease, the capital improvements in Paragraph 3(i) of the Lease are as defined below:

Capital improvements under this subparagraph shall only include expenditures that usually increase the value (efficiency, productivity, or use utility) or the life expectancy of the improvements; are not recurring in nature; and exceed: (a) \$20,000 or more, or exceed (b) 10% of the value of the improvements or more. Deferred maintenance and expenditures for repairs to keep the existing improvements in good condition are

specifically excluded. Items that separately would not qualify under this subparagraph may be considered collectively as part of an overall plan of renovation or redevelopment. Capital improvements under this subparagraph may include public art expenditures that otherwise would not qualify under this subparagraph. Non-realty property may be given consideration by the District, in its sole and absolute discretion, depending on property type. An example of this would be the purchase by industrial tenants of specialized fixtures or equipment that are necessary for its operation. The cost of environmental cleanup is specifically excluded as a capital improvement under this subparagraph.

**D. Paragraph 3.1 is deleted in its entirety and replaced with the following:**

3.1 Intentionally Omitted. Any references in the Lease to Paragraph 3.1 shall be disregarded.

**E. Paragraph 3.2 is amended to add the following to the very beginning of the Paragraph with the remainder unchanged:**

3.2 The following shall only apply to a Rent Review in the event that the parties to a consented-to assignment or sublease cannot agree to an amount that is equal to the market rent in accordance with the concluding paragraph of Paragraph 9.

**F. New Paragraph 15.2 DREDGING is hereby added to read as follows:**

15.2 DREDGING: Lessor shall not be responsible for any dredging of the Leased Premises whether to maintain navigability, suitability for Lessee's use, safety, health, or sanitary condition, for the benefit of the public or any third party, or for any other reason whatsoever. Without limitation, any claims, judgements, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands alleging that Lessor is obligated or responsible to dredge, or has failed to dredge, any portion of the Leased Premises shall trigger Lessee's obligation to hold harmless and indemnify Lessor in accordance with Paragraph 21.

**G. In case of any conflict between the provisions of this Amendment and other sections of the Lease, the provisions of this Amendment shall prevail.**

**H. All other provisions and conditions of the Lease shall remain the same except as adjusted herein.**

(ABSTRACT ON FOLLOWING PAGE)



**Legal Description for  
SILVER GATE YACHT CLUB  
TIDELAND LEASE  
Parcel / Drawing No 002-018  
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:

**PARCEL NO. 1 LAND AREA**

Commencing at a 3" diameter brass disk monument stamped "SDUPD-033" as shown on R.O.S. No. 17055, filed in the Office of the San Diego County Recorder June 29, 2001; thence leaving said monument South 88°00'20" West a distance of 254.24 feet (calculated) to the TRUE POINT OF BEGINNING of Parcel No. 1; said point being the beginning of a non-tangent curve concave to the northwest and having a radius of 3,530.62 feet; thence southwesterly along the arc of said curve through a central angle of 6°05'45" an arc distance of 375.63 feet; thence North 42°32'12" West a distance of 160.01 feet; thence North 48°13'59" East a distance of 400.04 feet; thence South 41°46'01" East a distance of 140.04 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 61,342 square feet or 1.41 acres of tidelands area.

