

Attachment C to Agenda File No. 2015-1686

SAN DIEGO UNIFIED PORT DISTRICT

LEASE TO

FOR PROPERTY LOCATED AT LANE FIELD SOUTH
LOCATED SOUTH OF THE PROLONGATION OF "C" STREET
BETWEEN PACIFIC HIGHWAY AND NORTH HARBOR DRIVE

SAN DIEGO, CALIFORNIA

FOR SIXTY-SIX (66) YEARS

COMMENCING __ (to be inserted when known) __, 201__

AND ENDING __ (to be inserted when known) _____

TABLE OF CONTENTS

<u>Paragraph/Exhibit</u>	<u>Page Number(s)</u>
1. TERM	3
2. USE	3
2.1. UNAUTHORIZED USE CHARGE	4
3. RENT	4
3.1. COST OF LIVING RENT ADJUSTMENTS	17
3.2. RENT REVIEW	18
3.3. LESSOR EXIT FEE	24
4. IMPROVEMENTS	25
5. CONSTRUCTION OF IMPROVEMENTS	27
5.1. LESSOR'S SETBACK PARK/PLAZA	30
6. TITLE TO IMPROVEMENTS	31
7. LIENS	32
8. LEASE ENCUMBRANCE	32
8.1. APPROVED PLEDGEE PROTECTIONS	41
9. ASSIGNMENT - SUBLEASE	43
10. DEFAULTS AND REMEDIES	49
11. BANKRUPTCY (INTENTIONALLY DELETED)	55
12. EMINENT DOMAIN	55
13. TERMINATION OF PRIOR AGREEMENT(S)	57
14. USE OBLIGATION	57
15. MAINTENANCE AND REPAIR	57
16. PERFORMANCE BOND	60
17. TAXES AND UTILITIES	60
18. CONFORMANCE WITH LAWS AND REGULATIONS	60
19. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION	61
20. PARTIAL INVALIDITY	61
21. HOLD HARMLESS	61
22. SUCCESSORS IN INTEREST	62
23. EASEMENTS	62
24. TITLE OF LESSOR	62
25. INSURANCE	63
26. COMPLIANCE WITH PREVAILING WAGE LAW	67
27. WARRANTIES-GUARANTEES-COVENANTS	68
28. DAMAGE TO OR DESTRUCTION OF LEASED PREMISES	68
29. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION	68
30. PEACEABLE SURRENDER	68
31. WAIVER	69
32. HOLDOVER	69
33. PARAGRAPH HEADINGS	69
34. ENTIRE UNDERSTANDING	69
35. TIME IS OF THE ESSENCE	70
36. NOTICES	70
37. REMOVAL OF MATERIALS	70
38. WASTE/NUISANCE	71
39. NUMBER AND GENDER	71

40.	APPLICABLE LAW.....	71
41.	ATTORNEY FEES	71
42.	HAZARDOUS MATERIALS.....	72
43.	STORAGE TANKS.....	75
44.	ENVIRONMENTAL DISCLOSURES	77
45.	AS-IS LEASE AND WAIVERS	78
46.	JOINT AND SEVERAL LIABILITY/NO JOINT VENTURE	81
47.	SECURITY DEPOSIT	81
48.	DISPUTE RESOLUTION.....	81
49.	COMPLIANCE WITH EMPLOYMENT AND LABOR REQUIREMENTS.....	82
50.	LESSOR ENCUMBRANCE OF LEASED FEE INTEREST	82
51.	ESTOPPEL CERTIFICATES.....	83
52.	COUNTERPARTS.....	83
53.	MEMORANDUM OF LEASE	84

Exhibit "A" Legal Description

Exhibit "B" Plat Map

Exhibit "C" Lane Field Coastal Development Permit

Exhibit "D" California Water Quality Board No Further Action Letter

Exhibit "E" Lessor's Broadway Setback Plat Map

Exhibit "F" Intentionally Deleted

Exhibit "G" Lessor's Wire Transfer Instructions

Exhibit "H" Tenant Improvement Policy

Exhibit "I" Lane Field Park Exhibit

Guaranty

LEASE

THIS LEASE, made and entered into this _____ day of _____, 201__, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter "Lessor," and, _____ hereinafter "Lessee," WITNESSETH:

Lessor, for the consideration hereinafter set forth, hereby leases to Lessee for the term and upon the conditions hereinafter set forth, a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

Approximately 69,278 square feet of land area located south of the southernmost edge of the prolongation of "C" Street, on the north side of Broadway between North Harbor Drive and Pacific Highway in the City of San Diego, California, more particularly delineated on Drawing No. 018-002 dated April, 2013, attached hereto as Exhibits "A" and "B" and by this reference made a part hereof hereinafter "Leased Premises".

TO HAVE AND TO HOLD said Leased Premises for the term of the Lease and upon the conditions as follows:

1. TERM: The term of the Lease shall be for a period of Sixty-Six (66) years, commencing on the ____ day of _____, 2016, hereinafter called the "Commencement Date," and ending on the _____ day of _____, 20__, hereinafter called the "Termination Date," unless sooner terminated as herein provided.

2. USE: Lessee agrees that the Leased Premises shall be used only and exclusively for a 400-room dual-branded or single-branded hotel in a single tower on the Leased Premises, with a minimum of one hotel brand(s) comparable or superior in quality to a "Intercontinental Hotel" (which would be any other hotel brand that has achieved AAA Four Diamond ratings in a reasonable number of its hotels), and associated meeting space; approximately 32,850 square feet of visitor-serving retail; and a minimum of 686 parking spaces, of which 271 must be available to the general public. This restriction on use of the Leased Premises absolutely prohibits a change in use.

Lessee further agrees to comply with all project conditions and all applicable mitigation measures contained in Coastal Development Permit No. A-6-PSD-08-004 / A-6-PSD-08-101 / A-6-PSD-08-004-E1 / A-6-PSD-08-004-A1 / A-6-PSD-08-004-E2 / A-6-PSD-08-004-A2,, attached hereto as Exhibit "C" – Coastal Development Permit, issued by the California

Coastal Commission on January 8, 2009 and amended on February 6, 2013, extended on March 29, 2013, extended on January 2, 2014, and amended on September 22, 2015, as it may be further amended, replaced, or superseded in the future, and contained in the "Final Master Environmental Impact Report for the proposed North Embarcadero Alliance Visionary Plan," (UPD #83356-EIR-351; SCH #99031037; District Document #40610), including, but not limited to, the "Mitigation, Monitoring & Reporting Program" and the resolution certifying said Final Environmental Impact Report, Resolution No. 2000-82 adopted by the Board of Port Commissioners on April 25, 2000. Failure to comply with any of the special conditions and mitigation measures in any of the above referenced documents during the term of this Lease shall be considered a default under Paragraph 10.

Lessor is in receipt of a No-Further Action letter from the San Diego Region of the California Water Quality Board dated August 2, 2013 and attached as Exhibit "D".

2.1 UNAUTHORIZED USE CHARGE: Lessee shall pay Lessor Twenty Percent (20%) of the gross receipts for any service or use that is not permitted under this Lease. This payment is subject to the due date for rent and the provisions for delinquent rent provided in Paragraph 3 herein. The existence of the Twenty Percent (20%) charge in this Paragraph and the payment of this charge or any part thereof, does not constitute an authorization for a particular service or use, and does not waive any Lessor rights to terminate a service or use or to default Lessee for participating in or allowing any unauthorized use of the Leased Premises.

3. RENT: Lessee agrees to pay to Lessor rent in accordance with the following:

(a) The term of this Lease shall be divided into the following rental periods, hereinafter "Rental Periods":

_____ - _____ (first period to be 25 years)
 _____ - _____ (next three periods to be 10 years each)
 _____ - _____
 _____ - _____
 _____ - _____ (last period to be 11 years)

(b) Minimum Annual Rent. The Minimum Annual Rent for the first Rental Period of this Lease commencing _____ (insert commencement date) shall be as follows:

<u>Year(s)</u>	<u>Accounting Year Dates</u>	<u>Minimum Annual Rent</u>
1	<u>(insert dates starting with</u>	\$0

	<u>commencement date)</u>	
2	_____ - _____	\$0
3	_____ - _____	\$231,378
4	_____ - _____	\$382,975
5	_____ - _____	\$539,451
6	_____ - _____	\$700,432
7	_____ - _____	\$862,942
8	_____ - _____	\$1,033,631
9	_____ - _____	\$1,212,822
10	_____ - _____	\$1,400,848
11	_____ - _____	\$1,598,058
12	_____ - _____	\$1,804,810
13	_____ - _____	\$2,008,261
14	_____ - _____	\$2,219,128
15	_____ - _____	\$2,437,627

The Minimum Annual Rent for each accounting year commencing year 16 shall be subject to the following adjustment (the "MAR Adjustment"). Within thirty (30) days following the commencement of accounting year 16 and each third year thereafter (i.e., 19, 22, 25, etc.) (the commencement date of each such accounting year being referred to as a "MAR Adjustment Date"), Lessor shall determine, and provide Lessee a written statement setting forth the calculation of, the average total annual rent that was payable by Lessee to Lessor during the three accounting years immediately preceding the applicable MAR Adjustment Date and the Minimum Annual Rent for the three accounting years commencing on the applicable MAR Adjustment Date shall be equal to 75% of such average total rent provided that in no event shall such new Minimum Annual Rent be less than the Minimum Annual Rent payable for the accounting year immediately preceding said MAR Adjustment Date.

This Lease shall provide for the following MAR Adjustment Dates:

_____ (date 15 years from commencement date)

_____ (three year increments for next 16 dates)

In addition to the MAR Adjustment to the Minimum Annual Rent, the Minimum Annual Rent for each Rental Period after the first Rental Period is subject to adjustment on each (i) CPI Adjustment Date (as defined below) as described in Paragraph "3.1 COST OF LIVING RENT ADJUSTMENTS" and (ii) Rent Reset Date (as defined below) as described in Paragraph "3.2 RENT REVIEW". In addition, Minimum Annual Rent shall be subject to Market Rent Adjustment (as defined in Paragraph 3.2(c) below).

The total rent for each accounting year shall be (i) the greater of the Minimum Annual Rent for such accounting year or, if applicable, the cumulative total of the percentage rents for such accounting year as provided in subparagraph (c) of "3. RENT", plus (ii) any Additional Rent due under subparagraph (d) of "3. RENT".

Notwithstanding the foregoing, in the event the Minimum Annual Rent is to be adjusted for any accounting year by more than one of the MAR Adjustment, the CPI Adjustment (as hereinafter defined) or the Rent Reset (as hereinafter defined) (i.e., accounting years 25, 40 and 55) the Minimum Annual Rent shall be the higher of the amounts calculated in accordance with the procedure for each such adjustment.

- (c) Percentage Rents. Percentage rents shall be calculated on a monthly basis based on the following percentages of the gross income as defined in Paragraph 3(j) below (without duplication), and shall be subject to Market Rent Adjustment (the "Gross Percentage Rent"). Percentage rent payable hereunder (the "Net Percentage Rent") shall be equal to a portion of the Gross Percentage Rent as follows: (i) eight percent (8%) of the Gross Percentage Rent during the first operational year (as defined in subparagraph

3(d) below); (ii) twelve percent (12%) of the Gross Percentage Rent during the second operational year; (iii) an additional four percentage points (4%) for each operational year thereafter commencing the third operational year (i.e., 16%, 20%, 24%, etc.) until it reaches one hundred percent (100%); and (iv) thereafter Net Percentage Rent shall equal Gross Percentage Rent:

- (1) For the First Rental Period, Seven Percent (7%); for the Second and Third Rental Periods, Eight Percent (8%); and for the Fourth and Fifth Rental Periods, Nine Percent (9%) of the gross income from rental of guest rooms, rental of in-room movies, sale of similar in-room entertainment services, charges for room service delivery, sale of telephone services, and sale of laundry and dry-cleaning services. Notwithstanding the foregoing, in the event that a Market Rent Adjustment results in a higher percentage rate for the rent category described in this clause (1) than the applicable percentage rate stated above (i.e., for the Rental Period during which the Market Rent Adjustment occurs), then, during the balance of the subject Rental Period, the percentage rate determined by the Market Rate Adjustment (for purposes of this clause (1), the "MRA Percentage Rate") shall apply and (i) if the MRA Percentage Rate is higher than the above stated percentage rate for any subsequent Rental Period, the MRA Percentage Rate also shall apply during such subsequent Rental Period, or (ii) if the MRA Percentage Rate is lower than the above stated percentage rate for any subsequent Rental Period, the percentage rate stated above for such subsequent Rental Period shall apply during such subsequent Rental Period.
- (2) For the First Rental Period, Seven Percent (7%); for the Second and Third Rental Periods, Eight Percent (8%); and for the Fourth and Fifth Rental Periods, Nine Percent (9%) of the gross income from rental of conference and banquet rooms and sale of related merchandise and services provided to conference and banquet room users (including gross income from recovery charges for materials, utilities, security, and similarly related accommodations, sales, and services). Notwithstanding the foregoing, in the event that a Market Rent Adjustment results in a higher percentage rate for the rent category described in this clause (2) than the applicable percentage rate stated above (i.e., for the Rental Period during which the Market Rent Adjustment occurs), then, during the balance of the subject Rental Period, the percentage rate determined by the Market Rate Adjustment (for purposes of this clause (2), the "MRA Percentage Rate") shall apply and (i) if the MRA Percentage Rate is higher than the above stated percentage rate for any subsequent Rental Period, the MRA Percentage Rate also shall apply during such subsequent

Rental Period, or (ii) if the MRA Percentage Rate is lower than the above stated percentage rate for any subsequent Rental Period, the percentage rate stated above for such subsequent Rental Period shall apply during such subsequent Rental Period.

- (3) For the First Rental Period, Three Percent (3%); for the Second and Third Rental Periods, Four Percent (4%); and for the Fourth and Fifth Rental Periods, Five Percent (5%) of the gross income from sale of food from full-service restaurants, limited-service restaurants, snack bars and delicatessens. Notwithstanding the foregoing, in the event that a Market Rent Adjustment results in a higher percentage rate for the rent category described in this clause (3) than the applicable percentage rate stated above (i.e., for the Rental Period during which the Market Rent Adjustment occurs), then, during the balance of the subject Rental Period, the percentage rate determined by the Market Rate Adjustment (for purposes of this clause (3), the "MRA Percentage Rate") shall apply and (i) if the MRA Percentage Rate is higher than the above stated percentage rate for any subsequent Rental Period, the MRA Percentage Rate also shall apply during such subsequent Rental Period, or (ii) if the MRA Percentage Rate is lower than the above stated percentage rate for any subsequent Rental Period, the percentage rate stated above for such subsequent Rental Period shall apply during such subsequent Rental Period.
- (4) For the First Rental Period, Five Percent (5%); for the Second and Third Rental Periods, Six Percent (6%); and for the Fourth and Fifth Rental Periods, Seven Percent (7%) of the gross income from sale of alcoholic and nonalcoholic beverages for consumption on the Leased Premises. Notwithstanding the foregoing, in the event that a Market Rent Adjustment results in a higher percentage rate for the rent category described in this clause (4) than the applicable percentage rate stated above (i.e., for the Rental Period during which the Market Rent Adjustment occurs), then, during the balance of the subject Rental Period, the percentage rate determined by the Market Rate Adjustment (for purposes of this clause (4), the "MRA Percentage Rate") shall apply and (i) if the MRA Percentage Rate is higher than the above stated percentage rate for any subsequent Rental Period, the MRA Percentage Rate also shall apply during such subsequent Rental Period, or (ii) if the MRA Percentage Rate is lower than the above stated percentage rate for any subsequent Rental Period, the percentage rate stated above for such subsequent Rental Period shall apply during such subsequent Rental Period.

- (5) Three Percent (3%) of the gross income from sale of alcoholic and nonalcoholic beverages for consumption off of the Leased Premises.
- (6) Five Percent (5%) of the gross income from any admission, cover, or other entertainment charges.
- (7) Five Percent (5%) of the gross income from sale of merchandise including, but not limited to, gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind. Notwithstanding the foregoing, Three Percent (3%) of the gross income from sale of merchandise from “outside retail shops” (i.e., freestanding buildings or other rental spaces within a common structure that are not connected to the hotel lobby or hotel guest room buildings and are accessible by the general public without entering the hotel lobby or hotel guest room buildings) including, but not limited to, gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind.
- (8) Ten Percent (10%) of the gross income from sale of health club services and/or sale of spa services, including but not limited to facials, massages, body wraps, aromatherapy, etc.
- (9) Five Percent (5%) of the gross income from sale of barber and beauty shop services to hotel guests.
- (10) Ten Percent (10%) of the gross income from rental of automobiles.
- (11) Fifteen Percent (15%) of the gross income from sale of parking services or rental of parking spaces.
- (12) Ten Percent (10%) of the gross income from sale of recreation lessons.
- (13) Fifteen Percent (15%) of the gross income from rental of bicycles and other recreational equipment, and rental of recreational facilities.
- (14) Ten Percent (10%) of the gross income from rental of office space to tourism/visitor-servicing tenants and maritime-related tenants.
- (15) One-Half Percent (0.5%) of the gross income from sale of any and all California State Lottery tickets.
- (16) Five Percent (5%) of the gross income from sale of merchandise and/or services through coin-operated vending or service machines or

devices, including telephones, that are owned, rented, or leased by Lessee or sublessee.

- (17) Twenty-Five Percent (25%) of the gross income from commissions and other compensation received for the right to install and operate coin-operated vending or service machines or devices, including telephones that are not owned, rented, or leased by Lessee or sublessee.
 - (18) Fifty Percent (50%) of the gross rental from any and all telecommunications uses other than telephone line access, use, tolls and long distance charges but which shall include and are not limited to, rooftop wireless antennas, antennas attached to a building façade, microwave antennas, paging antennas, and similar devices.
 - (19) Ten Percent (10%) of the gross income from any and all activities, operations, and enterprises permitted under the terms of the Lease and not otherwise addressed within the foregoing provisions.
 - (20) Twenty Percent (20%) of the gross income from any and all services and uses not permitted under the terms of the Lease and not otherwise addressed within the foregoing provisions.
- (d) Additional Rent. An “operational year” shall be each 12 month period of operation with the first operational year being the period from the opening of the hotel to be constructed as part of the Project to the general public until the last day of the 12th full calendar month thereafter and thereafter each following 12 month period. For the twenty five (25) operational years in the table below, Lessee shall pay additional rent to Lessor in the amount of three percent (3%) of the amount by which the gross income, as defined in Subparagraph 3(j) below for such operational year (provided that, notwithstanding Paragraph 3(j), for purposes of this Paragraph 3(d), gross income from operations, businesses and commercial activities conducted by or through sublessees of Lessee shall mean the rental due Lessee from such sublessees and not the gross income generated by or through or otherwise received by such sublessees), exceeds Lessee's projected gross income for that operational year. Lessee's projected gross incomes by operational year are as follows:

<u>Operational Year(s)</u>	<u>Projected Gross Income</u>
1	\$46,079,093
2	\$52,008,130
3	\$55,438,930
4	\$57,747,547

5	\$59,225,021
6	\$60,740,446
7	\$62,294,799
8	\$63,889,087
9	\$65,524,340
10	\$67,201,615
11	\$68,545,647
12	\$69,916,560
13	\$71,314,891
14	\$72,741,189
15	\$74,196,013
16	\$75,679,933
17	\$77,193,532
18	\$78,737,402
19	\$80,312,150
20	\$81,918,393
21	\$83,556,761
22	\$85,227,897
23	\$86,932,424
24	\$88,671,104
25	\$90,444,526

On or before the 20th day of the month following the end of each operational year through the twenty fifth (25th) operational year, Lessee shall render to Lessor, in a form prescribed by Lessor, a report of gross income for that operational year and the additional rent due, if any. Each report shall be signed by Lessee or its responsible agent under penalty of perjury and shall include the following:

- (1) The total gross income for the operational year.
- (2) The applicable Lessee's projected gross income from the table.
- (3) The amount, if any, by which (1) above exceeds (2) above.
- (4) The total additional rent due, if any, calculated by multiplying three percent (3%) times the amount calculated in (3) above.

Each report shall be accompanied by payment of the additional rent due, if any, in accordance with Paragraph "3. RENT" requirements for the payment of rent to Lessor.

- (e) The accounting year shall be twelve (12) full calendar months. The first accounting year shall begin on the Commencement Date, if the first day of the month, or the first day of the first month following the Commencement Date if the Commencement Date is other than the first day of the month. Subsequent accounting years shall begin upon each anniversary of that date

during the Lease term or any extension thereof. On or before the 20th day of each month following completion of the Project and commencement of operations under this Lease, Lessee shall render to Lessor, in a form prescribed by Lessor, a detailed report of gross income for that portion of the accounting year which ends with and includes the last day of the previous calendar month. Each report shall be signed by Lessee or its responsible agent under penalty of perjury and shall include the following:

- (1) The total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rent rate is established.
- (2) The related itemized amounts of percentage rent computed, as herein provided, and the calculation of the Net Percentage Rent.
- (3) The total rent previously paid by Lessee for the accounting year within which the preceding month falls.

Concurrently with the rendering of each monthly statement, Lessee shall pay the greater of the following two amounts:

- (1) The total Net Percentage Rent computed for that portion of the accounting year ending with and including the last day of the preceding month [Item (2) above], less total rent previously paid for the accounting year [Item (3) above], or
 - (2) One-twelfth (1/12th) of the Minimum Annual Rent for the applicable accounting year, multiplied by the number of months from the beginning of such accounting year to and including the preceding month, less total rent previously paid for such accounting year [Item (3) above].
- (f) All rent payments shall be delivered to and statements required in Paragraph (e) above shall be filed with Lessor's Treasurer. Checks shall be made payable to the San Diego Unified Port District and mailed to the Treasurer's Office, San Diego Unified Port District, Post Office Box 120488, San Diego, California 92112-0488, or delivered to the Treasurer's Office, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California. Rent payments may also be made by wire transfer of immediately available funds in accordance with wire transfer instructions provided to Lessee by Lessor in writing from time to time. As of the date hereof, the wire transfer instruction are set forth on Exhibit "G" attached hereto. Lessor may change the designated place of payment and filing at any time upon ten (10) days' written

notice to Lessee. Lessee assumes all risk of loss and responsibility for late charges, as hereinafter described, if payments are made by mail.

- (g) Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease. Accordingly, in the event Lessee is delinquent in rendering to Lessor an accounting of rent due or in remitting the rent due in accordance with the rent provisions of this Lease, Lessee shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] (collectively, "Late Charges"). The parties hereby agree that said Late Charges are additional rent and are not interest, and that said Late Charges are appropriate to compensate Lessor for loss resulting from rent delinquency including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of such Late Charges and less than the entire amount of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of its other rights and remedies. The Executive Director of Lessor shall have the right to waive for good cause any Late Charges upon written application of Lessee for any such delinquency period.
- (h) All payments by Lessee to Lessor shall be by a good and sufficient check or wire transfer. All rent hereunder shall be paid when due without any offset or deductions. No payment made by Lessee or receipt or acceptance by Lessor of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance or pursue any other available remedy.
- (i) Lessee shall, at all times during the term of this Lease, keep or cause to be kept, accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuit of the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoices, or other pertinent supporting documents. Financial statements (a balance sheet and income/expense statement), based upon the double entry books of account, shall be prepared not less than annually.

All sales under this Lease shall be recorded by means of a comprehensive system which includes sufficient business processes to ensure that all monies

received are clearly and accurately recorded and are documented by system reports and/or original source documents. The system shall provide appropriate reporting and distinction of all sales categories and be able to generate an audit trail of all transactions. Sales may also be recorded by such other system as is first approved in writing by the Executive Director of Lessor.

Contracts, bills, invoices, sales receipts or other similar-type documents evidencing transactions between any parties doing business under this Lease (including sublessees) shall in no event identify rent due to Lessor as a separate charge, fee or tax.

All Lessee's books of account, records, financial statements, and documentation related to this Lease or to business operations conducted within or from the Leased Premises, shall be kept either at the Leased Premises or at such other locations as are acceptable to Lessor, or be available electronically at the Leased Premises. Lessor shall have the right at any and all reasonable times, upon fifteen (15) business days' notice, to examine and audit said books, records, financial statements, and documentation, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the monthly statements of gross income submitted, and the accuracy of the rent paid to the Lessor. In the event that the Lessee's business operations conducted within or from the Leased Premises are part of a larger business operation of the Lessee, and any part of the books, records, financial statements and documentation required herein is prepared only for the larger operation, and not solely for the business operations of the Leased Premises, then the Lessor shall also have the right to examine and audit that part of said books, records, financial statements, and documentation of the larger business operation.

Lessee's failure to keep such books of account, records, financial statements, and documentation and make them available for inspection by Lessor is a breach of this Lease and cause for termination. The Executive Director of Lessor shall have the discretion to require the installation of any additional accounting methods or controls he may deem necessary, subject to prior written notice and to the approval of the manager of the hotel operations on the Leased Premises, which approval shall not be unreasonably withheld. In the event the Lessee does not make available the original records and books of account at the Leased Premises or within the limits of San Diego County, Lessee agrees to pay all necessary travel expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained.

Additionally, if the audit reveals a discrepancy of more than five percent (5%) between the rent due as reported by Lessee and the rent due as determined by the audit, and/or Lessee has failed to maintain complete and accurate books of account, records, financial statements, and documentation in accordance with this Lease, then Lessee shall pay the cost of the audit, as determined by the Executive Director of Lessor, plus any rent determined to have been underpaid. In addition, should Lessee fail to pay any such amounts within thirty (30) days after written notice from Lessor, then Lessee shall pay an additional fee of ten percent (10%) of said unpaid amounts as compensation to Lessor for administrative costs as previously described herein, along with the rent determined to have been underpaid.

Furthermore, if the audit reveals a discrepancy of less than five percent (5%) between the rent due as reported by Lessee and the rent due as determined by the audit, and should Lessee fail to pay any unpaid rent within thirty (30) days after written notice from Lessor, then Lessee shall pay an additional fee of ten percent (10%) of said unpaid rent as compensation to Lessor for administrative costs as previously described herein, along with the rent determined to have been underpaid.

Lessee agrees to pay such amounts as set forth above. Acceptance of Late Charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee default with respect to late payment, nor prevent Lessor from exercising any of the other rights and remedies granted in this Lease. The Executive Director of Lessor shall have the right to waive for good cause any Late Charges upon written application of Lessee for any such delinquency period.

If the audit reveals that rent has been overpaid by Lessee, then Lessor shall credit Lessee in the amount of said overpayment which credit shall be used to offset future rental payment(s) due Lessor.

- (j) Gross income shall include all income resulting from operations, businesses and commercial activities conducted on or from the Leased Premises or any other property owned or leased by Lessee that is located within Lessor's jurisdiction (unless such income is being reported under another agreement with Lessor):
 - (1) whether conducted by Lessee, its sublessees or concessionaires, or parties operating through Lessee, its sublessees, or concessionaires;
 - or
 - (2) whether conducted with or without an agreement with Lessor or a tenant of Lessor or a tenant of Lessee.

Gross income shall include revenue from whatever source derived including, but not limited to: (i) sales via the internet; (ii) sales via telephone; (iii) agency sales; and (iv) any other type of sales (whether such sales occur from the Leased Premises or elsewhere) resulting in Lessee's customers receiving services, products, or benefits on or from the Leased Premises or any other property owned or leased by Lessee and within Lessor's jurisdiction and whether for cash or credit.

Gross income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

Gross income, however, shall not include any of the following: (1) sales of United States postage; (2) any sales or excise taxes payable by Lessee to any governmental agency as a direct result of operations under this Lease, provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained; (3) gratuities, provided the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that the Lessee has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer; (4) sales of fixtures, equipment or property which are not Lessee's stock in trade; (5) interest earned by Lessee on funds arising from the Leased Premises or use thereof, deposited or maintained by Lessee in a bank or similar institution; (6) ticket sales price (If this Lease allows ticket sales for events that will occur on property not within Lessor's jurisdiction for events or activities in which Lessee has no ownership interest [e.g., San Diego Zoo, San Diego Wild Animal Park, Sea World, Caribbean cruises, etc.] gross income shall include all income, fees and commissions that Lessee receives as compensation for handling and making said ticket sales); and (7) the fees paid by Lessee to any agent of Lessee that is managing or operating the Leased Premises on behalf of Lessee, which fees shall not be deducted from the amount of gross income received by Lessee.

Further, refunds for goods returned shall be deducted from current gross income upon their return.

To the extent that bad debt losses have previously been included in reported gross income, such losses may be deducted therefrom. Otherwise, bad debt losses shall not be deducted from gross income.

3.1 COST OF LIVING RENT ADJUSTMENTS:

- (a) This Lease shall provide for the following mid-term Rental Period adjustment dates, hereinafter "CPI Adjustment Dates":

_____ (date thirty years from commencement)

_____ (next three dates in 10 year increments)

- (b) On the referenced CPI Adjustment Dates, the Minimum Annual Rent specified in Paragraph 3(b) shall be adjusted by the increase, if any, in the Consumer Price Index for All Urban Consumers for Los Angeles/Riverside/Orange County, CA/All Items based on the period 1982-84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics, hereinafter "CPI" (the "CPI Adjustment"). The Minimum Annual Rent payable pursuant to Paragraph 3(b) shall be multiplied by a fraction, the numerator of which shall be the CPI for the calendar month which is three months prior to the CPI Adjustment Date under consideration, and the denominator of which shall be the CPI for the calendar month which is three months prior to commencement of the then-current Rental Period. The sum so calculated shall constitute the new Minimum Annual Rent herein, but in no event shall such new Minimum Annual Rent be less than the Minimum Annual Rent payable for the accounting year immediately preceding said CPI Adjustment Date, provided that if the Minimum Annual Rent is to be adjusted pursuant to a MAR Adjustment for any accounting year in which a CPI Adjustment Date occurs (i.e., accounting year 40) the Minimum Annual Rent shall be the higher of the amounts calculated by each of such methods.

In the event the CPI is no longer published, the index for the CPI Adjustment Date shall be the one reported in the U. S. Department of Labor's comprehensive official index most nearly corresponding to the foregoing description of the CPI. If the herein-described Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by agreement of the parties. If they are unable to agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

Notwithstanding the publication dates of the CPI, the Minimum Annual Rent shall be adjusted to be effective on the CPI Adjustment Dates. Until said Minimum Annual Rent Adjustment can be reasonably determined by CPI publication, Lessee shall continue to make rent payments pursuant to this Lease at the same rent in effect at the then-current Rental Period. Because of this provision, underpayments of rent shall be immediately paid to the Lessor.

3.2 RENT REVIEW:

- (a) At least two hundred seventy (270) days prior to the beginning of the Rental Period which commences _____, 20__ and at least two hundred seventy (270) days prior to the beginning of each Rental Period thereafter as described in Paragraph 3(a) herein (the beginning of each such Rental Period being referred to as a "Rent Reset Date"), Lessor and Lessee shall attempt to reach mutual agreement on the Minimum Annual Rent specified in Paragraph 3(b) herein (such rent being referred to herein as the "Rent Subject to Reset" and the adjustment of the Minimum Annual Rent as provided in this Paragraph 3.2 being referred to herein as a "Rent Reset"); provided, however, that the Minimum Annual Rent shall not be less than the Minimum Annual Rent in effect for the accounting year immediately preceding the applicable Rent Reset Date (the "Minimum Rent Floor"), nor greater than the greater of (x) the Minimum Rent Floor, or (y) the aggregate percentage rent payable by Lessee during the twelve full calendar months preceding the Rent Reset Date for which information regarding the amount of percentage rent payable by Lessee is available at the time of commencement of the Rent Reset process (the "Minimum Rent Cap").
- (b) If Lessor and Lessee shall fail to reach agreement on the Rent Subject to Reset for the next Rental Period at least two hundred ten (210) days prior to the next Rent Reset Date ("Outside Agreement Date"), then either party may elect to require that the Rent Subject to Reset 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 Minimum Annual Rent shall be deemed to be the greater of (i) the Minimum Annual Rent at the end of the immediately preceding Rental Period, or (ii) 75% of the average total percentage rents payable during the last three accounting years of the immediately preceding Rental Period.

If (i) either party elects to require that the Rent Subject to Reset 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 or (ii) pursuant to the last paragraph of Paragraph 8(a) or pursuant to Paragraph 9, as applicable, market rent is to be determined in accordance with this Paragraph 3.2, then, in either case, each party shall make, or cause to be made by an appraiser selected by such party, a separate, written determination of the Rent Subject to Reset ("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 that is less than the Minimum Rent Floor or more than the Minimum Rent Cap. 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 Rent Subject to Reset 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 PARAGRAPH 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 SUBJECT TO RESET SHALL BE DEEMED TO BE 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 Subject to Reset 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; provided, however, if the two appraisers fail to select the third appraiser as described below, then, in order to allow for a larger pool of persons to serve as the third appraiser, in lieu of the requirement that the third appraiser be familiar with commercial properties in the immediate vicinity of the Leased Premises and active in such field over the last five years, the third appraiser need only be familiar with the valuation of ground leased waterfront properties within the State of California and active in such field over the last five years. 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; provided that no such appraiser appointed by the Appraisal Institute or Superior Court may have been engaged by, or provided appraisal services to, either Lessor or Lessee during the three (3) year period prior to such appointment and such appraiser shall satisfy the criteria described above with respect to the appointment of a third appraiser following the initial failure of the two appraisers to select the third appraiser. The party making the application shall give the other party notice of its application within three (3) business days of the filing of such application.

- (4) In determining which Rent Proposal is the closest to the actual fair market rent of the Leased Premises, 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 uses permitted in Paragraph 2 above;
 - (iii) the improvements on the Leased Premises were maintained, refurbished, renovated and operated at the standard required under this Lease for the permitted use provided in Paragraph 2;
 - (iv) the Leased Premises 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) the Leased Premises 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 Leased Premises as described in Paragraph 2 above. 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 or, in the case of application of this Paragraph 3.2 in connection with a Market Rent Adjustment, to the effective date of the subject encumbrance, assignment or other transaction to which the Market Rent Adjustment is applicable (an "MRA Adjustment Date"). 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 or MRA Adjustment Date, as applicable, 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 subparagraph (6) below, the new rent as of the commencement of the relevant Rental Period or MRA Adjustment Date, as applicable, shall be the Rent Proposal selected pursuant to such appraisal process.

- (ii) Notwithstanding any determination of the appraisers, in no event shall the Minimum Annual Rent as so adjusted be less than the Minimum Rent Floor nor more than the Minimum Rent Cap.
- (6) The Minimum Annual Rent determined pursuant to this Paragraph 3.2(b) shall be subject to further adjustment (i) to reflect increases in the CPI on each subsequent CPI Adjustment Date as provided in Paragraph 3.1(b), and (ii) for MAR Adjustments as provided in Paragraph 3(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) In the event that this Paragraph 3.2 is to be applied pursuant to the last paragraph of Paragraph 8(a) or pursuant to Paragraph 9, (a) the "Rent Subject to Reset" shall be the Minimum Annual Rent and, subject to the terms of Paragraph 3(c)(1), (2), (3) and (4), all percentage rent category rates under Paragraph 3(c), (b) the "Rent Reset Date" shall be the MRA Adjustment Date, (c) "Rent Reset" shall mean the adjustment of the Rent Subject to Reset, and (d) "Outside Agreement Date" shall mean the date on which either party gives written notice to the other party that they are unable to reach mutual agreement on market rent pursuant to the last paragraph of Paragraph 8(a) or pursuant to Paragraph 9, as applicable, and that market rent will need to be determined in accordance with this Paragraph 3.2. Any adjustment to be made to the Minimum Annual Rent and/or any of the

percentage rent category rates pursuant to the last paragraph of Paragraph 8(a) or pursuant to Paragraph 9 shall be referred to herein as a "Market Rent Adjustment."

3.3 LESSOR EXIT FEE:

- (a) Upon the direct assignment of this Lease pursuant to Paragraph 9 (but excluding any indirect assignment which shall be governed by Paragraph 3.3(e) below) to a Third Party Assignee (as defined below) and which results in Gross Sales Proceeds (as defined below) in excess of the applicable GSP Threshold Amount (as defined below) (a "Third Party Lease Assignment"), Lessee shall pay to Lessor a fee (the "Exit Fee") in an amount equal to the lesser of (i) \$2.3 million (as adjusted on each anniversary of the first Third Party Lease Assignment by the then most recent available 12-month percentage change, if any, in the CPI from the date of such first Third Party Lease Assignment) (the "Exit Fee Cap"), and (ii) 0.85% of any Gross Sales Proceeds; provided however that for any such Third Party Lease Assignment occurring after the 25th accounting year, the fee shall be equal to the amount calculated pursuant to item (ii) without regard to item (i) (i.e., there shall be no Exit Fee Cap on the Exit Fee). When owed, the Exit Fee shall constitute additional rent.
- (b) The term "GSP Threshold Amount" shall mean, with respect to any Third Party Lease Assignment occurring in any particular accounting year, the amount indicated below for such accounting year:

<u>Accounting Year</u>	<u>GSP Threshold Amount</u>
1	\$250,000,000
2	\$250,000,000
3	\$260,000,000
4	\$270,000,000
5	\$285,000,000
6	\$295,000,000
7	\$305,000,000
8	\$310,000,000
9	\$315,000,000
10-66	\$320,000,000

- (c) The term "Third Party Assignee" shall mean any person or entity to whom this Lease is assigned other than (i) a person or entity who is, or who is 100% directly or indirectly owned and controlled by, one or more of the Approved Parent Entities, (ii) a Consented-to-Lender (as defined in Paragraph 8(b)) or CTL Affiliate (as defined in Paragraph 8(d)) pursuant to an assignment under

Paragraph 8, (iii) the Approved Pledgee (as defined in Paragraph 8(a)) or an Affiliate of the Approved Pledgee pursuant to an assignment under the terms of Paragraph 8.1, or (iv) an assignee of a Consented-to-Lender or CTL Affiliate who previously acquired the leasehold interest under this Lease (or pursuant to a new lease) pursuant to the terms of Paragraph 8 provided that the Gross Sales Proceeds (as defined below) with respect to any such assignment by such Consented-to-Lender or such CTL Affiliate do not exceed the Aggregate Debt Amount (as defined below). The term "Aggregate Debt Amount" shall mean the aggregate amount of the outstanding principal, interest and other amounts secured by the applicable consented-to-encumbrance at the time of acquisition by the Consented-to-Lender or CTL Affiliate of the leasehold interest in the Leased Premises pursuant to Paragraph 8.

- (d) The term "Gross Sales Proceeds" shall mean the gross purchase price actually paid (either in cash or by an assumption of debt) by a Third Party Assignee to the Lessee and/or its member(s) or other equity owners in connection with a Third Party Lease Assignment (the "seller") less the sum of any prorations, credits or other deductions to the purchase price which is payable to the seller.
- (e) Notwithstanding anything contained herein to the contrary, but subject to Paragraph 9.1 herein, an Exit Fee shall also be owed as follows upon the occurrence of a change in direct or indirect ownership of Lessee by which a Third Party (as defined in Paragraph 9) acquires any direct or indirect interest in Lessee: Except as otherwise provided in Paragraph 9.1 herein, at any time a direct or indirect ownership interest in Lessee in favor of a Third Party is created or acquired, such Exit Fee shall be payable by Lessee but the Gross Sales Proceeds shall be determined with respect to the consideration paid with respect to the subject interest and the Exit Fee Cap (if applicable) and the GSP Threshold Amount shall be prorated to reflect the percentage of the same that the acquired interest represents in terms of direct or indirect percent ownership in Lessee.

4. IMPROVEMENTS:

- (a) In accordance with the procedures described herein, Lessee may, at its own expense, make alterations or changes, or cause to be made, built, installed, or removed any structures, machines, appliances, utilities, signs, or other improvements necessary or desirable for the authorized use of the Leased Premises. Provided, however, said work shall be in accordance with plans and specifications, including but not limited to working drawings, hereinafter "Plans," previously submitted to and approved in writing by Lessor.

- (b) No construction, installation, or removal of any improvement upon the Leased Premises shall commence without Lessor's prior written approval. All construction, installations, and removals shall be in accordance with Plans submitted to and approved in writing by Lessor prior to the commencement of any such work. All Plans are subject to changes as may be approved by Lessor, in Lessor's sole discretion. Further, all work shall be in accordance with all applicable laws, regulations, ordinances, and codes.
- (c) Notwithstanding the foregoing, within the interior of any enclosed building structure, and without Lessor's prior consent, Lessee shall have the right to install, alter, replace and/or remove machines, equipment, appliances, furniture, and trade fixtures that are necessary or desirable for the authorized use of the Leased Premises.
- (d) When required by Lessor, Lessee shall, at its sole cost and expense, pave or landscape the entire portion of the Leased Premises not covered by structures. All paving and/or landscaping shall be in accordance with Plans which must be submitted to and approved in writing by Lessor prior to the commencement of any such paving and/or landscaping.
- (e) Lessee shall notify Lessor prior to submitting application(s) to any governmental regulatory agency for any development or construction permit or license pertaining to the Leased Premises. Lessee shall also provide Lessor with a copy of all application(s) within five (5) days of making said application(s), along with copies of all Plans submitted as part of the application(s). Lessee shall also provide Lessor, within ten (10) days of Lessee's receipt, a copy of all permits, licenses, or other authorizations subsequently issued.
- (f) Lessee agrees that no banners, pennants, flags, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Leased Premises without Lessor's prior written consent.
- (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) Notwithstanding anything to the contrary contained in this Paragraph 4 or elsewhere in this Lease, neither the approval of nor any prior notice to the Lessor shall be required for the construction, installation, removal, repair, replacement or alteration of any improvements ("Lessee Improvements") (or with respect to any plans therefor) (i) for which Lessor approval is not expressly required pursuant to Lessor's policy regarding tenant project plan approvals (BPC Policy No. 357), a copy of which is attached hereto as Exhibit "H" and incorporated herein by reference ("Tenant Improvement Policy"), (ii) which constitute fire or life safety repairs that are not expressly included in Section 1 of the Tenant Improvement Policy, (iii) which are emergency repairs or replacements regardless of whether or not they are extraordinary repairs or would otherwise require Lessor approval pursuant to the Tenant Improvement Policy, (iv) which constitute Permitted Improvements (as defined below), or (v) which are described in Section 3 of the Tenant Improvement Policy. As used herein, the term "Permitted Improvements" shall mean those Lessee Improvements which (w) are to be made solely to the interior of the hotel, (x) involve an aggregate expenditure of less than \$500,000, (y) are not described in Section 1 of the Tenant Improvement Policy, and (z) do not require or involve structural modifications. As used in Section 4 of the Tenant Improvement Policy, the term "extraordinary repairs" means those repairs which are not anticipated to be needed in the ordinary course of operating the hotel on the Leased Premises. To the extent of any conflict or inconsistency between the terms of this Lease and the Tenant Improvement Policy, the terms of this Lease shall govern. To the extent that Lessor approval is required for any Lessee Improvements, Lessor shall review and respond to any request for such approval within thirty (30) days following Lessor's receipt of such request from Lessee together with all relevant plans and information regarding such Lessee Improvements that are necessary to Lessor's consideration of Lessee's request. If Lessor fails to respond to any such request within such thirty (30) day period, Lessee will provide written notice to Lessor stating that Lessor has failed to respond to the notice requesting approval as provided above and if Lessor fails to respond within thirty (30) days after receiving such notice from Lessee, Lessee's request for approval shall be deemed to have been granted.

5. CONSTRUCTION OF IMPROVEMENTS:

- (a) By no later than (insert date three months from commencement date), Lessee shall commence the construction of and diligently proceed to completion, a 400-room dual-branded or single-branded hotel in a single tower on the Leased Premises, with a minimum of one hotel brand(s) comparable or

superior in quality to a "Intercontinental Hotel" (which would be any other hotel brand that has achieved AAA Four Diamond ratings in a reasonable number of its hotels), and associated meeting space; approximately 32,850 square feet of visitor-serving retail; and a minimum of 686 parking spaces, of which 271 must be available to the general public; a landscaped/hardscaped view corridor with public promenade; and the North Embarcadero Visionary Plan improvements approved by Lessor that are located adjacent to the Premises such as, but not limited to, sidewalks and landscaping, as described in Paragraph 5.1 below, hereinafter "Project." Additionally, Lessee shall pay a mitigation fee of Three Million Dollars (\$3,000,000) to Lessor in accordance with Exhibit "C" and failure to pay the mitigation fee shall be a default under this Lease under Paragraph 10.

The Project shall be constructed at prevailing wage and substantially in accordance with plans and specifications, including but not limited to working drawings, which consist of complete architectural, civil, structural, mechanical, electrical, plumbing, utility layout, landscaping, irrigation, stormwater, and public artworks plans (including artwork locations) and site horizontal (coordinate) and vertical control plans included in the civil drawings and complete specifications, materials, and color list and engineering calculations for all improvements, hereinafter "Plans," approved in writing by Lessor, subject to any material changes thereto as may be approved by Lessor, in Lessor's sole discretion. As of the commencement of this Lease, Lessee has obtained all Lessor-required approvals for the Plans. Said Plans, as approved by Lessor, and any approved changes thereto, are by this reference made a part hereof. Construction of the Project shall be completed by no later than the date which is thirty eight (38) months after the Commencement Date. Provided, however, the commencement and completion dates may be extended pursuant to Paragraph 5(e) herein. In the event of any inconsistency between the Plans and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

- (b) Lessee shall, as a condition of this Lease, make an investment in the Project in an amount which shall exceed One Hundred Eighty Million Dollars (\$180,000,000). Such investment is qualification for the term of this Lease and is not a portion of the rent obligations provided in Paragraph 3 herein. Further, neither such investment, nor such improvements, nor any other Lessee investment or improvement shall be considered by the parties hereto or any appraiser in determining any rent during the term of this Lease. Additionally, Lessee shall defend and indemnify Lessor under Paragraph 21 below for any claims for the payment of prevailing wage related to construction of the Project.

- (c) The investment in the Project referenced in Paragraph 5(b) above shall include an investment of not less than One Million Eight Hundred Thousand, Dollars (\$1.8 million) as described in this subparagraph (c) in public artworks. No public artwork shall be installed on the Leased Premises unless the written approval of the Lessor has been granted. Acceptable forms of public artworks are described in Lessor's Board of Port Commissioners' Policy No. 608 Tenant Percent for Art and include, but are not limited to, paintings, sculptures, works of visual art, and artist-designed landscapes. For each public artwork installed on the Leased Premises in fulfillment of the aforementioned minimum investment amount: (i) title to the artwork must be legally transferred in writing by the artist to the Lessee; (ii) the artist must grant in writing to both the Lessor and Lessee a nonexclusive, royalty free license that will allow them to make reproductions of the artwork in any two-dimensional form for educational, public relations, tourism, and arts promotional purposes; (iii) the artist must legally assign in writing to Lessor and Lessee all rights to collect royalty payments including, without limitation, those provided by California Civil Code Section 986; (iv) the artist must warrant in writing that the artwork is solely the result of artistic effort by the artist and that the artwork is unique and original and does not infringe upon any copyright; (v) the artist must agree in writing to not make any duplicate(s) or reproduction(s) of the artwork nor grant permission to others to do so without the prior written approval of both the Lessor and Lessee; and (vi) the artist must warrant in writing that the artwork is free of defects in material and workmanship and is free and clear of all liens. Subject to the requirements of (i), (ii), (iii), (iv), (v) and (vi) in the preceding sentence, the artist of the public artwork shall retain all rights under the Federal Copyright Act of 1976 (17 USC 101 et. seq.).
- (d) Not less than every ninety (90) days during construction of the Project, Lessee shall furnish Lessor an itemized statement of the actual construction cost of the Project to date. The statement shall be sworn to and signed, under penalty of perjury, by Lessee or its responsible agent.

Lessee shall maintain true, accurate, and complete records to support said statement. Such records shall include, but are not limited to a general ledger, vendor invoices, cancelled checks, construction loan documentation, agreements with third-party contractors, and contractor progress payment billings. Additionally, should Lessee perform any construction in-house, Lessee shall substantiate the actual work performed by maintaining a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates.

Books and records herein required shall be maintained and made available either at the Leased Premises or at such other location as is agreeable to

Lessor. Further, Lessor shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof, and the accuracy of the aforesaid statement. In the event Lessee does not make available the original books and records at the Leased Premises or within the limits of San Diego County, Lessee agrees to pay all necessary expenses incurred by Lessor in conducting an audit at the location where said books and records are maintained.

- (e) The time(s) during which Lessee's construction is delayed, despite Lessee's diligent and commercially-reasonable efforts to proceed with such construction, by riots; natural disasters and other acts of God, including, without limitation, fires, earthquakes, floods, hurricanes, and unusually severe weather conditions; labor strikes; delays caused by governmental agencies; acts of terrorism; and war on United States soil; (each, a "Force Majeure Event"), shall be added to the times for the commencement and/or completion of construction established in Paragraph 5(a) herein. Provided, however, in no event shall the period of excused delay exceed Seven Hundred Thirty (730) days in the aggregate. In the event of a Force Majeure Event, Lessee shall give Lessor written notice of such Force Majeure Event within forty five (45) days after the initial occurrence of the Force Majeure Event.
- (f) Failure to comply with this Paragraph is a breach of this Lease and cause for termination in accordance with Paragraph 10 herein.

5.1 BROADWAY SETBACK: Concurrently with the construction of the Project, Lessee shall, at its own expense, construct an approximately 0.41 acre, 55 foot setback from West Broadway as delineated on Drawing No. 018-126 dated November 21, 2014, attached hereto as Exhibit "E" and working drawings approved by Lessor, by this reference made a part hereof (collectively, the "Setback Plans"), hereinafter the "Broadway Setback". Lessee shall construct the Broadway Setback in accordance with the Setback Plans. Upon completion, the Broadway Setback will be owned and maintained by Lessor. With respect to the Broadway Setback, Lessee and Lessor shall have the following rights and obligations:

- (a) Lessee has the right to develop underground structured parking beneath the Broadway Setback to the extent required, if necessary, to accommodate all project parking requirements plus the 271 public parking spaces required by the NEVP Master EIR.
- (b) Lessee has the right to occupy and use the Broadway Setback for staging during construction of the Project. Lessee's staging will be permitted through Lessor's standard right of entry agreement or such other agreement as Lessor and Lessee determine.

- (c) Lessee has the right to occupy and use the Broadway Setback consistent with Lessor's permitting policies for public parks.

6. TITLE TO IMPROVEMENTS: For the purpose of this Paragraph, "improvements" shall include, but are not limited to subsurface improvements. On the Commencement Date of this Lease, all existing structures, buildings, installations, and improvements located on the Leased Premises are owned by and title thereto is vested in Lessee. All said existing structures, buildings, installations, and improvements, as well as structures, buildings, installations, and improvements of any kind placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease shall be owned by and title thereto shall be vested in Lessee and shall, at the option of Lessor, be removed by Lessee at Lessee's expense. Lessor may exercise said option as to any or all of the structures, buildings, installations, and improvements by written notice to Lessee on or prior to the Termination Date or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove such structures, buildings, installations, and/or improvements within ninety (90) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier; provided, however, Lessee agrees to repair any and all damage occasioned by their removal. Title to any such structures, buildings, installations, and/or improvements not so removed within said ninety (90) days shall vest in Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

On the Commencement Date of this Lease, all existing machines, appliances, equipment, trade fixtures, and portable public artworks (i.e., artworks that are not architecturally integrated into the structures and buildings and are capable of being removed and transported to another location without being damaged) located on the Leased Premises are owned by and title thereto is vested in Lessee. Furthermore, all machines, appliances, equipment, trade fixtures, and portable public artworks placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease are owned by and title thereto is vested in Lessee. All machines, appliances, equipment, trade fixtures, and portable public artworks shall be removed by Lessee, at Lessee's expense, within ninety (90) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier; provided, however, Lessee agrees to repair any and all damage occasioned by their removal.

Notwithstanding the foregoing, any machines, appliances, equipment, trade fixtures, and portable public artworks placed on the Leased Premises by Lessee as qualification for the term of this Lease pursuant to Paragraph 5 herein, as well as portable public artworks located on the Leased Premises on the Commencement Date of this Lease, may only be removed by Lessee, at Lessor's option. If machines, appliances, equipment, trade fixtures, and portable public artworks required by Lessor to be removed are not removed by Lessee within ninety (90) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier, the same may be considered abandoned and shall

thereupon become the property of Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

During any period of time employed by Lessee under this Paragraph to remove structures, buildings, installations, improvements, machines, appliances, equipment, trade fixtures, and portable public artworks, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily.

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, 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 8 herein.

8. LEASE ENCUMBRANCE:

(a) Lessor's Consent to Encumbrance.

Lessor acknowledges the following construction loan has been consented to by Lessor and is a permitted encumbrance: a first lien construction loan in the maximum principal amount of \$_____, exclusive of any protective advances, to be made to Lessee pursuant to a loan agreement among _____, as agent, lead arranger, and book manager and the lenders party thereto, and secured by a first lien deed of trust for the benefit of _____, as agent (the "**Initial Construction Loan Encumbrance**"). Lessor also acknowledges that it has consented to the pledge by _____ of its entire membership interest in Lessee in favor of _____ (referred to herein as the

“Approved Pledge” and, in its capacity as the pledgee under the Approved Pledge, _____ is referred to herein as **“Approved Pledgee”**). The Approved Pledgee is an express third-party beneficiary of this Lease to the extent of the rights expressly provided to the Approved Pledgee hereunder, subject to such limitations as are contained in this Lease.

Except as provided above, 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, subject to the notice and cure rights set forth in Paragraph 10.

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.

Subject to the terms of the paragraphs below, in the event Lessor consents to any Lease encumbrance, 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, an Update Amendment shall be executed; provided that (x) upon request by Lessee, Lessor shall provide to Lessee a form of any such Update Amendment (as such term is defined in Paragraph 9) that would be required by Lessor in connection with any requested Lease encumbrance to be consented to by Lessor within one (1) year following Lessor’s delivery of such form of Update Amendment to Lessee and during such one-year period, Lessor may not request any additional revisions to this Lease or any further Update Amendment with respect to any lease encumbrance made during any such one (1) year period, (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; (iii) the loan shall have an amortization term that is less than the remaining term of the ground lease; and (iv) 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. Subject to the terms of the paragraphs below, 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.

Notwithstanding the foregoing, Lessor will grant consent to any refinance encumbrance which satisfies the following criteria, which consent shall be granted within sixty (60) days after receiving the notice and information described in clause (4) below. Provided that if Lessor fails to grant such consent within such sixty-day period, Lessee will provide written notice to Lessor stating that Lessor has failed to grant such consent to the refinance encumbrance as provided above and if Lessor fails to grant such consent within fifteen (15) days after receiving such notice from Lessee, Lessor's consent to the refinance encumbrance shall be deemed to have been rejected:

- (1) The refinancing loan does not exceed the greater of (i) 70% loan-to-value as determined by Lender's appraisal or (ii) the amount of repayment of existing financing that encumbers the leasehold, unless the excess proceeds are expended on or for the benefit of the Leased Premises and/or improvements; provided, however, in no event shall the loan-to-value exceed 75%;
- (2) The loan shall have an amortization term that is less than the remaining term of this Lease;
- (3) The lender is a Financial Institution as defined in Paragraph 8(j) below;
- (4) Lessee provides to Lessor prior notice of the proposed encumbrance, loan amount, lender and delivers to Lessor along with such notice satisfactory specific evidence that the refinancing loan satisfies the above criteria (e.g., information on the lender, a copy of the appraisal, and, if applicable, loan document terms reflecting Lessee's obligation to invest on or for the benefit of the Leased Premises and/or improvements any loan proceeds in excess of the greater of (i) a 70% loan-to-value), or (ii) the amount of repayment of existing financing that encumbers the leasehold,

Notwithstanding the foregoing, any encumbrance which is consented to and made prior to twenty-five (25) years following the Commencement Date shall not be subject to the requirement for adjustment of the rent to market rent. Any encumbrance which is consented to on or after twenty-five (25) years following the Commencement Date shall be subject to the market rent adjustment terms provided above.

Any encumbrance which is consented to pursuant to the foregoing procedure as well as any encumbrance specifically consented to by Lessor shall be a "consented-to encumbrance".

In the event of a consented-to encumbrance which is made on or after twenty-five (25) years following the Commencement Date, 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 appraisers' determination 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 Initial Construction Lender as well as a Financial Institution (as defined below) holding a consented-to encumbrance. 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; Amendment. Without the prior written consent of the Consented-to-Lender, should Lessee owe the Consented-to-Lender any amounts or have any outstanding obligations 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. In addition, provided that loan documents governing the consented-to encumbrance require the Consented-to-Lender's consent to the same and Lessee has provided Lessor a copy of the loan documents and identified the provision containing such requirement, Lessor agrees not to enter into an amendment of this Lease without the prior written consent of such Consented-to-Lender, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Lessee and Lessor may enter into an Update Amendment (as defined in Paragraph 9) without the prior written consent of such Consented-to-Lender.
- (d) Loan Default. If a consented-to encumbrance is in default at any time, the Consented-to-Lender or an Affiliate of the Consented-to-Lender who has acquired the consented-to encumbrance for the purpose of accepting an assignment of this Lease in lieu of foreclosure or to hold a foreclosure sale (a "CTL Affiliate"), 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 the consented-to encumbrance.

With the exception of said Consented-to-Lender or such CTL Affiliate, no assignment to the successful bidder shall be effective without Lessor's prior written consent (which shall be granted or withheld as provided in subparagraph 8(f) below).

- (e) Assume Lease Obligations. Before said Consented-to-Lender or CTL Affiliate, 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 and liability under the Lease arising from and after such acquisition; provided, however, that under no circumstances shall said Consented-to-Lender or CTL Affiliate or future consented-to-assignee have any liability hereunder unless and until it agrees in writing to assume such obligations and liabilities and becomes the Lessee under this Lease. Furthermore, before any said Consented-to-Lender or CTL Affiliate, or any other future consented-to assignee or purchaser, may subsequently assign or sublease all or any portion of the leasehold interest, it shall, in each instance, obtain Lessor's prior written consent in accordance with the terms of Paragraph 9.

Further, a Consented-to-Lender or CTL Affiliate that has: (i) acquired the leasehold interest and assumed the Lessee's obligations and liabilities hereunder arising from and after such acquisition, or (ii) entered into a new lease pursuant to Paragraph 10 herein concurrently with a termination of this Lease, shall, to the extent assumed by such assignee, be released from all obligations and liabilities 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 or CTL Affiliate 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 CTL Affiliate; or
- (2) Assignment or sublease of all or substantially all of the Leased Premises by said Consented-to-Lender or CTL Affiliate 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,

if Lessee satisfies the following criteria, Lessor will grant such consent within sixty (60) days of Lessor receiving a request for consent to the lease assignment and all documents needed by Lessor to process the request for consent. Provided that if Lessor fails to grant such consent within such sixty-day period, Lessee will provide written notice to Lessor stating that Lessor has failed to grant such consent as provided above and if Lessor fails to grant such consent within fifteen (15) days after receiving such notice from Lessee, Lessor's consent shall be deemed to have been rejected:

- (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 (as defined in Paragraph 9) to perform Lessee's obligations under this Lease; and
- (iii) The assignee, purchaser, or sublessee agrees in writing to assume each and every obligation and liability 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 or CTL Affiliate 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 or CTL Affiliate 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 or CTL Affiliate 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. Except as otherwise expressly provided in this Lease, only said Consented-to-Lender or CTL Affiliate 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 CTL Affiliate 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. This subparagraph 8(g) shall only apply to successful bidder upon foreclosure who is other than the Consented-to-Lender or CTL Affiliate. If the successful bidder is rejected by Lessor as provided in Paragraph 8(f) above (said successful bidder being sometimes referred to hereinafter as the "Aggrieved Party"), 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 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 Aggrieved Party 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 Aggrieved Party. If the Aggrieved Party so elects, Lessor shall be deemed to have adopted a resolution rejecting an Aggrieved Party if Lessor has

not acted within ninety (90) days after the Aggrieved Party files a written application for Lessor to approve the Aggrieved Party;

- (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) [Intentionally Omitted]
- (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.
- (j) Assignment of Security Interest. Except as permitted under Paragraph 8(d), 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, which consent shall be granted or denied within sixty (60) days of Lessor receiving such request for consent and all documents needed by Lessor to process the request for consent. 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 Five Hundred Million Dollars (\$500,000,000) or a wholly-owned subsidiary of said Financial Institution if said Financial Institution guaranties the performance of said subsidiary; 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 this Paragraph 8 "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) a real estate investment trust; (vi) any lender or investment fund whose regular on-going business includes real property secured financing for

commercial properties, or (vii) a combination of two or more of the preceding entities.

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.
- (k) Additional Mortgagee Protections. Lessor acknowledges that a proposed lender will review the leasehold mortgage protection provisions (including the provisions of Paragraphs 8 and 10 as well as other provisions set forth in this Lease which provide rights or protections to or otherwise benefit, directly or indirectly, a Consented-to-Lender and which are provisions which leasehold lenders customarily obtain) of this Lease and based upon such review may request changes to or clarifications of such provisions or additional mortgagee protections. Lessor agrees to reasonably consider such changes or clarifications or additions and to promptly amend this Lease (in accordance with Lessor's customary process) to reflect reasonable changes, clarifications and/or additions requested by such proposed lender as a condition to its financing provided the Lender's requested changes directly relate to mortgagee protections and do not reduce Lessor's rights and remedies or expand any of Lessor's obligations hereunder in any material respect. Lessee shall reimburse Lessor for Lessor's reasonable attorneys' fees incurred in connection with any such amendment.

8.1 APPROVED PLEDGEE PROTECTIONS:

- (a) Voluntary Lease Surrender; Amendment. Without the prior written consent of the Approved Pledgee (so long as the Approved Pledge has not been terminated), Lessor will not accept the voluntary surrender, cancellation, or termination of this Lease before the expiration of the term thereof. In addition, provided that pledge documents governing the Approved Pledge require the Approved Pledgee's consent to the same and Lessee has provided Lessor a copy of the pledge documents and identified the provision containing such requirement, Lessor agrees not to enter into an amendment of this Lease without the prior written consent of the Approved Pledgee,

which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Lessor and Lessee may enter into an Update Amendment without the prior written consent of the Approved Pledgee.

- (b) Loan Default. If the Approved Pledge is in default at any time, the Approved Pledgee or an Affiliate of the Approved Pledgee to whom the Approved Pledge has been assigned for the purpose of accepting an assignment of the pledged membership interest in lieu of exercising its rights under the Approved Pledge or to exercise its rights under the Approved Pledge to acquire such membership interest, shall, as provided by law, have the right, without Lessor's prior consent, to:

- (1) Accept an assignment of such membership interest in lieu of exercising its rights under the Approved Pledge; or
- (2) Exercise its rights under the Approved Pledge to acquire such membership interest as provided in the Approved Pledge.

Following such acquisition of the pledged membership interest by the Approved Pledgee or such Affiliate, no transfer of such membership interest shall be effective without Lessor's prior written consent (which shall be granted or withheld in the same manner and subject to the same criteria and limitations as provided in subparagraph 8(f) above); provided, however, any merger, consolidation or reorganization involving the Approved Pledgee or its Affiliate shall not be deemed a transfer requiring Lessor's consent or otherwise restricted by the terms of this Lease. No transfer of the pledged membership interest to any person other than Approved Pledgee or its Affiliate in connection with the exercise of Approved Pledgee's rights under the Approved Pledge shall be effective without Lessor's prior written consent (which shall be granted or withheld in the same manner as provided in subparagraph 8(f) above); provided that any person that is the successful bidder in connection with a foreclosure of the Approved Pledge will have the same rights, and subject to the same limitations, as provided to a successful bidder in subparagraph 8(g).

- (c) Approved Pledge and Exercise of Approved Pledge Does Not Require Consent. Notwithstanding the terms of Paragraph 9 below, the Approved Pledge and the acquisition by the Approved Pledgee or its Affiliate of the pledged membership interest pursuant to the Approved Pledge shall not require Lessor's consent.
- (d) Notice and Cure Rights. So long as the Approved Pledge is outstanding and so long as Lessee or the Approved Pledgee has provided to Lessor the name and address of the Approved Pledgee for purposes of such notice, Lessor shall provide the Approved Pledgee with the same notice and cure rights and

other protections and rights described in Paragraph 10 below to which the Consented-to-Lender or CTL Affiliate is entitled including without limitation, the right to enter into a new lease if this Lease is terminated prior to the termination of the Approved Pledge. If there is a conflict between the cure rights which the Consented-to-Lender or CTL Affiliate asserts and the cure rights the Approved Pledgee asserts, Lessor shall have no duty to resolve such conflict and may elect to recognize only the cure rights of the Consented-to-Lender or CTL Affiliate without any liability to the Approved Pledgee; provided, however, Lessor shall accept without the necessity of further inquiry, as confirmation that no conflict exists, a written notice executed by the Consented-to-Lender or CTL Affiliate that recognizes Approved Pledgee's right to exercise any cure rights or enter into a new lease as described in Paragraph 10.

- (e) Acquisition of Initial Construction Loan Encumbrance. Lessor acknowledges that Approved Pledgee has the option to acquire the loan secured by the Initial Construction Loan Encumbrance and agrees that (i) Lessor's consent shall not be required in connection with any such acquisition, and (ii) upon Lessor's receipt of written notice from the Approved Pledgee that the Approved Pledgee or its Affiliate has acquired such loan and has become the assignee of the Initial Construction Lender with respect to the Initial Construction Loan Encumbrance, then, in such event, Approved Pledgee or its Affiliate (as applicable) shall be deemed a Consented-to-Lender for all purposes and shall be afforded the rights and privileges of a Consented-to-Lender under the terms of this Lease.
- (f) Termination of Approved Pledge. Upon receipt of written notice from the Approved Pledgee that the Approved Pledge is no longer in effect, then, in such event, the provisions of this Paragraph 8.1 shall automatically terminate and be of no further force or effect.

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 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) Except as provided in Paragraph 8 herein, permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein; or

(e) Permit the occupancy of the whole or any part of the Leased Premises by any other person or entity.

Notwithstanding the foregoing, nothing herein shall be construed to prevent, or require Lessor's consent to, 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:

- (i) Except as provided in Paragraph 8 and except with respect to a change in direct or indirect ownership of Lessee involving only one or more Approved Parent Entities and/or their respective Affiliates (as such terms are defined below), permit assignment, hypothecation, withdrawal, admittance, dissolution, change, pledge, encumbrance, transfer or sale, voluntary or involuntary, of any direct or indirect ownership or beneficial interest in Lessee. All references to indirect ownership in this Paragraph 9 are without limitation on the number of levels within the ownership structure of Lessee; or
- (ii) Contract for the management, operation, or brand of the whole or any part of the Leased Premises.

In the event Lessor's consent is required for any transaction described in this Paragraph 9 above, hereinafter referred to as a "transaction," 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. Consent shall be granted or denied within sixty (60) days of Lessor receiving the request for such transaction and all documents needed by Lessor to process such transaction; provided that if Lessor fails to grant or deny such consent within such sixty-day period, Lessee will provide written notice to Lessor stating that Lessor has failed to respond to the notice requesting consent as provided above and if Lessor fails to respond within fifteen (15) days after receiving such notice from Lessee, Lessee's request shall be deemed to have been rejected.

If Lessor's consent is required under this Paragraph 9, Lessor may withhold its consent on any reasonable grounds, including without limitation any of the following: (i) the assignee or transferee's contemplated use of the Leased Premises following the proposed assignment or transfer is not substantially similar to the use permitted under this Lease; (ii) in Lessor's reasonable business judgment, the proposed Lessee or its operator pursuant to a long term hotel management agreement lacks sufficient business experience to operate a successful hotel of the type and quality required under this Lease, (iii) the proposed Lessee or any person or entity acquiring more than a 2% direct or indirect interest in Lessee is not

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 consideration of personal taste or preference), or (iv) the proposed Lessee or person(s) or entity(ies) acquiring control of Lessee do not collectively possess Business Experience and Financial Means. As used in Articles 8 and 9, the term “**Business Experience**” means, in Lessor’s reasonable judgment, sufficient general business experience to perform Lessee’s obligations under this Lease, according to the then-current standards for business experience that Lessor generally requires of new and renewed lessees at the time of the request but taking into account that specific hotel operational experience may be provided by the operator of the hotel; and the term “**Financial Means**” means, in Lessor’s reasonable judgment, that Lessee or the principals of Lessee possess the financial means to perform Lessee’s obligations under this Lease taking into consideration the particular condition and performance of the improvements on the Leased Premises (e.g., different financial means are required to complete improvements under construction, improve a property in need of rehabilitation, and/or financially support the operation of a property not generating a sufficient return to its ownership).

Regardless of whether or not Lessor’s consent is required for the same, no assignment of the Lease shall be effective unless the assignee shall assume each and every obligation and liability under this Lease arising from and after the assignment whereupon the assignor shall be automatically released of all obligations and liabilities actually assumed by assignee.

If a transaction (other than a sublease of less than substantially all of the Leased Premises, which is addressed below) occurs on or after the twenty-fifth (25th) anniversary of the Commencement Date, Lessor’s consent shall be conditioned upon the following: (i) if, on the effective date of such transaction, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; provided that this item (i) shall not apply to a transaction resulting from a contract for the management, operation or brand of the whole or any part of the Leased Premises; and (ii) if deemed necessary by Lessor, a Lease amendment shall be executed by Lessor and Lessee to reflect updated or additional lease provisions for the purpose of conforming this Lease to Lessor’s then standard leasing terms, practices, and policies including, but not limited to, a sustainable leasing policy, provided no such changes would result in any material adverse effect on Lessee’s obligations, liabilities or rights under this Lease or under law and such terms have been and are included in substantially all similar leases or amendments entered into by Lessor at or around the time of the proposed modification (such an amendment is referred to herein as an “**Update Amendment**”). Notwithstanding the foregoing terms of this paragraph, clauses (i) and (ii) of this paragraph shall not apply in the event of: (a) a Lease assignment or transfer to a third party from a Consented-to-Lender or CTL Affiliate 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 or CTL Affiliate by deed in lieu of foreclosure, or to a Consented-to-Lender or CTL Affiliate or a third party as the successful bidder at a foreclosure sale.

Lessor may withhold consent to any sublease on any reasonable grounds, including without limitation any of the following situations: (i) the sublessee's contemplated use of the Leased Premises following the proposed sublease is not substantially similar to the use permitted under the Lease as provided in Paragraph 2; (ii) in Lessor's reasonable business judgment, the sublessee or its operator, if any, lacks sufficient business reputation, experience or financial capacity to operate successfully on the subleased premises, (iii) the sublessee's contemplated use of the subleased premises is not for a use consistent with those visitor serving retail uses normally associated with a hotel of the standards required by the Lease as provided in Paragraph 2, or (iv) the proposed sublessee is not 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 consideration of personal taste or preference).

In the event Lessor consents to any sublease (other than a sublease of all or substantially all of the Leased Premises, which is addressed above) on or after the twenty-fifth (25th) anniversary of the Commencement Date, said consent shall be conditioned upon the following: 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.

In the event of a consented-to transaction that requires adjustment to market rent as provided above, upon the effective date of such transaction, 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. If the parties cannot agree to an amount that is equal to the market rent, the rent shall be determined by the appraisal procedure described in Paragraph 3.2 herein, except that the determination of the appraisers 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 appraisal procedure.

"Affiliate" means, as to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control with such person. For purposes of this Lease, the term **"control"** (including the terms "controlling," "controlled by" and "under common control with") of a person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person through the ownership of voting stock or equity interests, by contract or otherwise, and/or the direct or indirect ownership of fifty percent (50%) or more of the beneficial ownership interest in the controlled person. Notwithstanding the foregoing, and subject to the provisions of Paragraph 9.1 below, there will be no change in control of Lessee so long as one or more of the following persons or entities are in control of Lessee (directly or indirectly): (i) a COS Parent Entity; (ii) a Portman Parent Entity; (iii) a Hensel Phelps Parent Entity; and/or (iv) a Lankford Parent Entity (as such terms are defined below) (collectively, the **"Approved Parent Entities"**). The term "COS Parent Entity" shall mean any person or entity (A) 100%

owned directly or indirectly by and controlled by China Orient Asset Management (International) Holding Limited (Hong Kong), (B) 100% owned directly or indirectly by China Orient Summit Capital Co., Ltd. or (C) that owns substantially all of the commercial real estate portfolio of China Orient Asset Management (International) Holding Limited (Hong Kong) or China Orient Summit Capital Co., Ltd. (inclusive of any Affiliates thereof), or (D) any successor to any person or entity described in (A), (B) or (C) above whether by merger, consolidation or operation of law or sale of substantially all of its assets. The term "Portman Parent Entity" shall mean any person or entity which is 100% owned by Portman Holdings, LLC or by John C. Portman, Jr. and/or his spouse, children and lineal descendants, or any trust for the benefit of such persons. The term "Hensel Phelps Parent Entity" shall mean Hensel Phelps Construction Co. The term "Lankford Parent Entity" shall mean any person or entity which is 100% owned by Robert V. Lankford and/or his spouse, children and lineal descendants, or any trust for the benefit of such persons. A **"Third Party"** is any person or entity other than (a) an Approved Parent Entity, (b) a person or entity who is 100% owned directly or indirectly by an Approved Parent Entity, (c) with respect to the Hensel Phelps Parent Entity, a person or entity who is a shareholder thereof from time to time provided that such shareholder is also an employee of the Hensel Phelps Parent Entity, (d) with respect to the Lankford Parent Entity and so long as Lankford & Associates is a Lankford Parent Entity, up to four (4) employees of Lankford & Associates other than Robert V. Lankford, provided that the cumulative ownership of such employees does not exceed ten percent (10%) of the equity interest in Lankford Lane Field, LLC, or (e) a shareholder of a publicly traded company.

Lessee shall notify Lessor of all changes in the direct or indirect ownership of Lessee (whether or not there is a change of control of Lessee) as follows: Lessor shall be notified of all changes in direct or indirect ownership involving only Approved Parent Entities within thirty (30) days of the occurrence of the change. Lessor shall be notified of all proposed changes in direct or indirect ownership involving Third Parties in connection with Lessee's seeking to obtain Lessor's consent to such change in direct or indirect ownership involving a Third Party. Such notice of change in a direct or indirect change in ownership of Lessee shall be accompanied by such information as is reasonably necessary to determine whether the change involves an Approved Parent Entity or an Affiliate of an Approved Parent Entity and/or a Third Party and whether or not the change results in a change of control of Lessee as defined above. In addition, at the request of Lessor from time to time, within thirty (30) days after a request from Lessor for the same, which Lessor can make from time to time, Lessee shall provide to Lessor a detailed organizational chart and other information to determine all persons and entities holding a direct or indirect interest in Lessee and who has control over Lessee including information on beneficial ownership and voting rights necessary to make such determination.

9.1 COS FUND

Notwithstanding the provisions of Article 9 or any other provision of this Lease to the contrary, the following provisions shall apply to the creation of an investment fund or any

club investment vehicle (a "Fund"), if any, by the COS Parent Entity, or any Affiliates thereof (as such terms are defined in Article 9) (collectively, "COS") and the contribution to the Fund of some or all of the indirect interest which COS holds in Lessee (the "COS Indirect Interest"):

- (a) Within twenty four (24) months after the Commencement Date, COS may, without prior approval of Lessor, cause the COS Indirect Interest to be contributed to the Fund in one or more tranches, provided that:
 - (i) The credit provided to COS from the Fund as a result of the contribution of the COS Indirect Interest to the Fund shall not exceed an amount equal to (X) the amount invested by COS, directly or indirectly in Lessee and the Project, plus acquisition and closing costs paid by COS in acquiring the COS Indirect Interest, plus (Y) interest in the amount of ten per cent (10%) per annum from the date invested through the date of contribution of the COS Indirect Interest to the Fund, which amount shall be prorated in the event COS contributes less than all of its COS Indirect Interest.
 - (ii) The investors in the Fund (the "Fund Investors") shall be made up of institutional investors, insurance companies, wealth management firms and/or high net worth individuals.
 - (iii) The Fund will have no more than six (6) limited partner Fund Investors in addition to COS acting as a limited partner and/or general partner Fund Investor or other similar capacities.
 - (iv) COS will retain at least twenty percent (20%) of the ownership of the Fund as a limited partner and/or general partner or other similar capacities.
 - (v) All Fund Investors, and persons having an equity ownership interest in any Fund Investor which is a fund vehicle of individual investors, (x) must not be Prohibited Persons (as defined in Paragraph 47) and must not otherwise cause Lessee not to be in compliance with Paragraph 47, and (y) must be accredited investors as provided in Rule 501 of Regulation D of the Securities Act of 1933, as amended.
 - (vi) The General Partner or Managing Member of the Fund must be COS, the Portman Parent Entity or an Affiliate thereof, or a joint venture between COS and the Portman Parent Entity or an Affiliate thereof (collectively, the "Approved Fund Manager"), with day to day control over the Fund and decisions made by the Fund with respect to the Project. Lessor shall have the right to approve any such General Partner or Managing Member if it is not an Approved Fund Manager, such approval not to be unreasonably withheld, conditioned or delayed.
 - (vii) No Exit Fee shall be payable with respect to the contribution of the COS Indirect Interest to the Fund, or the investment by Fund Investors in the Fund, or the sale of interests in the Fund by Fund Investors.

- (viii) No contribution of the COS Indirect Interest to the Fund, or the investment by Fund Investors in the Fund, or the sale of interests in the Fund by Fund Investors in accordance with the above shall cause or be deemed to cause to occur a change of control of Lessee.
- (ix) The parties having the right to make decisions for Lessee relating to this Lease and the Project shall remain LPP Lane Field South, LLC and COS.
- (x) Any sale and transfer of the COS Indirect Interest by the Fund shall be subject to the provisions of Article 9 and Paragraph 3.3.
- (xi) COS shall deliver written notice to Lessor within thirty (30) days after (x) any transfer of the COS Indirect Interest to the Fund, (y) the investment in the Fund by a Fund Investor, together with the identity of such Fund Investor and persons having an equity ownership interest in any Fund Investor which is a fund vehicle of individual investors, together with Lessor's standard sublessee information form with respect to each such Fund Investor and person.
- (xii) Lessor shall have the right from time to time, but not more than two (2) times in any twelve (12) month period, to conduct an audit to confirm that the ownership of the Fund is in compliance with the terms of this Lease.

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, failure to actively and continuously use the Leased Premises in accordance with Paragraph 14 for twenty (20) 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 in any material respect any other express or implied covenants or conditions in this Lease, including without limitation Lessee's failure to comply with all time and cure periods specified in this Lease (except those described in Paragraphs 10(a)(1) and 10(a)(2) above and 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; provided that, if such default is not reasonably susceptible of cure within said thirty (30) day period and Lessee has commenced action within said thirty (30) day period to cure the default and is diligently prosecuting action to completion, such time period shall be extended by the time necessary to cure such default and further provided, in no event shall such extension period to cure the default continue for a time period in excess of Three Hundred Sixty Five (365) days. Notwithstanding the foregoing, in the event the default is the result of Lessee's failure to complete construction of the Project as required in Paragraph 5, Lessee may extend such cure period for an additional twelve (12) month period (the "First Extended Cure Period") upon satisfaction of the following requirements: (i) written notice to Lessor of the exercise of such extension right at least thirty (30) days before the commencement of the First Extended Cure Period, (ii) Documented evidence that Lessee has expended \$100 million in equity in developing the Project; (iii) Lessee is diligently pursuing the completion of the construction of the Project; and (iv) Lessee has paid Lessor prior to the commencement of the First Extended Cure Period a non-refundable extension fee in the amount of \$1.47 million, which payment will be in lieu of Minimum Annual Rent, but not any Net Percentage Rent, otherwise payable during the First Extended Cure Period. In the event Lessee has failed to complete construction of the Project as required in Paragraph 5 by the end of the First Extended Cure Period, Lessee may extend such cure period for an additional twelve (12) month period (the "Second Extended Cure Period") upon satisfaction of the following requirements: (x) written notice to Lessor of the exercise of such extension right at least thirty (30) days before the commencement of the Second Extended Cure Period, (y) Lessee is diligently pursuing the completion of the construction of the Project; and (z) Lessee has paid Lessor prior to the commencement of the Second Extended Cure Period a non-refundable extension fee in the amount of \$1.91 million, which payment will be in lieu of Minimum Annual Rent, but not any Net Percentage Rent, otherwise payable during the Second Extended Cure Period. For purposes of this section 10(a)(3), Lessee agrees that the Net Percentage Rent shall be payable without comparison to the Minimum Annual Rent as provided in paragraph 3(e) above.

- (4) Subject to any restrictions or limitations placed on Lessor by applicable laws governing bankruptcy, if there is a judicial sale of Lessee's leasehold interest or 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 not consented to by Lessee under any bankruptcy, arrangement, reorganization, dissolution or insolvency law (unless in the case of an involuntary petition, the same is dismissed within sixty (60) 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; (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, or (i) becoming insolvent.

This Paragraph 10(a)(4) shall not be applicable or binding on Lessee or any Consented-to-Lender, CTL Affiliate, or to any successors in interest thereto consented to by Lessor, as long as there remains any monies to be paid or any obligations to be satisfied by Lessee to such Consented-to-Lender, CTL Affiliate or successor thereto; provided that Lessee, such Consented-to-Lender, CTL Affiliate or successor, 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 Consented-to-Lender, CTL Affiliate or successor thereto agrees in writing to assume and perform each and every obligation and liability under the Lease capable of being assumed and performed by such Consented-to-Lender, CTL Affiliate or successor thereto at the time such performance is required.

- (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, reasonable expenses of reletting (including necessary repair, renovation and alteration of the Leased Premises) for a comparable use, 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. Lessor shall use reasonable efforts to mitigate its damages.

- (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.
- (4) Assignment of Plans and Entitlements. If this Lease terminates for any reason, then at Lessor's request, Lessee shall license or assign and transfer to Lessor at Lessee's sole expense all of Lessee's right, title and interest in and to all plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, to the extent assignable, free and clear of liens and claims by third parties. If Lessor so requests, Lessee shall execute and deliver to Lessor, within five (5) business days of Lessor's request, in a form provided by and acceptable to Lessor, an instrument confirming the license or assignment and transfer of such property and interests to Lessor and shall, within such five (5) business day period, deliver the originals of such plans, drawings, specifications, permits, approvals, warranties and other property and interests to Lessor.

In the event Lessor has consented to (or has been deemed to have consented to) an encumbrance of 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 Consented-to-Lender by certified mail (provided Lessee or Consented-to-Lender has provided to Lessor the name and address of any such Consented-to-Lender for purposes of such notice), which written notice shall set forth the event of default, the date of default (if known by Lessor), the amount of payment required, if any, and the applicable cure period, contemporaneously with the furnishing of such written notices to Lessee. Furthermore, in the event Lessee fails to cure such default(s) within the time permitted herein, said Consented-to-Lender 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) as to monetary defaults and within one hundred twenty (120) days following the expiration of the period within which Lessee may cure said default(s) as to nonmonetary default(s); provided, however, Lessor shall not be required to furnish any further notice(s) of default(s) to said Consented-to-Lender. Notwithstanding the foregoing, if a nonmonetary default cannot be cured within said one hundred twenty (120) day period

or if cure requires possession of the Leased Premises, the Lease shall not be terminated so long as said Consented-to-Lender has commenced and is diligently proceeding to foreclose under an encumbrance of the Lease for security purposes that has been consented to by Lessor (or which is deemed consented to). Without limiting the foregoing, if said Consented-to-Lender is timely making all monetary payments required hereunder and is using its best efforts in diligently proceeding to cure all other defaults and to foreclose the encumbrance or otherwise acquire title to the leasehold estate (e.g., by assignment of the Lease in lieu of foreclosure), no default hereunder shall operate to permit Lessor to terminate this Lease. In the event that any such foreclosure shall be subject to any stay or injunction, including, without limitation, any bankruptcy stay or injunction, Lessor will not terminate this Lease as long as the Consented-to-Lender is timely making all monetary payments required hereunder and is using its best efforts to obtain relief from such stay or injunction. Lessor agrees to accept performance by any such Consented-to-Lender of Lessee's obligations under this Lease with the same force and effect as if the same were performed by Lessee. Any cure period granted to said Consented-to-Lender pursuant to this Paragraph 10 shall be extended by any period of time during which said Consented-to-Lender is prevented from exercising its rights and remedies by reason of the bankruptcy of Lessee, an injunction, court order or similar legal prohibition so long as the Consented-to-Lender is timely making all monetary payments required hereunder and is using its best efforts to obtain relief from such bankruptcy, injunction, court order or similar legal prohibition. In addition to the foregoing, in the event the Lessee does not properly exercise its right, as provided in Paragraph 10(a)(3), to extend the cure periods provided to the Lessee with respect to an event of default resulting from Lessee's failure to complete construction of the Project as required in Paragraph 5, the Consented-to-Lender shall have the right to exercise such extension rights, either on behalf of the Lessee or with respect to its own right to cure such default, upon satisfaction of the conditions set forth in Paragraph 10(a)(3), including payment of the applicable extension fee; provided that the Consented-to-Lender gives written notice to Lessor and pays the applicable extension fee within five (5) Business Days after the expiration of the time period for Lessee to exercise such right to an extension. The exercise of the extension right(s) by the Consented-to-Lender as provided in the preceding sentence shall not operate to deprive the Consented-to-Lender of any additional time to cure defaults otherwise provided in this Paragraph 10, which additional time shall be added to the extension in the date for completion of construction effected by the exercise of such extension right(s).

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, this Lease shall not be terminated unless Lessor first legally offers to enter into a valid lease with said Consented-to-Lender or CTL Affiliate, and said offer is not accepted in writing within (30) 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 (subject to

such changes as may be reasonably necessary to reflect the change in the identity of the Lessee and /or its constituent owners), conditions (other than as to matters theretofore satisfied or completed), and priority as this Lease, provided the Consented-to-Lender or CTL Affiliate promptly cures all then-existing defaults under this Lease when and to the extent it is able to cure them. Without limiting the foregoing, the Consented-to-Lender or CTL Affiliate shall have no obligation to cure any insolvency or bankruptcy of Lessee, perform any non-monetary covenants (if any) that pertain to the financial condition, ownership or management of Lessee or cure any other default which is not susceptible to cure by such Consented-to-Lender or CTL Affiliate. 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 Consented-to-Lender or CTL Affiliate as soon as the same is obtained. Should the Consented-to-Lender or CTL Affiliate fail to accept said offer in writing within said thirty- (30) 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 Consented-to-Lender or CTL Affiliate.

Furthermore, in the event this Lease is rejected in connection with a bankruptcy proceeding (or any proceeding referred to in Paragraph 10[a][4] above), Lessor shall, within thirty (30) days thereafter, offer in writing to said Consented-to-Lender or CTL Affiliate 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 the termination of this Lease as provided in the immediately preceding provisions.

11. INTENTIONALLY DELETED.

12. EMINENT DOMAIN: If any public authority takes the whole or a substantial part of the Leased Premises under the power of eminent domain, then the term of this Lease shall cease as to the part so taken from the day the possession of that part is taken. Further, the rent shall be paid up to that day. Lessee shall then have the right either to: (i) cancel this Lease and declare the same null and void; or (ii) continue in possession of the remainder of the Leased Premises under the then-current Lease terms. Provided, however, the Minimum Annual Rent shall be reduced in proportion to the value of the portion of the Leased Premises taken. If less than the whole or a substantial part of the Leased Premises is so taken, then the term of this Lease shall otherwise remain in full force and effect as to the remainder of the Leased Premises under the then current Lease terms. Provided, however, the Minimum Annual Rent shall be reduced in proportion to the value of the portion of the Leased Premises taken. A part taken shall be deemed "substantial" if it is of such a nature and to such an extent that it has a material adverse impact on Lessee's ability to reasonably and economically use the remaining part of the Leased Premises for the purposes permitted under this Lease. If this Lease is not terminated, any award due

Lessee shall be held by the Consented-to-Lender, if any, and applied first to the cost of restoration and then to any debt or other sums owed to said Consented-to-Lender.

If there is a Consented-to-Lender, Lessee may not exercise its right to terminate this Lease as provided above without the Consented-to-Lender's prior written consent. Further, except as provided above, all amounts payable to Lessee pursuant to this Paragraph shall instead be paid to said Consented-to-Lender until all indebtedness due and owing to such Consented-to-Lender by Lessee has been repaid in full. Lessee and any such Consented-to-Lender shall each have the right to participate in any condemnation proceeding affecting the Leased Premises.