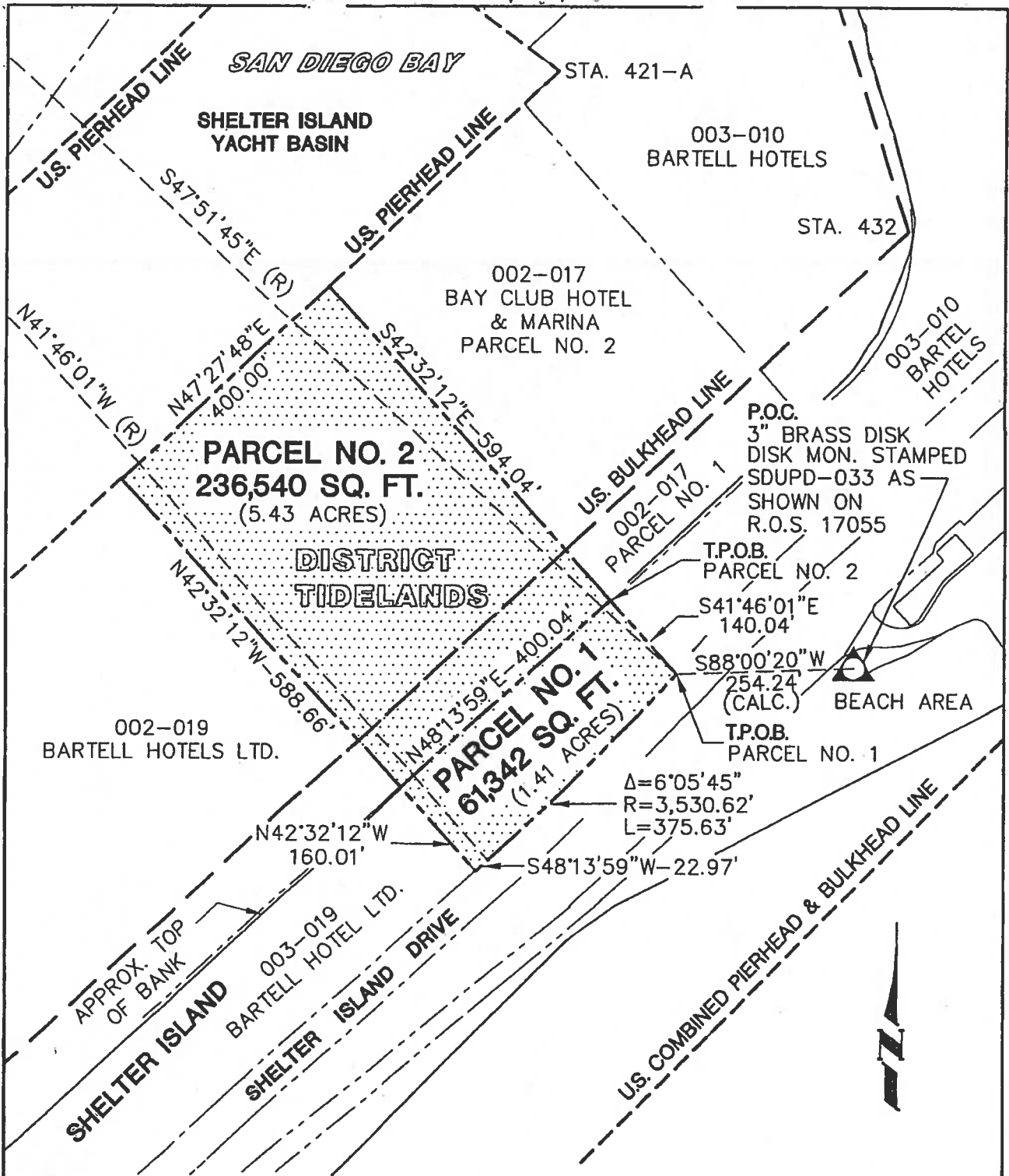
**PARCEL NO. 2 WATER AREA**

Commencing at the True Point of Beginning of Parcel No. 1; thence North 41°46'01" West a distance of 140.04 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence South 48°13'59" West a distance of 400.04 feet; thence North 42°32'12" West a distance of 588.66 feet to a point on U.S. Pierhead Line, as said U.S. Pierhead Line is now established for the Bay of San Diego, and delineated on the map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 425.1", Approved by the Secretary of the Army. August 18, 1965, 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 400.00 feet; thence leaving said U.S. Pierhead Line South 42°32'12" East a distance of 594.04 feet to the TRUE POINT OF BEGINNING of PARCEL NO. 2, containing 236,540 square feet or 5.40 acres of water covered area.

Sheet 1 of 2

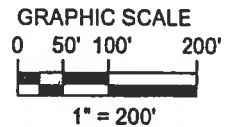
**EXHIBIT "A"**





**NOTES:**

1. LEASE AREAS SHOWN SHADED.
2. BEARINGS AND DISTANCES ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6, N.A.D. 83, EPOCH 1991.35.



DRAWN JFD  
 CHECKED A. SANTONIL  
 REVIEWED William W. Winchell  
 APPROVED  
  
 LAND SURVEYOR, S.D.U.P.D.

**SAN DIEGO UNIFIED PORT DISTRICT**  
 TIDELAND LEASE  
 WITHIN CORPORATE LIMITS OF SAN DIEGO  
**SILVER GATE YACHT CLUB**

DATE AUGUST 1, 2006  
 SCALE 1"=200'  
 REF. FIELD SURVEY  
 DRAWING NO.  
 SHEET 1 OF 1  
**002-018**

EXHIBIT "B"

DEVSERV\REM\002\002-018\002-018\_080106.DWG

(FOR USE BY \_\_\_\_\_)

STATE OF CALIFORNIA)  
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name \_\_\_\_\_

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

Signer is Representing: \_\_\_\_\_

\_\_\_\_\_  
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\_\_\_\_\_  
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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: \_\_\_\_\_

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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

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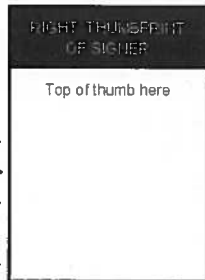
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- Individual
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- Partner --  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

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Signer's Name \_\_\_\_\_

- Individual
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- Partner --  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

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