In the event the whole or any part of the Leased Premises is taken, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be distributed and disbursed first for the payment of all unpaid real and personal property taxes payable with respect to the part of the Leased Premises or the improvements thereon taken for the period prior to the taking (unless the amount of the award has already been reduced by the amount of such taxes), and the remainder apportioned between Lessor and Lessee (including any permitted subtenants claiming under or through Lessee) in proportion to their respective interests as follows:

- (i) Lessee's portion of the award shall be the amount remaining after deduction of Lessor's portion of the award as provided in clause (ii) below.
- (ii) In the event this Lease is terminated as a result of such taking, Lessor's portion of the award shall be based upon the sum of (aa) the present value at the date of the taking of all rents that would have accrued to Lessor under this Lease during the remaining portion of the Term had it not been terminated and (bb) the present value at such date of Lessor's reversionary interest in the Leased Premises, including all improvements or alterations thereon.
- (iii) In the event this Lease is not terminated as a result of such taking, Lessor's portion of the award shall be based upon the sum of (yy) the difference between (1) the present value at the date of the taking of all rents that would have accrued to Lessor under this Lease during the remaining portion of the Term without considering the reduction in Minimum Annual Rent resulting from the taking, minus (2) the present value at the date of the taking of all rents that will accrue to Lessor under this Lease during the remaining portion of the Term considering the reduction in Minimum Annual Rent resulting from the taking and (zz) the present value at such date of Lessor's reversionary interest in the part of the Leased Premises, including all improvements or alterations thereon, subject to the taking.

Title to remaining improvements and personal property constructed and installed by Lessee shall remain vested in Lessee for all purposes in connection with this Paragraph.

For purposes of this Paragraph, all amounts paid pursuant to any agreement with any condemning authority in settlement of or under threat of condemnation affecting the Leased Premises shall be deemed an award for purposes of this Paragraph. Lessee shall have the right to assert that, separate from the award with respect to the fee and leasehold interest, the valuation process take into account (a) any of Lessee's personal property, (b) compensation for moving and related expenses pursuant to the provisions of California Government Code Section 7262 et seq., (c) compensation for loss of good will pursuant to California Code of Civil Procedure Section 1263.510 et seq.; and (d) any other personal rights and remedies to which the occupant and user of the condemned portion of the Leased Premises may be entitled to under law. Said amounts shall not be deemed a part of an "award" as provided above.

13. TERMINATION OF PRIOR AGREEMENT(S): Any and all existing occupancy agreements, leases, or rental agreements, or option agreements with respect thereto, between Lessor and Lessee for the Leased Premises which have not already expired or terminated, are hereby terminated on the effective date of this Lease. Any surviving rights, duties, and obligations of the parties, if any, pursuant to the terms, covenants, and conditions in any such hereby terminated agreements shall remain enforceable and subject to all defenses, including without limitation any applicable statute of limitations. Further, said statute shall not be waived or extended because of this Lease. Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a release of any such duties or obligations, whether known or unknown at this time or upon the effective date of this Lease.

14. USE OBLIGATION: Lessee shall actively and continuously use and operate the Leased Premises for the limited particular exclusive use expressly provided for in Paragraph 2, herein, except for failure to so use caused by a Force Majeure Event. Notwithstanding the foregoing or anything to the contrary in this Lease, Lessee shall have the right to temporarily take portions of the Leased Premises out of service for the purpose of maintenance, repair, or renovation of same, and such shall not be construed as failing to actively and continuously use and operate the Leased Premises as provided in Paragraph 2, provided such maintenance, repair, or renovation is diligently pursued to completion. Said active and continuous use and operation enhances the value of the lands within Lessor's jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area. Lessee, however, shall not and is expressly prohibited from using the Leased Premises for any other purpose or use whatsoever, whether it is purported to be in addition to or in lieu of the particular exclusive use expressly provided in Paragraph 2, 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 necessary to maintain and preserve the Leased Premises in a good, safe, healthy, and sanitary condition, reasonably satisfactory to Lessor and in compliance with all applicable laws, and consistent with or superior to the standard of maintenance in Lessee's industry or industries according to the uses allowed on the Leased Premises. Provided, however, prior to Lessee performing any extraordinary repairs, as defined in Paragraph 4(h), 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.

Lessee shall, at all times during the term of this Lease, keep or cause to be kept, accurate and complete records of maintenance conducted on the Leased Premises. The records must be supported by source documents of original entry such as invoices, receipts, work orders, or other pertinent supporting documents. All Lessee's maintenance records related to business operations conducted within or from the Leased Premises, shall be kept either at the Leased Premises or at such other locations as are acceptable to Lessor. Lessor shall have the right at any and all reasonable times to examine said maintenance records, without restriction, for the purpose of determining Lessee's compliance with the maintenance obligations under this Lease.

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, conduct maintenance in the event of Lessee's failure to maintain as provided herein, 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, upon written notice 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, (i) if maintenance or remedial work, Lessee must immediately commence the work within ten (10) calendar days after written notice from Lessor, and (ii) if upgrades, Lessee must immediately commence the upgrades and diligently pursue the upgrades to completion, which upgrades shall be completed within one hundred eighty (180) days after written notice from Lessor. Further, if at any time Lessor reasonably 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.

Should Lessee fail to commence any required maintenance work within ten (10) calendar days at Lessor's written request (subject to a reasonable extension as may be needed to enable Lessee to enter into any contracts or other arrangements for the performance of such maintenance work), Lessor shall have the right to enter the Leased Premises and complete said work. Lessor may perform all maintenance, which includes all repairs and replacements necessary to maintain and preserve the Leased Premises in a good, safe, healthy, and sanitary condition, reasonably satisfactory to Lessor and in compliance with all applicable laws.

For any and all repairs undertaken by Lessor in accordance with this Paragraph, and upon written demand, Lessee shall reimburse or pay in advance to Lessor all costs associated with said repairs including, but not limited to, cost of materials and labor at Lessor's actual cost. Said payments shall be paid to Lessor as additional rent due under this Lease, subject to the rent provisions of this Lease, and paid in monthly installments or in one lump sum at the sole discretion of Lessor. For all repairs undertaken by Lessor pursuant to this Paragraph, Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor and its officers, employees, and agents pursuant to Paragraph 21 of this Lease. 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 the above, 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 15 shall not create any obligations or increase any obligations of Lessor elsewhere in this Lease, nor shall the exercise therefore limit any and all other rights or remedies of Lessor specified elsewhere in this Lease or provided by law.

15.1 LANE FIELD PARK MAINTENANCE AND MASTER SPECIAL EVENTS PERMIT

- a. As a part of the consideration for this Lease, Lessee shall, at its sole cost and expense, operate and maintain the areas delineated on Exhibit I attached hereto and incorporated herein by reference located adjacent to the Leased Premises during the term of the Lease in accordance with the terms of an Access, Maintenance and Master Special Events Permit ("Permit") to be entered into by Lessee and Lessor concurrently with this Lease and amended from time to time.
- b. The Permit shall include language which permits Lessee to hold temporary special events (generally less than forty-eight (48) hours each, excluding setup and

breakdown times), such as, without limitation, weddings, holiday parties, concerts, conventioner meetings, lectures, etc. in portions of Lane Field Park as shown on Exhibit I.

16. PERFORMANCE BOND: After completion of the improvements described in Paragraphs 5 and 5.1, Lessee shall not commence any major construction upon the Leased Premises until performance bonds in the amount of the total estimated construction cost of the proposed improvements have been secured and submitted to Lessor. Major construction, as used in this Paragraph 16, shall mean any construction in which Lessee will make an individual expenditure of Five Hundred Thousand Dollars (\$500,000) (which limitation amount shall be adjusted on each anniversary of the Commencement Date of this Lease by the then most recent available 12-month percentage change in the CPI) or more. In lieu of said performance bonds, the Executive Director of Lessor may, in his sole discretion, accept performance and labor and material bonds supplied by Lessee's contractor or subcontractors, performance guarantees, or other satisfactory evidence that said construction will be timely completed. Said bonds must be in a form acceptable to Lessor and have been issued by a company qualified to do business in the state of California.

17. TAXES AND UTILITIES: This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the Leased Premises by reason of: (i) this Lease; (ii) any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Lessee; or (iii) the business or other activities of Lessee upon or in connection with the Leased Premises. Lessee is permitted to pay the taxes and assessments under protest and contest the amounts. Lessee also shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the Leased Premises, or under this Lease, and shall pay before delinquency any and all charges for utilities at or on the Leased Premises.

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 laws and regulations. Said laws and regulations 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, including but not limited to regulations promulgated

thereunder, and Lessor shall have no such obligations or responsibilities as to the Leased Premises.

19. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION: Lessee shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the Americans with Disabilities Act of 1990; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such laws, including without limitation the Americans with Disabilities Act of 1990, Lessee shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Lessor and Lessee.

Annually, Lessee shall formulate and file with Lessor an approved: (i) "Equal Employment Opportunity and Nondiscrimination Program," and (ii) "Statement of Compliance" for the promotion of equal employment opportunities and nondiscrimination. Lessee shall make such progress reports as required by Lessor, and, upon Lessor's reasonable notice, Lessee shall make available for inspection and copying all of its records relevant to compliance with this Paragraph. Provided, however, Lessee is required to file the Program and Statement only when the average annual employment level operating on the Leased Premises exceeds fifty (50) employees. Provided further, should Lessee be subject to a federally-mandated affirmative action program for employees, Lessee may, in lieu of filing the Program and Statement, annually certify in writing to Lessor that Lessee is subject to such a program, and, upon Lessor's request, Lessee shall furnish evidence thereof.

For the purposes and provisions of this Paragraph, a sublessee shall be considered the Lessee should the sublessee become the prime operator of the Leased Premises.

Lessee's compliance with this Paragraph is an express condition hereof, and any failure by Lessee to so comply and perform shall be a default as provided in this Lease, and Lessor may exercise any right as provided herein, and as otherwise provided by law.

20. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

21. HOLD HARMLESS: Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor and its officers, employees, and agents (collectively "Indemnitees") for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands 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 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 Indemnitees from any claims, including but not limited to litigation, arising out of Lessor's approval(s) of the Redevelopment Project, any third party challenges to the CEQA review or determination for the Redevelopment Project if applicable, or Lessee's development of such Redevelopment Project. In the event such claims arise, Lessor will engage qualified counsel of its choosing at Lessee's sole cost and expense to defend the Indemnitees against any claims. Lessee will pay for any and all attorney's fees, costs and expenses associated with any such claims. The Indemnitees acknowledge and agree that the counsel of the Indemnitees may also jointly represent the Lessee, to the extent no conflict of interest exists.

22. SUCCESSORS IN INTEREST: Unless otherwise provided in this Lease, the terms, covenants, conditions, and agreements herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto.

23. EASEMENTS: This Lease and all rights granted hereunder are subject to all easements and rights-of-way previously granted or reserved by Lessor in, upon, over, and across the Leased Premises for any purpose whatsoever. Said Lease and granted rights shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and such other Lessor or public facilities as Lessor may determine from time to time to be in the best interests of the development of the lands within Lessor's jurisdiction. Lessor agrees that it will locate future easements and rights-of-way, and install associated public facilities, so as to produce a minimum amount of interference with Lessee's business. Further, Lessee shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way.

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

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 and Excess Liability covering the Leased Premises, operations, and contractual liability assumed by Lessee in this Lease in the amount of not less than Twenty Million Dollars (\$20,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be not less than Forty Million Dollars (\$40,000,000) unless a Twenty Million Dollars (\$20,000,000) 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 Five Million Dollars (\$5,000,000) 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, sprinkler leakage coverage and, if so required by Lessor, flood and earthquake coverage. The All Risk Property Coverage policies shall be endorsed with a Loss Payee endorsement in favor of Lessor. It is agreed that any property insurance proceeds in excess of Five Hundred Thousand Dollars (\$500,000) 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. All business interruption losses shall be payable to the insured parties as their interest may appear. However, if there is a Permitted Encumbrance held by a Financial Institution 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 to be disbursed for the repair

and restoration of the Leased Premises in accordance with its standard construction loan disbursement procedures (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 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.

(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 reasonably 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. Except with respect to the policies provided by an affiliate of InterContinental Hotels Group, PLC ("IHG") in connection with the operation of the Hotel Improvements which are confidential, Lessor reserves the right to require complete, certified copies of all required policies at any time. So long as the policies are provided by IHG in connection with its operation of the Hotel Improvements and they contain confidential terms, in the event of a claim under such policies for which a reservation or rights or denial letter has been issued by the insurer, Lessor shall have the right to receive the portions of the policies not containing confidential terms and if Lessor requires that it review such terms, then Lessee will provide a reasonable means for Lessor to review such terms and address its claim while otherwise keeping such terms confidential.
- (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. Such liability policies shall not contain a cross liability exclusion. All insurance policies shall be endorsed to state that coverage will not be suspended, voided, or cancelled, except after prior written notice to the named insured, which notice shall be thirty (30) days prior relative to voiding or cancellation and ten (10) days prior relative to suspension. Lessee shall provide Lessor immediate notice of any such suspended, voided, or cancelled policy if a replacement policy is not obtained by the suspended, voided, or cancelled notice date. 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 (it being acknowledged that Lessee shall not be in breach of this provision if applicable law provides that Lessee's insurance shall not cover Lessor to the extent of Lessor's sole negligence and/or willful misconduct). Further, all insurance companies must be reasonably satisfactory to Lessor.
- (3) Any deductibles or self-insured retentions must be declared and reasonably 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 reasonable 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 shall notify Lessee in writing of changes in the insurance requirements pursuant to clause (4) above. 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.
- (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. Further, if Lessee fails to procure and maintain any insurance required to be procured and maintained under this Paragraph, Lessor shall have the right, but not the obligation, to procure insurance in an amount and form consistent with the requirements of this Paragraph. The cost of said insurance shall be payable by Lessee to Lessor as additional rent under this Lease on or before the first (1st) day of the month immediately following written notice of Lessor's procurement of said insurance with interest at the Default Rate from the date such sums

are expended. "Default Rate" shall mean a rate per annum equal to the prime rate of interest as announced from time to time by Bank of America, or any successor thereto, plus five percent (5%).

- (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 Lessee knows, or reasonably should have known, will result in the cancellation of any insurance Lessor may have on the Leased Premises or with respect to any adjacent premises of which Lessor has notified Lessee in writing or that will cause cancellation of any other insurance coverage for the Leased 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 LAW: Lessee acknowledges and agrees that:

- (a) Prevailing wages will be paid by Lessee or its contractors, subcontractors, agents, or affiliates to all persons and or entities subject to California's Prevailing Wage Laws ("PWL") who provide any labor, services and/or equipment or materials, in connection with any construction or work of improvement on the Lease Premises or areas occupied by Lessee;
- (b) Lessee shall comply with all applicable provisions of California's PWL;
- (c) Lessee shall ensure that all persons and/or entities who provide any labor, services, equipment and/or materials in connection with such construction or work of improvement shall also comply with all applicable provisions of the PWL;
- (d) Lessor is not responsible for Lessee's failure to comply with all applicable provisions of the PWL;
- (e) Lessee shall defend and indemnify Lessor and its officers; employees, commissioners and agents for any and all claims, suits, liability judgements,

damages, proceedings, orders, directives, costs, including reasonable attorney's fees, (claims) for payment of prevailing wages or failure to comply with the PWL, except for claims arising through the sole negligence or willful misconduct of Lessor.

27. WARRANTIES-GUARANTEES-COVENANTS: Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Leased Premises, including the physical condition thereof, or any condition which may affect the Leased Premises. It is agreed that Lessor will not be responsible for any loss, damage, and/or costs, which may be incurred by Lessee by reason of any such condition or conditions.

28. DAMAGE TO OR DESTRUCTION OF LEASED PREMISES: Should Lessee-owned improvements be: (i) damaged or destroyed by fire, the elements, acts of God, or by any other cause; or (ii) declared unsafe or unfit for occupancy or use by a public entity with the appropriate authority, (i) and/or (ii) hereinafter "event," Lessee shall, within ninety (90) days of such event, commence and thereafter diligently pursue to completion the repair, replacement, or reconstruction of the improvements necessary to permit full occupancy and use of the Leased Premises for the uses required herein. Repair, replacement, or reconstruction of such improvements shall be accomplished in a manner and according to Plans approved by Lessor except as otherwise provided in Paragraph 4(h). Provided, however, Lessee shall not be obligated to repair, reconstruct, or replace the improvements following their destruction in whole or substantial part, except to the extent the loss is covered by insurance required pursuant to Paragraph 25 herein (or would be covered if Lessee had complied with Paragraph 25 regardless of whether such required insurance is actually in effect).

If Lessee elects not to restore, repair, or reconstruct as herein required, then this Lease shall terminate, subject, however to the rights of any Consented-to-Lender pursuant to Paragraph 10 and Paragraph 25. Further, Lessor shall have any rights to which it would be entitled under the provisions of Paragraph Nos. 6, 25 and 42 herein.

No event described herein shall relieve Lessee of its obligations to pay all rent and other amounts otherwise due hereunder.

29. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION: Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to Lessor within thirty (30) days after receipt of written demand therefore, a good and sufficient deed whereby all Lessee's right, title, and interest in the Leased Premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge, and deliver such deed. Said notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee, or those claiming under Lessee, in and to the Leased Premises.

30. PEACEABLE SURRENDER: Upon expiration of this Lease or earlier termination or cancellation thereof, as herein provided, Lessee shall peaceably surrender the Leased Premises to Lessor in as good condition as the Leased Premises were at the Commencement Date of this Lease, except as the Leased Premises were repaired, rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease, ordinary wear and tear and casualty excepted, and subject to Paragraph 6 herein. If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

31. WAIVER: Should either Lessor or Lessee waive any breach by the other of any Lease covenant, condition, or agreement, such waiver shall not be, nor be construed to be, a waiver of any subsequent or other breach of the same or any other Lease covenant, condition, or agreement. Further, failure on the part of either party to require or exact the other's full and complete compliance with any of the Lease covenants, conditions, or agreements shall not be, nor be construed as in any manner changing the terms, or preventing the enforcement in full, of the provisions hereof. In addition, Lessor's subsequent acceptance of rent hereunder shall not be deemed to be a waiver of any preceding Lessee breach of any Lease term, covenant, or condition, other than Lessee's failure to pay the particular rent so accepted, regardless of Lessor's knowledge of Lessee's preceding breach at the time rent is accepted.

32. HOLDOVER: This Lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after either expiration or termination shall not constitute a renewal or extension, or give Lessee any rights in or to the Leased Premises.

If Lessee, with Lessor's consent, remains in possession of the Leased Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. In addition, all provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy, and Lessee shall continue to pay all rent required by this Lease. Provided, however, if percentage rent is required by this Lease, it shall be paid monthly on or before the tenth (10th) day of each month, including the tenth (10th) day of the month following the expiration of any such holdover period.

33. PARAGRAPH HEADINGS: The Table of Contents and Paragraph Headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

34. ENTIRE UNDERSTANDING: This Lease contains the entire understanding and agreement of the parties. Lessee acknowledges there is no other written or oral understanding or agreement between the parties with respect to the Leased Premises, and that this Lease supersedes all prior negotiations, discussions, obligations, and rights of the

parties hereto. No waiver, modification, amendment, or alteration of this Lease shall be valid unless it is expressly in writing and signed by authorized representatives of the parties hereto. Each of the parties to this Lease acknowledges that no other party, agent, or representative has made any promise, representation, waiver, or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease. Each party further acknowledges it has not executed this Lease in reliance upon any collateral promise, representation, waiver, or warranty, or in reliance upon any belief as to any fact not expressly recited in this Lease.

35. TIME IS OF THE ESSENCE: Time is of the essence of each and all of the terms and provisions of this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance. All covenants, conditions, and agreements in this Lease shall extend to and bind any assigns and sublessees of Lessee.

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

With copy to
Port General Counsel
San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488

To Lessee

c/o Portman Holdings, LLC
303 Peachtree Center Ave.
Suite 575
Atlanta, GA 30303
Attn: Mr. Ambrish Baisiwala and General
Counsel

With a copy to:

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.

37. REMOVAL OF MATERIALS: Lessee shall, upon expiration of this Lease or sooner termination as herein provided, remove within sixty (60) days all materials, including without limitation all debris, and surplus and salvage items, hereinafter "Materials," from the Leased Premises, so as to leave the same in as good condition as when first occupied by Lessee, subject to reasonable wear and tear. Provided, however, if Lessee fails to remove all Materials within sixty (60) days, Lessor may remove, sell, or destroy said Materials at the expense of Lessee. Further, Lessee agrees to pay Lessor the reasonable cost of such removal, sale, or destruction; or, at the option of Lessor, said Materials not removed, sold, or destroyed by Lessee shall become the property of Lessor, without cost to Lessor, and without any payment to Lessee.

During any period of time required to remove said Materials, or to test for and/or remediate Hazardous Materials as required in Paragraph 42 herein, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily.

38. WASTE/NUISANCE: Lessee shall not use the Leased Premises in a manner that constitutes waste or nuisance.

39. NUMBER AND GENDER: Words of any gender used in this Lease shall include any other gender and each word in the singular number shall include the plural whenever the tense requires.

40. APPLICABLE LAW: The Lease will be governed by and construed and enforced in accordance with the laws of the State of California.

41. ATTORNEY FEES: Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Lessor under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

42. HAZARDOUS MATERIALS:

- (a) Definition of "Hazardous Material." The term "Hazardous Material" shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including oil and petroleum products, which now or in the future may be within the meaning of any applicable, federal, state, or local law, regulation, ordinance, or requirement at any concentration that is or has become regulated by the United States, the State of California, or any local government authority having jurisdiction over the Leased Premises.
- (b) Lessee Use of Hazardous Materials. Lessee shall not cause or permit any Hazardous Material, or products or materials which include any hazardous substance as a component, to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Leased Premises by Lessee or its agents, employees, contractors, sublessees, or invitees unless expressly approved, at Lessor's sole discretion, in writing by Lessor after submittal by Lessee of Material Safety Data Sheets ("MSDS") or other information requested by Lessor. Limited quantities of equipment, materials and supplies customarily used in connection with the construction of improvements and standard office, food service and janitorial supplies customarily used in places of business which contain chemicals categorized as Hazardous Material are excluded from this requirement. Lessee shall use, store, and dispose of all such Hazardous Materials in strict compliance with all applicable statutes, ordinances, regulations, and other requirements in effect during the Lease Term that relate to public health and safety and protection of the environment ("Environmental Laws"); and shall comply at all times with all Environmental Laws.
- (c) Notice of Release or Investigation. If during the term of this Lease (including any extensions), Lessee becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Leased Premises; or (ii) any inquiry, investigation, proceeding, or claim (collectively "Inquiry") by any government agency or other person regarding the presence of any Hazardous Material on, in, under, from or about the Leased Premises, Lessee shall give Lessor written notice of the release or Inquiry within five (5) days after Lessee learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Lessor copies of any claims, notices of violation, reports, warning or other writings received by Lessee that concern the release or Inquiry.
- (d) Lessor Right to Inspect. If Lessee has in the past or continues to use, dispose, generate, or store Hazardous Materials on the Leased Premises, Lessor or its designated representatives, at Lessor's sole discretion, may at

any time during the term of this Lease, but is no way obligated to, enter upon the Leased Premises and make any inspections, tests or measurements Lessor deems necessary to determine if a release of Hazardous Materials has occurred. Lessor shall furnish Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's sole judgment, circumstances require otherwise. Such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Lessee's operation as is practicable. If such tests indicate a release of Hazardous Materials, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have such tests for such Hazardous Materials conducted by a qualified party or parties on the Leased Premises. If Lessor has reason to believe any Hazardous Materials originated from a release on the Leased Premises have contaminated any area outside the Leased Premises, including but not limited to surface and groundwater, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have tests for such Hazardous Materials conducted by a qualified party or parties on said area outside the Leased Premises. Lessor's failure to inspect, test or take other actions pursuant to this Paragraph 42(d) regarding the Leased Premises, shall in no way relieve Lessee of any responsibility for a release of a Hazardous Material.

- (e) Clean-up Obligations. If the presence of any Hazardous Material brought onto the Leased Premises by Lessee or Lessee's employees, agents, sublessees, contractors, or invitees, or generated by same during the term of this Lease, results in contamination of the Leased Premises, adjacent properties or the San Diego Bay, Lessee shall promptly take all necessary actions, at Lessee's sole expense, to remove or remediate such Hazardous Materials. Lessee shall provide notice to Lessor prior to performing any removal or remedial action. Lessee shall not propose nor agree to any covenant of use restriction as part of any removal or remediation required as a result of this Paragraph 42(e). To the extent Lessor incurs any costs or expenses in performing Lessee's obligation to clean-up contamination resulting from Lessee's operations or use of the Leased Premises, Lessee shall promptly reimburse Lessor for all costs and expenses incurred within thirty (30) days. Any amounts not so reimbursed within thirty (30) days after Lessee's receipt of an itemized statement therefore shall bear interest at the Prime Rate plus Five Percent (5%) per annum compounded monthly. This provision does not limit the indemnification obligation set forth in Paragraph 42(f). The obligations set forth in this Paragraph 42(e) shall survive any expiration or other termination of this Lease.
- (i) Clean-up Extending Beyond Lease Term. Should any clean-up of Hazardous Materials for which Lessee is responsible not be completed

prior to the expiration or sooner termination of the Lease, including any extensions thereof, then: (A) Lessee shall deposit into an escrow account an amount of money equal to the balance of the estimated costs of the clean-up, together with instructions for the disbursement of such amount in payment of the costs of any remaining clean-up as it is completed, and (B) if the nature of the contamination or clean-up required of Lessee is of such a nature as to make the Leased Premises untenable or unleaseable, then Lessee shall be liable to Lessor as a holdover lessee until the clean-up has been sufficiently completed to make the Leased Premises suitable for lease to third parties. The estimated cost of the clean-up shall require approval of the Lessor.

(ii) Financial Security. If Lessor determines, in its reasonable discretion, that Lessee does not have insurance or other financial resources sufficient to enable Lessee to fulfill its obligations under this Paragraph 42(e), whether or not accrued, liquidated, conditional, or contingent, then Lessee shall, at the request of Lessor, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Lessor as is appropriate to assure that Lessee will be able to perform its duties and obligations hereunder.

(f) Indemnification. Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend, and hold harmless Lessor and Lessor's directors, officers, employees, partners, affiliates, agents, successors, and assigns with respect to all losses, including reasonable attorneys' and environmental consultants' fees, arising out of or resulting from Lessee's occupancy or use of the Leased Premises, or the violation of any Environmental Law, by Lessee or Lessee's agents, assignees, sublessees, contractors, or invitees. This indemnification applies whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any government agency has issued a clean-up or other order. This indemnification shall survive the expiration or termination of this Lease. This indemnification includes, but is not necessarily limited to:

- (i) Losses attributable to diminution in the value of the Leased Premises;
- (ii) Loss or restriction of use of rentable space(s) in the Leased Premises;
- (iii) Adverse effect on the marketing of any space(s) in the Leased Premises;

- (iv) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation; and,
- (v) All costs (including reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Lessor in undertaking any assessment or remediation of the Leased Premises that might not have been fully resolved by Lessee by the time this Lease terminates or expires.

Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign said indemnity.

- (g) Termination of Lease. Upon the expiration or earlier termination of the term of the Lease, Lessee shall: (i) cause all Hazardous Materials previously owned, stored, or used by Lessee to be removed from the Leased Premises and disposed of in accordance with all applicable provisions of law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by Lessee, or its predecessors, to store any Hazardous Material on the Leased Premises, and repair any damage to the Leased Premises caused by such removal; (iii) cause any soil or other portion of the Leased Premises which has become contaminated by any Hazardous Material stored or used by Lessee, or its predecessors, to be decontaminated, detoxified, or otherwise cleaned-up in accordance with the applicable requirements of any relevant government authorities; and (iv) surrender possession of the Leased Premises to Lessor free of contamination attributable to Hazardous Materials generated or used by Lessee or stored or disposed of by any party other than Lessor in or on the Leased Premises during the term of this Lease.

43. STORAGE TANKS:

- (a) Underground Storage Tanks. No underground storage tanks ("USTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of the Lessor's Executive Director in his or her sole and absolute discretion. In the event Lessee obtains such approval to install a UST on the Leased Premises, Lessee shall be responsible for complying with all laws and regulations pertaining to such UST, including tank monitoring of such UST as required by the County of

San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Lessee further agrees to take responsibility for reporting unauthorized releases from USTS to HMMD and the Lessor within twenty-four (24) hours of such unauthorized release. Lessee will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. Lessee shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST. Lessee further agrees to be responsible for maintenance and repair of the USTs; obtaining tank permits; filing a business plan with HMMD or other responsible agency; and for paying UST fees, permit fees, and other regulatory agency fees relating to USTs.

Lessee agrees to keep complete and accurate records on the Leased Premises for a period of not less than thirty-six (36) months from the applicable events including, but not limited to, permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs, and any unauthorized releases of Hazardous Materials. Lessee also agrees to make such records available for Lessor or responsible agency inspection. Lessee further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Lessee and any operator of USTs.

Furthermore, Lessee shall be responsible for compliance with all other laws and regulations presently existing, or hereinafter enacted, applicable to USTs, including without limitation any such laws and regulations which alter any of the above requirements.

- (b) Aboveground Storage Tanks. No aboveground storage tanks ("ASTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of the Lessor's Executive Director in his or her sole and absolute discretion. In the event Lessee obtains such approval to install an AST, Lessee shall be responsible for complying with all laws and regulations pertaining to such AST. Lessee shall, in accordance with this Lease and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said applicable laws and regulations. In addition, Lessee shall maintain and repair said tanks to conform and comply with all other applicable laws and regulations for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual

inspection of said tanks, allowing the San Diego Regional Water Quality Control Board ("SDRWQCB"), Lessor, and/or responsible agency, to conduct periodic inspections. Lessee also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefore, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. The Lessee shall be responsible for all costs associated with any unauthorized release from ASTS, including but not limited to, investigative, surface and groundwater clean-up, and expert and agency fees.

44. ENVIRONMENTAL DISCLOSURES: Lessee understands and agrees that the Leased Premises are being leased in an "as is, with all faults" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee. Lessee further understands and agrees that the "as-is, with all faults" condition of the Leased Premises includes any contamination of the Leased Premises, including structures, soils, groundwater, and adjacent San Diego Bay water and sediment, and that information received from Lessor regarding such matters may not be complete or accurate and should not be accepted as such.

Lessee hereby acknowledges that excavation of soils from the Leased Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Lessor takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Lessee hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal.

Lessor accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants in 29 Code of Federal Regulations ("CFR"). Lessee shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Lessee hereby waives any claim, or potential claim, it may have to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless Lessor from and against any and all such claims, liabilities, losses, damages, costs, and expenses.

Lessor is in receipt of a No-Further Action letter from the San Diego Region of the California Regional Water Quality Board dated August 2, 2013 and attached hereto as Exhibit D.

45. "AS-IS" LEASE AND WAIVERS: Lessee's execution of the Lease shall fully and finally constitute:

- (a) Lessee's Acknowledgment. Lessee's acknowledgment that Lessor has given to Lessee sufficient opportunity to consider, inspect and review, to Lessee's complete satisfaction the land use; the environmental, biological, physical and legal condition of the Leased Premises; and the feasibility of Lessee's intended use and enjoyment of the Leased Premises including without limitation: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Leased Premises; (2) the physical condition of the Leased Premises, including, without limitation, the condition of the buildings (if any) and the soils, subsoil media, and groundwaters at or under the Leased Premises; (3) the effect upon the Leased Premises of any and all applicable federal, state or local statutes, ordinances, codes, regulations, decrees, orders, laws or other governmental requirements (collectively, "Applicable Laws"); (4) the development potential of the Leased Premises including without limitation on the preceding clause (3), the effect of all Applicable Laws concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (5) the financial prospects of the Leased Premises and local market conditions; (6) Lessee's determination of the feasibility of Lessee's intended use and enjoyment of the Leased Premises; and (7) all other facts, circumstances, and conditions affecting, concerning or relating to the Leased Premises, collectively referred to herein as the "Condition of the Leased Premises." Without limitation on any other provision of this Lease, Lessee expressly assumes the risk that adverse conditions affecting the Leased Premises have not been revealed by Lessee's investigations.
- (b) Only Lessor's Express Written Agreements Binding. Lessee acknowledges and agrees that no person acting on behalf of Lessor is authorized to make, and that except as expressly set forth in this Lease, neither Lessor nor anyone acting for or on behalf of Lessor has made, any representation, warranty, statement, guaranty or promise to Lessee, or to anyone acting for or on behalf of Lessee, concerning the Condition of the Leased Premises or any other aspect of the Leased Premises. Lessee further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any person acting on behalf of Lessor which is not expressly set forth in this Lease will be valid or binding on Lessor.
- (c) As-Is Lease. Lessee further acknowledges and agrees that Lessee's execution of this Lease shall constitute Lessee's representation, warranty and

agreement that the Condition of the Leased Premises has been independently verified by Lessee to its full satisfaction, and that, except to the extent of the express covenants of Lessor set forth in this Lease, Lessee will be leasing the Leased Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Lessee's representatives; and that LESSEE IS LEASING THE LEASED PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE LESSEE'S EXECUTION OF THIS LEASE. Without limiting the scope or generality of the foregoing, Lessee expressly assumes the risk that the Leased Premises do not or will not comply with any Applicable Laws now or hereafter in effect.

(d) Waivers, Disclaimers and Indemnity.

- (i) Waiver and Disclaimer. Lessee hereby fully and forever waives, and Lessor hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Leased Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.
- (ii) Lessor's Materials. Lessee further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Lessee has received or may hereafter receive from Lessor or its agents or consultants have been furnished without warranty of any kind and on the express condition that Lessee will make its own independent verification of the accuracy, reliability and completeness of such information and that Lessee will not rely thereon. Accordingly, subject to terms of Paragraph 45(e) below, Lessee agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Lessor or any of the persons or entities who prepared or furnished any of the above information or materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such information or materials and Lessee hereby fully and forever releases, acquits and discharges Lessor and each person furnishing such information or materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

(e) Release and Waiver.

- (i) 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, actions, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "Claims"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that 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.

- (ii) Waiver of Civil Code Section 1542. With respect to all releases made by Lessee under or pursuant to this Paragraph 45, 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 or her settlement with the debtor.”

Lessee: _____

46. JOINT AND SEVERAL LIABILITY/NO JOINT VENTURE: If the leasehold estate under this Lease is ever held by more than one person or entity such that the Lessee is more than one person or entity, then all such persons and entities shall be jointly and severally liable for the obligations of Lessee under this Lease. 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.

47. OFAC COMPLIANCE. 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 will use commercially reasonable efforts to abide by the foregoing representations and warranties at all times.

48. 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.

49. 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. This shall include a specific commitment to not impede or limit any employee's rights with regards to unionization, including their right to meet, seek and receive information, or elect to organize. In complying with all such laws, Lessee shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Lessor and Lessee. Additionally, Lessee shall formulate and file with Lessor a "Statement of Compliance" for the protection of employment rights; provided, however, Lessee is only required to file the Statement when the average annual employment level at the project site exceeds fifty (50) employees.

Lessee's compliance with this Paragraph is an express condition hereof, and any failure by Lessee to so comply and perform shall be a default as provided in this Lease, and Lessor may exercise any right as provided herein, and as otherwise provided by law.

50. LESSOR ENCUMBRANCE OF LEASED FEE INTEREST: In the event that Lessor encumbers its leased fee interest in the Leased Premises by a deed of trust, mortgage or other similar type document, other than an indenture with respect to bonds such as general obligation bonds and revenue bonds which pledge the revenues which Lessor receives in connection with the Lease (but not Lessor's fee interest in the Leased Premises) ("Encumbrance Document"), such Encumbrance Document shall be subordinate to this Lease and to any modifications, amendments, restatements or supplements to this Lease and to any new lease or replacement of this Lease entered into pursuant to the terms of or in connection with this Lease, and to any consented-to encumbrance (each, a "Lease Amendment/Replacement"), which subordination shall be self-operative without the execution of any further instruments; provided, however, Lessor shall exercise good-faith efforts to cause any holder of an Encumbrance Document ("Fee Lender") to execute and deliver any commercially-reasonable instrument (in recordable form) that Lessee may

reasonably request to evidence, confirm and/or acknowledge such subordination. In addition, Lessor shall exercise good-faith efforts to require any Fee Lender to include a provision in the applicable Encumbrance Document, and shall enter into any other commercially reasonable document reasonably necessary to ensure, that this Lease (and any Lease Amendment/Replacement) is superior in priority to such Encumbrance Document and is to be recognized and continue in full force and effect in the event said Fee Lender (or any purchaser of the loan or other obligation secured by the Encumbrance Document at a foreclosure sale) attains title to Lessor's interest in the Leased Premises.

51. ESTOPPEL CERTIFICATES: Upon request of Lessee or any Consented-to-Lender or prospective Consented-to-Lender, Lessor shall provide an estoppel certificate certifying as to the status of Lessee's rent payments, whether there are any defaults under the Lease by the Lessee, and as to any other commercially reasonable matters requested by the requesting party so long as such matters would not constitute or result in a modification or amendment of any of the terms of this Lease. Lessor agrees that the provisions of this paragraph will not limit in any way the obligations of Lessor under Paragraph 8 hereof to negotiate in good faith with a Consented-to-Lender regarding mortgagee protection amendments to this Lease described therein. Upon request of Lessor or any lender or prospective lender placing a security interest on Lessor's interest in the Leased Premises, Lessee shall provide an estoppel certificate certifying as to the status of Lessee's rent payments, whether there are any defaults under the Lease by the Lessor, and as to any other commercially reasonable matters requested by the requesting party so long as such matters would not constitute or result in a modification or amendment of any of the terms of this Lease.

52. COUNTERPARTS: This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which combined together shall constitute one and the same agreement.

(MEMORANDUM OF LEASE FOLLOWS)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

First American Title Insurance Company
4380 La Jolla Village Drive, Suite 110
San Diego, CA 92122
Attention: Vincent L. Tocco

A Portion of APN: 760-012-02-00

(Space Above For Recorder's Use)

MEMORANDUM OF LEASE

53. MEMORANDUM OF LEASE: This is the final Paragraph and Memorandum of Lease, hereinafter "Memorandum," dated _____ 201__, between SAN DIEGO UNIFIED PORT DISTRICT, Lessor, and _____, 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 dated _____ 201__, 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, which said Lease is incorporated in this Memorandum by this reference.

The term is sixty-six (66) years, beginning January 1, 2016, and ending December 31, 2081.

The Lease provides for, among other things, the subordination of any deed of trust, mortgage or other security instrument granted by Lessor on its fee interest in the Leased Premises to the Lease and any consented-to encumbrance on the leasehold estate and is to be recognized and continue in full force and effect if the holder of such deed of trust, mortgage or other security instrument obtains title to Lessor's fee interest in the Leased Premises.

The Lease further provides for certain benefits and protections to the holder of a deed of trust, mortgage or other security instrument granted by the Lessee to secure a loan or credit enhancement made or provided to the Lessee and consented to (or deemed consented to) by Lessor (a "Leasehold Security Instrument") and to the holder, as of the commencement of the Lease, of a pledge of equity given to secure a certain credit enhancement given for

the benefit of the Lessee (the "Approved Pledge"). In addition, the Lease contains a requirement for Lessor's consent to an assignment of the Lease or equity interests in the Lessee including, without limitation, an assignment to the successful bidder in a foreclosure of the Leasehold Security Instrument or the Approved Pledge.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease provisions. In the event of conflict between this Memorandum and other parts of the Lease, the other parts shall control. Execution hereof constitutes execution of the Lease itself.

APPROVED AS TO FORM AND LEGALITY

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Deputy General Counsel

By: _____
Anthony Gordon
Acting Director, Real Estate

(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT/CUSTOMER)

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(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

GUARANTY

LANKFORD & ASSOCIATES, INC., a California corporation, whose address is 655 West Broadway, Suite 1450, San Diego, CA 92101; HENSEL PHELPS DEVELOPMENT, LLC, a Delaware limited liability company, whose address is 420 Sixth Avenue, Greeley, CO 80631; PORTMAN LANE FIELD, LLC, a Georgia limited liability company, whose address is 303 Peachtree Center Ave., Suite 575, Atlanta, GA 30303, hereinafter collectively "Guarantor," as a material inducement to and in consideration of the SAN DIEGO UNIFIED PORT DISTRICT, hereinafter "Lessor," entering into a written Lease, hereinafter "the Lease", with LFS Development, LLC, hereinafter "Lessee," dated the same date as this Guaranty, pursuant to which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the city of San Diego, County of San Diego, California, in accordance with the Lease on file in the Office of the Clerk of Lessor, Document No. _____, attached to this Guaranty, and made a part of it, unconditionally guarantees and promises to and for the benefit of Lessor, that Lessee shall perform all of the provisions of the Lease that Lessee is to perform during the first five (5) years of the Term of the Lease, except for construction of the Project pursuant to Paragraph 5 of the Lease which is the subject of a separate Completion Guaranty that is executed by Hensel Phelps Construction Co., a Delaware corporation.

Guarantor's obligations are joint and several, and are independent of Lessee's obligations. A separate action may be brought or prosecuted against any Guarantor, whether the action is brought or prosecuted against any other Guarantor, Lessee, or all, or whether any other Guarantor, Lessee, or all are joined in the action.

Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

The provisions of the Lease may be changed by agreement between Lessor and Lessee at any time, without the consent of or without notice to Guarantor. The Guarantor shall guaranty the performance of the Lease, as changed. Assignment of the Lease (as permitted by the Lease) shall not affect this Guaranty. Lessor's failure or delay in the enforcement of any of its rights also shall not affect this Guaranty.

If Lessee defaults under the Lease, Lessor can proceed immediately against Guarantor, Lessee, or both, or Lessor can enforce against Guarantor, Lessee, or both, any rights that it has under the Lease or pursuant to applicable laws. If the Lease terminates and Lessor has any rights it can enforce against Lessee after termination, Lessor can enforce those rights against Guarantor without giving prior notice to Lessee, Guarantor, or both, or without making any demand on either of them.

Guarantor waives the right to require Lessor to: (1) proceed against Lessee; (2) proceed against or exhaust any security that Lessor holds from Lessee; or (3) pursue any other

remedy in Lessor's power. Guarantor waives any defense by reason of any disability of Lessee, and waives any other defense based on the termination of Lessee's ability from any cause.

Until all Lessee's obligations under the Lease have been discharged in full, Guarantor has no right of subrogation against Lessee. Guarantor waives: (i) its right to enforce any remedies that Lessor now has, or later may have, against Lessee; (ii) any right to participate in any security now or later held by Lessor; (iii) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; and (iv) all notices of the existence, creation, or incurrence of new or additional obligations.

If Lessor is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay Lessor all costs incurred, including but not limited to reasonable attorney fees.

Guarantor's obligations under this Guaranty shall be binding on any successor of Guarantor. As used herein, a successor of Guarantor shall mean any assignee, transferee, personal representative, heir, or other person or entity succeeding lawfully, and pursuant to the provisions of said Lease, to the rights or obligations of Guarantor.

Also as used herein, Lessor shall mean Lessor's successors and assigns, if any.

This Guaranty may be executed in two or more counterparts, each of which shall be deemed an original, but all of which combined shall constitute one and the same instrument.

This Guaranty shall only be effective up to and including the fifth (5th) anniversary of the Commencement Date as that term is defined in Paragraph 1 of the Lease.

(SIGNATURE PAGE FOLLOWS)

This Guaranty shall be governed by, and construed in accordance with, the laws of California.

DATED: _____, 201__

LANKFORD & ASSOCIATES, INC.

By: _____
Robert V. Lankford
President

HENSEL PHELPS DEVELOPMENT, LLC

By: _____
Eric L. Wilson
President

PORTMAN LANE FIELD, LLC

By: _____

(FOR USE BLANKFORD
& ASSOCIATES, INC.
)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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.

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Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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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 THUMBPRINT
OF SIGNER

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(FOR USE BY HENSEL PHELPS DEVELOPMENT, LLC)

STATE OF COLORADO)

COUNTY OF WELD)

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(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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- ☐ Partner -- ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**

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Signer's Name _____

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

Signer is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**

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(FOR USE BY PORTMAN LANE FIELD, LLC)

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

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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Signer is Representing: _____

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- ☐ Attorney in Fact
- ☐ Trustee
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- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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**Legal Description for
SAN DIEGO UNIFIED PORT DISTRICT
LANE FIELD SAN DIEGO DEVELOPERS, LLC
South Option
Parcel / Drawing No. 018-002**

Within Corporate Limits of the City of San Diego

Parcel 1:

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-inch diameter brass disc monument marked "SDUPD-011" 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 along a tie line South 12°01'26" East a distance of 774.71 feet (calculated) to a point 5.00 feet Westerly of the Easterly right-of-way line of North Harbor Drive, said point also being on the Westerly prolongation of the Northerly right-of-way line of Broadway, as said North Harbor Drive and Broadway were established as and for public streets by Documents of Conveyance filed February 13, 1963 in the Office of the District Clerk as Document No. 71; thence along said Westerly prolongation and said Northerly right-of-way line South 89°28'03" East a distance of 474.76 feet to a point on the Westerly right-of-way line of Pacific Highway, as said Pacific Highway was established by said Document No. 71; thence along said Westerly right-of-way line North 00°31'57" East a distance of 55.00 feet to the **True Point of Beginning**; thence leaving said Westerly right-of-way line North 89°28'03" West a distance of 324.76 feet; thence North 00°31'55" East a distance of 213.32 feet; thence South 89°28'03" East a distance of 324.76 feet to a point on said Westerly right-of-way line of Pacific Highway; thence along said Westerly right-of-way line South 00°31'57" East a distance of 213.32 feet to the **True Point of Beginning**.

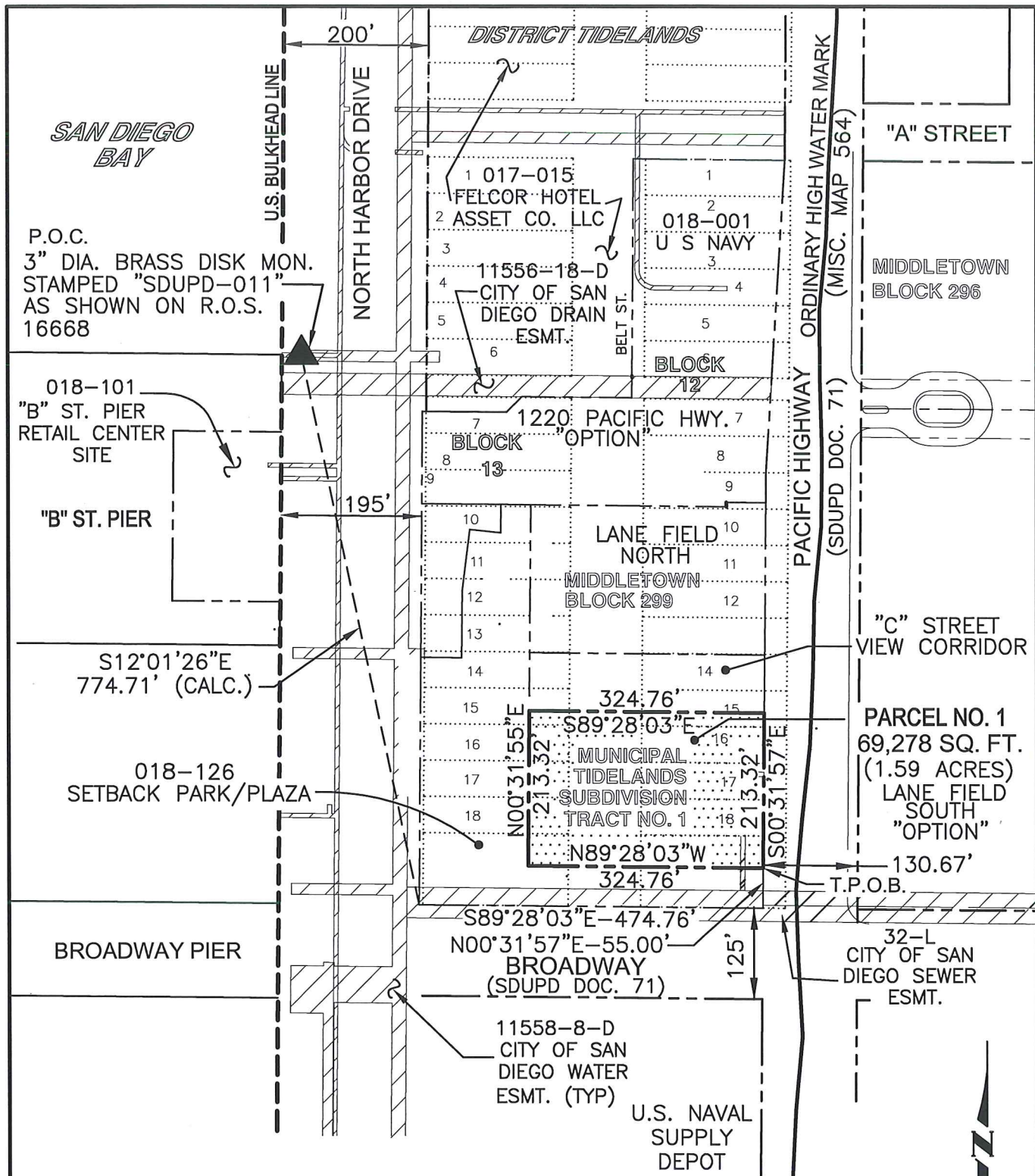
Said parcel of land contains 69,278 square feet or 1.59 acres of tidelands area.

The above described land area is delineated on the San Diego Unified Port District Drawing No. 018-002 dated April, 2013 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 per Record of Survey No. 20589, filed in the Office of the San Diego County Recorder on October 1st, 2009.

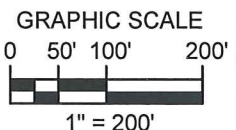
GARY L. HUS 04-01-2013
DATE





NOTES:

1. LEASE AREA SHOWN SHADED.
2. BEARINGS AND DISTANCES ARE GRID AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM, N.A.D. 83, ZONE 6, EPOCH 1991.35. PER RECORD OF SURVEY NO. 20589.



DRAWN JFD
 CHECKED CSH
 REVIEWED
 APPROVED
 GARY L. HUS, L.S. 7019

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF SAN DIEGO
 LANE FIELD SAN DIEGO
 DEVELOPERS, LLC

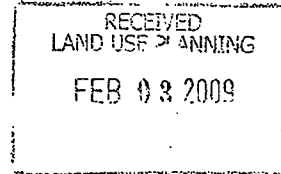
DATE APRIL 2013
 SCALE 1"=200'
 REF.
 DRAWING NO.
 SHEET 1 OF 1
 018-002

CALIFORNIA COASTAL COMMISSION

San Diego Coast Area Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
(619) 767-2370
www.coastal.ca.gov

RECEIVED

FEB 06 2009

SAN DIEGO UNIFIED
PORT DISTRICT
REAL ESTATE

Page: 1

Date: January 22, 2009

Permit Application No.: A-6-PSD-08-04/A-6-PSD-08-101

COASTAL DEVELOPMENT PERMIT

On January 8, 2009, the California Coastal Commission granted to:

Lane Field San Diego Developers, LLC

this permit subject to the attached Standard and Special Conditions, for development consisting of

Redevelopment of the former Lane Field: Lane Field North will have a 205-foot high hotel with 275 guest rooms, a health club/spa, pools, ballrooms, and meeting rooms; and a 3-story building surrounding the hotel with 30,000 sq.ft. of visitor-serving retail and restaurants. Lane Field South will have a 275-foot high hotel with 525 guest rooms, a health club/spa, pools, ballrooms, and meeting rooms, and a 3-story building surrounding the hotel with 50,000 sq.ft. of visitor-serving retail and restaurants. Also included are 1,330 underground parking spaces and public plazas, development of a public downtown shuttle system, and a hostel development program

more specifically described in the application filed in the Commission offices.

The development is within the coastal zone

north of Broadway Street between Pacific Highway and Harbor Drive, Port District, San Diego, San Diego County

Issued on behalf of the California Coastal Commission by

PETER M. DOUGLAS
Executive Director

Diana Lilly

By: DIANA LILLY
Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part that: "A Public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

COASTAL DEVELOPMENT PERMIT

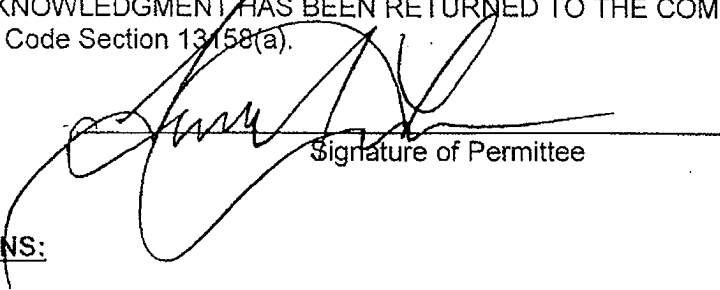
Date: January 22, 2009

Permit Application No.: A-6-PSD-08-004/A-6-PSD-08-101

Page 2 of 4

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

1/25/2009
Date


Signature of Permittee

STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. **Compliance with the San Diego Unified Port District Conditions of Approval.** All conditions of approval of San Diego Unified Port District January 8, 2008 and October 7, 2008 decisions (CDP-2008-01 & CDP-2008-01a) for the proposed project as shown in Exhibit #5 are hereby incorporated as special conditions of the subject permit unless specifically modified by any special conditions set forth herein. For purposes of condition compliance, the Port District shall be responsible for reviewing and determining compliance with the special conditions referenced above, except for those specifically modified by any special condition set forth herein. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the Port District shall notify the Executive Director when all of the conditions have been met. Any proposed changes shall be limited to immaterial or minor changes which do not have the potential for adverse impacts, either individually or cumulatively, on coastal resources or public access to and along the shoreline. All proposed changes shall be reported to the Executive Director for review and written approval. Changes that are not immaterial or that alter the physical aspect of the project (e.g. building height, building footprint, number of rooms, setbacks, parking or public access) shall require an amendment to this

COASTAL DEVELOPMENT PERMIT

Date: January 22, 2009

Permit Application No.: A-6-PSD-08-004/A-6-PSD-08-101

Page 3 of 4

Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.

2. Multimodal Transit Opportunity Promotion Plan. The applicant shall comply with all requirements contained in the "Lane Field Multimodal Transit Opportunity Promotion Plan" by Lane Field San Diego Developers, LLC, dated July 16, 2008.

Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Public Access Program. The applicant shall comply with all requirements contained in the "Lane Field Public Access Program" by Lane Field San Diego Developers, LLC, dated July 17, 2008, as revised August 20, 2008. During the site selection process, the applicant will work with the Port and the Coastal Commission Executive Director to identify a suitable site on the land to lease for a new hostel.

Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Hostel Location. The location of the hostel required per Special Condition #3 of CDP A-6-PSD-08-004 shall be located within the Coastal Zone on Port Tidelands within the City of San Diego. No changes to this condition shall occur without an amendment to this coastal development permit.

5. Water Quality Management Plan. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit, for review and written approval of the Executive Director, a final Water Quality Management Plan, prepared by a licensed water quality professional, in substantial conformance with the draft Water Quality Technical Report dated October 2008 and the letter from Lane Field Developers to the Port of San Diego, dated October 17, 2008 as Exhibit #19.

- a. The Water Quality Management Plan (WQMP) shall document how the elements of the water quality treatment system will meet the following conditions:
 - i. The project water quality treatment system will treat all dry weather runoff and all storm runoff from storms smaller than or equal to the 85th percentile design storm (0.55 in./24 hours for volume based Best Management Practices (BMPs) and 0.2 in./hr for flow based BMPs), with a suite of BMPs that meet the design criteria below;
 - ii. The design criteria for BMPs shall be based on the recommendations in the latest edition of the California Association of Stormwater Quality Agencies (CASQA) BMP Handbook; and
 - iii. If the proposed suite of BMPs cannot meet the two conditions above, then the applicant will provide an alternative water quality treatment system with documentation that the system provides equivalent water quality protection, for review and approval of the Executive Director.

COASTAL DEVELOPMENT PERMIT

Date: January 22, 2009

Permit Application No.: A-6-PSD-08-004/A-6-PSD-08-101

Page 4 of 4

6. Operation and Maintenance Plan. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit, for review and written approval of the Executive Director, an Operation and Maintenance (O&M) plan that includes description of the long-term operation and maintenance requirements of proposed best management practices described in the Water Quality Management Plan described in Condition #5 of this permit, and a description of the mechanisms that will ensure ongoing long-term maintenance.

7. Regional Water Quality Control Board Oversight. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall provide evidence of an agreement with the RWQCB for regulatory oversight of the project during the site cleanup and construction.

The applicant shall undertake development in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Landscaping. By acceptance of this permit, the applicant agrees that all landscaping on the site shall be drought-tolerant (or irrigated via reclaimed water) and (1) native or (2) non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

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3165 Pacific Highway, San Diego, CA 92101
P.O. Box 129452, San Diego, CA 92112-0452
619.686.6200 www.portofsandiego.org

[DRAFT] COASTAL DEVELOPMENT PERMIT AMENDMENT

Receiver

Applicant: Lane Field San Diego Developers, LLC
655 West Broadway Street, Suite 1450
San Diego, California 92101

For: [Signature]
California Coastal Commission
San Diego Coast District

Project: North Embarcadero Visionary Plan Lane Field Development Project

Location: North of Broadway Street between Pacific Highway and Harbor Drive

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

Date of Board Action: January 08, 2008

Amendment: October 07, 2008

BPC Resolution Number: 2008-15

Amendment: 2008-211

Application Number: 2007 07-49-144

Amendment: 2007 07-49-144a

Permit Number: CDP-2008-01

Amendment: CDP-2008-01a

Date of Amended Permit: October 24, 2008

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

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

DEVELOPMENT

The proposed project is situated in the city of San Diego on Coastal Zone State Tidelands administered by the San Diego Unified Port District under a certified PMP. Lane Field Developers San Diego, LLC (referred to herein as ("Permittee"))

San Diego Unified Port District

EXHIBIT #5
APPLICATION NO.
A-6-PSD-08-4
Amended Port Permit

proposes to redevelop the Lane Field leasehold with the following: (1) demolition/removal of existing temporary structures and existing surface parking, (2) construction of a two-level subterranean project and public parking garage containing approximately 1,330-spaces, (3) creation of a public pedestrian landscaped park/plaza along the Broadway Street frontage in front of retail stores and restaurants as well as public terraces at the fifth floor ("Podium Level"), (4) construction of an approximately 205-foot tall hotel with approximately 275 rooms and approximately 30,000 square feet of retail/restaurant tower on the northerly portion of the leasehold (Lane Field North), and (5) construction of an approximately 275-foot tall hotel with approximately 525 rooms and approximately 50,000 square feet of retail/restaurant on the southerly portion of the leasehold (Lane Field South). The project area is approximately 5.7 acres.

1. Existing Surface Parking

The approximately 5.7 acre Lane Field leasehold is currently a 880-space surface parking lot operated by Five Star Parking. Temporary structures are also located on the leasehold including an information booth, ticket sales booth, a shed, and an ATM. All existing facilities will be removed/demolished. Necessary infrastructure components will remain or be relocated as necessary. An existing monument for the former Lane Field will be relocated within the project boundaries.

2. Parking Structure

A subterranean parking structure containing approximately 1,330 spaces will be constructed as part of the proposed project. The parking structure will be two-levels constructed across the majority of the leasehold below grade and beneath the proposed structures and plaza. Access to the parking structure will be from the project driveway at the prolongation of C Street off Pacific Highway with additional access directly off Pacific Highway at the northern extremity of the leasehold.

The proposed project will be self-parked with an additional 300 public parking spaces not dedicated to hotel operations or to the retail. The parking structure will be operated by Permittee or its designee as a combined self-park and valet facility with the ability to be operated entirely as a valet facility dependant on management's assessment of needs but in such a manner that the additional 300 parking spaces will remain available to the public. Parking fees will be set at market rates. Additionally, parking garage capacity could expand to 1,552 spaces by utilizing additional valet parking to allow the operator to accommodate peak parking demand during special events if the need should arise.

3. Lane Field North

On the parcel north of the prolongation of "C" Street, between Pacific Highway and Harbor Drive, the proposed Lane Field North hotel will include a hotel lobby, approximately 275 guest rooms and suites, approximately 30,000 square feet of retail and restaurants, a health club and spa of approximately 15,000 square feet, and ballrooms and meeting rooms. Retail and restaurant areas will be located at the ground to third floor elevations along the western, southern, and eastern frontage of Lane Field North. Additional amenities will include a Podium Level event terrace with dining and refreshment facilities at the west end of the structure, to which public access will be provided by a glass-faced elevator from the sidewalk and by both escalators and elevators from the hotel lobby. Offering views toward the San Diego Bay, the terrace deck will feature outdoor dining and event areas. Public art will also be incorporated into the public spaces on the site. A rooftop lounge and event terrace will also be available for public access using express elevators available from within the hotel lobby. The proposed Lane Field North hotel will be approximately 17-stories with an approximate height of 205-feet.

4. Lane Field South

The proposed Lane Field South hotel will include approximately 525 guest rooms and suites, approximately 50,000 square feet of retail uses, including street level restaurants and shopping, ballrooms, meetings rooms, and pools. Retail and restaurant areas will be located at ground to third floor elevations along the western, southern, northern and eastern frontage of Lane Field South. Additional amenities will include a Podium Level event terrace with dining and refreshment facilities at the west end of the structure, to which public access will be provided by an elevator from the sidewalk and by both escalators and elevators from the hotel lobby. The terrace deck will feature outdoor dining, event areas, and provide views of the Bay and Broadway. Public art will also be incorporated into the public spaces on the site. The proposed Lane Field South hotel will be approximately 22-stories, with a height of approximately 275 feet.

5. Public Access and View Corridors

The proposed project includes the prolongation of "C" Street approximately 10 feet to the north of its original location as a designated view corridor described in the North Embarcadero Visionary Plan schematic design. The purpose of this adjustment is to allow better alignment and coordination of the site development plan with site planning efforts on an adjacent parcel to the east (being developed by the Irvine Company), to facilitate ingress and egress to the site, and to enhance the view corridor. "C" Street is proposed to be a private drive facilitating access through the proposed project, but historically has never been and is not intended to be a dedicated public street or undedicated tidelands street.

The proposed project will provide public access into the site and parking facilities at the prolongation of "C" Street off Pacific Highway as well as public pedestrian access through the development from Pacific Highway to Harbor Drive and the waterfront. Plaza areas will also be open to the public along the prolongation of "C" Street, the Broadway Street frontage of the project and on the third floor terraces of each of the proposed hotels. These public areas will be activated by restaurant and retail facilities as well as seating and public art provisions in addition to the beneficial near waterfront location of the site. The plazas and public areas in combination with the set backs and step backs applied to structures maintains the public view corridors along Broadway and C Street. Street trees and landscaping along Broadway Street have been coordinated with and are consistent with NEVP JPA requirements, the members of which include the District, City of San Diego, and Center City Development Corporation.

6. Construction

The underground parking structure will require dewatering during construction only and excavation of approximately 115,000 cubic yards of material. The excavated material will be exported off-site and disposed of or used for beach sand replenishment if determined suitable. The estimated duration of construction is approximately 36 months. To the extent possible, construction staging for equipment, materials as well as vehicular parking will occur primarily onsite. Construction employee parking will be accommodated both onsite and offsite at a location which will be chosen based on its proximity to the proposed project site and to public transportation. As part of the Lane Field development, the Permittee will provide a construction parking management plan.

STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify the District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state, and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.

7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the Permittee has signed a statement agreeing that the Permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.
10. All Port of San Diego tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District (Municipal Permit). This permit was recently adopted in January of 2007, and replaces the previous permit Order No 2001-01. All jurisdictions are required to be in full compliance with Order R9-2007-0001 by January 24, 2008. The Municipal Permit prohibits any activities that could degrade stormwater quality.

Post-construction / operational use of this project site must comply with the Municipal Permit and District direction related to permitted activities including the requirements found in the District Jurisdictional Urban Runoff Management Document (JURMP). The JURMP is available on the District website: http://www.portofsandiego.org/sandiego_environment/susmp.asp or by contacting the Environmental Services Department, (619) 686-6254.

11. This project is subject to the Port Standard Urban Stormwater Mitigation Plan (SUSMP) process. As such, approval of the project by the District is necessarily conditioned upon submission by the project proponent of a project specific urban Stormwater Mitigation Plan (USMP) that meets District requirements. Project approval requires full implementation of all USMP structural and non-structural BMPs throughout the life of the project.

The Port is currently modifying its development and redevelopment processes that will include modifications to the Port SUSMP, greater reliance of low impact design techniques and the incorporation of a Hydromodification plan. These changes are being made to meet the requirements of the newly adopted Municipal Permit. During this transition period and until the updated Port SUSMP is final, the project USMP is to be designed to follow the County

of San Diego's Draft Model SUSMP as revised November 6, 2007, and the Municipal Permit. A link to these interim guidance documents can be found on the District website

http://www.portofsandiego.org/sandiego_environment/susmp.asp

The implementation and maintenance of the USMP BMPs constitute regulatory obligations for the lessee, and failure to comply with the Municipal Permit, the JURMP, or the Port approved USMP, including the specific BMPs contained therein, may be considered a default under the lease.

SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, the Permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the Permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary if visible soil material is carried onto adjacent public paved roads using a water sweeper.
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent inactive trucks from idling more than 5 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.

12. Construction employees shall be provided with transit and ride share information.
13. Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. Permittee and/or contractor shall comply with State Water Resources Control Board Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000002, and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "General Construction Storm Water Permit"), as adopted, amended, and/or modified. The District is responsible for submitting the Notice of Intent to comply with the General Construction Storm Water Permit. The Permittee and/or contractor must comply with the General Construction Storm Water Permit and District direction related to permitted activities. Construction activity subject to the General Construction Storm Water Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor must prepare and submit the SWPPP for review and approval by the District prior to site work.

SPECIAL PROVISIONS

1. Following construction, the applicant shall implement the "Lane Field Public Access Program" dated July 17, 2008, attached hereto as Attachment "A," throughout operation of the project to the satisfaction of the District.
2. The applicant shall maintain no less than 300 parking spaces available to the public within its managed parking facility throughout project operation, consistent with the North Embarcadero Visionary Plan Parking Management requirements.
3. The applicant shall implement the "Lane Field Construction Parking Management Plan" throughout project construction to the satisfaction of the District.

4. Prior to development, a subsurface remediation plan shall be developed and implemented. Such plan shall be consistent with the requirements of "Short Term Construction Measures" Item 13 above.
5. A subsurface mitigation plan shall be implemented during site excavation by a qualified archaeologist/paleontologist who meets the City's standards for an archaeological principal investigator. The plan shall include a detailed review of Sanborn fire insurance maps, directory search, and if warranted, limited testing of where the project archaeologist deems necessary for cultural materials recovery within the area impacted. The archaeologist/paleontologist shall conduct on-site observation during the site excavation process. All cultural material recovered and associated records shall be delivered to the curator of an appropriate San Diego County institution that meets the standards of the State Historical Resource Commission's *"Guidelines for the Curation of Archaeological Collections"* dated May 7, 1993.
6. A complete site contamination report in conformance with federal, State, and local regulations shall be completed for the project. The report shall include an existing conditions survey, detailed project description, and specific measures proposed to preclude upset conditions (accidents) from occurring. If hazardous materials are identified, a risk assessment and remediation efforts shall be conducted in conformance with federal, State, and local regulations.
7. A site-specific soil/groundwater assessment shall be performed by a qualified geologist/hydrologist in conformance with federal, State, and local regulations prior to soil disturbance in all areas where soil or water contamination sources are suspected of containing hazardous materials storage systems. Such an assessment shall include collecting and analyzing soil and/or groundwater samples. The presence of soils or groundwater contamination shall be remediated, if necessary, according to applicable federal, State, and local regulations prior to development of the site.
8. The proposed project will be designed and constructed so that permanent dewatering is not required. Dewatering activity will be limited to the construction period as may be necessary. The North Embarcadero Visionary Plan Master Environmental Impact Report (certified in March 2000) (Master EIR) recommends that dewatering shall occur to lower the groundwater table to a minimum of 2 feet below the bottom of all removals and excavations.

9. Dewatering discharge shall meet the effluent limits specified by the RWQCB (order No. 90-31) and Federal National Pollution Discharge Elimination System (NPDES) requirement. Order No. 90-31 includes a prohibition of the discharge of dewatering effluent to San Diego Bay for new permanent dewatering operations. If the effluent is discharged to the City of San Diego sewer system, then the discharge shall meet the discharge requirements of the City.
10. In the event that dewatering effluent is discharged to surface waters, groundwater quality data will be required in advance, and possibly, a treatment system will be needed to meet federal, State, and local regulations.
11. If necessary, to identify locations of Underground Storage Tanks (USTs), a site-specific informational review and geophysical survey shall be conducted.
12. A contingency plan for UST removal and remediation shall be prepared. Such plan shall address contractor procedures in the event that an unknown UST is encountered during site redevelopment.
13. Permits to operate or close tanks must be obtained by the tank owner or operator in conformance with federal, State, and local regulations.
14. Soil/groundwater testing shall be performed prior to soil disturbance in conformance with federal, State, and local regulations, and subject to the approval of the jurisdictional agency (i.e., City of San Diego or Port District). Such an assessment shall include collecting and analyzing soil and/or groundwater samples. Soil or groundwater contamination shall be remediated according to applicable federal, State, and local regulations prior to development of the site. Implementation of BMPs to control erosion during construction shall be required regardless of whether or not the soil / groundwater is contaminated.
15. All earthwork activities shall be governed by the provisions of the NPDES general permit, which includes the preparation and implementation of a SWPPP and BMPs to control runoff and sedimentation during construction and post construction.
16. Additional assessment of soil and/or groundwater shall be performed prior to soil disturbance in conformance with federal, State and local regulations.
17. Remediation shall be conducted according to applicable federal, State and local regulations prior to development of the site.
18. Transportation Demand Management (TDM) measurements, including Regional Air Quality Strategy (RAQS) mandated trip/Vehicle Miles

Traveled (VMT) reduction and land use measures, shall be implemented for high-occupancy events at the hotels. Project related traffic is less than previously incorporated into the RAQS, which concludes that as long as forecast levels of growth and associated traffic are not exceeded, the RAQS contains enough mitigation of such growth to allow regional air quality standards to be met.

19. Alternative transit opportunities shall be provided by the Permittee for guests and employees as described in the applicant's "Lane Field Multimodal Transit Opportunity Promotion Plan" dated July 16, 2008, attached hereto as Attachment "B," which may include but are not limited to a shuttle service to San Diego International Airport and the provision of bike racks.
20. Permittee shall comply with all applicable public access requirements including mandatory participation in a bayside shuttle system upon District implementation of that system as described in the applicant's "Lane Field Multimodal Transit Opportunity Promotion Plan" dated July 16, 2008, attached hereto as Attachment "B."
21. Energy conservation measures will be implemented throughout project operation such that a 20 percent reduction compared to satisfying current Title 24 requirements is achieved. Measures from the applicants "Lane Field Sustainability Initiatives Global Warming Assessment" may be used and include but are not limited to: use of recycled water for landscaping; heat reclamation from central air conditioning; use of fuel cell technology for power cogeneration; and noticing of laundry reuse to guests.
22. Permittee shall investigate the suitability of excavated material for use as sand replenishment on a beach subject to approval by the US Army Corps of Engineers. Beaches within the District shall have first priority for selection. If material is deemed suitable for depositing on a District beach then such an action shall occur. If the material is deemed unsuitable for any District beach but suitable for another beach within San Diego County then that action shall occur. If the material is deemed unsuitable for use as beach replenishment for any beach within San Diego County then the material shall be disposed of or recycled in accordance with applicable local, state, and federal regulations.
23. The project design shall comply with Title 24 of the California Code of Regulations, which includes establishing permissible horizontal sound transmission through shared walls, as well as vertical transmission of impulsive noise through floor/ceiling assemblies. In addition, the use of upgraded interior finishing and heavy window glass are standards

required by Title 24. Compliance with these regulations meets the required 45 dBA CNEL interior levels even if the 65 dBA exterior levels are not met. Documentation of compliance shall be provided when building plans are filed.

24. If windows face the tracks along Pacific Highway, use of heavily upgraded glazing and/or heavy drapes is recommended to reduce hotel sleep interference from peak train noise levels.
25. An interior noise study shall be conducted for hotels at the time building plans are developed and measures required to ensure a 45 dB interior level for transient occupancy rooms shall be implemented. Documentation of compliance shall be when building plans are filed.
26. All construction activities shall comply with the City of San Diego's Noise Ordinance, which limits the allowable hours and establishes performance standards for construction activities.
27. Use pre-drilled piles or vibratory drivers if subsurface conditions can accommodate such methods.
28. Perform all pile driving activities on weekdays between 9:00 am and 5:00 pm.
29. Pile driving shall extend past the loose and unconsolidated bay deposits to a depth within the Bay Point Formation that is suitable for the support of proposed piles.
30. All structures shall be designed in accordance with the recommendation of the geotechnical evaluation, and with all applicable requirements of the Uniform Building Code (UBC) for Seismic Zone 4. Project specific design recommendations to limit structural damage or maintain function during an earthquake shall include foundation design parameters and specifications for deep foundations.
31. It is expected that large structures will be founded on some type of deep foundation system, which may consist of driven or cast-in place piles embedded into the underlying Bay Point Formation.
32. All structures shall be reinforced and supported using ground modification (e.g., dynamic compaction) or deep foundation piles.
33. Remedial grading or surcharging and monitoring by means of settlement monuments shall be incorporated into construction within the project area.

34. To assess and offset impacts associated with hydrostatic uplift, an evaluation of potential hydrostatic uplift activities during the time of geotechnical plan review regarding the design and construction of below-grade basement levels shall occur.
35. The project applicant shall prepare a waste management plan in consultation with the City of San Diego Environmental Services Department (ESD) which shall also approve the plan. The waste management plan shall include the following elements:
 - The type and quantity of solid waste expected to enter the waste stream.
 - Source separation techniques to be used and the location of on site storage for separated materials as required by Municipal Code Section 101 2001.
 - The method of transport and destination of separated waste and/or construction debris not re-used on site.
 - A "buy-recycled" program for the project.
 - An impact analysis spreadsheet completed by an ESD analyst. A copy of the waste management plan shall be submitted to ESD and the Port District. With respect to construction/demolition debris, the amount of this material being deposited in the landfill should be reduced by implementing any or all of the following mitigation techniques.
 - Onsite re-use of demolition material in the construction of the development activities
 - Separating construction debris for recycling-reuse by others

If you have any questions on this permit, please contact the Land Use Planning Department of the San Diego Unified Port District at (619) 686-6283.

BRUCE B. HOLLINGSWORTH
Executive Director

By: _____
John Helmer
Director, Land Use Planning

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

**Lane Field
Multimodal Transit Opportunity Promotion Plan**

**Coastal Development Permit
Special Provision/Condition # 19**

**Lane Field San Diego Developers, LLC
655 West Broadway, Suite 1450
San Diego, California 92101**

July 16, 2008

Lane Field Multimodal Transit Opportunity Promotion Plan

I. Purpose

The transportation plan outlined herein describes the measures Lane Field San Diego Developers, LLC (LFSDD) will implement as stated in the draft Coastal Development Permit Special Provision/ Condition # 19 approved by the Board of Port Commissioners on January 8, 2008, to promote alternative mass transit opportunities for visitors, guests, and employees.

II. Overview

Lane Field San Diego Developers, LLC will encourage the use of public transportation for employees and provide alternative transit opportunities for visitors and guests.

The Lane Field project encompasses approximately 5.7 acres of land in downtown San Diego, located on the north side of Broadway, between North Harbor Drive and Pacific Highway. Lane Field is in Subarea 33 of Planning District 3 in the certified Port Master Plan (PMP) and encompassed within the Master Environmental Impact Report (MEIR) for the North Embarcadero Visionary Plan (NEVP). The project site is adjacent to the core of San Diego's downtown with the Broadway Pier and B Street Pier immediately to the west; the Irvine Company proposed office building to the east and the Navy Broadway Complex development to the south.

Lane Field is located immediately adjacent to multiple transit connections and services, including:

Transportation	Proximity to Hotels/walking distance	Areas Served
Amtrak	.15 miles a 2 minute walk	Pacific Surfliner Route, service between Downtown San Diego, San Luis Obispo, and Los Angeles with connections to national rail routes
Coaster	.15 miles a 2 minute walk	Rail service between Downtown San Diego and Oceanside.
Trolley	.21 miles a 3 minute walk	Red, Blue and Orange lines with direct services from Downtown San Diego through Old Town and Mission Valley to Santee, through downtown, and La Mesa to El Cajon and through Barrio Logan, National City, and Chula Vista to San Ysidro. Direct service to Qualcomm Stadium, Petco Park, and the International Border.
5 region wide bus stops	Within .25 miles a 3 minute walk	City and region wide bus routes to most Visitor serving destinations such as the Zoo, Balboa Park, Sea World etc.

Lane Field Multimodal Transit Opportunity Promotion Plan

Bus to San Diego International Airport/Commuter Terminal	.15 miles a 2 minute walk; airport is 2.3 miles away	Bus access to all terminals of the San Diego International Airport, Lindbergh Field.
Water Taxi	.15 miles a 2 minute walk	On-call transportation along San Diego Bay, serving Shelter Island, Harbor Island, Coronado and Downtown.
Ferry	.15 miles a 2 minute walk	Daily service between Broadway Pier (Downtown San Diego) and The Ferry Landing Marketplace (Coronado).
Convention Center Shuttle	On-site service	Routes connect conference attendees to convention center facilities.
Pedi-Cab	On-site service	Managed service extending throughout the boundaries of Downtown San Diego.

The Downtown San Diego Community Plan Update¹ includes the following proposed transit systems, which would further enhance access to the site:

- Downtown shuttle
- "Bay-to-Park" shuttle
- Potential Bus Rapid Transit (BRT) route/shuttle

This plan identifies separate and shared transit strategies for employees and visitors to Downtown.

III. Mass Transit Incentives for Employees & Visitors

The table below identifies incentive and collaborative programs offered by transit providers within the San Diego region and specifies the intended user as either employees and/or guest/visitors.

Program	Target Transit User
MTS – ECO Pass ²	Employee & Guest/Visitor
SANDAG – Ridelink ³	
Carpool Matching Services	Employee
Bike to Work	Employee

¹ Centre City Development Corporation Community Plan Update approved February 26, 2006. Actual implementation date unknown.

² <http://www.sdmts.com/Marketing/EcoPass.asp>

³ <http://www.ridelink.org/>

Lane Field Multimodal Transit Opportunity Promotion Plan

Guaranteed Ride Home Program	Employee
Regional Vanpool Program	Employee & Guest/Visitor
Carsharing Program	Employee
Public Shuttles	Employee & Guest/Visitor
NCTD – Employer Transportation Services and Monthly/Regional passes	Employee

IV. Guest and Visitor Transit Opportunities

Lane Field benefits from the close proximity to multiple forms of transit, ranging in scale from existing bus lines connecting Lane Field to the larger metropolitan area and San Diego International Airport, to water taxis that service the waterways of San Diego Bay both locally and over to Coronado. In addition to existing services, a Summer Bayfront Shuttle system will be implemented to connect major destinations along the North Embarcadero. Together, the variety and extent of mass transit opportunities creates a network, which will not only serve the employees, but also the guests/visitors to Lane Field as well as San Diego's bayfront, with a myriad of transit options.

In an effort to maximize use of transit and minimize vehicular reliance, Lane Field commits to the following:

- Summer Bayfront Shuttle Service: a will provide guests, visitors and members of the public with service along the North Embarcadero, including stops at Lane Field, bayfront destinations, the Convention Center, and other bayfront hotels.
- Designated guests and visitor parking spaces will be reserved for advanced systems low emission vehicles.
- Discounted Trolley and Bus passes: through the Metropolitan Transit System's ECO Pass and Group Day Pass programs, guests and visitors will have access to discounted trolley and bus passes.
- Downtown San Diego Pedi-cab network: Pedi-cabs offer an alternative for intra-downtown connectivity with a unique exposure of guests and visitors to Downtown's amenities and destination points. Pedi-cab staging facilities will be provided within the project site and managed service will be provided.

Lane Field Multimodal Transit Opportunity Promotion Plan

- San Diego Water Transportation: The water taxi and ferry dock is less than a 2 minute walk away, located immediately west of the project site across Harbor Drive. Arrangements will be made with both operators for guests/visitors to obtain ticketing at the concierge stations within each hotel.
- Concierge Transit Service and Coordination: Hotel concierge employees will be thoroughly trained to understand and promote the various public transportation opportunities available to the guests/visitors and offer discounted tickets when applicable.
- Convention Center Shuttles: Shuttle services to and from the Convention Center will include routes to the project and be coordinated to suit guests/visitors needs.

V. Employee Transit Opportunities

Employees will be encouraged to utilize transit through incentives and amenities. LFSDD will offer employees the following options:

- Use of any transit incentives identified in table above, offering up to a 20% savings in cost of transportation, as compared standard fares.
- Access to Summer Bayfront Shuttle during hours and seasons of operation to utilize peripheral parking structures.
- Access to on-site parking at reduced monthly Employee Rate for:
 - Advanced system low emission vehicles
 - Carpooling
 - Car sharing
- Per the requirements of USGBC LEED Silver rating, on-site bicycle parking together with shower and locker facilities for use by bicyclists will be provided in the underground garage.
- The project's parking operator will encourage "park and ride" scenarios, identifying where employees may drive to the perimeter of the city to reasonably priced parking and connect to Downtown via trolley, bus, Pedi-cab or other public transportation opportunities.
- Human Resources personnel for both hotels will offer all employees assistance in maximizing use of public transportation.

VI. Bayfront Shuttle System

The Coastal Commission and the Port of San Diego have indicated their support for the concept of a bayfront shuttle. Ideally, San Diego would have a shuttle service linking Downtown, the Gaslamp District, and Balboa Park to the bayfront. Full implementation of such a system is beyond the ability of LFSDD to implement at Lane Field alone. Significant inter-agency cooperation will be required to implement such a system, including financial and logistical support from SANDAG, the City of San Diego, the Centre City Development Corporation (CCDC), the Metropolitan Transit Authority, and the Port.

Despite these challenges, a bayfront-only program will be implemented by LFSDD or a third party, concurrent with the opening of the Lane Field project for business, to provide linkages from existing transit facilities. LFSDD and the Port have identified privately-operated transit systems which may provide the pedestrian linkages sought by the Coastal Commission. Should it be feasible to expand or support these existing systems, LFSDD will do so to achieve the concept of a bayfront shuttle as described below.

Regardless of whether expansion or support of these existing systems proves feasible, as part of its compliance with Special Condition No. 19 of the Coastal Development Permit for Lane Field, LFSDD will form a partnership with the Port, the terms of which will be negotiated, to implement a scalable system linking major mass transit and parking reservoirs to bayfront attractions. Together with this system, LFSDD will participate in ongoing planning efforts currently underway at CCDC and the Port for a downtown shuttle as described in the Downtown San Diego Community Plan Update.

As described below, this two-pronged approach addresses the immediate interests of both the Coastal Commission and the Port while furthering the long-term transit planning goals of the San Diego region.

Shuttle System Overview

Operation

As recommended by the Coastal Commission, LFSDD will operate a summer shuttle in partnership with the Port daily from June 1 through August 31 of each year or until such time as a regional system is put into place. The shuttle will consist of two or more vehicles available to Lane Field hotel guests and retail visitors and members of the general public. For the first three years of operation, the shuttle will be provided at low cost to all riders.

Lane Field Multimodal Transit Opportunity Promotion Plan

The shuttle route is anticipated to be thirty minutes in duration. Two shuttles in operation will deliver approximately fifteen-minute headways. The first shuttles will depart Lane Field (northbound) at 10 am, and (southbound) at 10:15 am. The final shuttle of the day will depart Lane Field at 9 pm.

Routes

The proposed route for the daily summer shuttle would include stops along Harbor Drive between Hawthorn and Park Boulevard. The route would begin and end at Lane Field, picking up and dropping passengers off in front of Lane Field South along Harbor Drive on the north bound lane. The shuttle will service the following destination:

- Lane Field
- Holiday Inn
- County Administration Building
- Grape Street Pier & Maritime Museum
- Anthony's
- B Street Pier
- Hornblower Cruises
- Midway Museum
- The Fish Market
- Seaport Village
- The Hyatt
- The Marriott
- Convention Center
- Hilton Convention Center Hotel
- Gaslamp - 4TH & J (Alternate Route)

Shuttle stops will be designated within reasonable pedestrian walking distance of each destination. Accordingly, two or more destinations may be grouped together to create a stop. The final configurations of the shuttle stops will be informed by the selected operator and vehicle specific requirements for drop-off and pick-up areas.

Funding

LFSDD will acquire, through purchase or lease, at least two vehicles for the shuttle system. Additional funding, if available, may allow for the acquisition of more than one vehicle. LFSDD will seek additional funding from the Port; other Port tenants; and local, regional, state, and federal agencies. Consistent with any green programs available through these agencies, LFSDD will inquire about and apply for grants and/or low-interest loans where feasible.

Lane Field Multimodal Transit Opportunity Promotion Plan

Initiation and Duration

The shuttle system will commence operations with the month of June concurrent with occupancy of the hotels on Lane Field North and South. The shuttle will continue in operation for three consecutive summer seasons, from June 1 through August 31 unless replaced by another comparable or more comprehensive transit system.

If the shuttle has not been replaced, then at the end of three years of operations, LFSDD will fund, and the Port will contract and administer, a market-feasibility and demand study:

- to determine whether operation of the shuttle system achieves on its face the goals set forth by the Coastal Commission and the Port, namely reducing traffic congestion during summer months;
- to identify transit systems in place or to be implemented at or near the time the study is completed which may render the bayfront shuttle duplicative or into which the shuttle may be incorporated;
- to assess existing and projected usage and demand for a bayfront shuttle as currently programmed; and
- to recommend whether the bayfront shuttle should continue operations considering both external and internal factors affecting transit ridership.

Upon completion of the study, the Port will share the results with local Coastal Commission staff to allow them an opportunity to comment. Port staff will then present the results of the study, and any comments received from the Coastal Commission, to the Board of Port Commissioners for its consideration. Should the Board determine that continued operation is not feasible in light of the considerations above, LFSDD may elect to terminate the bayfront shuttle through an amendment to its Coastal Development Permit.

At any time during operation of the shuttle, whether before, during, or after the initial three-summer operation, the Port may relieve LFSDD of its obligation to operate the shuttle without an amendment to its Coastal Development Permit provided the shuttle described in this plan is replaced with a comparable or more comprehensive shuttle system.

Agency Outreach and Advocacy

Joint Transit Planning

As described by the Coastal Commission, several years ago Port staff and the City of San Diego explored the possibility of a downtown shuttle that served the bayfront. Recently, the concept was revived at a meeting of the Joint Powers Authority for implementation of Phase One of the North Embarcadero Visionary Plan. Following that meeting, representatives from SANDAG, MTS, the City of San Diego, CCDC, LFSDD, Coastal Commission staff, and the Port met and formed a shuttle committee to share preliminary concepts, identify key issues, and plan next steps.

Given the complexity of joint transit planning, CCDC recommended a committee approach. The committee will prepare a Request for Qualifications (RFQ) seeking a consultant with specific experience in planning, designing, and operating downtown shuttle services. The findings and recommendations made by the consultant will form the basis of public and private agreements for one or more shuttle systems.

Following is a generalized outline of required activities:

- Form committee
 - Identify committee members
 - Conduct committee meetings
 - Characterize conceptual framework (i.e. project narrative, phasing, tentative routes, etc.)
- Prepare consultant scope of services for RFQ
 - Case studies
 - Routes and service/operating plan
 - Operating and maintenance costs
 - Funding plan
- Public and private agreements/commitments
 - Implementation
 - Operating contract
 - Vehicle procurement
 - Initiate service

Scaling the Bayfront Shuttle

As the efforts of the shuttle committee intensify, and the shuttle system(s) to be implemented are better defined, there may be an opportunity to integrate the bayfront shuttle to be implemented by LFSDD into a larger transit plan. The shuttle committee has discussed phases of implementation which may either connect with or eventually supplant the bayfront shuttle. Should such a comparable or more comprehensive

Lane Field Multimodal Transit Opportunity Promotion Plan

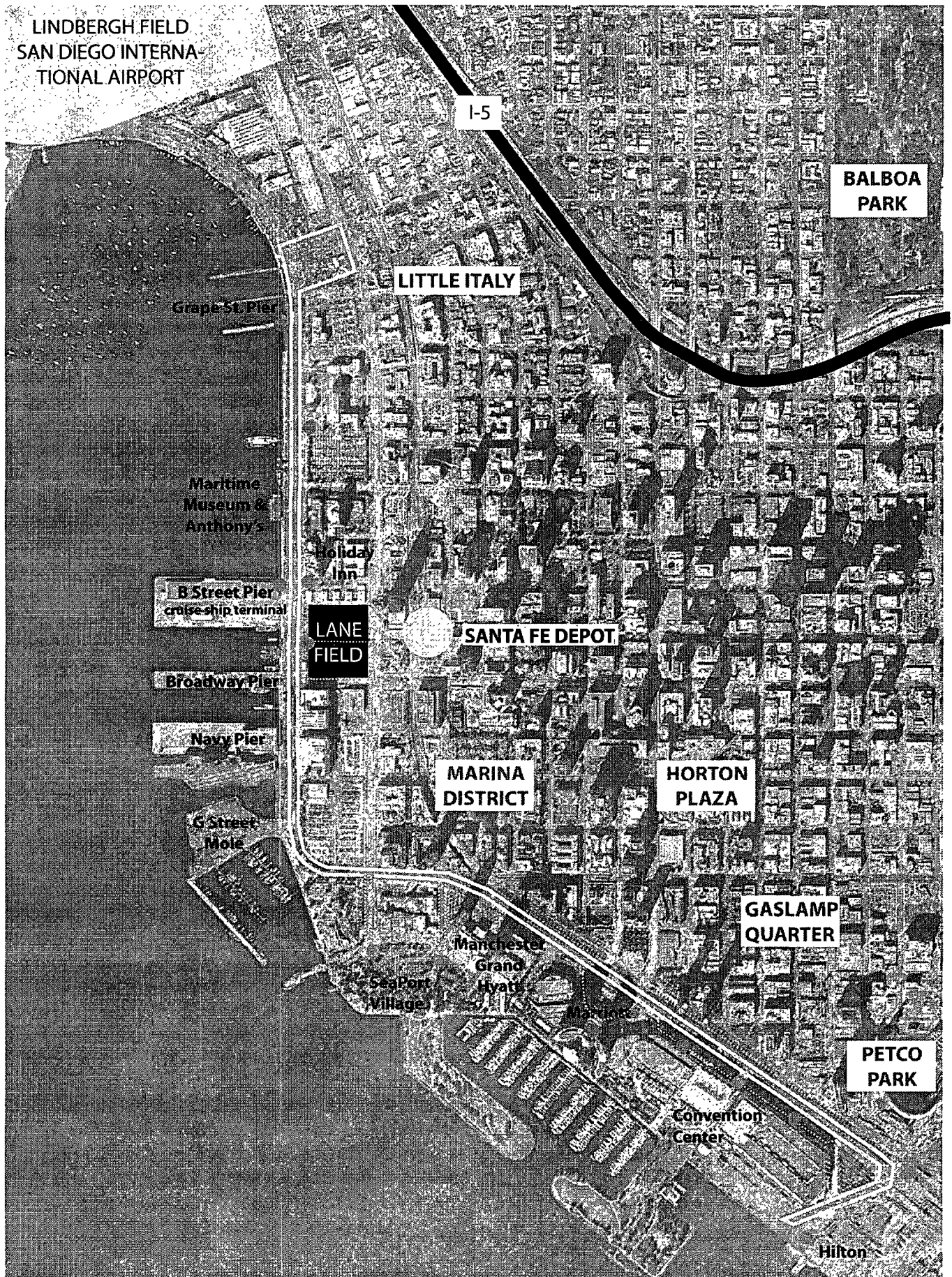
transit system arise, LFSDD would no longer be required to operate the bayfront shuttle as described above.

One possible route for a subsequent phase would begin at Lane Field and proceed along the bayfront, but loop through Downtown, connecting the Gaslamp District, Horton Plaza, and Little Italy, and then return to Lane Field. Additional phases may expand that route, with departures from Lane Field along the bayfront through Downtown, expanding the stops above to include Balboa Park and additional stops at San Diego International Airport and the Convention Center, again ultimately returning to Lane Field. The Port may also wish to include stops at Harbor and Shelter Island in future phases, or link the bayfront shuttle to other transit systems to reach those destinations.

In this manner, the LFSDD bayfront shuttle could be either scaled up to meet the needs of the greater Downtown area or replaced over time with other, more comprehensive transit systems. Under either approach, the interests of the Coastal Commission and the Port in preserving and enhancing public access to the bayfront would be adequately addressed.

LANE FIELD: PROPOSED SUMMER EMBARCADERO SHUTTLE ROUTES & DESTINATIONS

LINDBERGH FIELD
SAN DIEGO INTERNATIONAL AIRPORT



KEY

-  SUMMER BAYFRONT SHUTTLE
-  SUMMER BAYFRONT SHUTTLE STOPS & DESTINATIONS



300' 1/4 mile

58634


PAGE 137

Lane Field Public Access Program

Receiver
OCT 03 2008
California Coastal Commission
San Diego Coast District

Lane Field San Diego Developers, LLC
655 West Broadway, Suite 1450
San Diego, California 92101

July 17, 2008
As revised August 20, 2008

EXHIBIT #6
APPLICATION NO.
A-6-PSD-08-4
Public Access Program
 California Coastal Commission

Lane Field Public Access Program

Project Location

The Lane Field project encompasses approximately 5.7 acres of land in downtown San Diego, located on the north side of Broadway, between North Harbor Drive and Pacific Highway. Lane Field is in Subarea 33 of Planning District 3 in the certified Port Master Plan (PMP) and encompassed within the Master Environmental Impact Report (MEIR) for the North Embarcadero Visionary Plan (NEVP). The Port of San Diego Board of Port Commissioners (Board) certified the Final MEIR on April 25, 2000. The Board issued a Notice of Determination on August 8, 2006 finding that there were no substantial changes in the circumstances under which the Final MEIR was certified. The project site is adjacent to the core of San Diego's downtown with the Broadway Pier and B Street Pier immediately to the west; the Irvine Company proposed office building to the east and the Navy Broadway Complex development to the south.

Public Access Program Components

The purpose of the Lane Field Public Access Program is to define the proposed public pedestrian access integrated throughout the site and identify the management of the public access. The Public Access Program includes the ground level, the podium roof level, vertical circulation elements, a signage program, and a conceptual affordable accommodations program.

Site Access and Public Parking

A critical feature of the Public Access Plan is the proximity to multiple modes of public transit and inclusion of on-site public parking. Lane Field is located one block away from Santa Fe Depot (Amtrak and the Coaster), two blocks away from One America Plaza (San Diego Trolley Orange Line and Blue Line) and within three blocks of seven bus lines. The Lane Field project includes an approximately 1,330 space subterranean parking garage for public and private use. Public vehicular access to self-park is located in two locations: the northeast edge of the project off of Pacific Highway and off C Street on the eastern edge of the project. Four public access elevator banks connect the subterranean parking structure to the one or more of the street, plaza, lobby and ballroom levels.

Lane Field North:

- Parking Garage Elevator bank with two elevators on the North side of C Street, mid-block - access between Garage and Street levels
- Parking Garage Elevator on the northeast corner along Pacific Highway - access between Garage and Street levels

Lane Field South:

- Parking Garage Elevator bank with two elevators on the North side of C Street - access between Garage, Street and Ballroom levels

Lane Field Public Access Program

- Parking Garage Elevator on the southeast corner along Broadway Plaza
– access between Garage and Street levels

The elevators off of C Street are within immediate proximity to adjacent retail uses, the C Street Plaza, the hotel lobbies, and the NEVP promenade along North Harbor Drive.

Ground Level Access and Circulation

The Lane Field project is a fundamental part of the NEVP, integrating the public realm improvements along Broadway, Harbor Drive and Pacific Highway and extending C Street west of Pacific Highway to Harbor Drive. The ground level access and circulation includes the streetscapes and plaza areas as well as connections into and through the first floor. The ground level use is visitor-serving retail and restaurants, directly accessible from the streets and plazas.

- **Broadway:** the minimum setback requirement along Broadway creates a public plaza ("Broadway Plaza") that expands from 55' between the eastern building edge and Broadway to 110' wide between the western building edge and Broadway at Harbor Drive. The Broadway Plaza will integrate decorative paving (in accordance with the NEVP design principles) with permeable surfaces, seating, and an informal water feature. The design intent of the public realm along Broadway is to create diverse opportunities for the scale and nature of enjoyment, ranging from large civic gatherings and celebrations to intimate spaces for relaxation and conversation.
- **C Street:** C Street provides a critical link for the public between Pacific Highway and Harbor Drive and serves as the primary vehicular circulation path for the hotel, retail and restaurant uses. To accomplish both, the streetscape with optimal sun exposure on the northern side includes a 34' sidewalk at the east and west ends to facilitate heavy pedestrian use and outdoor seating/café areas. The sidewalk narrows to 17'8" at the curve of the ellipse. The sidewalk on the southern side of C Street is 22'6" at the western edge, 12'6" along the traffic ellipse and 10'0" on the eastern edge. On an urban scale, C Street physically and visually connects Santa Fe Depot (Amtrak, Coaster and Trolley services) to the Bay, serving visitors, tourists, residents and local employees. To celebrate the importance of this connection, the central ellipse within C Street will incorporate a public art waterscape designed to mimic the natural phenomenon of waves. Pedestrian connections to this water feature will be provided at its western edge and will integrate a viewing platform for public use.

Lane Field Public Access Program

The western portion of C Street extending 180' east from the curb edge of North Harbor Drive is designed as flexible plaza space that will accommodate both pedestrians and vehicles. The area's primary use will be as a public plaza with direct access to adjacent ground level retail and restaurants, both the North and South public access elevators and connections to the public art waterscape.

The central 'ellipse' mentioned above defines vehicular circulation. This feature includes three traffic lanes and integrates valet parking drop-off and pick-up locations at each hotel's porte-cochere. Valet services are available to the public. Self-park access on the eastern edge of C Street is achieved through ingress/egress ramps that connect to the below grade parking structure.

- **Harbor Drive:** The project is set back 10' beyond the public sidewalk resulting in 25' sidewalks that will accommodate activated outdoor cafés and retail shops, including seating.
- **Pacific Highway:** The at-grade sidewalk along Pacific Highway is 12' wide and is constructed at an elevation that places it within the potential 100-year flood. To allow the building to be constructed with a first floor elevation adequately above the potential high water mark, a raised 12' wide private walkway ramped for public access will be provided in front of the retail establishments. This design will allow the existing sidewalk grade to be maintained while providing safe public access to the retail shops. The private walkway may be eliminated if the final storm water runoff elevation at Pacific Highway allows, as developed by the NEVP Public Improvements design. In this scenario, the building façade would meet the sidewalk level rather than a ramped walkway.
- **North - South Connection:** In addition to the streetscape and plaza areas, the Lane Field public access plan includes a north/south connection established through the Lane Field South lobby, a 70' high space that opens up onto Broadway and offers a mid-block connection through to C Street. Further, the hotel lobbies of both Lane Field South and North are accessible to the public.

Vertical Circulation Elements

- **Layered Public Realm:** The Lane Field project integrates the concept of a 'layered public realm,' which begins on the ground level with the streetscapes, plaza and activating uses and continues to the podium roof level with viewing terraces and restaurants and on to the tower roof level of Lane Field North.

Lane Field Public Access Program

- The activated podium rooftop will be visible from the ground level
- To assure and encourage public access, two public access elevators are located on Harbor Drive.
- The design of the elevators will include transparent glass to showcase the direct accessibility from Harbor Drive to the podium roof level to the public.

Podium Roof Level

The Lane Field project includes two roof levels accessible by the public in varying degrees: public terrace and circulation, terrace and event space, restaurant/bar and hotel amenities with appropriate management structures, as discussed below.

- Lane Field South (InterContinental Hotel): the public realm elevator arrives on the podium at the northwest corner of the InterContinental Hotel podium roof, connecting to the restaurant and bar on the same corner and linking directly to the viewing terrace on the southwest corner with expansive views of the city and the bay.
 - Public terrace and circulation – A promenade is designed to connect the core vertical circulation elements through the lobby with the public realm elevator and all adjacent uses. The circulation area includes restrooms and a dedicated viewing terrace.
 - Terrace and event space – the southwest corner is a multi-purpose space designed to accommodate private functions and, during a non-event hours, provide a public viewing platform.
 - Restaurant/Bar – the Food and Beverage facilities are available to all customers, including guests, visitors, and residents.
 - Hotel Amenities – the hotel amenities include a pool deck and luxury spa facility and are designated specifically for guest access only.
- Lane Field North (Vivara): the public realm elevator arrives in the middle of the western edge of the Hotel podium with direct access to restaurant and bar and visual connection to the bar terrace and outdoor terrace. The Vivara also features a tower roof level terrace.
 - Public terrace and circulation – the public access elevator connects along the southern edge of the terrace level, wrapping around the restaurant/bar area to connect to the elevator and escalator access
 - Restaurant/Bar – the Food and Beverage facilities are located on the northwestern corner and are available to all customers, including guests, visitors, and residents.
 - Hotel Amenities – the hotel amenities include guest suites located on the terrace level.

Lane Field Public Access Program

- Tower roof level – presuming that the rooftop lounge and event terrace are constructed, public access will be provided through a clearly identified promenade linking the public realm elevator to the building's vertical transportation core. The core contains two designated elevators linking the podium roof level to both the hotel lobby and the terrace at the Tower roof. Access to the rooftop may occasionally be limited for private events. This access will be managed by the hotel operator.

Management

- All facilities included in Lane Field are open to the public, defined by business hours.
 - Access to the podium level will be allowed during normal business hours, which are expected to be between 6am to 2am.
 - The Broadway Plaza will be publicly accessible to the public 24 hours a day for all days except for those dedicated to civic events.
 - C Street Plaza will be accessible to the public 24 hours a day for all days when it is not reserved for private functions sponsored by the Manager of the Development. This area will be operated and managed by the entity that operates the common spaces and parking garage.
 - Access to the podium and rooftop levels of the hotels will be allowed during normal business hours, which are expected to be between 6am to 2am.

Signage

A comprehensive signage system will be integrated into the project to indicate areas of public access and hours of availability. The signage system provides appropriate direction to specific points of access, including the parking garage elevators and the public access elevators.

Affordable Accommodations

The Applicant (Lane Field San Diego Developers, LLC [LFSDD]), proposes the concept below to address the issue of affordable accommodations raised by Coastal Commission staff in reviewing the application for Coastal Development Permit CDP-2008-01.

Any concept will take several years to implement, requiring a development program, a suitable site; entitlements under CEQA and the Port Master Plan, and design and construction. LFSDD believes, however, that this concept will

Lane Field Public Access Program

substantially advance the Coastal Commission's interest in preserving and growing the inventory of low-priced accommodations in the coastal zone.

The conceptual program described below is contingent upon (1) obtaining the necessary entitlements, including review and approval by the Board of Port Commissioners, a Port Master Plan Amendment (if applicable), CEQA review including a project-specific EIR, and a Coastal Development Permit; (2) the acceptance and consent of the Coastal Commission; and (3) the commencement of construction on Lane Field.

Concept Proposal

LFSDD proposes to negotiate an agreement with the Port to entitle and construct a hostel on Port-controlled land. Development of the hotels on Lane Field will directly result in the funding necessary for LFSDD to partner with the Port in developing the hostel. LFSDD proposes the following four-point program to address affordable accommodations:

(1) LFSDD will seek a lease with the Port for land suitable for construction of a new hostel.

- LFSDD will work with the Port to identify a suitable site on land to lease for a new hostel.
- The hostel operator's criteria, such as proximity to mass transit and major tourist destinations, will be used to site the hostel.
- Land value as discussed below would be considered the Port's contribution to affordable accommodations in fulfillment of the Coastal Commission's interests.

(2) LFSDD will construct a hostel on the site selected by the Port and directly fund half of the construction costs.

- LFSDD will design and construct the hostel on a site selected with the Port.
- LFSDD will fund half of the construction subject to a matching grant from the hostel operator.
- The minimum number of units to be constructed will be based on the following formula:

$$\begin{array}{rcl} 400 \text{ beds} & = & 800 \text{ assumed hotel rooms on} \\ & & \text{Lane Field} \\ & & \times 2 \text{ people (beds) per room} \\ & & \times 25\% \text{ of units} \end{array}$$

400 beds = 133 assumed units per
the hostel operator's standards

(3) The Hostel Operator will match LFSDD's contribution.

- Hostel operator matches LFSDD's contribution for construction.
- Hostel operator will operate the hostel as either a Port tenant or subtenant.
- Lease/sublease structured in accordance with the hostel operator's pro formas and brand standards as reviewed and approved by the Port.

(4) LFSDD will petition the Port to establish a low-cost overnight accommodations bank and a comprehensive low cost facilities policy. LFSDD recommends the following:

- The Port will maintain records of when and how the bank is used including the amount of units or dollars in the bank at any given time, and will notify the Executive Director of the Coastal Commission when units or dollars are allocated or withdrawn.
- The value of the completed project will be established by an appraiser acceptable to LFSDD and the Port and will consider the total market value of the land to the Port as if available for construction of a high-end hotel or other comparable highest and best use for the site and the value of designing and constructing the hostel improvements.
- The appraised value of the Hostel will likely exceed the Coastal Commission's recommended fee of \$30,000 for 25% of higher cost units constructed.
- Any value of the Hostel that exceeds the recommended fee described above will be credited to the Port bank to be applied to future Port projects consistent with the Coastal Commission's recommended fee.
- If the value of the Hostel does not exceed the recommended fee, then provided the Hostel is constructed with approximately 133 units according to the hostel operator's standards, then there will be no excess value to credit to the Port bank but no additional fee will be required.
- If the Port acquires a site not presently within the Port's jurisdiction, all costs to acquire the land plus any increase in market value at the time construction of the Hostel is complete will be appraised.

Lane Field Public Access Program

Hostel Project Milestones

Planning and constructing the hostel will require substantial effort and, depending upon several factors, could take several years after completion of the Lane Field project. Following is a schedule of actions to be taken prior to and following issuance of the Coastal Development Permit.

Prior to issuance of the Coastal Development Permit, LFSDD will enter into a memorandum of understanding or other legal arrangement with a qualified non-profit hostel operator establishing the requirements and responsibilities contained in this Public Access Plan. The agreement will be submitted to the Executive Director of the Port for review and approval to ensure that it is consistent with this Public Access Plan.

Prior to execution of the lease, a bond or other financial instrument ("Guaranty") acceptable to the Port shall be executed to ensure the fee amount, including any interest that would have accrued since issuance of the Coastal Development Permit, is available in the event of the hostel project default. The Port shall notify the Coastal Commission Executive Director when the Guaranty is executed.

The following milestones establish a reasonable timeline for this concept:

Task #1: Identify one or more sites in conjunction with the Port and the hostel operator and complete appropriate site feasibility analysis.

Due: Within twelve (12) months from issuance of the Coastal Development Permit for the Lane Field project.

Task #2: Negotiate an agreement with the Port to establish a development program and for an entitlement process for an approximately 133 unit hostel sized in accordance with the Coastal Commission's formula. The development may be stand-alone, single-use, or mixed use. The selected hostel site will be secured through a lease with the Port for use as a hostel. If the hostel is part of a mixed-use development, the lease shall stipulate that a hostel will be developed and maintained as part of the improvements to the site. Any change of use on the site to a use other than a hostel would require an amendment to both the Lane Field Coastal Development Permit and the Coastal Development Permit for the hostel.

Due: Within six (6) months from completion of Task #1.

Lane Field Public Access Program

Task #3: Seek site-specific entitlements which will include CEQA review and may include a Port Master Plan Amendment followed by issuance of an appealable Coastal Development Permit. Prior to completion of this task, LFSDD will petition the Port to draft and seek the approval of the Coastal Commission for a comprehensive Low Cost Facilities Policy to include, but not be limited to, an affordable overnight accommodations bank concept for use on future Port hotel projects as described in (4) above.

Due: Within eighteen (18) to twenty-four (24) months from completion of Task #2.

Task #4: Complete design and commence construction of a Hostel pursuant to a to-be negotiated agreement with the Port and entitlements to be obtained as described above.

Due: Within twelve (12) months from completion of Task #3.

The milestone schedule will be extended one day for each day that a delay is caused by:

- (i) litigation by a third party not affiliated with or under the direction of LFSDD or the Port that prevents LFSDD from completing the milestone task and advancing development of the hostel; and
- (ii) if it causes a delay in the development of the hostel or in LFSDD's or the Port's ability to perform as described above despite LFSDD's diligent and commercially reasonable best efforts to proceed with the hostel development: riots; natural disasters and other acts of God, including, without limitation, fires, earthquakes, floods, unusually severe weather conditions, and hurricanes; labor strikes; delays caused by governmental agencies other than the Port; acts of terrorism; and war on United States soil.

Hostel Project Default

Should LFSDD or the Port fail to meet any of these milestones subject to any extensions if any as described above, then the Port will promptly notify the Executive Director of the Coastal Commission of such failure. Following receipt of the notice, the Executive Director of the Coastal Commission may require that LFSDD pay a fee in lieu of affordable accommodations calculated on the basis of

Lane Field Public Access Program

\$30,000 for 25% of the units being, having been and to be constructed on Lane Field.

Within ninety (90) days of missing any milestone, either the Port or LFSDD or both may request an extension of time from the Executive Director of the Coastal Commission, and if the extension is granted, may complete the remaining task(s) within the time granted. If an extension is not granted, then the Port or LFSDD or both may complete the remaining task(s) within the ninety (90) day period or LFSDD may pay the fee if requested by the Executive Director of the Coastal Commission as described above, or apply for an amendment for a revised affordable accommodations proposal.

In no event will LFSDD or the Port pay the abovementioned fee to the Coastal Commission and additionally construct the Hostel as described above. Construction of a hostel is intended to supplant entirely the Coastal Commission's request for payment of a fee, based upon LFSDD's belief that the appraised total value of the Hostel will exceed the in-lieu fee amount and it will therefore work with the Port to establish an affordable accommodations bank with the "excess" paid to construct the hostel. The bank concept will be more fully described in a Low-Cost Facilities Policy to be drafted by the Port and submitted for Coastal Commission approval as a Port Master Plan amendment.

Lane Field Public Access Diagrams

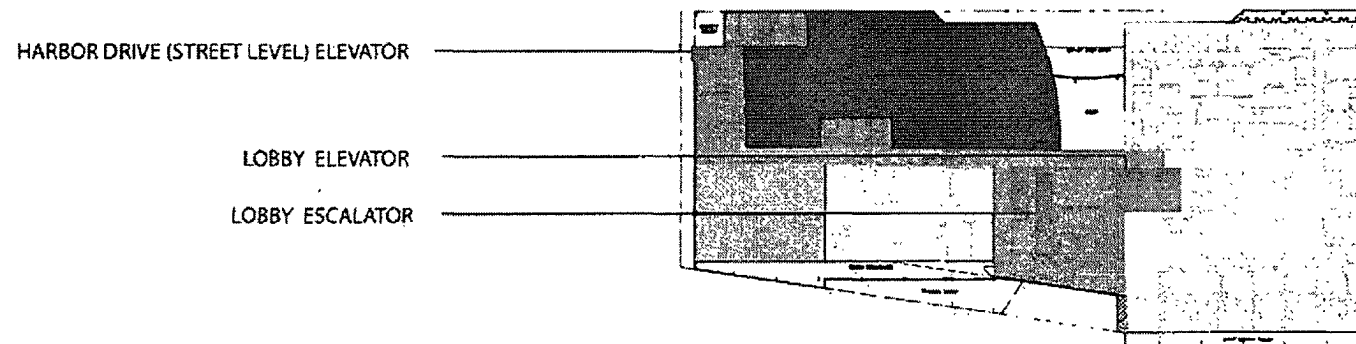
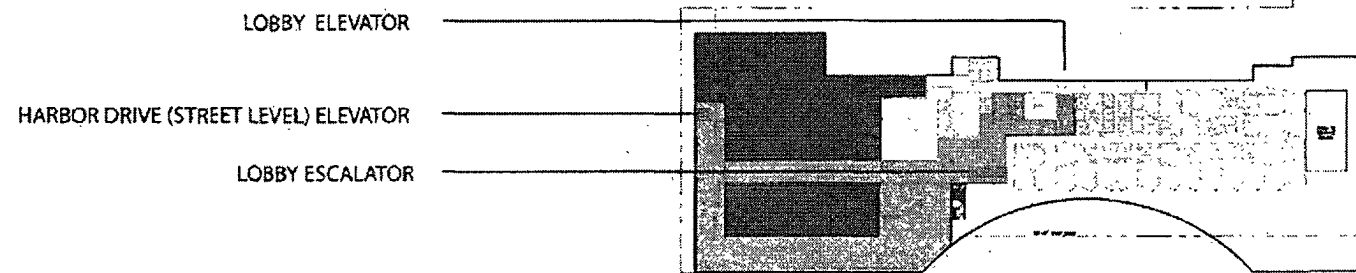
- Site Access and Public Parking
- Site Plan Diagram
- Podium Roof Level
- Vertical Circulation

II. LANE FIELD PUBLIC ACCESS DIAGRAMS: PODIUM ROOF LEVEL

Direct Access Points identify public access from the ground level to the podium roof level.

KEY

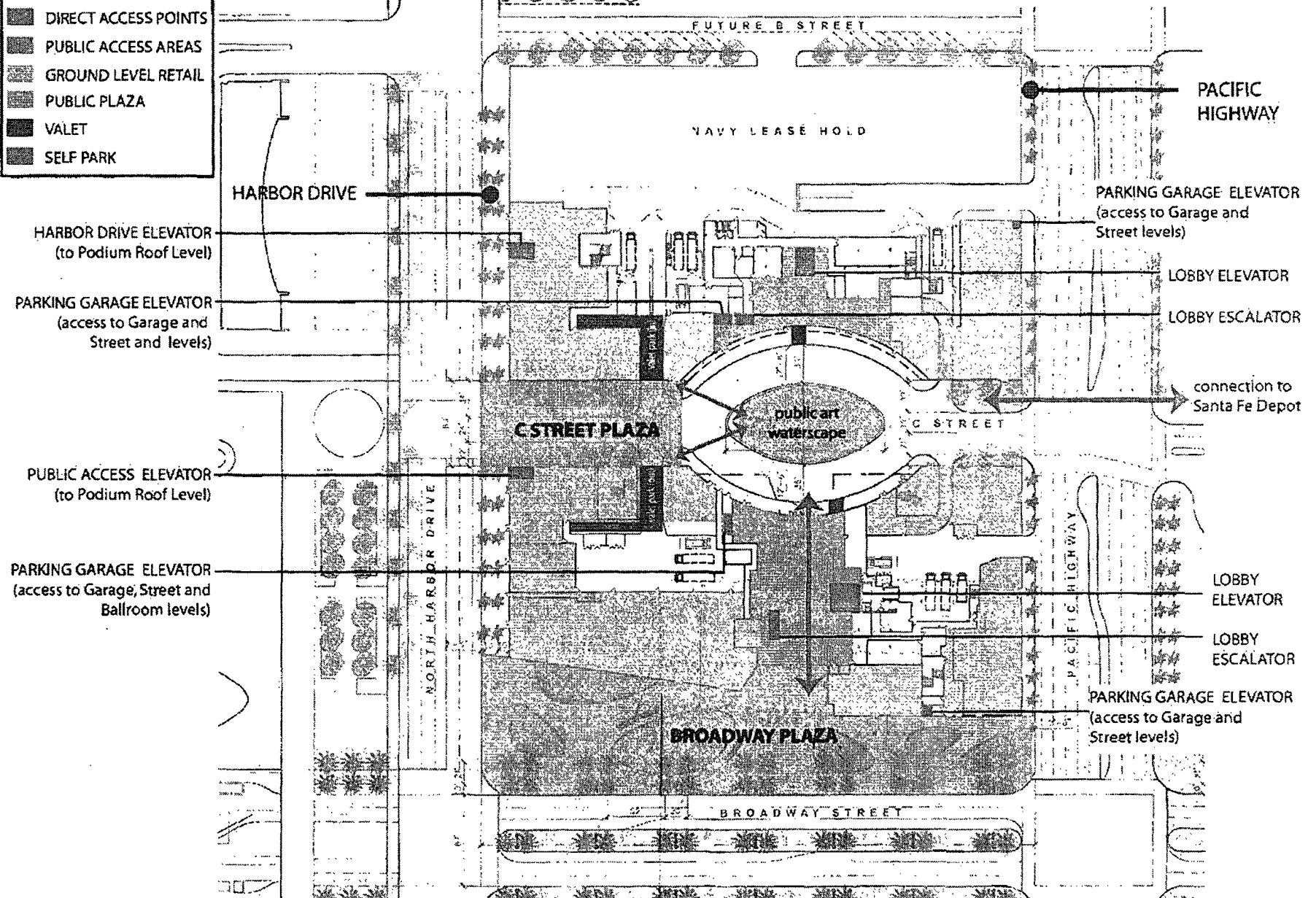
-  DIRECT ACCESS POINTS
-  PUBLIC TERRACE & CIRCULATION
-  EVENT SPACE & PUBLIC TERRACE
-  RESTAURANT/BAR
-  HOTEL AMENITIES



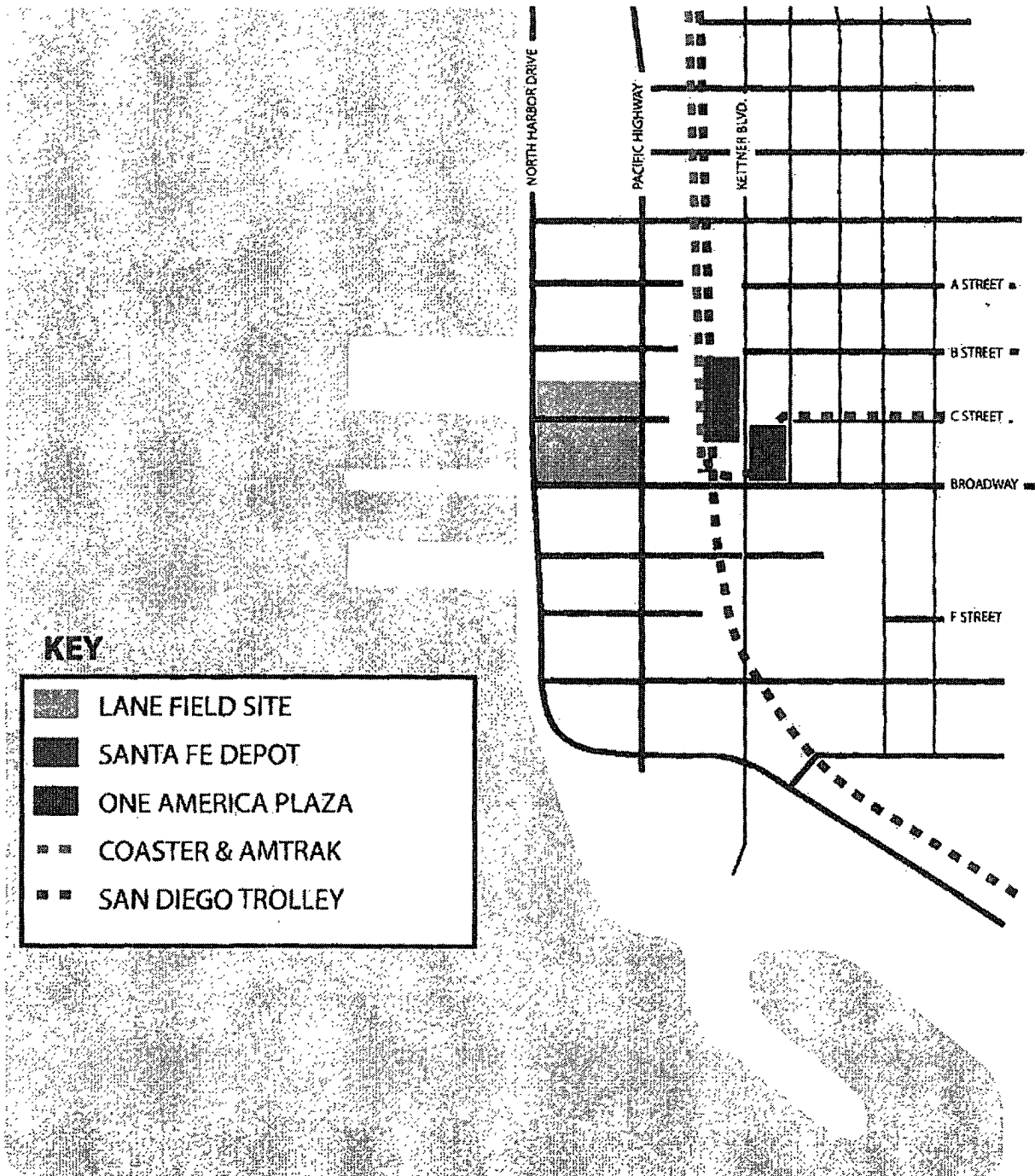
KEY

-  DIRECT ACCESS POINTS
-  PUBLIC ACCESS AREAS
-  GROUND LEVEL RETAIL
-  PUBLIC PLAZA
-  VALET
-  SELF PARK

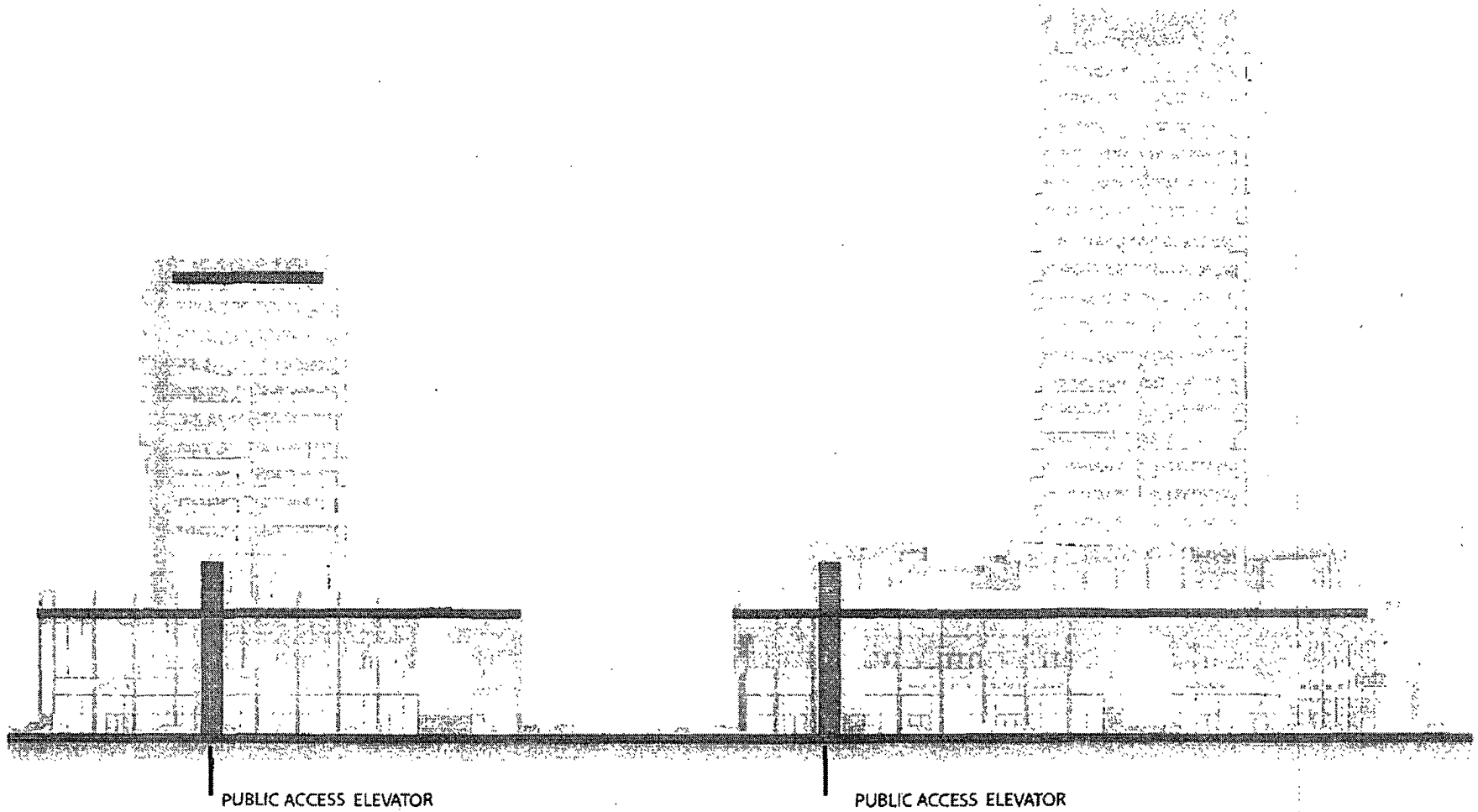
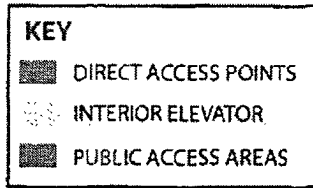
II. LANE FIELD PUBLIC ACCESS DIAGRAMS: SITE PLAN DIAGRAM



II. LANE FIELD PUBLIC ACCESS DIAGRAMS: SITE ACCESS AND PUBLIC PARKING



II. LANE FIELD PUBLIC ACCESS DIAGRAMS: VERTICAL CIRCULATION



Lane Field San Diego Developers, LLC

655 West Broadway, Suite 1450
San Diego, CA 92101
(619) 702-5655

17 October 2008

Mr. John Helmer
Director of Land Use Planning
Unified Port of San Diego
3165 Pacific Highway
San Diego, CA 92103

Re: Response to Electronic Communication from Mr. Jack H. Gregg, Ph.D., Water Quality Program Supervisor, California Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, California 94105, (415) 904-5246 sent Wednesday October 15, 2008

Dear Mr. Helmer:

The subject communication was sent to our Public Outreach Consultant Stacey Pennington and to me on the date shown. The communication included an attachment listing eight concerns expressed by Mr. Gregg regarding Water Quality issues regarding our Lane Field project (Project).

A copy of Mr. Gregg's attachment with our responses interlineated is appended to this letter, as is a copy of a letter from the California Regional Water Quality Control Board, San Diego Region (RWQCB) to the Port advising that the RWQCB will provide Regulatory Oversight "of the environmental investigations and any cleanup activities required at the former Lane Field site."

We believe the attachment to the letter will provide Mr. Gregg with complete and satisfactory responses to his concerns and we will hold ourselves available for further consultation with either you or Mr. Gregg at your convenience. Please do not hesitate to contact me should the need arise.

Very truly yours,


LANE FIELD SAN DIEGO DEVELOPERS, LLC

Jerome M Trammer

Digitally signed by Jerome M Trammer
DN: cn=Jerome M Trammer, o=J and T Consulting
Service, c=US, email=jerrytrammer@sbcglobal.net, c=US
Date: 2008.10.17 07:29:18 -07'00'

Jerome M Trammer
Project Executive

1

EXHIBIT #19
APPLICATION NO.
A-6-PSD-08-4
Applicant Water Quality Letter
 California Coastal Commission

cc: Craig Clark, C. W. Clark, Inc.
Samuel A Hardage, Hardage Suite Hotels, LLC
Robert V Lankford, Lankford & Associates, Inc
Shaun D. Sumner, Esq, UPDSD
Ms Diana Lilly, California Coastal Commission
Mr. Jack Gregg, California Coastal Commission

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

Lane Field Water Quality Recommendations:

- Q-1 The plan should be prepared by a licensed engineer and incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site.
- A-1 The Lane Field project (Project) Drainage and Grading Plan is being designed by Project Design Consultants (PDC), a registered Civil Engineering firm licensed to practice in the State of California. PDC prepared the Lane Field Project's Storm Water Pollution Prevention Plan (SWPPP) and its Water Quality Technical Report (WQTR) using trained personnel under the supervision of a Registered Civil Engineer (RCE). Both the SWPPP and the WQTR will be signed and stamped by an RCE prior to approval by the Unified Port District of San Diego (UPDSD) and the City.

Section III.B of the San Diego Municipal Code Land Development Manual, Storm Water Standards requires the implementation of applicable low impact development (LID) Best Management Practices (BMPs), source control BMPs, BMPs applicable to individual priority development project categories, and structural treatment control BMPs. These requirements are discussed in Section 4 of the WQTR and sizing is based on the Municipal Storm Water Permit (Order No. R9-2007-0001) §D.1.d.(6)(c) and San Diego County's 85th Percentile Isopleth Map. According to Storm Water Standards §III.B.4, structural treatment facilities are required to remove pollutants contained in storm water runoff. Target pollutants, removal efficiencies, expected flows, and space availability determine the selection of structural treatment BMP options. Only structural treatment BMPs with high or medium pollutant removal efficiency shall be selected for mitigation of the primary target pollutants.

PDC has also been retained by the North Embarcadero Visionary Plan (NEVP) Joint Powers Authority (JPA) to design site drainage in conjunction with a system for storm water retention and reuse for irrigation, for the NEVP Phase I improvements. The Lane Field Project design criterion dictate a zero runoff site and contemplate cleanup and reuse of all storm water, incorporating all applicable BMPs.

- Q-2 The project should be required to use BMP designs that meet the design criteria found in the January 2003 edition of the California Association of Stormwater Quality Agencies (CASQA) BMP Handbook (CASQA Handbooks), at a minimum.
- A-2 The SWPPP includes BMP Fact Sheets from the 2003 CASQA Construction Handbook for all selected/recommended BMPs (refer to Appendix 15). All non-proprietary post-construction BMPs recommended in the WQTR will be designed in compliance with the 2003 CASQA New Development and Redevelopment Handbook and the County LID Handbook (refer to Appendix 4).

Q-3 If the CASQA Handbook design criteria are not practicable for a particular project site or the project proponents propose alternate BMPs or alternate BMP design criteria that are not in CASQA Handbooks, they should be required to provide documentation that the alternate BMPs provide equivalent treatment capacity, commit to a monitoring program that will demonstrate that equivalence and commit to a contingency plan for retrofitting the BMPs to meet CASQA design standards if the alternative management practices do not provide equivalent treatment. The monitoring program should evaluate treatment of at least three storms over at least three rainy seasons.

A-3 If any selected proprietary post-construction BMPs cannot provide documentation of equivalent treatment capacity, a monitoring program will be included in the Storm Water Management and Discharge Agreement to be recorded with the City of San Diego.

In addition, the Project has published and the Port has accepted a Sustainability Initiatives Report (Report) detailing the Sustainable Design criterion to be implemented through the Project's design documents. The Report anticipates that the State of California will adopt the gray water "reuse-within-buildings" regulations that are specified in SB1258.

The Project's design includes a dual plumbing system that will capture gray water, chiller blow-down, storm water, and pool drainage, treat the water to the standards of Title 22 and either reuse the water for sanitary flush or irrigation or, anticipating a surplus of treated water, distribute such water to the JPA for use in irrigating the NEVP Phase I landscaping. Title 22 standards dictate water quality monitoring BMPs.

Q-4 This development should eliminate dry weather runoff from landscaping, water fountains, swimming pool discharge, and other sources and water quality. At a minimum, all water discharged from the pools or Jacuzzis should be discharged to the sanitary sewer and not to the storm drain system.

A-4 Use of efficient irrigation systems and landscaping design will be incorporated into the project. Rain shutoff devices will be included in all outdoor landscaping; as will flow reducers or shutoff valves. The irrigation system will automatically irrigate landscaping based on exposure and plant material type.

The City of San Diego's non-storm water discharge protocol prohibits discharges from draining Swimming Pools or Jacuzzis into the Sanitary Sewer system. Instead, these discharges are required to be properly disposed of to the City storm drain system after using pre-treatments, scheduling, or other options as appropriate.

This Project's Sustainable Design criteria require that discharges from draining the pool or Jacuzzi will not be directed into the City system but will instead be processed and reused (see 2 and 3 above). To that end, it is the design intent that landscape irrigation or incidental water runoff from fountains and features will be captured, cleaned, and reused in the sanitary flush or irrigation systems

CALIFORNIA COASTAL COMMISSION

San Diego Coast Area Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
(619) 767-2370
www.coastal.ca.gov

San Diego Unified Port District

Document No.

61770

Filed

MAY 02 2014

Office of the District Clerk

RECEIVED**JAN 28 2014****CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT**

Page: 1

Date: February 20, 2013

Permit Application No.: A-6-PSD-08-004-A1

AMENDED COASTAL DEVELOPMENT PERMIT

On January 8, 2009, and as amended on February 6, 2013, the California Coastal Commission granted to:

LPP, Lane Field, LLC

this permit for the development described below

for: **Redevelopment of the former Lane Field: Lane Field North will have a 205-foot high hotel with 275 guest rooms, a health club/spa, pools, ballrooms, and meeting rooms; and a 3-story building surrounding the hotel with 30,000 sq.ft. of visitor-serving retail and restaurants. Lane Field South will have a 275-foot high hotel with 525 guest rooms, a health club/spa, pools, ballrooms, and meeting rooms, and a 3-story building surrounding the hotel with 50,000 sq.ft. of visitor-serving retail and restaurants. Also included are 1,330 underground parking spaces and public plazas, development of a public downtown shuttle system, and a hostel development program.**

at: **North side of Broadway between Pacific Highway and Harbor Drive, Port District, San Diego, San Diego County.**

This permit has been amended to include the following changes, subject to the attached Standard and Special Conditions:

Revise location of two hotel towers and retail to be set back 150 feet from Harbor Drive to accommodate and include the construction of a 1.66 ac public park; reduce retail from 80,000 sq. ft. to 63,549 sq. ft.; reduce heights of hotel towers by 10-30 feet. Construct project in two separate phases: Phase I consisting of the park and hotel/retail on the northern portion of the site, and Phase II the hotel/retail on the southern half. Distribution of the hotel rooms will be revised to 400 rooms on the north parcel and 400 rooms on south parcel. Revise requirement to develop and partially fund construction of a hostel and/or contribute an in-lieu fee, to pay mitigation fee outright; revise requirement to develop a stand-alone 3-year summer shuttle program, to contribute to the Port District's on-going permanent summer shuttle program; update public access program, multimodal transit opportunity plan, and water quality plan to accommodate project revisions; reduce number of parking spaces to 1,100; replace subterranean parking on north parcel with a multi-level parking garage located within the podium of the hotel/retail structure.

AMENDED COASTAL DEVELOPMENT PERMIT

Date: February 20, 2013

Permit Application No.: A-6-PSD-08-004-A1

Page 2 of 7

This amended permit will become effective upon return of a signed copy of this form to the San Diego Coast District Office.

CHARLES LESTER

Executive Director

Diana Lilly

By: DIANA LILLY

Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above amendment and agree to be bound by its Conditions.

Date: 1/24/14

Signature: *[Signature]*

SPECIAL CONDITIONS:

This permit is granted subject to the following special conditions, which shall replace the conditions on the original permit in their entirety:

1. **Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final plans for Phase I of the proposed development. Said plans shall first be reviewed and approved in writing by the Port of San Diego. Said plans shall also be in substantial conformance with the preliminary plans by John Portman & Associates dated 10/25/12, revised 12/19/12, and shall be subject to the review and written approval of the Executive Director.

PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASE II of the approved development, the applicant shall submit for review and written approval of the Executive Director, final plans for Phase II of the approved development, consistent with the preliminary plans by John Portman & Associates dated 10/25/12, revised 12/19/12.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

AMENDED COASTAL DEVELOPMENT PERMIT

Date: February 20, 2013

Permit Application No.: A-6-PSD-08-004-A1

Page 3 of 7

2. **Lower Cost Overnight Accommodations Mitigation Fee.** The applicant shall pay a fee of \$30,000 per unit for 25% (200 units) of the total number of high-cost overnight visitor accommodations (800 units) in the approved project for a total fee of \$6,000,000, in lieu of providing lower cost accommodations on-site. This fee shall be paid in two phases, and the following milestones shall be met as described below.
- A. **Prior to commencement of construction of Phase I of the project,** the applicant shall submit a signed and executed Option Agreement with the Port District that includes a Project Completion Guarantee with the specific acknowledgement that the applicant is obligated to pay the mitigation fee described above.
 - B. **Prior to occupancy of the hotel(s) in Phase I of the project,** but only after the Executive Director of the Coastal Commission has indicated, in writing, that the Commission has entered into a memorandum of understanding with the San Diego Unified Port District on the conditions of expenditure of the funds from the mitigation fee, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$30,000 per unit for 25% (100 units) of the number of high-cost overnight visitor accommodations in the approved Phase I project (400 units), for a total fee of \$3,000,000, has been paid in lieu of providing lower cost accommodations on-site. Said MOU shall accommodate and provide for payment of the fee for both Phase I and Phase II of the approved project.
 - C. **Prior to commencement of construction of Phase II of the project,** the applicant shall submit a signed and executed Option Agreement with the Port District that includes a Project Completion Guarantee with the specific acknowledgement that the applicant is obligated to pay the mitigation fee described above.
 - D. **Prior to occupancy of the hotel in Phase II of the project,** the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$30,000 per unit for 25% (100 units) of the number of high-cost overnight visitor accommodations in the approved Phase II project (400 units), for a total fee of \$3,000,000, has been paid in lieu of providing lower cost accommodations on-site.
 - E. The required in-lieu fee shall be deposited into an interest-bearing account, to be established and managed by the San Diego Unified Port District pursuant to a memorandum of understanding entered into between the Port and Executive Director of the Coastal Commission, as indicated above. The purpose of this account shall be to establish lower cost overnight visitor accommodations, such as hostel beds, tent campsites, cabins or campground units, at appropriate locations on Port Tidelands within the City of San Diego. All development funded by this account will require review and approval by the Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone.

AMENDED COASTAL DEVELOPMENT PERMIT

Date: February 20, 2013

Permit Application No.: A-6-PSD-08-004-A1

Page 4 of 7

If any portion of the fee remains five years after it is deposited into the interest-bearing account required by this condition, the Executive Director may require that the funds be transferred to another entity that will provide lower cost visitor amenities in the County of San Diego coastal zone jurisdiction.

3. **Final Urban Storm Water Mitigation Plan/Water Quality Technical Report.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval of the Executive Director, a final Urban Storm Water Mitigation Plan/Water Quality Technical Report (FWQTR), for Phase I of the approved development, prepared by a licensed engineer, that is in substantial compliance with the October 2012 Preliminary Urban Storm Water Mitigation Plan and includes the following.
- a. Minimum standards to be used for BMP design that include:
 - i. The project water quality treatment system will treat all storm runoff from storms smaller than or equal to the 85th percentile design storm (0.55 inches/24 hours for volume based Best Management Practices (BMPs) and 0.2 inches/hour for flow based BMPs), with a suite of BMPs that meet the design criteria below;
 - ii. The design criteria for BMPs shall comply with the recommendations in the latest edition of the California Association of Stormwater Quality Agencies (CASQA) BMP Handbook at a minimum.
 - b. A detailed description of the design and location of the final selected suite of BMPs for this project.
 - c. Site-specific documentation showing how the final selected suite of BMPs meets the standards in section a. above, including:
 - i. That the selected Treatment Control (TC) BMPs are either Preferred TC BMPs as listed in the Port USMP submitted to the Coastal Commission on November 16, 2012 or if any of the Conditionally Adequate TC BMPs are selected that the document justifies that selection and documents that the Conditionally Adequate TC BMPs will protect water quality for the site-specific conditions at this location.
 - ii. Avoids use of drain inlet insert BMPs where more effective BMPs are feasible.
 - iii. A technical analysis by a licensed engineer of infiltration-based BMPs that shows how the design of the BMPs will be modified to protect coastal water quality since the seasonal groundwater high at the site is about 3 feet below ground surface instead of the typically recommended 10 feet of separation from the bottom of the BMP to groundwater.
 - iv. If any existing TC BMPs (e.g., drain inlet inserts on Broadway Plaza) will be maintained for use in the completed project, describe the design, operation and maintenance of those BMPs.

AMENDED COASTAL DEVELOPMENT PERMIT

Date: February 20, 2013

Permit Application No.: A-6-PSD-08-004-A1

Page 5 of 7

- d. The project will eliminate all sources of dry weather flow to the municipal storm drain system.

PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASE II of the approved development, the applicant shall submit, for review and written approval of the Executive Director, an FWQTR plan for Phase II of the approved development, that includes all of the above-listed required items for Phase I.

4. **Operation and Maintenance Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval of the Executive Director, an Operation and Maintenance (O&M) plan for Phase I of the approved development that includes description of the long-term operation and maintenance requirements of proposed best management practices described in the final Urban Stormwater Mitigation Plan/Water Quality Technical Report described in Condition #3 of this permit, and a description of the mechanisms that will ensure ongoing long-term maintenance. The O&M Plan shall include:
- a. A description of the proper operation of the project BMPs and required maintenance and documentation for that information.
 - b. A plan for annual reporting on the operation, maintenance and effectiveness of the project BMPs submitted to the Executive Director over a period of at least five years, where, at a minimum, the reports include:
 - i. Any modifications of operations or maintenance procedures that are found to be necessary for effective BMP operation,
 - ii. Documentation of stormwater runoff events that bypass the BMP system, including estimates of the size and duration of the bypass and conditions that led to the bypass.
 - iii. Documentation of any adverse impacts of the BMPs to other site features (e.g., unexpected impacts of infiltration, bypass of runoff through landscaping, flooding of landscaping).
 - c. A contingency plan identifying possible modifications to the final selected BMPs if they do not effectively treat runoff from the design storm (e.g., bypass runoff for storm events smaller than the design storm).

PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASE II of the approved development, the applicant shall submit, for review and written approval of the Executive Director, an O&M plan for Phase II of the approved development, that includes all of the above-listed required items for Phase I.

The applicant shall undertake development in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

AMENDED COASTAL DEVELOPMENT PERMIT

Date: February 20, 2013

Permit Application No.: A-6-PSD-08-004-A1

Page 6 of 7

5. **Regional Water Quality Control Board Oversight. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide evidence of an agreement with the RWQCB for regulatory oversight of the project during the site cleanup and construction.

The applicant shall undertake development in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. **Compliance with the San Diego Unified Port District Conditions of Approval.** All conditions of approval of San Diego Unified Port District January 8, 2008 and October 7, 2008 decisions (CDP-2008-01 & CDP-2008-01a) for the proposed project as shown in Exhibit #10 have been incorporated as part of the subject permit except those specifically modified by any special conditions set forth herein. For purposes of condition compliance, the Port District shall be responsible for reviewing and determining compliance with the special conditions referenced above, except for those specifically modified by any special condition set forth herein. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the Port District shall notify the Executive Director when all of the conditions have been met. Any proposed changes shall be limited to immaterial or minor changes which do not have the potential for adverse impacts, either individually or cumulatively, on coastal resources or public access to and along the shoreline. All proposed changes shall be reported to the Executive Director for review and written approval. Changes that are not immaterial or that alter the physical aspect of the project (e.g. building height, building footprint, number of rooms, setbacks, parking or public access) shall require, unless the Executive Director determines that no amendment is legally required.

7. **Public Access Program.** The applicant shall comply with all requirements contained in the "Lane Field Public Access Program" by LPP Lane Field, LLC, dated December 19, 2012, attached to this staff report as Exhibit #9.

Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. **Multimodal Transit Opportunity Promotion Plan.** The applicant shall comply with all requirements contained in the "Lane Field Multimodal Transit Opportunity Promotion Plan" by LPP Lane Field, LLC, dated November 9, 2012, attached to this staff report as Exhibit #8.

AMENDED COASTAL DEVELOPMENT PERMIT

Date: February 20, 2013

Permit Application No.: A-6-PSD-08-004-A1

Page 7 of 7

Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. **Landscaping.** By acceptance of this permit, the applicant agrees that all landscaping on the site shall be drought-tolerant (or irrigated via reclaimed water) and (1) native or (2) non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
10. **Commencement of Phase II.** Within 3 years of Commission approval of the permit, the applicant shall submit, for review and written approval of the Executive Director, evidence that construction of Phase II of the approved project has commenced. Delay of commencement of construction beyond 3 years shall require an amendment to this coastal development permit.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Anne Blemker
McCabe and Company
10520 Oakbend Drive
San Diego, CA 92131

NOTICE OF ACCEPTANCE

Date: July 12, 2013

Applicant: LLP Lane Field, LLC

Document or Plans: Final Urban Storm Water Mitigation Plan

Submitted in compliance with Special Condition(s) No(s): 3, 4, 5
of Coastal Development Permit No. A-6-PSD-08-004-A1

Remaining Special Condition(s): 1 (Final Plans); 2 (Mitigation Fee); 6 (Compliance with
Port Conditions—Prior to Commencement of Construction)

Material submitted in compliance with said Special Condition(s) of your development permit has been reviewed by the District Director and found to fulfill the requirements of said condition(s). Your submitted material and a copy of this letter have been made a part of the permanent file.

Sincerely,

Deborah Lee
District Manager

By: Diana J. Lee

(G:\San Diego\DIANA\2008 Permit Items\A-6-08-004-E1 & A1 Lane Field Extension & Amendment\Notice of Acceptance.docx)

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Alex Guyott
LPP Lane Field, LLC
1050 Park Blvd.
San Diego, CA 92101

NOTICE OF ACCEPTANCE

Date: January 10, 2014

Applicant: LLP Lane Field, LLC

Document or Plans: Final Plans

Submitted in compliance with Special Condition(s) No(s): 1
of Coastal Development Permit No. A-6-PSD-08-004-A1

Remaining Special Condition(s): 2 (Mitigation Fee); 6 (Compliance with Port Conditions—Prior to Commencement of Construction)

Material submitted in compliance with said Special Condition(s) of your development permit has been reviewed by the District Director and found to fulfill the requirements of said condition(s). Your submitted material and a copy of this letter have been made a part of the permanent file.

Sincerely,

Deborah Lee
District Manager

By: Diana Lilly

(G:\San Diego\DIANA\2008 Permit Items\A-6-08-004-E1 & A1 Lane Field Extension & Amendment\Notice of Acceptance.docx)


ATTACHMENT A
COASTAL DEVELOPMENT PERMIT 6-12-073
PROPOSED PORT DISTRICT PROVISIONS

STANDARD PROVISIONS

1. Developer shall adhere strictly to the current plans for the project as approved by the District.
2. Developer shall notify the District of any changes in the project.
3. Developer shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state, and federal agencies.
4. Developer shall conform to the permit rules and regulations of the District.
5. Developer shall be responsible for compliance with ADA and Title 24 specifications.
6. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.
7. All Port of San Diego tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District (Municipal Permit). This permit was recently adopted in January of 2007, and replaces the previous permit Order No 2001-01. All jurisdictions are required to be in full compliance with Order R9-2007-0001 by January 24, 2008. The Municipal Permit prohibits any activities that could degrade stormwater quality.

Post-construction/operational use of this project site must comply with the Municipal Permit and District direction related to permitted activities including the requirements found in the District Jurisdictional Urban Runoff Management Document (JURMP). The JURMP is available on the District website: http://www.portofsandiego.org/sandiego_environment/susmp.asp or by contacting the Environmental Services Department, (619) 686-6254.

8. This project is subject to the Port Standard Urban Stormwater Mitigation Plan (SUSMP) process. As such, approval of the project by the District is

EXHIBIT NO. 10
APPLICATION NO.
A-6-PSD-08-4
Port District
Provisions
 California Coastal Commission

necessarily conditioned upon submission by the project proponent of a project specific urban Stormwater Mitigation Plan (USMP) that meets District requirements. Project approval requires full implementation of all USMP structural and non-structural BMPs throughout the life of the project.

The implementation and maintenance of the USMP BMPs constitute regulatory obligations for the lessee, and failure to comply with the Municipal Permit, the JURMP, or the Port approved USMP, including the specific BMPs contained therein, may be considered a default under the lease.

SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, the Developer will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the Developer will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary using a water sweeper if visible soil material is carried onto adjacent public paved roads.
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Developer shall prevent inactive trucks from idling more than 5 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Equipment shall use low-sulfur diesel fuel.

11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.
13. Developer shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Developer shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. Developer and/or contractor shall comply with State Water Resources Control Board Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000002, and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "General Construction Storm Water Permit"), as adopted, amended, and/or modified. The District is responsible for submitting the Notice of Intent to comply with the General Construction Storm Water Permit. The Developer and/or contractor must comply with the General Construction Storm Water Permit and District direction related to permitted activities. Construction activity subject to the General Construction Storm Water Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Developer and/or contractor must prepare and submit the SWPPP for review and approval by the District prior to site work.

SPECIAL PROVISIONS

1. Following construction, the applicant shall implement the "Lane Field Public Access Program" throughout operation of the project to the satisfaction of the District.
2. The applicant shall maintain no less than 300 parking spaces available to the public within its managed parking facility(ies) throughout project operation, consistent with the North Embarcadero Visionary Plan Parking Management requirements.

3. The applicant shall implement the "Lane Field Construction Parking Management Plan" throughout project construction to the satisfaction of the District.
4. A subsurface mitigation plan shall be implemented during site excavation by a qualified archaeologist/paleontologist who meets the City's standards for an archaeological principal investigator. The plan shall include a detailed review of Sanborn fire insurance maps, directory search, and if warranted, limited testing of where the project archaeologist deems necessary for cultural materials recovery within the area impacted. The archaeologist/paleontologist shall conduct on-site observation during the site excavation process. All cultural material recovered and associated records shall be delivered to the curator of an appropriate San Diego County institution that meets the standards of the State Historical Resource Commission's *"Guidelines for the Curation of Archaeological Collections"* dated May 7, 1993.
5. A complete site contamination report in conformance with federal, State, and local regulations shall be completed for the project. The report shall include an existing conditions survey, detailed project description, and specific measures proposed to preclude upset conditions (accidents) from occurring. If hazardous materials are identified, a risk assessment and remediation efforts shall be conducted in conformance with federal, State, and local regulations.
6. A site-specific soil/groundwater assessment shall be performed by a qualified geologist/hydrologist in conformance with federal, State, and local regulations prior to soil disturbance in all areas where soil or water contamination sources are suspected of containing hazardous materials storage systems. Such an assessment shall include collecting and analyzing soil and/or groundwater samples. The presence of soils or groundwater contamination shall be remediated, if necessary, according to applicable federal, State, and local regulations prior to development of the site.
7. The proposed project will be designed and constructed so that permanent dewatering is not required. Dewatering activity will be limited to the construction period as may be necessary. The North Embarcadero Visionary Plan Master Environmental Impact Report (certified in March 2000) (Master EIR) recommends that dewatering shall occur to lower the groundwater table to a minimum of 2 feet below the bottom of all removals and excavations.
8. Dewatering discharge shall meet the effluent limits specified by the RWQCB (order No. 90-31) and Federal National Pollution Discharge

Elimination System (NPDES) requirement. Order No. 90-31 includes a prohibition of the discharge of dewatering effluent to San Diego Bay for new permanent dewatering operations. If the effluent is discharged to the City of San Diego sewer system, then the discharge shall meet the discharge requirements of the City.

9. In the event that dewatering effluent is discharged to surface waters, groundwater quality data will be required in advance, and possibly, a treatment system will be needed to meet federal, State, and local regulations.
10. If necessary, to identify locations of Underground Storage Tanks (USTs), a site-specific informational review and geophysical survey shall be conducted.
11. A contingency plan for UST removal and remediation shall be prepared. Such plan shall address contractor procedures in the event that an unknown UST is encountered during site redevelopment.
12. Permits to operate or close tanks must be obtained by the tank owner or operator in conformance with federal, State, and local regulations.
13. All earthwork activities shall be governed by the provisions of the NPDES general permit, which includes the preparation and implementation of a SWPPP and BMPs to control runoff and sedimentation during construction and post construction.
14. Remediation shall be conducted according to applicable federal, State and local regulations prior to development of the site.
15. Transportation Demand Management (TDM) measurements, including Regional Air Quality Strategy (RAQS) mandated trip/Vehicle Miles Traveled (VMT) reduction and land use measures, shall be implemented for high-occupancy events at the hotels. Project related traffic is less than previously incorporated into the RAQS, which concludes that as long as forecast levels of growth and associated traffic are not exceeded, the RAQS contains sufficient mitigation of such growth to allow regional air quality standards to be met.
16. Alternative transit opportunities shall be provided by the Developer for guests and employees, which may include but are not limited to a shuttle service to San Diego International Airport and the provision of bike racks.

17. Developer shall comply with all applicable public access requirements including participation in a bayside shuttle system upon District implementation of that system.
18. Energy conservation measures will be implemented throughout project operation such that a 20 percent reduction compared to satisfying current Title 24 requirements is achieved. Measures from the applicants "Lane Field Sustainability Initiatives Assessment" may be used and include but are not limited to: use of recycled water for landscaping; heat reclamation from central air conditioning; use of fuel cell technology for power cogeneration; and noticing of laundry reuse to guests.
19. Developer shall investigate the suitability of excavated material for use as sand replenishment on a beach subject to approval by the US Army Corps of Engineers. Beaches within the District shall have first priority for selection. If material is deemed suitable for depositing on a District beach then such an action shall occur. If the material is deemed unsuitable for any District beach but suitable for another beach within San Diego County then that action shall occur. If the material is deemed unsuitable for use as beach replenishment for any beach within San Diego County then the material shall be disposed of or recycled in accordance with applicable local, state, and federal regulations.
20. The project design shall comply with Title 24 of the California Code of Regulations, which includes establishing permissible horizontal sound transmission through shared walls, as well as vertical transmission of impulsive noise through floor/ceiling assemblies. In addition, the use of upgraded interior finishing and heavy window glass are standards required by Title 24. Compliance with these regulations meets the required 45 dBA CNEL interior levels even if the 65 dBA exterior levels are not met. Documentation of compliance shall be provided when building plans are filed.
21. If windows face the tracks along Pacific Highway, use of heavily upgraded glazing and/or heavy drapes is recommended to reduce hotel sleep interference from peak train noise levels.
22. An interior noise study shall be conducted for hotels at the time building plans are developed and measures required to ensure a 45 dB interior level for transient occupancy rooms shall be implemented. Documentation of compliance shall be when building plans are filed.

23. All construction activities shall comply with the City of San Diego's Noise Ordinance, which limits the allowable hours and establishes performance standards for construction activities.
24. Use pre-drilled piles or vibratory drivers if subsurface conditions can accommodate such methods.
25. Perform all pile driving activities on weekdays between 9:00 am and 5:00 pm.
26. Pile driving shall extend past the loose and unconsolidated bay deposits to a depth within the Bay Point Formation that is suitable for the support of proposed piles.
27. All structures shall be designed in accordance with the recommendation of the geotechnical evaluation, and with all applicable requirements of the International Building Code (IBC) for Seismic Zone 4. Project specific design recommendations to limit or structural damage or maintain function during an earthquake shall include foundation design parameters and specifications for deep foundations.
28. It is expected that large structures will be founded on some type of deep foundation system, which may consist of driven or cast-in place piles embedded into the underlying Bay Point Formation.
29. All structures shall be reinforced and supported using ground modification (e.g., dynamic compaction) or deep foundation piles.
30. Remedial grading or surcharging and monitoring by means of settlement monuments shall be incorporated into construction within the project area.
31. To assess and offset impacts associated with hydrostatic uplift, an evaluation of potential hydrostatic uplift activities during the time of geotechnical plan review regarding the design and construction of below-grade basement levels shall occur.
32. The project applicant shall prepare a waste management plan in consultation with the City of San Diego Environmental Services Department (ESD) which shall also approve the plan. The waste management plan shall include the following elements:
 - The type and quantity of solid waste expected to enter the waste stream.

- Source separation techniques to be used and the location of on site storage for separated materials as required by Municipal Code Section 101.2001.
- The method of transport and destination of separated waste and/or construction debris not re-used on site.
- A "buy-recycled" program for the project.
- An impact analysis spreadsheet completed by an ESD analyst. A copy of the waste management plan shall be submitted to ESD and the Port District. With respect to construction/demolition debris, the amount of this material being deposited in the landfill should be reduced by implementing any or all of the following mitigation techniques.
 - Onsite re-use of demolition material in the construction of the development activities
 - Separating construction debris for recycling-reuse by others

LANE FIELD

**LANE FIELD
PUBLIC ACCESS PLAN
December 19, 2012**

**LPP Lane Field, LLC
1050 Park Boulevard
San Diego, California 92101**

Special Condition #7

EXHIBIT NO. 9
APPLICATION NO.
A-6-PSD-08-4
Public Access Plan
 California Coastal Commission

Lane Field Public Access Plan Table of Contents

Public Access Plan

Project Location

Public Access Program Components

Site Access and Public Parking

Ground Level Access and Circulation

Public Realm Vertical Circulation to Level 2 - Balcony and Level 5 -Terrace

Rooftop Terrace

Way Finding Signage

Management

Hostel Project

Lane Field Public Access Diagram Attachments:

1. Lane Field Public Transit Opportunity Map
2. Lane Field Refined Site Plan
3. Lane Field Public Access Areas
4. Lane Field Setback Park/Plaza – Conceptual Site Plan
5. Lane Field Setback Park/Plaza – Event Planning Diagrams

The 12/19/12 Public Access Plan revision has been published to more fully describe both phases of the project.

Project Location

The Lane Field project consists of three discrete project areas, 1.52 acres of building site, 0.60 acres of view corridor (Lane Field Entry Plaza), and 1.98 acres designated as the Lane Field Setback Park/Plaza. A future building site, Lane Field South, contains an additional 1.59 acres of land. The entire Lane Field Site comprises 5.7 acres of tidelands in downtown San Diego, located on the north side of West Broadway, between North Harbor Drive and the Pacific Highway. Lane Field is in Subarea 33 of Planning District 3 of the San Diego Unified Port District's (District) certified Port Master Plan. Lane Field is adjacent to the core of San Diego's downtown with the Broadway Pier and B Street Pier immediately to the west, the Irvine Company's proposed office building to the east and the proposed Navy Broadway Complex development to the south.

Public Access Program Components

The purpose of the Lane Field Public Access Plan is to define how public access is integrated into the project site, and identify how such public access will be managed. The program includes Site Access and Parking, Ground Level Access and Circulation, Elevated Public Realm and Vertical Circulation to Level 2 Balcony and Level 5 - Terrace, a Way Finding Signage Program, and Management.

Site Access and Parking

Two critical features of the Public Access Plan are the proximity of the site to multiple modes of public transit, and the inclusion of on-site public parking. Lane Field is located one block away from the Santa Fe Depot (Amtrak and the Coaster), two blocks from One America Plaza (San Diego Trolley Orange Line and Blue Line), and within three blocks of seven bus lines.

The District requires that the project include sufficient parking for its own use, and that a total of 300 additional public parking spaces be provided on the entire Lane Field site. The public parking requirement is embodied in the District's previous approvals for the project and in the Lane Field Coastal Development Permit issued by the California Coastal Commission on January 8, 2009. Based upon the development of two 400-key hotels as is required by the developer's Option with the Port, the Lane Field North project includes a parking garage with 414 parking stalls; of those, 29 stalls will be dedicated for public use. The future Lane Field South project will provide an additional 686 parking stalls, 271 of which will be dedicated public parking stalls, thereby fulfilling the requirement for 300 dedicated public parking spaces as imposed by the NEVP MEIR. Prior to construction of the project, a shared parking study will be performed by a professional parking consultant. If the study indicates a differing need for project parking than that which is indicated above, the parking garage design will be adjusted to comport with the study's conclusion.

Vehicular access into Lane Field North and the future Lane Field South will be through the Lane Field Entry Plaza (Entry Plaza). The Entry Plaza serves as the entry drive into the site for hotel guest drop-off and access to the parking garage. It also serves as the pedestrian circulation corridor into the site. The Entry Plaza will be accessed from Pacific Highway within the C Street View Corridor.

Access to the elevated public realm comprised of shops and restaurants on the Level 2 Balcony and the Level 5 Terrace on both the north and south projects will be achieved through public access elevators. The elevators will be accessible from the Entry Plaza, the Setback Park/Plaza, and on the north site, the parking garage. The elevators are located just off the Entry Plaza adjacent to each hotel podium for ease of access. On the north site, the elevators will connect the Entry Plaza to all parking garage levels, the shops, restaurants and terraces; on the south site, because the parking garage will be subterranean, the public access elevators will provide access only to the shops and restaurants on the Level 2 Balcony and the level 5 Terrace.

Ground Level Access and Circulation

The Lane Field project is a fundamental part of the North Embarcadero Visionary Plan resulting from the integration of the Lane Field Setback Park/Plaza (Park) into the project. The Park will eventually extend the NEVP from the "B" Street R.O.W. south to Broadway and along Broadway from North Harbor Drive to Pacific Highway, and the Lane Field Entry Plaza creates the View Corridor. Ground level access and circulation includes the Park, the Entry Plaza and connections to the first floor and elevated shops and restaurants, and terraces.

- **Lane Field Setback Park/Plaza:** the Park is a 1.98 acre public space created as a destination and passive recreation gathering area. It originates at the eastern edge of the sidewalk at North Harbor Drive and extends 150' eastward to the face of the Lane Field North and the future Lane Field South building sites. Both the easternmost and southernmost 25' portions of the Park are programmed for the creation of café type venues with outside dining and other public use functional areas. Immediately west of the 25' area, one encounters the main north-south pedestrian connection within the overall Lane Field Site. A second north-south pedestrian connection is provided by the sidewalk fronting North Harbor Drive. The Park is designed for public recreation and also public gatherings. Taken as a whole, the Park can accommodate civic events attended by 3,000 persons.

The design of the Park emanates from the former baseball stadium and diamond that are a part of Lane Field's history. In-ground lighting will illuminate the base paths, the bases will be marked with in-ground plaques, and both the pitcher's mound and home plate will be presented as significant features. A children's play area will be provided as will a seating bench with provisions for wheel chair access. A casual dining pavilion will be located on a raised seating area which will be accessible via stairs and an access ramp. The pavilion will be privately operated and will serve casual fare to the public. Two public restrooms will be attached to the pavilion building and will be available to the public. Although the Port will be responsible to provide all necessary operating supplies, accomplish general maintenance, and both open and secure the restrooms at the beginning and end of each day, during operating hours, the pavilion operator will be responsible to maintain the restrooms in a clean and sanitary condition as a requirement of its lease.

- **Broadway:** The east-west sidewalk along the north side of West Broadway will be paved and planted in accordance with the NEVP Uniform Control Plan (UCP) as provided for in the NEVP Phase 1A CDP. The 55' setback behind the sidewalk along West Broadway is part of the Park. When developed, this setback creates the "Broadway Plaza" (Plaza) portion of the Park. The Plaza will be constructed in accordance with the UCP, as will the entire Setback Park. Both the Park and the Plaza will include permeable surfaces, decorative paving, and seating. The design intent along Broadway is to create diverse opportunities for the scale and nature of enjoyment, ranging from civic gatherings and celebrations to intimate spaces for relaxation and conversation.
- **Harbor Drive:** The western interface of the Park and the Lane Field Site provides a continuous pedestrian link from North Harbor Drive through and around the project site to Broadway. In addition, the north-south sidewalk along the east side of North Harbor Drive will be paved and planted as specified by the UCP.

- **Pacific Highway:** The at-grade sidewalk along Pacific Highway will be 12' wide. The development of Lane Field North will provide for the construction and planting of the sidewalk from the northern property line of Lane Field North through the Entry Drive. That portion of the sidewalk south of the Entry Plaza will be completed concurrent with the construction of the Lane Field South hotel(s). Although construction of the sidewalk will conform to the requirements of the UCP, the plantings will be specified in the Landscape Plans for the project, which will specify native or non-invasive tree species in lieu of the plantings required by the UCP.
- **Lane Field Entry Plaza:** The Entry Plaza provides a pedestrian link for the public between Pacific Highway and the Park and serves as the entry point for vehicular traffic to the Lane Field North hotel, shops and restaurants and the future Lane Field South development. The western edge of the Entry Plaza conjoins the Entry Plaza to the Park. The Park then provides for contiguous pedestrian movement and links to North Harbor Drive. On an urban scale, the Entry Plaza and the Park create the C Street View Corridor which continues through the Park. Pedestrian crosswalks will be provided on the north and south sides of the Entry Plaza to facilitate east-west pedestrian access across Pacific Highway.

As a part of the development of Lane Field South, the intersection of C Street with Pacific Highway will be signalized to enhance the safety of the pedestrian crosswalks at that location and to allow 4-way vehicular access and egress to both the Lane Field site and the planned Irvine Company office building at the corner of Pacific Highway and West Broadway. The future development of the Irvine Company project will continue the pedestrian link from Pacific Highway to the Santa Fe Station, connecting the Santa Fe Depot (Amtrak, Coaster and Trolley services) to the Bay.

Public Realm Vertical Circulation to Level 2 - Balcony and Level 5 -Terrace

The Lane Field project integrates the concept of a 'layered public realm,' which begins on the Park and Entry Plaza and continues to the Level 2 Balcony shops and restaurants and the Level 5 Terrace. Vertical access within the layered realm consists of exterior elevators located just outside the footprint of the podium portion of both the north and south structures. The elevators are accessible to the public without requiring travel through the hotel lobby. On the north site, the circulation elements will connect the Entry Plaza to all parking garage levels, the shops and restaurants, and public accessible terraces; on the south site, because the parking garage will be subterranean, the public access elevator will provide access only to the shops and restaurants on the Level 2 Balcony and the level 5 Terrace.

Rooftop Terrace

Public access to the Rooftop Terrace at Lane Field North will be available using one of the internal hotel elevators which, during Terrace operating hours, will provide non-keycard access to the rooftop. Noise producing activities will be limited to comply with the requirements of §59.5.0401 of the San Diego Municipal Code (Noise Ordinance).

Way finding Signage

The fact that the Park and the Entry Plaza integrate both the Lane Field North and future Lane Field South projects allows for the planning and execution of a coordinated and integrated Way Finding signage system. Because the Park and the hotel project represent a mix of public and private spaces, the signage system will provide for both directional and hours of operation information needed for ease of pedestrian movement. Signage specific to "Areas of Interest" is contemplated. All exterior signage will conform to the requirements of the NEVP Uniform Control Plan.

Affordable Accommodations - Hostel

The Port is currently developing a Port Master Plan Amendment that will potentially provide a site to construct the hostel that was contemplated by the Lane Field Developer in its original Lane Field project.

Because of the phased nature of the Lane Field project (i. e. different timelines for the development of the north and south portions of Lane Field) both the Lane Field North and South projects will pay an in-lieu fee to the Port as trustee for the California Coastal Commission. This fee, which will be paid in lieu of construction of affordable lodging facilities by the Lane Field developer, will be calculated on the basis of \$30,000 for 25% of the units being, having been or to be constructed on Lane Field North and Lane Field South on a phase-by-phase basis. The Port has indicated that it intends to seek an agreement with the Coastal Commission that will allow use of the In-Lieu Fee described above as a partial offset to the cost to develop the Hostel. Should construction of the Hostel fail to begin within a stipulated time frame subsequent to the date of issuance of the Lane Field CDP, the Port will remit the monies held in trust to the Coastal Commission.

Management

The Entry Plaza, Parking Garage and Elevated Public Realm will be operated and managed by the hotel. Both the Public and Private areas within the project will be managed by their individual hours of operation and respective codes of conduct.

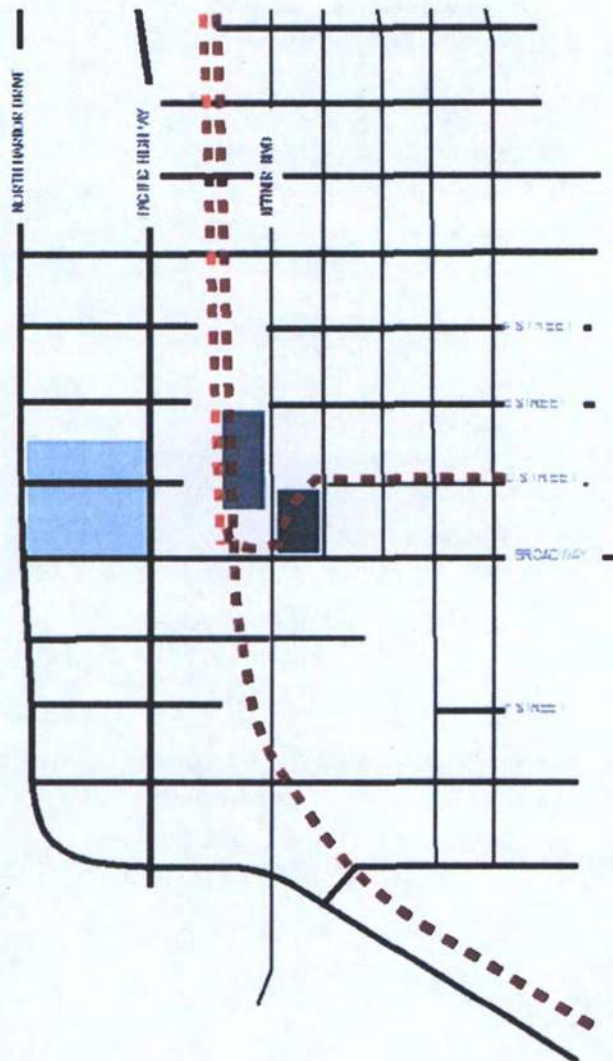
- **Lane Field**
 - Parking Garages – hours of operation based on 3rd party Operator; 6am to 2 am are contemplated.
 - Plaza Level Retail and Dining Areas – hours of operation based on the Operator hours of operation.
 - Level 2 Balcony Shops & Restaurants - hours of operation based on the Operator hours of operation and based on Hotel operating hours.
 - Level 5 Terraces - hours of operation based on the Hotel operations all days except when closed for Private Party use and events.
 - Rooftop Terrace (Lane Field North Only) – Hours of operation based on Hotel operations and State law (if alcohol is served to the public).
 - Vertical Circulation – as required based on times of operation or as dictated by Life Safety Considerations.
 - The Entry Plaza will be accessible to the public 24 hours a day.
- **Setback Park/ Plaza** - The Park and its related elements are not part of the Lane Field North Ground Lease and will be maintained and managed by the Port.
 - Major pedestrian pathways within the Park will be publicly accessible 24 hours a day for all days except for those dedicated to civic events or when leased or rented to private parties pursuant to Port policy. In general, except for security and major pathway lighting, all Park illumination will be extinguished at 10:30PM daily.
 - Restrooms within the Park will be available for use from 6:00AM to 10:30PM daily.
 - Operating hours for the Food Pavilion will be as established by the Lessee within the hours of 6:00AM to 10:30PM daily.

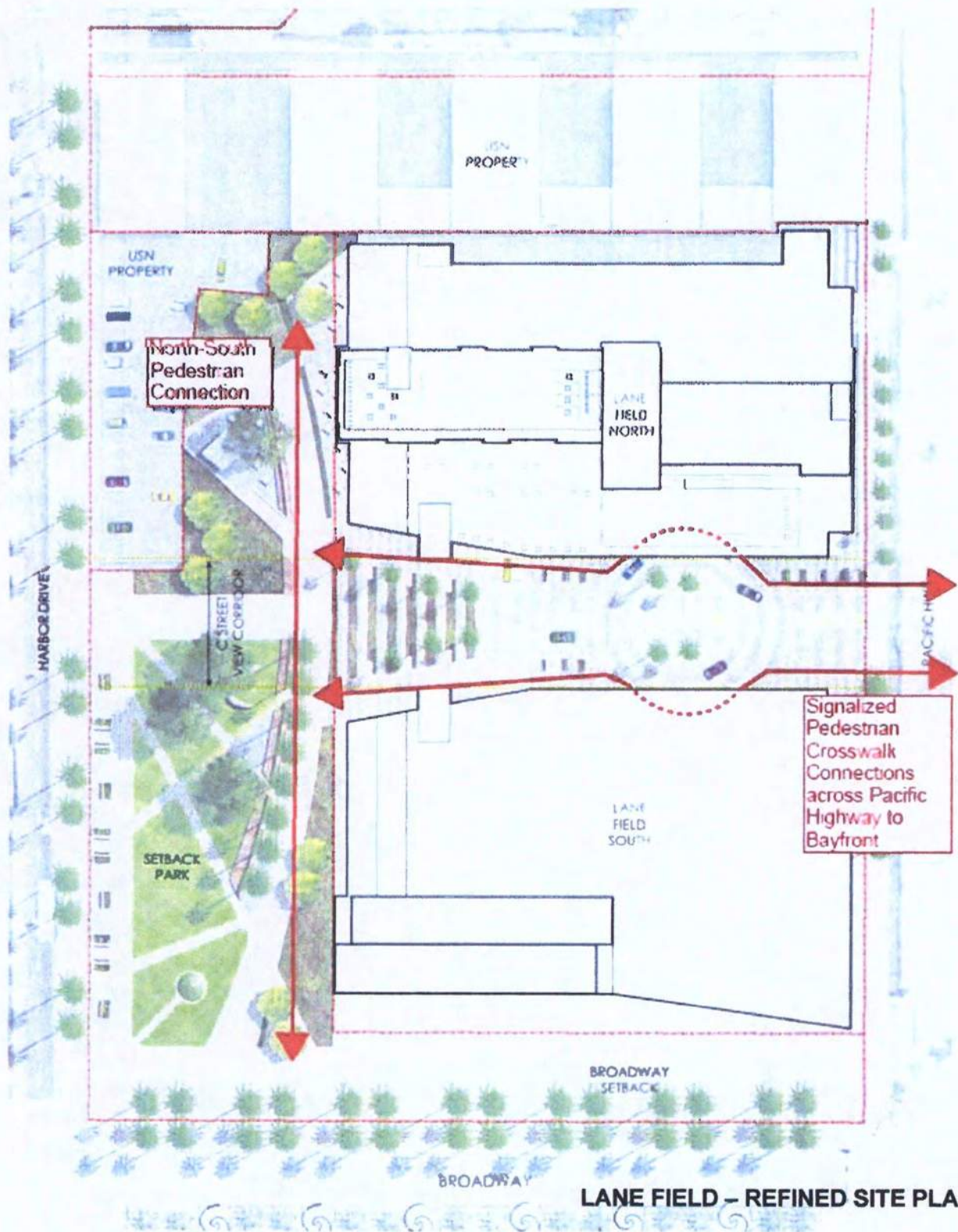
**LANE FIELD PUBLIC ACCESS
DIAGRAM ATTACHMENTS**

LANE FIELD – PUBLIC TRANSIT OPPORTUNITY MAP

KEY

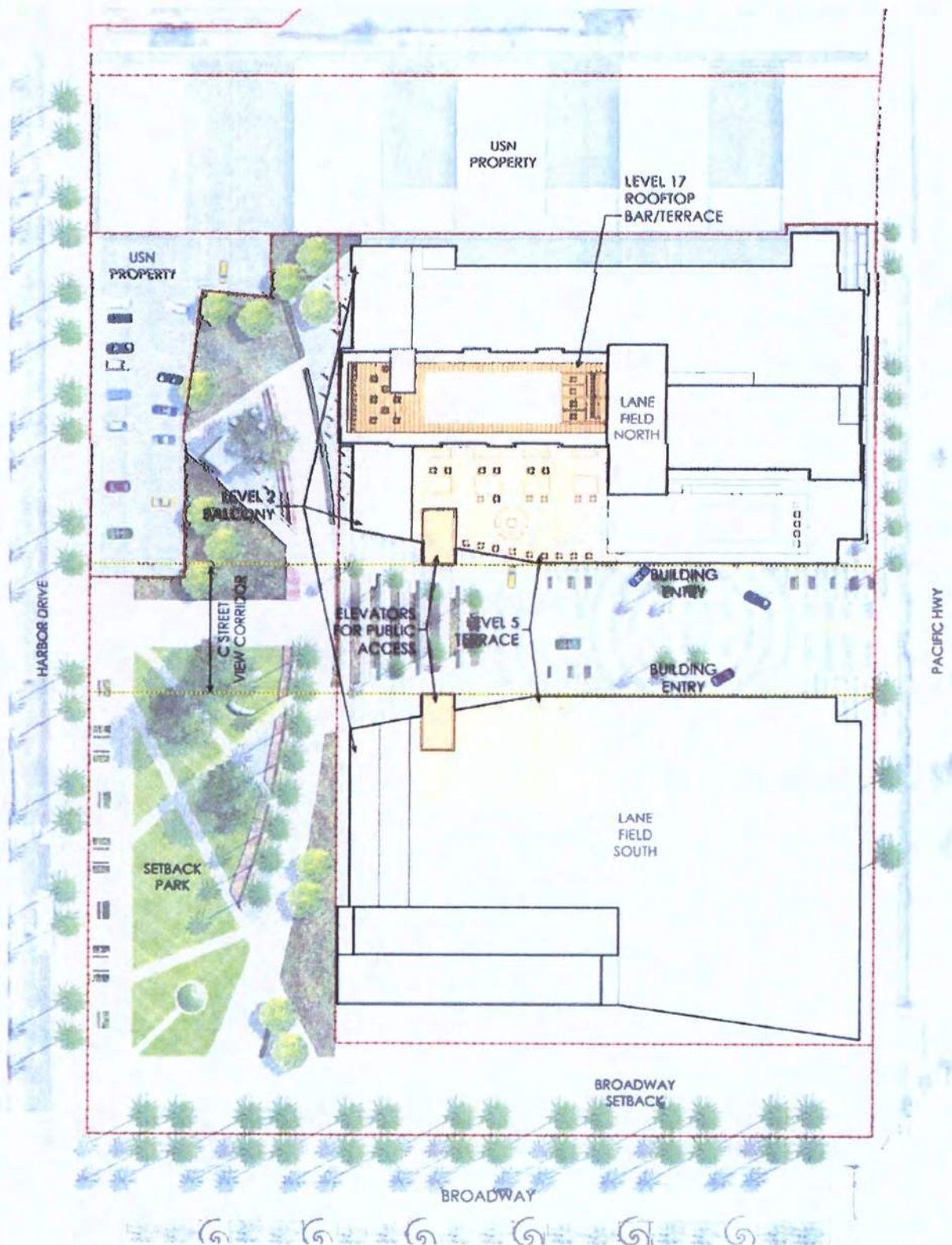
	LANE FIELD SITE
	SANTA FE DEPOT ONE
	AMERICA PLAZA
	COASTER & AMTRAK
	SAN DIEGO TROLLEY





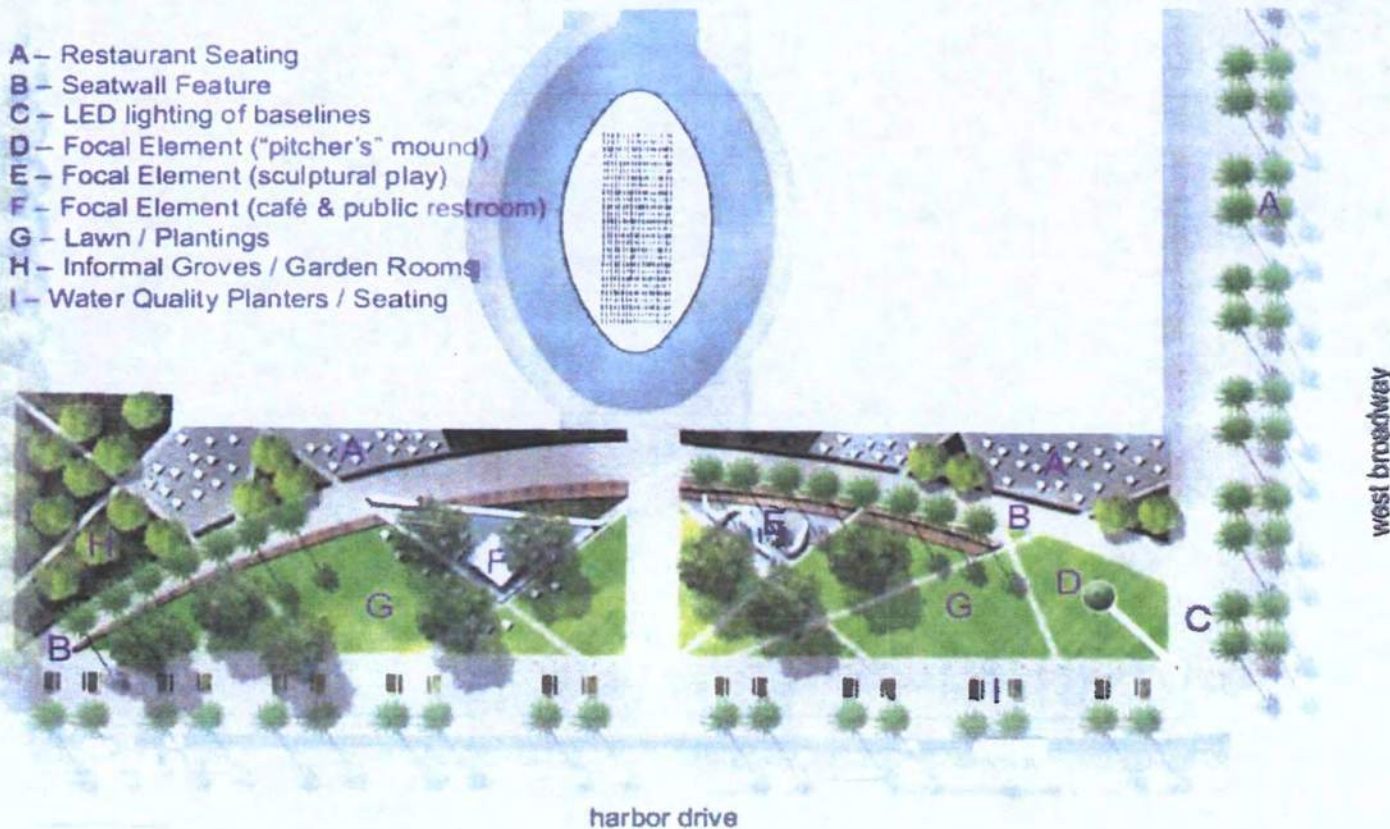
LANE FIELD - REFINED SITE PLAN

LANE FIELD – PUBLIC ACCESS AREAS



SETBACK PARK / PLAZA – CONCEPTUAL SITE PLAN

- A – Restaurant Seating
- B – Seatwall Feature
- C – LED lighting of baselines
- D – Focal Element ("pitcher's" mound)
- E – Focal Element (sculptural play)
- F – Focal Element (café & public restroom)
- G – Lawn / Plantings
- H – Informal Groves / Garden Rooms
- I – Water Quality Planters / Seating



nev phase 1

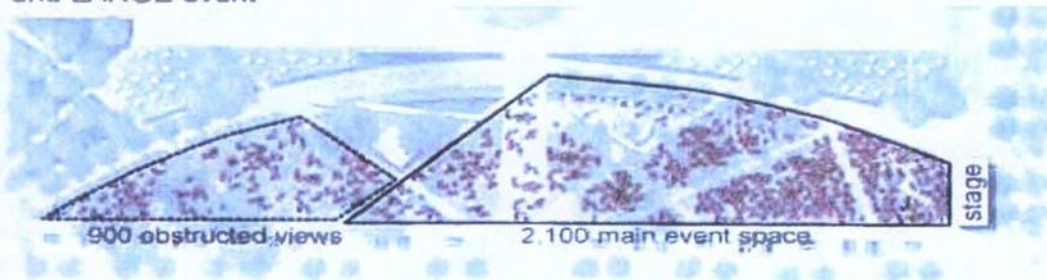
note: buildings shown for graphic purposes only

Lane Field Setback Park | Plaza Programming

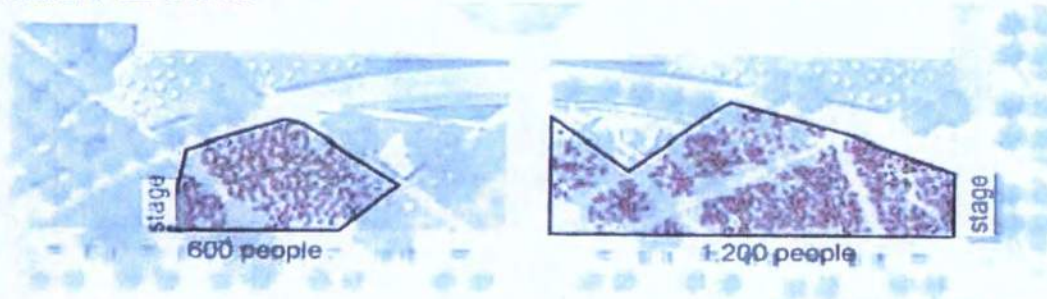
The Lane Field Setback Park has been designed to accommodate events of all sizes. The diagrams below depict how the space can be configured to accommodate events of different sizes, and how 10' x 10' tents for markets and other festivals can be configured



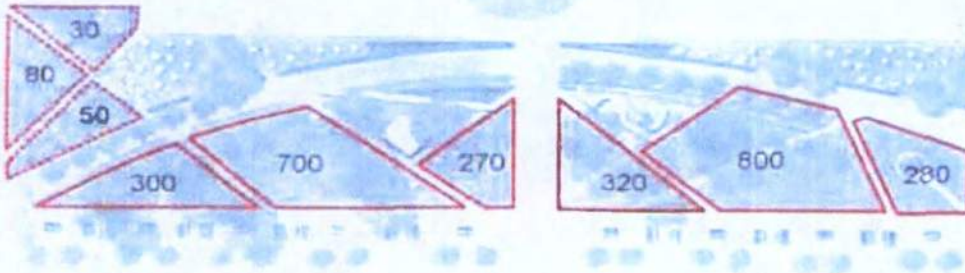
PERFORMANCE spaces one LARGE event



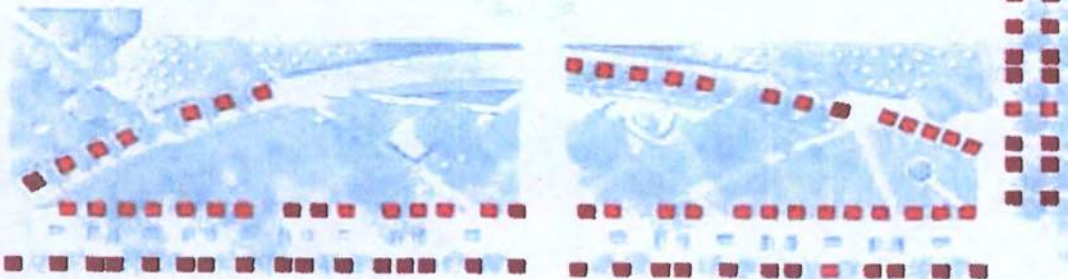
MULTIPLE events



MULTIPLE EVENT spaces



MARKET activities



MULTIMODAL TRANSPORTATION OPPORTUNITIES PLAN
November 9, 2012

Purpose

Overview

Mass Transit Incentives for Employees & Visitors

Guest and Visitor Transit Opportunities

Employee Transit Opportunities

Bayfront Shuttle System

Discussion

LPP Bayfront Shuttle System Approach

Agency Outreach and Advocacy

Transportation Opportunities Plan Attachments

1. LPP Sponsored Bayfront Shuttle Route
2. LPP Sponsored Bayfront Shuttle Alternate Route
3. Port Sponsored Bayfront Shuttle Route

**LANE FIELD MULTIMODAL
TRANSPORTATION
OPPORTUNITIES PLAN**

EXHIBIT NO. 8
APPLICATION NO.
A-6-PSD-08-4
Multimodal
Transportation Plan
 California Coastal Commission

Special Condition #8

Purpose

The transportation plan outlined herein describes the measures LPP Lane Field, LLC (LPP) will implement as stated in the draft Coastal Development Permit Special Provision/Condition # 19 approved by the Board of Port Commissioners on January 8, 2008, to promote alternative mass transit opportunities for visitors, guests, and employees.

Overview

LPP Lane Field, LLC will encourage the use of public transportation for employees and provide alternative transit opportunities for visitors and guests.

The Lane Field project encompasses 5.7 acres of land in downtown San Diego, located on the north side of Broadway, between North Harbor Drive and Pacific Highway. Lane Field is in Subarea 33 of Planning District 3 in the certified Port Master Plan (PMP) and encompassed within the Master Environmental Impact Report (MEIR) for the North Embarcadero Visionary Plan (NEVP). The project site is adjacent to the core of San Diego's downtown with the Broadway Pier and B Street Pier immediately to the west; the Irvine Company proposed office building to the east and the Navy Broadway Complex development to the south.

Lane Field is located immediately adjacent to multiple transit connections and services, including:

Transportation	Proximity to Hotels/walking distance	Areas Served
Amtrak	.15 miles a 2 minute walk	Pacific Surfliner Route, service between Downtown San Diego, San Luis Obispo, and Los Angeles with connections to national rail routes
Coaster	.15 miles, a 2 minute walk	Rail service between Downtown San Diego and Oceanside.
Trolley	.21 miles, a 3 minute walk	Red, Blue and Orange lines with direct services from Downtown San Diego through Old Town and Mission Valley to Santee, through downtown, and La Mesa to El Cajon and through Barrio Logan, National City, and Chula Vista to San Ysidro. Direct service to Qualcomm Stadium, Petco Park, and the International Border.
5 region wide bus stops	Within .25 miles, a 3 minute walk	City and region wide bus routes to most Visitor serving destinations such as the Zoo, Balboa Park, Sea World etc.
Bus to San Diego International Airport/ Commuter Terminal	.15 miles, a 2 minute walk; airport is 2.3 miles away	Bus access to all terminals of the San Diego International Airport, Lindbergh Field.
Water Taxi	.15 miles, a 2 minute walk	On-call transportation along San Diego Bay, serving Shelter Island, Harbor Island, Coronado and Downtown.
Ferry	.15 miles, a 2 minute walk	Daily service between Broadway Pier (Downtown San Diego) and The Ferry Landing Marketplace (Coronado).
Unified Port of San Diego Bayfront Shuttle	300' from hotel entrances	Port operated Shuttle service with 15 minute headways. The current route runs from the Bayfront Hilton Hotel south of the Convention Center to the Sheraton Harbor Island Hotel.
Conv. Ctr. Shuttle	On-site service	Routes connect conference attendees to conv. center facilities.

Pedi-Cab	On-site service	Managed service extending throughout the boundaries of Downtown San Diego.
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The Downtown San Diego Community Plan Update¹ includes the following proposed transit systems, which would further enhance access to the site:

- Downtown shuttle
- "Bay-to-Park" shuttle
- Potential Bus Rapid Transit (BRT) route/shuttle

This plan identifies separate and shared transit strategies for employees and visitors to Downtown.

Mass Transit Incentives for Employees & Visitors

The table below identifies incentive and collaborative programs offered by transit providers within the San Diego region and specifies the intended user as either employees and/or guest/visitors.

Program	Target Transit User
MTS – ECO Pass ²	Employee & Guest/Visitor
SANDAG – Ridelink ³	
Carpool Matching Services	Employee
Bike to Work	Employee
Guaranteed Ride Home Program	Employee
Regional Vanpool Program	Employee & Guest/Visitor
Car sharing Program	Employee
Public Shuttles	Employee & Guest/Visitor
NCTD – Employer Transportation Services and Monthly/Regional passes	Employee

Guest and Visitor Transit Opportunities

Lane Field benefits from the close proximity to multiple forms of transit, ranging in scale from existing bus lines connecting Lane Field to the larger metropolitan area and San Diego International Airport, to water taxis that service the waterways of San Diego Bay both locally and over to Coronado. A Summer Bayfront Shuttle system has been implemented on a trial basis to connect major destinations along the North Embarcadero. This shuttle is expected to become permanent (i.e. operate 365-days a year) in the future. Together, the variety and extent of mass transit opportunities creates a network which will not only serve hotel employees, but also the guests/visitors to Lane Field as well as San Diego's Bayfront, with a myriad of transit options.

In an effort to maximize use of transit and minimize vehicular reliance, Lane Field commits to the following:

- Provide or Participate in the Summer Bayfront Shuttle Service as appropriate: the service will provide guests, visitors and members of the public with service along the North Embarcadero, including stops at Lane Field, Bayfront destinations, the Convention Center, and other Bayfront hotels.

¹ Centre City Development Corporation Community Plan Update approved February 26, 2006. Actual implementation date unknown.

² <http://www.sdmts.com/Marketing/EcoPass.asp>

³ <http://www.ridelink.org/>

- Designated guests and visitor parking spaces will be reserved for advanced systems low emission vehicles.
- Discounted Trolley and Bus passes: through the Metropolitan Transit System's ECO Pass and Group Day Pass programs, guests and visitors will have access to discounted trolley and bus passes.
- Downtown San Diego Pedi-cab network: Pedi-cabs offer an alternative for intra-downtown connectivity with a unique exposure of guests and visitors to Downtown's amenities and destination points. Pedi-cab staging facilities will be provided within the project site and managed service will be provided.
- San Diego Water Transportation: The water taxi and ferry dock is less than a two minute walk away, located immediately west of the project site across Harbor Drive. Arrangements will be made with both operators for guests/visitors to obtain ticketing at the concierge stations within each hotel.
- Concierge Transit Service and Coordination: Hotel concierge employees will be thoroughly trained to understand and promote the various public transportation opportunities available to the guests/visitors and offer discounted tickets when applicable.
- Convention Center Shuttles: Shuttle services to and from the Convention Center will include routes to the project and be coordinated to suit the needs of guests and visitors.

Employee Transit Opportunities

Employees will be encouraged to utilize transit through incentives and amenities. LPP will offer employees the following options:

- Use of any transit incentives identified in table above, offering up to a 20% savings in cost of transportation, as compared to standard fares.
- Access the Bayfront Shuttle during hours and seasons of operation to utilize peripheral parking structures.
- Access to on-site parking at reduced monthly Employee Rate for:
 - Advanced system low emission vehicles
 - Carpooling
 - Car sharing
- The project's parking operator will encourage "park and ride" scenarios, identifying where *employees may drive to the perimeter of the city to reasonably priced parking and connect to Downtown via trolley, bus, Pedi-cab or other public transportation opportunities.*
- Human Resources personnel will offer all employees assistance in maximizing use of public transportation.

Bayfront Shuttle System

Discussion: The Coastal Commission and the Port of San Diego have indicated their support for the concept of a Bayfront shuttle system and in fact, the Port has successfully implemented a "test case" shuttle service that carried over 20,000 passengers during the summer months of 2012. The Port is considering viable alternatives that would implement the Bayfront Shuttle on a permanent basis with the possibility of providing expanded service beyond the current route which serves the North Embarcadero from the Bayfront Hilton to the Sheraton Harbor Island Hotel.

The Port of San Diego plans to eventually expand its Bayfront Shuttle service to include the Cabrillo National Monument. The Port has secured a National Parks Service grant to accomplish this expansion which is on hold pending grant coordination. The test case shuttle route operated on 15 minute headways. The first shuttle departed at 10 am, the last departed at 8 pm from Monday through Thursday, and 10 pm from Friday through Sunday. The Shuttle serviced the following locations and included stops along Harbor Drive between Hawthorn and Park Boulevard

- The Sheraton Harbor Island Hotel
- Grape Street Pier & Maritime Museum
- County Administration Building
- Anthony's
- Holiday Inn
- B Street Pier
- Hornblower Cruises
- Midway Museum
- The Fish Market
- Seaport Village
- The Hyatt
- The Marriott
- Convention Center
- Hilton Convention Center Hotel

Shuttle stops were designated within reasonable pedestrian walking distance of each destination. Accordingly, two or more destinations may be grouped together to create a stop. The final configurations of the shuttle stops when permanent service is implemented will be informed by the selected operator and vehicle specific requirements for drop-off and pick-up areas.

LPP Bayfront Shuttle Approach

Ideally, San Diego would have a shuttle service linking Downtown, the Gaslamp District, and Balboa Park to the Bayfront. Full sponsorship of such an expansive system is beyond the ability of LPP or the Port acting either alone or in concert with each other. Significant inter-agency cooperation will be required to implement such a system, including financial and logistical support from SANDAG, the City of San Diego, Civic San Diego, MTS, and the Port.

The Port will commence operations of a year-to-year summertime shuttle system in 2013, which is prior to the anticipated completion of the Lane Field North project. If for some reason the Port's service has not commenced at the time of completion of Lane Field North, then LPP will, as required by Special Provision 19 of the Lane Field Coastal Development Permit (CDP) A-6-PSD-08-04/A-6-PSD-08-101, sponsor a Bayfront-only shuttle program to provide linkages to and from existing visitor-serving and transportation facilities. To that end, LPP has identified privately-operated transit systems such as the Old Town Trolley's Seal Program which may provide the pedestrian linkages sought by the Coastal Commission. Should it be feasible to expand or support these existing systems, LPP will do so to achieve the concept of a Bayfront shuttle as described below. Regardless of whether expansion or support of these existing systems proves feasible, LPP will form a partnership with the Port, the terms of which will be negotiated, to implement a scalable system linking major mass transit and parking reservoirs to Bayfront attractions.

If the Port has implemented a permanent Bayfront Shuttle service at the time the Lane Field North project is complete, then as provided by Special Provision 20 of the above-cited CDP ("Permittee shall comply with all applicable public access requirements including mandatory participation in a bayside shuttle system upon District implementation of that system..."), LPP will participate in the Port operated system and will not implement the stand-alone shuttle described above. If the Port has not placed a permanent shuttle system into service by the time the Lane Field North project is complete, LPP will move forward and sponsor the shuttle system described in the paragraph above. Together with this system, LPP will

participate in ongoing planning efforts (if any) for a downtown shuttle service as described in the Downtown San Diego Community Plan.

As described below, this two-pronged approach addresses the immediate interests of both the Coastal Commission and the Port while furthering the long-term transit planning goals of the San Diego region.

Shuttle System Overview

The following applies if the Port has not implemented a permanent Bayfront Shuttle service and the service is to be provided by LPP as a stand-alone system.

Operation

As recommended by the Coastal Commission, LPP will operate a summer shuttle in partnership with the Port daily from June 1 through August 31 of each year or until such time as a regional system is put into place. The shuttle will consist of one or more vehicles available to Lane Field hotel guests and retail visitors and members of the general public. It is intended that the shuttle will operate with 15 minute headways. The first shuttle will depart Lane Field at 9 am, and the final shuttle of the day will depart at 10 pm.

Routes

The proposed route for the daily summer shuttle would include stops along Harbor Drive between West Hawthorn Street and Park Boulevard. The route would begin and end at Lane Field, picking up and dropping passengers off in front of Lane Field South along Harbor Drive on the north bound lane. The proposed stops will be flexible and responsive to passenger's requests to the extent feasible.

North along North Harbor Drive

- Stop 1: Lane Field
- Stop 2: Holiday Inn
- Stop 3: County Administration Building

(right on Grape, left on Pacific Highway, left on Hawthorn, left on North Harbor Drive)

South along North Harbor Drive

- Stop 4: Grape Street Pier & Maritime Museum
- Stop 5: Anthony's
- Stop 6: B Street Pier
- Stop 7: Midway Museum

(right on Tuna Lane)

- Stop 8: The Fish Market
- Stop 9: Seaport Village
- Stop 10: The Hyatt
- Stop 11: The Marriott
- Stop 12: Convention Center
- Stop 13: Hilton Convention Center Hotel

Funding

LPP will acquire, through purchase or lease, at least one vehicle for the shuttle system. Additional funding, if available, may allow for the acquisition of more than one vehicle. LPP will seek additional funding from the Port, other Port tenants, and local, regional, state, and federal agencies. Consistent with any green programs available through these agencies, LPP will inquire about and apply for grants and/or low-interest loans where feasible.

Initiation and Duration

The shuttle system will commence operations with the month of June concurrent with occupancy of the hotel on Lane Field North. The shuttle will continue in operation for three consecutive summer seasons, from June 1 through August 31 unless replaced by another comparable or more comprehensive transit system.

At the end of three years of operations, LPP will fund, and the Port will contract and administer, a market-feasibility and demand study:

- to determine whether operation of the shuttle system achieves on its face the goals set forth by the Coastal Commission and the Port, namely reducing traffic congestion during summer months;
- to identify transit systems in place or to be implemented at or near the time the study is completed which may render the Bayfront shuttle duplicative or into which the shuttle may be incorporated;
- to assess existing and projected usage and demand for a Bayfront shuttle as currently programmed; and to recommend whether the Bayfront shuttle should continue operations considering both external and internal factors affecting transit ridership.

Upon completion of the study, the Port will share the results with local Coastal Commission staff to allow them an opportunity to comment. Port staff will then present the results of the study, and any comments received from the Coastal Commission staff, to the Board of Port Commissioners for its consideration. Should the Board determine that continued operation is not feasible in light of the considerations above, LPP may elect to terminate the Bayfront shuttle and apply for the requisite Coastal Permit amendment.

Agency Outreach and Advocacy

Joint Transit Planning

As described by the Coastal Commission in the staff report for Lane Field several years ago, Port staff and the City of San Diego explored the possibility of a downtown shuttle that served the Bayfront. Several years ago, the concept was revived at a meeting of the Joint Powers Authority for implementation of Phase One of the North Embarcadero Visionary Plan. Following that meeting, representatives from SANDAG, MTS, the City of San Diego, Civic San Diego, LPP, Coastal Commission staff, and the Port met and formed a shuttle committee to share preliminary concepts, identify key issues, and plan next steps.

Given the complexity of joint transit planning, Civic San Diego (now Civic San Diego) recommended a committee approach. The committee was to prepare a Request for Qualifications (RFQ) seeking a consultant with specific experience in planning, designing, and operating downtown shuttle services. The findings and recommendations made by the consultant will form the basis of public and private agreements for one or more shuttle systems. Unfortunately, the committee foundered and eventually disbanded with no action having been taken. Also, the Port has succeeded in obtaining a National Park Service Grant to sponsor a Bayfront Shuttle that would service the embarcadero and extend to Cabrillo National Cemetery. The Port and SANDAG are currently exploring mechanisms to accept the grant and to begin the implementation of that shuttle service.

Scaling the Bayfront Shuttle

As the shuttle system(s) to be implemented are better defined, there may be an opportunity to integrate the Bayfront into a larger transit plan. The shuttle committee had discussed phases of implementation which may either connect with or supplant the Bayfront shuttle. Should such a comparable or more comprehensive transit system arise, LPP would no longer be required to operate the Bayfront shuttle as described above.

One possible route for a subsequent phase would begin at Lane Field and proceed along the Bayfront, but loop through Downtown, connecting the Gaslamp District, Horton Plaza and Little Italy, and then return to Lane Field. Additional phases may expand that route, with departures from Lane Field along the Bayfront through Downtown, expanding the stops above to include Balboa Park and additional stops at San Diego International Airport and the Convention Center, again ultimately returning to Lane Field. The Port may also wish to include stops at Harbor and Shelter Islands in future phases, or link the Bayfront shuttle to other transit systems to reach those destinations.

In this manner, the LPP Bayfront shuttle could be either scaled up to meet the needs of the greater Downtown area or replaced over time with other, more comprehensive transit systems. Under either approach, the goals of the Coastal Commission and the Port of San Diego to preserve and enhance public access to the Bayfront would be achieved.

LANE FIELD: PROPOSED SUMMER EMBARCADERO SHUTTLE ROUTES & DESTINATIONS

LINDBERGH FIELD
 SAN DIEGO INTERNATIONAL AIRPORT



KEY

- SUMMER BAYFRONT SHUTTLE
- SUMMER BAYFRONT SHUTTLE STOPS & DESTINATIONS



300' 1/4 mile

Transportation Opportunities Plan | LFF LANE FIELD, LLC

LANE FIELD: ALTERNATE SUMMER EMBARCADERO SHUTTLE ROUTES & DESTNATIONS

LINDBERGH FIELD
 SAN DIEGO INTERNA-
 TIONAL AIRPORT



KEY

- SUMMER BAYFRONT SHUTTLE
- SUMMER BAYFRONT SHUTTLE STOPS & DESTINATIONS





300' 1/4 mile

PORT OF SAN DIEGO BAYFRONT SHUTTLE ROUTE



KEY

-  BAYFRONT SHUTTLE
-  BAYFRONT SHUTTLE STOPS & DESTINATIONS



0 300 600
feet
0 1/4 1/2
mile

Transportation Opportunities Plan | LPP LANE FIELD, LLC

PORT OF SAN DIEGO BAYFRONT SHUTTLE ROUTE



KEY

- BAYFRONT SHUTTLE
- BAYFRONT SHUTTLE STOPS & DESTINATIONS



300' 1/4 mile

Re Coastal Development Permit -]
]
 "North Embarcadero Visionary Plan]
]
 Lane Field Development Project",]
]
 San Diego]
]
 _____]

Reference Copy
 61770

RESOLUTION 2008-15

WHEREAS, pursuant to Ordinance 2431, adopted 5 December 2006, the San Diego Unified Port District (District) and Lane Field San Diego Developers, LLC, a Delaware limited liability company, (Lane Field) are parties to an Option to Lease Agreement (Option) dated 5 December 2006, covering approximately 161,614 square feet of land area located on the north side of Broadway, between North Harbor Drive at Pacific Highway in the City of San Diego; for purposes of an approximately Five Hundred (500) to Five Hundred Fifty (550) guestroom high-rise hotel, located on the north side of Broadway, between North Harbor Drive and Pacific Highway in the City of San Diego, and further authorized the Executive Director or his authorized representative to accept a Quitclaim Deed from said Lane Field for approximately 161,614 square feet of land area, located on the north side of Broadway, between North Harbor Drive and Pacific Highway in the City of San Diego, said Option and the proposed lease attached thereto is on file in the office of the District Clerk as Document No. 51259; and

WHEREAS, pursuant to Ordinance 2436, adopted 13 February 2007, the Board further granted an Option to Lane Field for the purposes of an approximately Two Hundred Fifty (250) to Three Hundred (300) guestroom high-rise hotel and related activities, located on the north side of C Street, between North Harbor Drive and Pacific Highway in the City of San Diego, said Option and the proposed lease attached thereto is on file in the office of the District Clerk as Document No. 51527; and

WHEREAS, in the event Lane Field exercises said Options, in accordance with all of the terms, conditions and covenants contained therein, by 5:00 P.M. on February 29, 2008, and August 31, 2009, respectively, Lane Field desires to enter into proposed leases with the District to develop said premises known as the Lane Field North Hotel Site and the Lane Field South Hotel Site (Project), said leases are attached to said Options as Exhibits No. 1; and

WHEREAS, the District is trustee of said tidelands; and

WHEREAS, an application has been prepared by said Lane Field San Diego Developers, LLC for a Coastal Development Permit to provide for the development of said Project; and

WHEREAS, the Board of Port Commissioners (Board) of District held a noticed public hearing on the Coastal Development Permit on January 8, 2008; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

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

WHEREAS, the Board has certified the Final Master Environmental Impact Report entitled "North Embarcadero Alliance Visionary Plan and Subsequent Projects" (UPD No. 83356-EIR-351); and

WHEREAS, the District has prepared an Addendum to the Master Environmental Impact Report and Initial Study (Document No. 52547) pursuant to Public Resources Code Section 21157.1 for said Project, which analyzed whether the Project may cause any significant effect on the environment that was not examined in the Final MEIR and whether the Project was described in the Final MEIR as being within the scope of the report; and

WHEREAS, the District has further prepared a Final Addendum to the Master Environmental Impact Report and Initial Study (Document No. 52846); and

WHEREAS, based on said Addendum to the Master Environmental Impact Report and Initial Study, and Final Addendum thereto, the District has determined that the Project will have no additional significant effect on the environment that was not identified in the Final MEIR and that no new or additional mitigation measures or alternatives are required; and

WHEREAS, pursuant to Resolution 2008-14, adopted 8 January 2008, the Board in accordance with Public Resources Code Section 21157.1, the Board found based on the information contained in the Addendum to the Master Environmental Impact Report and Initial study, and Final Addendum thereto, that:

- a. The Project is within the scope of the project covered by the Final MEIR;
- b. The Project will not cause any significant effect on the environment that was not examined in the Final MEIR;
- c. All feasible mitigation measures identified in the Final MEIR and the Mitigation Monitoring and Reporting Program as appropriate to the Project are applicable and address all potential significant impacts of the Project and no new additional mitigation measures are required; and
- d. No new environmental document or findings pursuant to Public Resources Code Section 21081 are required, NOW THEREFORE,

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

That the Board further finds:

1. The Project, in general, consists of the development of the Lane Field leasehold, including without limitation the demolition/removal of existing temporary structures and existing surface parking; construction of a Two (2) level subterranean project and public parking garage containing approximately One Thousand Three Hundred Thirty (1,330) spaces; creation of a public pedestrian landscaped park/plaza along the Broadway Street frontage in front of retail stores and restaurants, as well as public terraces at the fifth floor

(podium level); construction of an approximately 205-foot tall hotel with approximately Two Hundred Seventy Five (275) rooms and approximately 30,000 square feet of retail-restaurant tower on the northerly portion of said leasehold (Lane Field North), and construction of an approximately 275-foot tall hotel with approximately Five Hundred Twenty Five (525) rooms and approximately 50,000 square feet of retail/restaurant on the southerly portion of the leasehold (Lane Field South); the entire Project area consists of approximately 5.7 acres; said Project is located within the Civic Zone subarea Planning District 3, Centre City Embarcadero, of the District Master Plan, the Precise Plan for which provides for uses as follows: "Commercial Recreation and Park/Plaza".

2. The proposed use for the Project is consistent with the use and development concept for the Centre City Embarcadero area as provided in said District Master Plan and, as such, is an Appealable Development which conforms to the certified District Master Plan. The proposed Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea, and said Project is consistent with Public Resources Code Sections 30604(c) and 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

3. The proposed Project which is entitled "North Embarcadero Visionary Plan Lane Field Development Project" is consistent with and conforms to the District Master Plan, and, accordingly, the Executive Director or his authorized representative is hereby authorized and directed to issue a Coastal Development Permit for said Project after passage of the Ten (10) working day appeal period as described in the Coastal Development Permit Regulations of the District. Said Coastal Development Permit shall require compliance with the Standard Provisions, Short-Term Construction Measures and in particular the conditions listed under the Special Provisions section.

ADOPTED this 8th day of January, 2008.

sw
1/8/08

SAN DIEGO UNIFIED PORT DISTRICTReference Copy
61770

DATE: January 8, 2008

SUBJECT: LANE FIELD NORTH AND SOUTH HOTEL DEVELOPMENT PROJECT
A) CONDUCT A PUBLIC HEARING AND ADOPT RESOLUTION FINDING THAT THE LANE FIELD HOTEL DEVELOPMENT PROJECT IS WITHIN THE SCOPE OF THE NORTH EMBARCADERO VISIONARY PLAN MASTER ENVIRONMENTAL IMPACT REPORT
B) CONDUCT A PUBLIC HEARING AND ADOPT RESOLUTION AUTHORIZING ISSUANCE OF AN APPEALABLE COASTAL DEVELOPMENT PERMIT

EXECUTIVE SUMMARY:

Lane Field San Diego Developers, LLC proposes redevelopment of the former Lane Field site with two hotels with 800 rooms, approximately 80,000 square feet of retail uses, restaurants, public spaces and public parking. The Lane Field Hotel development project (Proposed Project) consists of two hotels and ancillary uses located on the Lane Field North and Lane Field South parcels.

In 2000, the Board certified the Master Environmental Impact Report (Master EIR) for the North Embarcadero Visionary Plan (NEVP). Use of the Master EIR is intended to streamline subsequent environmental review for projects determined by the District to be within the scope of the Master EIR including the Lane Field Hotel development project.

Pursuant to the California Environmental Quality Act (CEQA), District staff reviewed the Master EIR and has determined: (1) no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified; (2) the Master EIR is adequate for use in the review of subsequent projects; and (3) the mitigation measures contained in the Master EIR and Mitigation Monitoring and Reporting Program (MMRP) adopted by the Board under Resolution 2000-82 remain in effect and are applicable for subsequent projects described in the Master EIR. The Master EIR specifically identified the Lane Field Hotel project as a subsequent project.

Staff also completed an Initial Study for the Lane Field Hotel development project, and has determined: (1) that the Proposed Project is within the scope of the Master EIR and (2) there would be no new significant impacts or required mitigation measures not previously identified in the NEVP Master EIR and NEVP Master EIR Mitigation Monitoring and Reporting Program previously adopted by the Board, and no additional environmental review is required. An Addendum to the NEVP Master EIR has also been prepared for the Board to consider.

The Proposed Project is consistent with the certified Port Master Plan. Staff recommends the Board declare the Proposed Project is within the scope of the NEVP Master EIR, consider the Initial Study and Addendum, and authorize the Executive Director to issue an appealable Coastal Development Permit.

RECOMMENDATION:

Lane Field North and South Hotel Development Project:

- A) Conduct a public hearing and adopt resolution declaring that the Proposed Project is within the scope of the North Embarcadero Visionary Plan Master Environmental Impact Report and that no further environmental review is required.
- B) Conduct a public hearing and adopt resolution authorizing issuance of an appealable Coastal Development Permit.

FISCAL IMPACT:

There will be no direct fiscal impact to the District by adopting the CEQA findings or authorizing issuance of the Coastal Development Permit for the Proposed Project. After the Lane Field project is completed, the District will collect revenues.

DISCUSSION:**Background**

In 1997, a multiple-jurisdiction alliance, consisting of the District, the City of San Diego, Centre City Development Corporation, the County of San Diego, and the U.S. Navy, was formed to create a unified vision for future development of the North Embarcadero area. The District, acting as CEQA Lead Agency for this project, prepared the NEVP Master EIR. The Lane Field Hotel project was identified in the Master EIR as a "subsequent project" of the NEVP and was incorporated into the Port Master Plan. On November 7, 2006, the Board directed staff to enter into exclusive negotiations with Lane Field San Diego Developers, LLC (LFSDD) for the development of Lane Field North and South. The Board granted LFSDD an option and lease agreement for development of Lane Field South in December 2006 and Lane Field North in February 2007.

LFSDD proposes redevelopment of the former Lane Field site with two hotels with 800 rooms, approximately 80,000 square feet of retail uses, restaurants, public spaces and public parking on the 5.7 acre site. The site is located at the northeast corner of Harbor Drive and Broadway Street, directly east of San Diego Bay and south of the B Street Pier Cruise Ship Terminal as shown in Exhibit 1. Exhibit 2 depicts the conceptual site plan and general layout of the Proposed Project and other amenities. Exhibit 3 contains a detailed description of the Proposed Project.

Master Environmental Impact Report and Subsequent Project Review

The District's NEVP Master EIR was intended to provide a level of certainty for the programmatic elements of the entire NEVP project and to minimize the need for, and reduce the scope of, environmental review for subsequent projects.

Master EIRs are valid for up to five years after which the EIR is to be reviewed, and updated as necessary and determined to be adequate for purposes of tiering future subsequent environmental analyses. To address this issue, District Staff reviewed the MEIR and evaluated whether "substantial changes have occurred with respect to the circumstances under which the MEIR was certified." It was determined that while seven years have passed and some aspects of the original NEVP have been developed (Midway project), some elements have evolved (Broadway Landing Concept) and some are no longer under consideration (County Administration Center Development), that these are not substantial changes that have changed the fundamental analysis contained in the MEIR, nor have they affected the integrity of the conclusions in the MEIR. Additionally, the Mitigation Measures contained in the MEIR and the Mitigation Monitoring Program adopted by the Board are still applicable. None of these changes would require revisions to the MEIR.

It has also been determined that the overall level of impacts analyzed in the MEIR has been reduced due to current circumstances in the NEVP project area. For example, the B Street Cruise Ship Terminal that is currently being evaluated is substantially smaller than the "Super 3" Terminal analyzed in the MEIR. That larger project proposed a 10.2-acre northward expansion to the B Street Pier as well as an additional 140-foot long westward pier extension. Additionally, the County is no longer pursuing a six-story, 300,000 square foot office retail building and a six-story hotel and retail building in the County Administration Center parking lots.

The Board adopted Resolution 2006-131 on August 08, 2006 with the finding that: (1) no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified; (2) the Master EIR is adequate for use in the review of subsequent projects; and (3) the mitigation measures contained in the Master EIR and Mitigation Monitoring and Reporting Program (MMRP) adopted by the Board under Resolution 2000-82 remain in effect and are applicable for subsequent projects described in the Master EIR. The Master EIR specifically identified the Lane Field Hotel project as a subsequent project.

CEQA further requires that the Lead Agency prepare an Initial Study to analyze whether the subsequent project would cause additional significant environmental effects not previously examined in the Master EIR prior to approving projects within the scope of the Master EIR. Hence, a CEQA Initial Study has been prepared for the Proposed Project and has concluded that no further review is required. The Addendum and the Initial Study are bound together and have been made available to the Board. The Initial Study and Addendum were circulated for a 45-day public review period ending

December 7, 2007 which was extended to December 20, 2007. Comments in the form of e-mails and letters were submitted and have been responded to in a separate attachment.

Coastal Analysis

The Proposed Project site is located within the Civic Zone subarea of Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 12 of the Port Master Plan (PMP). The PMP recognizes that the development of Lane Field is the most important component of the Civic Zone. While the PMP refers to Lane Field as the entire area bounded by Pacific Highway, Broadway Street, Harbor Drive and Ash Street, the current hotel proposal includes only the Lane Field North and South sites, and does not include at this time the Navy Facilities Engineering Command site (also known as 1220 Pacific Highway).

The Proposed Project is within the existing entitlement limits described in the PMP's Precise Plan language for the Civic Zone subarea. The PMP states that a 600 to 800 room hotel is the proposed primary use of this site with an array of other development options intended to retain flexibility. The Proposed Project includes a total of 800 hotel rooms and approximately 80,000 square feet of commercial and retail uses in two buildings. The PMP states that the Floor Area Ratio (FAR) for buildings on the Lane Field North and South sites shall be 6.5 and 7.0 respectively, while the Proposed Project includes an FAR of 4.6 for Lane Field North and 3.8 for Lane Field South. The PMP states that height limits for the buildings shall range from 400 to 200 feet sloping toward the Bay, while the Proposed Project has a maximum building height of 200 feet for the Lane Field North tower and 275 feet for the Lane Field South Tower. The PMP has special setback requirements along the Broadway side of the parcel ranging from 55 feet to 65 feet widening toward the Bay, while the Proposed Project has a setback on Broadway that is 55 feet at the east side increasing to 111 feet at the west side. The PMP also calls for special setbacks for upper stories that shall be 25-foot minimum at the 50-foot building height on Broadway Street, Harbor Drive and C Street, and 15-foot minimum at the 50-foot building height on all other streets except Pacific Highway. The Proposed Project is fully consistent with these special setback requirements.

Table A below describes the proposed Lane Field Hotel Project in terms of various development standards described above and compares them to those development standards described both in the PMP and the NEVP Master EIR. As indicated in this table, the proposed Lane Field Project is either in conformance with or is less intense than the existing PMP entitlement limits and the Lane Field project analyzed in the NEVP Master EIR in terms of building height, Floor Area Ratios, setbacks, setbacks, parking, and total number of hotel rooms.

The PMP Precise Plan land use map designates the Lane Field site as Commercial Recreation with a strip of Park/Plaza designation along Harbor Drive. Staff has analyzed the Proposed Project and has determined that it is consistent with both the PMP text and land use designation.

Public Access and View Corridors

As required by the NEVP and the Coastal Act, the Proposed Project includes significant public amenities. The Proposed Project includes the prolongation of "C" Street approximately 20 feet to the north of its original location. The purpose of this improvement is to allow better alignment and coordination of the site development plan with site planning efforts on an adjacent parcel to the east, to facilitate public ingress and egress to the site, and to preserve the view corridor. The view corridor is further enhanced through the east/west building orientation. The Proposed Project would also provide public access into the site and parking facilities at the prolongation of C Street off Pacific Highway as well as public pedestrian access through the development from Pacific Highway to Harbor Drive and the waterfront. Plaza areas would also be open to the public along the prolongation of C Street, the Broadway Street frontage of the project and on the third floor terraces of each of the proposed hotels.

These public areas would be activated by restaurant and retail facilities as well as seating and public art provisions in addition to the beneficial near-waterfront location of the site. The plazas and public areas in combination with the structures' setbacks and stepbacks would maintain the public view corridor(s) along Broadway Street (and C Street).

The project proponents have prepared a Lane Field Public Access Program to help ensure that the public access requirements of the PMP and the Coastal Act are incorporated into the Proposed Project. The purpose of the Lane Field Public Access Program is to define the proposed pedestrian access integrated throughout the site and identify the management of the public access. The Public Access Program includes the ground level, the podium roof level, and the vertical circulation elements and is incorporated into the Coastal Development Permit.

Parking

The commencement of construction of the Proposed Project will remove approximately 880 parking spaces on the Lane Field site for the duration of construction. LFSDD has prepared a Parking Management Plan, dated November 2, 2007 to address a number of parking issues including construction demand parking and all facets of parking operations once the project is completed. Approximately 200 construction parking spaces will be provided at Lot #57, located at the southeast corner of Pacific Highway and Broadway. Upon project completion and as required by the Master EIR mitigation measures, the hotel project will provide all its required parking on-site plus an additional 300 spaces to accommodate parking for the public and/or employees of waterfront uses on weekday evenings and weekend days. The plan states that a total of 1,330 spaces will be provided with the ability to expand to 1,552 spaces by utilizing additional valet parking; this expansion ability will allow the operator to accommodate peak parking demand during special events if the need should arise. Staff believes that both construction and operational parking is sufficient and has been adequately addressed

in this plan. Parking management requirements will be incorporated into the Coastal Development Permit

Additionally, and to implement an NEVP Master EIR parking mitigation requirement, District staff is working with a parking consultant to prepare a Parking Management Plan for the entire NEVP area. The purpose of this plan to comprehensively address and implement both weekday and weekend parking management plans that consider current conditions, utilization, and demand as well as include future NEVP area projects, schedule, construction, and impact on parking within the entire NEVP project area. This plan will consider the dynamic and evolving development and parking scenarios in the NEVP and will include an array of parking management strategies, including the use of off-site parking and shuttles. As part of this Plan, staff has met with various stakeholders including CCDC, City of San Diego, County of San Diego, Metropolitan Transit Services, Airport Authority, parking lot operators, and representatives of waterfront tenants. Staff is closely coordinating with CCDC on their parking management plan which encompasses the entire downtown area. Staff anticipates providing the Board with an update of this plan in early 2008.

Port Attorney's Comments:

Several public comment letters were submitted that challenge the adequacy of the CEQA analysis based on the age of the NEVP Master EIR. The Land Use Planning Department has analyzed these comments as they deemed appropriate. To withstand a legal challenge, the Board must determine that the CEQA analysis and findings are supported by substantial evidence in the record.

Environmental Review:

Pursuant to CEQA and the procedures for Master Environmental Impact Report subsequent projects, Staff has prepared an Initial Study and Addendum for the Proposed Project. The proposed Board action, consideration of the Initial Study and Addendum, is the final environmental review approval for the Proposed Project as required by CEQA.

Equal Opportunity Program:

Not Applicable.

PREPARED BY:

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Manager, Planning Services

Candice D. Magnus
Assistant Redevelopment Planner

Table A

Description of Proposed Development Intensity at Lane Field and Entitlements

	Maximum Height North/South	Setbacks on Broadway	Stepback Requirements	Parking Spaces	Hotel Rooms	Office Square Footage	Retail Square Footage	Floor Area Ratio North/South
Proposed Project	200 for North tower/ 275 for South tower	55' at the east side increasing to 111' at the west side	25' at 50' height on Broadway, Harbor Drive, and C Street; 15' at 50' height on all other streets except Pacific Highway	1330 parking spaces	800	None included	80,000	4.6/3.8*
NEVP & Master EIR	North is 350-200 sloping towards the Bay/ South is 400-300 sloping towards the Bay	55' at the east side increasing to 65' at the west side	25' at 50' height on Broadway, Harbor Drive, and C Street; 15' at 50' height on all other streets except Pacific Highway	Office at 2 per 1,000 SF; Hotel at 0.75 per room; Retail at 5 per 1,000 SF; Restaurant at 8 per 1,000 SF	800	400,000	Mixed use identified but retail SF not defined	6.5/7.0
Port Master Plan	400 to 200 sloping towards the Bay (both parcels)	55' at the east side increasing to 65' at the west side	25' @ 50' height on Broadway, Harbor Drive, and C Street; 15' @ 50' height on all other streets except Pacific Highway	Not defined	800	Not defined	Not defined	6.5/7.0

* Floor/Area Ratios have been calculated assuming the following: Lane Field North = 74,347 sf lot size and approx. 344,705 sf of floor area; Lane Field South = 161,614 sf lot size and approx. 618,600 sf floor area. The resulting FARs of 4.6 and 3.8 are more than the FARs of 2.8 and 2.6 indicated in the Initial Study/Addendum due to more precise development statistics as provided in the Lane Field Development Progress Submittal dated Nov. 8, 2007.

Exhibit #1: Conceptual Building Design – View to the Southeast



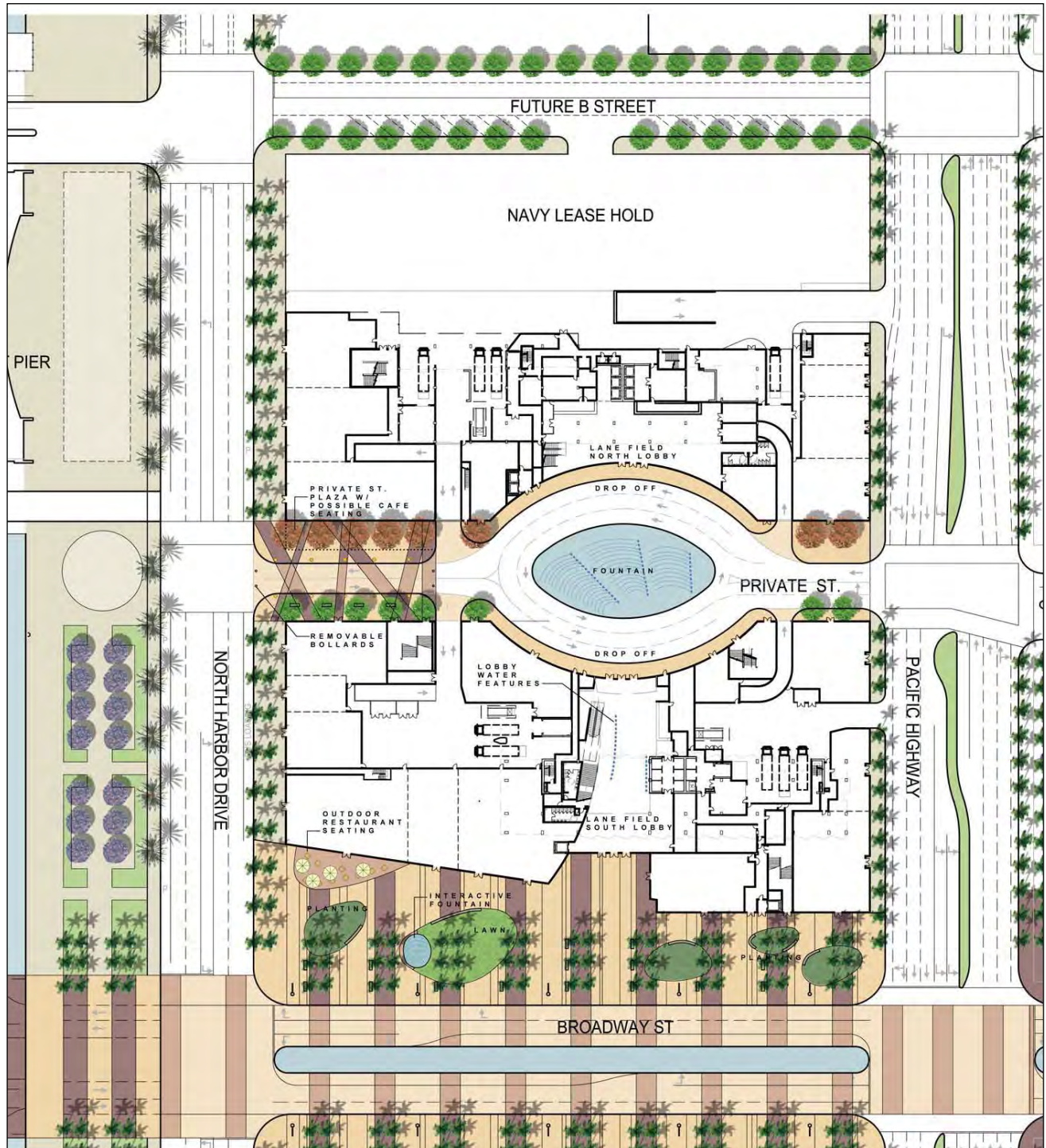
**View of Proposed Lane Field hotels with future Navy Broadway, Irvine and Bosa Development Projects
in the Background**

**Lane Field Development Project
October 2007**

Exhibit # 1



Exhibit #2: Conceptual Site Plan



Lane Field Development Project
October 2007

Exhibit # 2



EXHIBIT #3**LANE FIELD HOTEL DEVELOPMENT PROJECT DESCRIPTION**

The Proposed Project would provide a total of 800 hotel rooms and approximately 80,000 square feet commercial and retail uses, and is designed to create a lasting impression of San Diego on visitors and residents consistent with existing entitlements within the Port's certified Port Master Plan. The Proposed Project includes:

1. Existing Surface Parking

The approximately 5.7 acre Lane Field leasehold is currently an 880-space surface parking lot operated by Five Star Parking. Temporary structures are also located on the leasehold including an information booth, ticket sales booth, a shed, and an ATM. All existing facilities would be removed/demolished as part of the proposed project. Necessary infrastructure components would remain or be relocated as necessary. An existing monument for the former Lane Field will remain.

2. Parking Structure

A 1,330 space subterranean parking structure would be constructed as part of the proposed project. The November 2, 2007 Parking Management Plan for the Proposed Project states that the 1,330 spaces have the ability to be expanded to 1,552 spaces by utilizing additional valet parking; this expansion ability would allow the operator to accommodate peak parking demand during special events if the need should arise. The parking structure would be two-levels constructed across the majority of the leasehold below grade and beneath the proposed structures and plaza. Access to the parking structure would be from the project driveway at the prolongation of C Street off Pacific Highway with additional access directly off Pacific Highway at the northern extremity of the leasehold.

No less than 300 spaces would be public spaces with the remainder used for the development and or public visitors as demand dictates. The parking structure would be operated by Five Star Parking as a combined self-park and valet facility with the ability to be wholly either or dependent on management's assessment of needs but such that no less than 300 spaces are for public use at all times. Parking would be charged consistent with market rates.

3. Lane Field North

On the parcel north of the prolongation of "C" Street, between Pacific Highway and Harbor Drive, the proposed Lane Field North hotel would include a hotel lobby, approximately 275 guest rooms and suites, approximately 30,000 square feet of retail and restaurants, a 15,000 square feet health club as well as ballrooms and meeting rooms. Retail and restaurant areas would be located at ground to third floor elevations along the western, southern, and eastern frontage of Lane Field North. Additional amenities would include a third floor public terrace deck at the west end of the structure, to which public access would be provided by a glass or clear constructed elevator and

escalators from the sidewalk. Offering views toward the San Diego Bay, the terrace deck would feature outdoor dining and event areas. Public art would also be incorporated into the public spaces on the site. The proposed Lane Field North hotel would be approximately 13-stories with an approximate height of 200-feet.

4. Lane Field South

The proposed Lane Field South hotel would include approximately 525 guest rooms and suites, approximately 50,000 square feet of retail uses, including street level restaurants and shopping, ballrooms, meetings rooms, and pools. Retail and restaurant areas would be located at ground to third floor elevations along the western, southern, and eastern frontage of Lane Field South. Additional amenities would include a third floor public terrace deck at the west end of the structure, to which public access would be provided by a glass or clear constructed elevator and escalators from the sidewalk. The terrace deck would feature outdoor dining, event areas, and provide views of the Bay and Broadway. Public art would also be incorporated into the public spaces on the site. The proposed Lane Field South hotel would be approximately 22-stories, with a height of approximately 275 feet.

5. Public Access and View Corridors

As required by the NEVP and the Coastal Act, the Project includes significant public amenities. The proposed project includes the prolongation of "C" Street approximately 20 feet to the north of its original location. The purpose of this improvement is to allow better alignment and coordination of the site development plan with site planning efforts on an adjacent parcel to the east, to facilitate public ingress and egress to the site, and to preserve the view corridor. The proposed project would also provide public access into the site and parking facilities at the prolongation of C Street off Pacific Highway as well as public pedestrian access through the development from Pacific Highway to Harbor Drive and the waterfront.

6. Construction

Construction of the underground parking structure would require dewatering and excavation of approximately 115,000 cubic yards of material. The excavated material would be exported off-site and disposed of. The estimated duration of construction is approximately 30 months. To the extent possible, construction staging for equipment, materials as well as vehicular parking would occur primarily onsite. Construction employee parking will be accommodated both onsite and offsite at a location which will be chosen based on its proximity to public transportation. As part of the Lane Field development, the developer will provide a construction parking management plan.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CALIFORNIA 92108-4402
PH (619) 767-2370 FAX (619) 767-2384
WWW.COASTAL.CA.GOV



IMMATERIAL AMENDMENT TO COASTAL DEVELOPMENT PERMIT

September 22, 2015

Coastal Development Permit Amendment No. **A-6-PSD-08-004-A2**

Original Permit Number: **A-6-PSD-08-004**

Issued to: LPP Lane Field, LLC

for: **Redevelopment of the former Lane Field: Lane Field North will have a 205-foot high hotel with 275 guest rooms, a health club/spa, pools ballrooms, and meeting rooms; and a 3-story building surrounding the hotel with 30,000 sq. ft. of visitor-serving retail and restaurants. Lane Field South will have a 275-foot high hotel with 525 guest rooms a health club/spa, pools, ballrooms, and meeting rooms, and a 3-story building surrounding the hotel with 50,000 sq. ft. of visitor-serving retail and restaurants. Also included are 1,330 underground parking spaces and public plazas, development of a public downtown shuttle system, and a hostel development program.**

at: **North of Broadway between Pacific Highway and Harbor Drive, San Diego (San Diego County)**

...has been amended to include the following change(s):

Modify project description and Public Access Plan to relocate the publicly-accessible rooftop terrace from the Lane Field North Hotel to the Lane Field South Hotel, and add a publicly-accessible terrace and restaurant on the 4th floor of the Lane Field North Hotel.

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received. Please note that the original permit conditions unaffected by this amendment are still in effect.

Charles Lester
Executive Director

A handwritten signature in black ink, appearing to read 'KB', followed by a long horizontal flourish.

Kanani Brown
Coastal Program Analyst

AMENDMENT TO COASTAL DEVELOPMENT PERMIT
Coastal Development Permit – Immaterial Amendment No. A-6-PSD-08-004-A2

ACKNOWLEDGMENT

I have read and understand the above permit and agree to be bound by the conditions, as amended, of Coastal Development Permit A-6-PSD-08-004.

Date: 10/28/15

Signature 

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370 FAX (619) 767-2384
www.coastal.ca.gov



March 22, 2013

COASTAL DEVELOPMENT PERMIT EXTENSIONRe: Extension Request for Permit No. **A-6-PSD-08-004-E1**Original Permit No. **A-6-PSD-08-004**Original Permit Expiration Date: **January 8, 2011**Extended Permit Expiration Date: **January 8, 2014**

LPP, Lane Field, LLC
1050 Park Boulevard
San Diego, CA 92101

Dear LPP, Lane Field, LLC,

The Executive Director has determined that there are no changed circumstances affecting the conformity of the subject development with the California Coastal Act. No objections to this determination have been received at the Commission office. Therefore, the Executive Director grants an extension of the subject Permit, subject to the same conditions approved by the Commission, to expire on the Extended Permit Expiration Date indicated above.

Sincerely,
CHARLES LESTER
Executive Director

Diana Lilly
By: DIANA LILLY

Coastal Program Analyst
Sarah N. Lee
Supervisor.

cc: Local Planning Dept.

McCabe & Company, Attn: Anne Blemker

COASTAL DEVELOPMENT PERMIT EXTENSION

January 2, 2014

Coastal Development Permit Extension No. **A-6-PSD-08-004-E2**

Re: Extension Request for Permit No.: **A-6-PSD-08-004**
Original Permit Expiration Date: January 8, 2009
Extended Permit Expiration Date: January 8, 2015

LPP Lane Field, LLC, attn: Alex Guyott
1050 Park Blvd.
San Diego, CA 92101

Dear Mr. Guyott:

The Executive Director has determined that there are no changed circumstances affecting the conformity of the subject development with the California Coastal Act. No objections to this determination have been received at the Commission office. Therefore, the Executive Director grants an extension of the subject permit, subject to the same conditions approved by the Commission, to expire on the Extended Permit Expiration Date indicated above.

CHARLES LESTER,
Executive Director

By: Diana Lilly
Coastal Program Analyst

cc: File

California Regional Water Quality Control Board, San Diego Region

August 2, 2013

In reply refer to:
T10000002492:talo

Mr. Alex Guyott
Hensel Phelps
9404 Genesee Avenue, Suite 140
La Jolla, CA 92037

Mr. Shaun Sumner
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

Subject: No Further Action for the Former Lane Field Site located at 970 Broadway Avenue in San Diego, California.

Messrs. Guyott and Sumner:

This letter confirms the completion of a site investigation for the former Lane Field site. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) published a public notice in the meeting notice and agenda for the San Diego Water Board's June 19, 2013 meeting. This notice established a 30-day public comment period regarding the San Diego Water Board's intent to issue a no further action determination for this site. During the public comment period, no public comments concerning the proposed closure were received by the San Diego Water Board.

Based on the information in the files for this case and with the provisions that the information provided to this agency is accurate and representative of site conditions, this agency finds that (1) the residual concentrations of metals, volatile organic compounds, petroleum hydrocarbons, organochlorine pesticides, and polychlorinated biphenyls left in soil, soil vapor, and groundwater are protective of human health and the environment pursuant to the current redevelopment plans and (2) **no further action** related to this site is required. The current redevelopment plans include the construction of two hotel towers and a nearly two-acre public park and open air plaza as shown on Figure 1 (enclosure 1).

Please be advised that:

1. Any land use and/or redevelopment plan changes for the site may require reevaluation to determine if the changes pose an unacceptable risk to human health;
2. Any contaminated soil or groundwater encountered at the site must be managed in accordance with all applicable legal and regulatory requirements; and
3. No buildings shall be built on top of or immediately adjacent to the area of elevated soil vapor concentrations of tetrachloroethene (PCE) in the southwest corner of the site, as

shown on Figure 2 (enclosure 2), unless the concentrations are further mitigated to be protective of any future land use.¹ This "building exclusion zone" is shown on Figure 3 (enclosure 3). The elevated PCE concentrations have the potential to migrate into indoor air and pose an unreasonable cancer risk and/or non-cancer hazard to occupants inside the building. The current redevelopment plans indicate that a public park will occupy this area.

In the subject line of any response, please include the reference number **T10000002492:talo**. For questions or comments pertaining to this letter, please contact Mr. Tom Alo at (858) 636-3154 or at talo@waterboards.ca.gov.

Respectfully,



David W. Gibson
Executive Officer

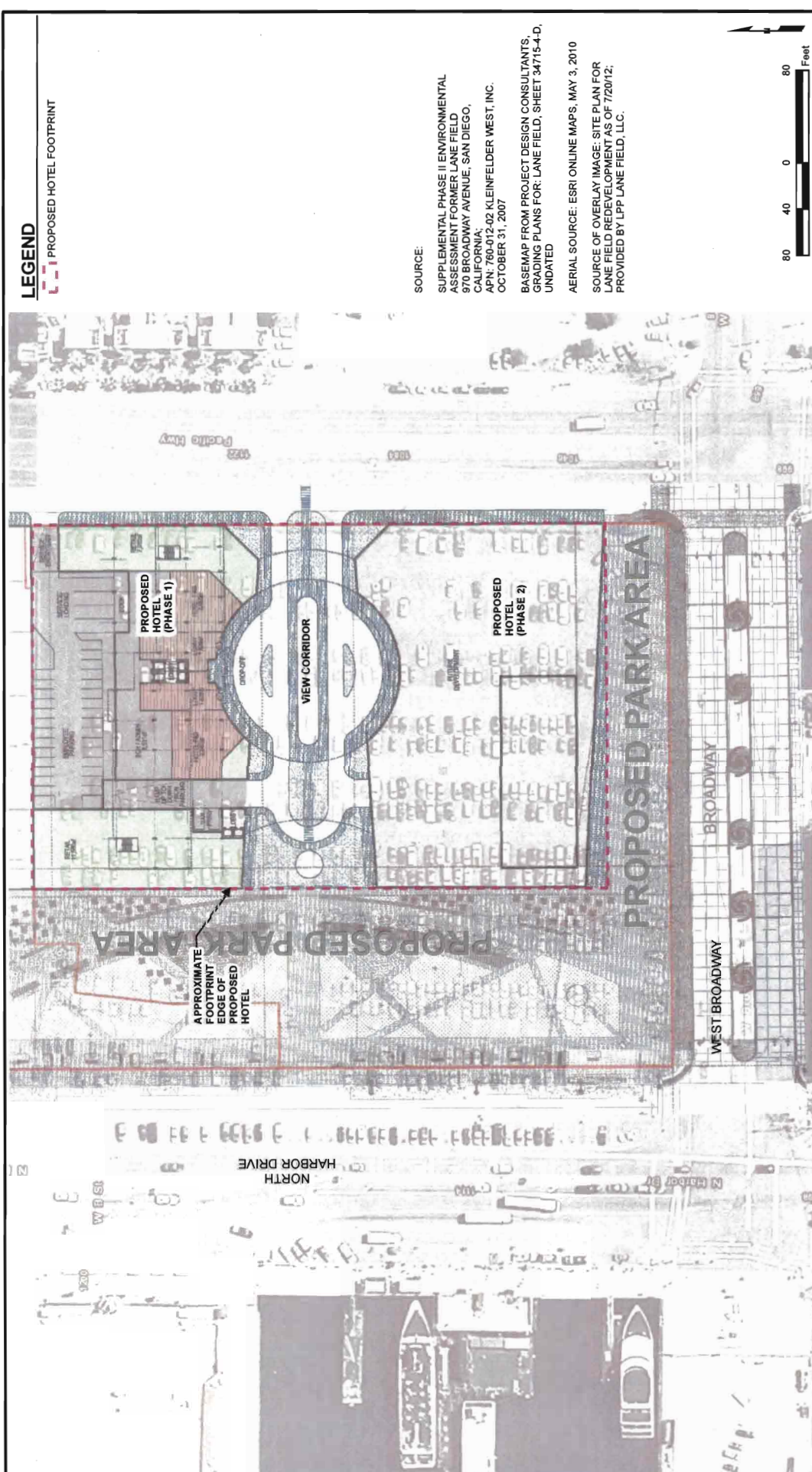
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Enclosures: 1. Figure 1 – Layout of Current Redevelopment Plans
2. Figure 2 – Elevated Soil Vapor Concentrations
3. Figure 3 – Building Exclusion Zone

cc via email: Mr. Jim Dill, Kleinfelder, jdill@kleinfelder.com

Tech Staff Info & Use	
Geotracker ID RB Case #	T10000002492 2090045

¹ Future land uses include, but are not limited to, residential (e.g., houses, apartments, and townhomes) and commercial/industrial (e.g., day care facilities, hotels, and stores).



LEGEND

PROPOSED HOTEL FOOTPRINT

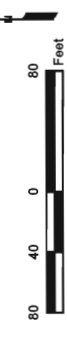
SOURCE:

SUPPLEMENTAL PHASE II ENVIRONMENTAL ASSESSMENT FORMER LANE FIELD 970 BROADWAY AVENUE, SAN DIEGO, CALIFORNIA; APN: 760-012-02 KLEINFELDER WEST, INC. OCTOBER 31, 2007

BASEMAP FROM PROJECT DESIGN CONSULTANTS. GRADING PLANS FOR: LANE FIELD, SHEET 34715-4-D, UNDATED

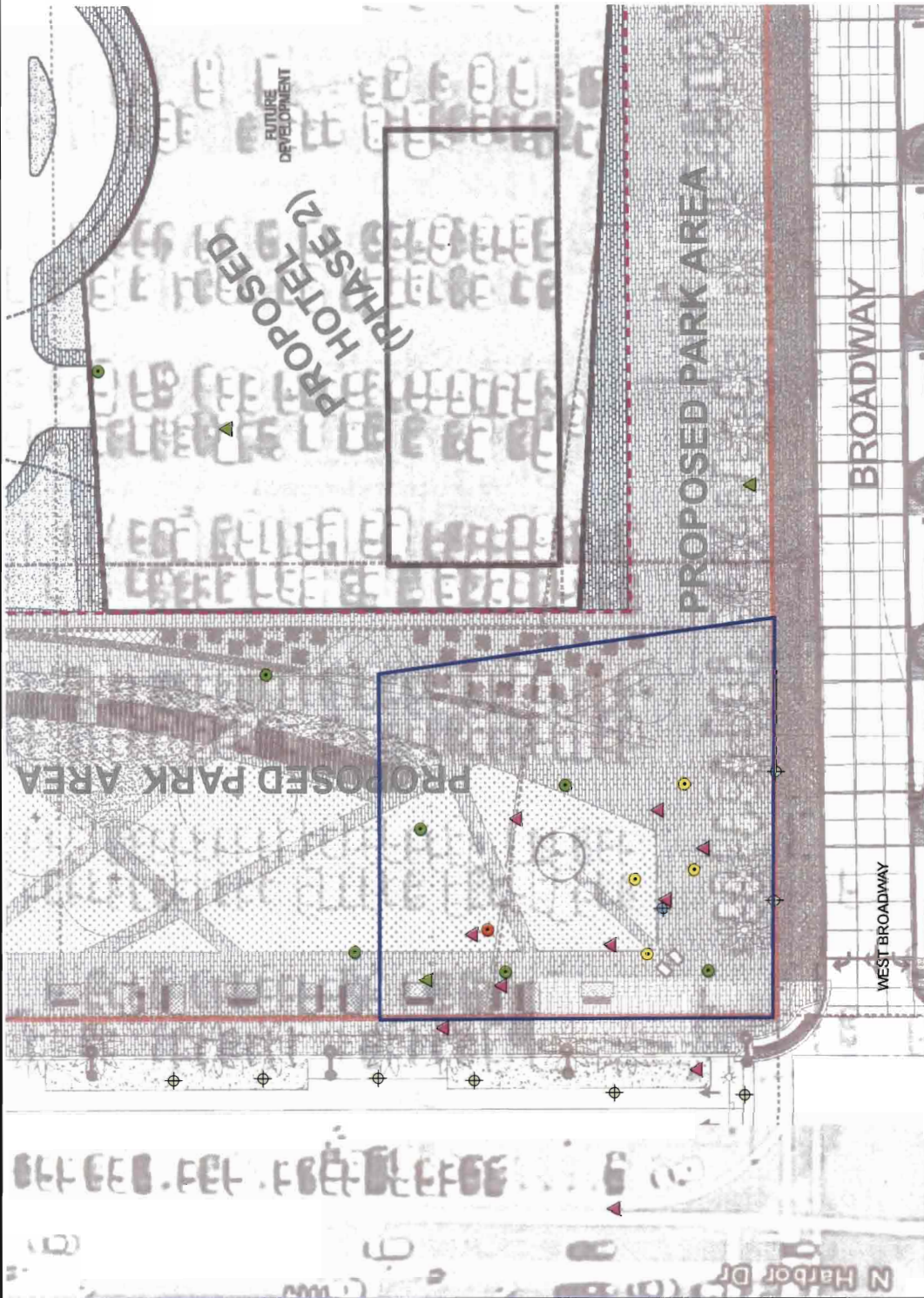
AERIAL SOURCE: ESRI ONLINE MAPS, MAY 3, 2010

SOURCE OF OVERLAY IMAGE: SITE PLAN FOR LANE FIELD REDEVELOPMENT AS OF 7/20/12, PROVIDED BY LPP LANE FIELD, LLC.



<div></div>		LAYOUT OF CURRENT REDEVELOPMENT PLANS		FIGURE 1
		PROJECT NO.	124741	
		DRAWN:	6/25/2013	
		DRAWN BY:	JP	
		CHECKED BY:	CN	CLOSURE REPORT FORMER LANE FIELD 970 BROADWAY AVENUE SAN DIEGO, CALIFORNIA
		FILE NAME:	124741_Site.mxd	

The information included in this graphic was prepared by the engineer and is based on the information provided by the client. The engineer is not responsible for the accuracy or completeness of the information provided by the client. The engineer is not responsible for the accuracy or completeness of the information provided by the client.



LEGEND

- MONITORING WELL OCTOBER 2007
- PCE > 500 µg/m SOIL GAS SAMPLE
- PCE < 500 µg/m SOIL GAS SAMPLE
- PCE > 100 µg/kg SOIL SAMPLE JANUARY 2007
- PCE 2.00 - 49.99 µg/kg SOIL SAMPLE JANUARY 2007
- PCE NON DETECT SOIL SAMPLE OCTOBER 2007
- PCE NON DETECT SOIL SAMPLE JANUARY 2007
- PROPOSED HOTEL FOOTPRINT
- BUILDING EXCLUSION ZONE

SOURCE:

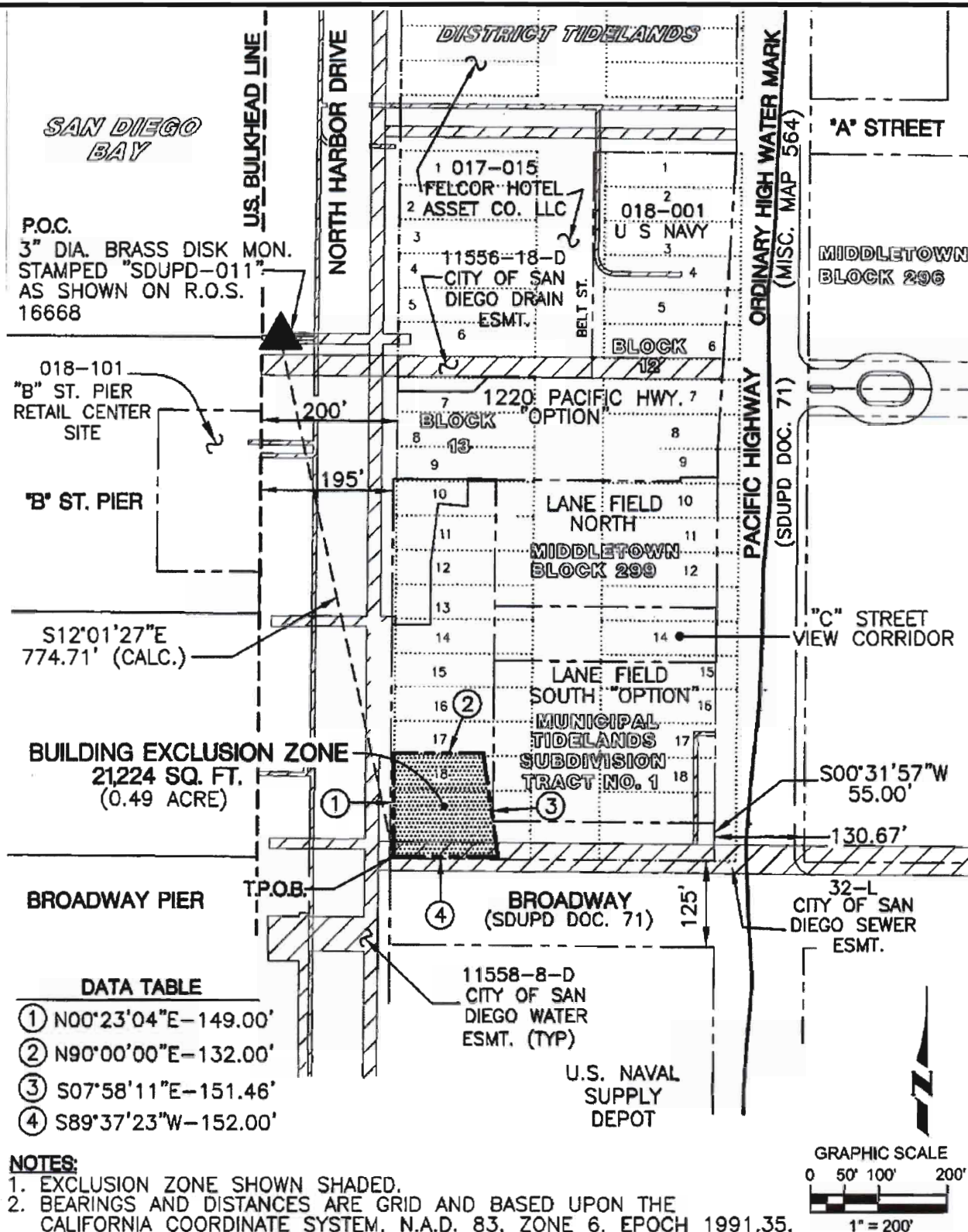
SUPPLEMENTAL PHASE II ENVIRONMENTAL ASSESSMENT FORMER LANE FIELD, 970 BROADWAY AVENUE, SAN DIEGO, CALIFORNIA
 APN: 760-012-02 KLEINFELDER WEST, INC.
 OCTOBER 31, 2007
 BASEMAP FROM PROJECT DESIGN CONSULTANTS, GRADING PLANS FOR LANE FIELD, SHEET 347154-D, UNDATED
 AERIAL SOURCE: ESRI ONLINE MAPS, MAY 3, 2010
 SOURCE OF OVERLAY IMAGE: SITE PLAN FOR LANE FIELD REDEVELOPMENT AS OF 7/20/12; PROVIDED BY LPP LANE FIELD, LLC.



<div><p>KLEINFELDER Bright People. Right Solutions. www.kleinfelder.com</p></div>	PROJECT NO. 124741		ELEVATED PCE SOIL VAPOR CONCENTRATIONS	<div>FIGURE 2</div>
	DRAWN: 7/30/2013			
	DRAWN BY: JP		CLOSURE REPORT FORMER LANE FIELD 970 BROADWAY AVENUE SAN DIEGO, CALIFORNIA	
	CHECKED BY: CN FILE NAME: 124741_Site1.mxd			

The information contained on this graphic is for informational purposes only and is not intended to be used for any other purpose. It is not a contract and does not constitute an offer of insurance or any other financial product. The use of this information is at the user's discretion and is not intended to be used for any other purpose. The use of this information is at the user's discretion and is not intended to be used for any other purpose.

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SOURCE: SAN DIEGO UNIFIED PORT DISTRICT, DRAWING NO. 018-126, DATED JULY 12, 2013



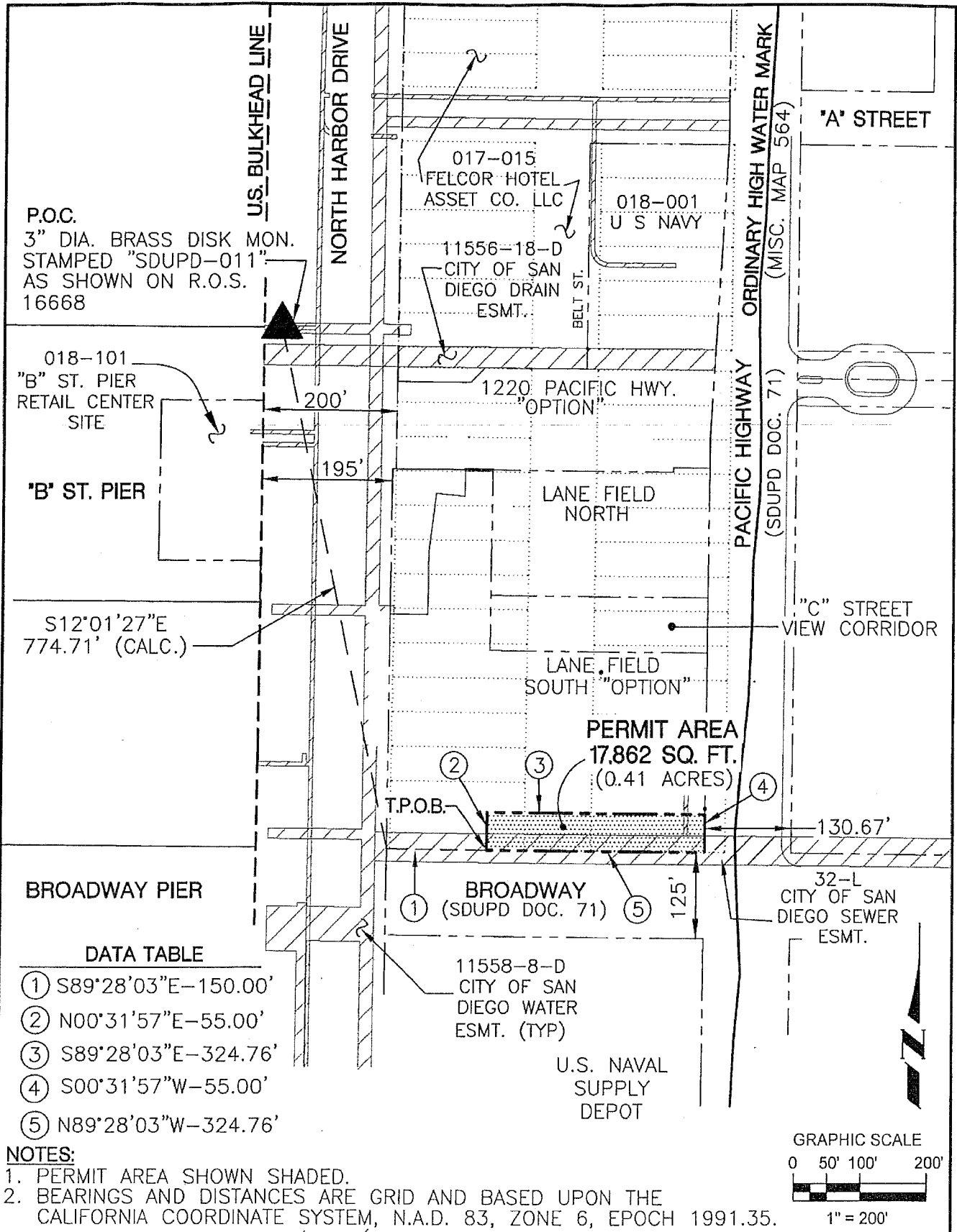
PROJECT NO.	124741
DRAWN:	7/25/2013
DRAWN BY:	JP
CHECKED BY:	CN
FILE NAME:	124741_bez.mxd

**BUILDING EXCLUSION ZONE
SAN DIEGO UNIFIED
PORT DISTRICT**

CLOSURE REPORT
FORMER LANE FIELD
970 BROADWAY AVENUE
SAN DIEGO, CALIFORNIA

FIGURE

3



DRAWN JFD

CHECKED D. VASQUEZ

REVIEWED RUA

SAN DIEGO UNIFIED PORT DISTRICT
OPTION AGREEMENT
WITHIN CORPORATE LIMITS OF CHULA VISTA
LPP LANE FIELD, LLC

DATE NOV. 21, 2014

SCALE 1"=200'

REF.

DRAWING NO.
SHEET 1 OF 1
018-126

EXHIBIT C

DEVSERV\REM\018-126\018-126-126_112114.DWG

EXHIBIT “F”

INTENTIONALLY DELETED

Exhibit "G"

Effective 11/01/07



**FOR DEPOSITS TO THE SAN DIEGO UNIFIED PORT DISTRICT VIA ACH CREDIT
OR WIRE TRANSFER:**

Beneficiary Bank:	Wells Fargo Bank, N.A.
Bank Location:	550 California St., 10 th Floor MAC: A0112-102 San Francisco, CA 94104
ACH/Wire Routing Number:	121000248
Beneficiary:	San Diego Unified Port District
Beneficiary Account Number:	4944983881
Type of Account:	Deposit
Reference:	INVOICE # AND DESCRIPTION-REQUIRED Fax Remittance info. To (619) 686-6480



Exhibit "H"

(3)

San Diego Unified Port District

Document No.

54013

Filed

SEP 26 2008

Office of the District Clerk

BPC Policy No. 357

SUBJECT: APPROVAL OF TENANT PROJECT PLANS

PURPOSE: To Establish A Policy Governing Tenant Project Plan Approvals

POLICY STATEMENT:

1. Preliminary plans for proposed new tenant development or alterations to existing facilities shall be presented to the Board of Port Commissioners (Board) for approval under any of the following circumstances:
 - a. The project is estimated to cost more than \$500,000 (exclusive of soft costs, including but not limited to, architectural costs and permit fees);
 - b. The project will make a significant change in the silhouette or appearance of the area;
 - c. If a material change of use is proposed;
 - d. Any project(s) District staff determines to be reviewed by the Board, regardless of cost, due to its high public profile, its regional impact, baywide security issues or other important matters that require the Board's consideration and/or determination.

For those projects the Board has previously approved, District staff shall then review and administratively approve the project working drawings and technical specifications, if the plans are in substantial conformance with the project approved in concept by the Board. District staff shall disapprove plans that are not in substantial conformance.

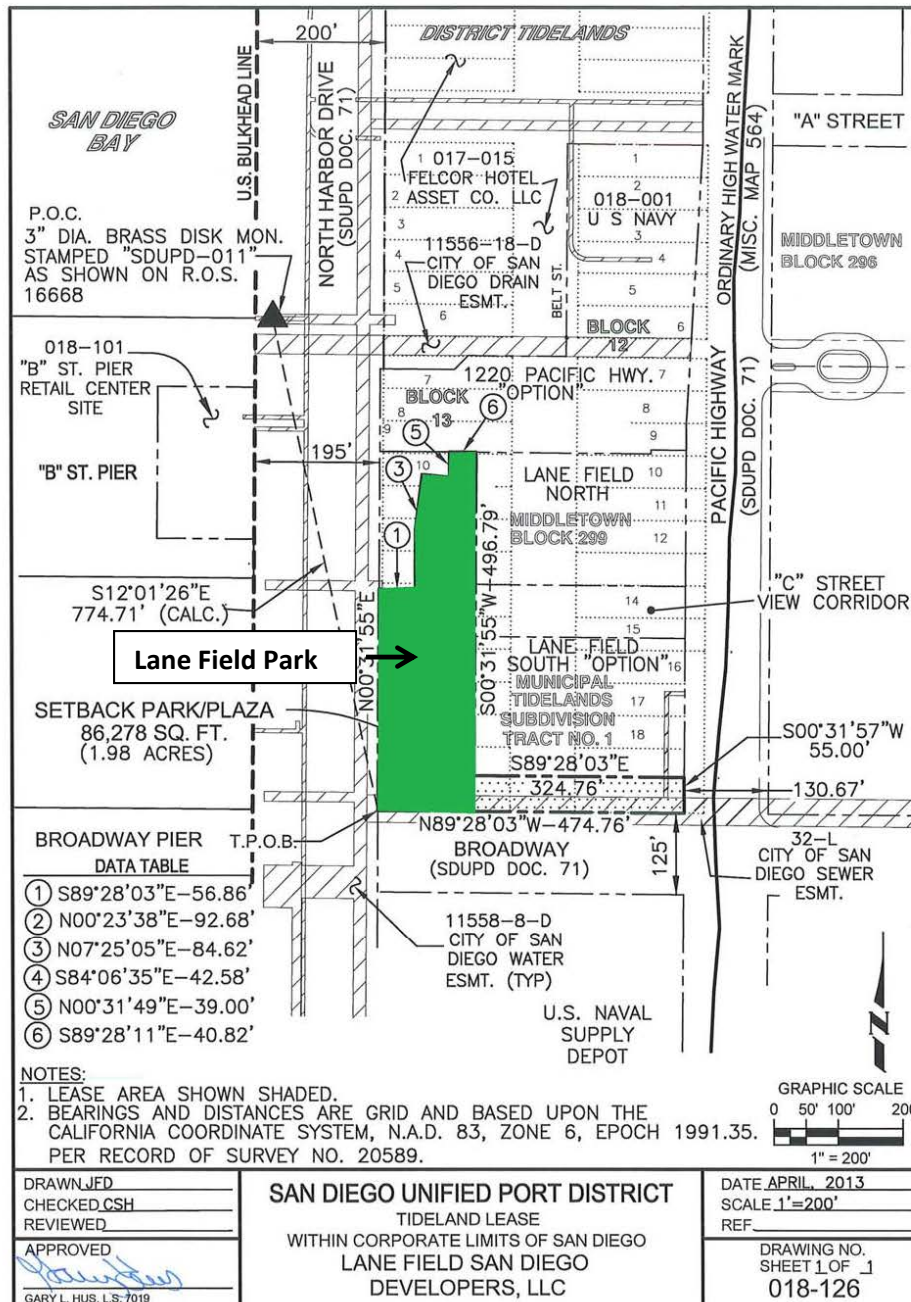
2. Plans for new development or alterations estimated to cost \$500,000 or less and that have no impact to the silhouette, appearance or material use of the leasehold area; and plans for proposed new subsurface improvements and demolition projects, regardless of cost, shall only be submitted for review and approval by staff.
3. District approval is not required, regardless of cost, for projects that fall into the following categories:
 - a. Routine maintenance and repairs;
 - b. Interior redecorating with like materials, finishes, and replacement of furniture,

fixtures and equipment (FF&E);

- c. Substantially similar replacements of existing interior or exterior painted or material finishes, roofing material, equipment, landscaping, irrigation lines or low voltage wiring;
 - d. Replacement of subsurface utilities (unless it affects other tideland facilities).
4. District approval is required for projects that fall into the following categories:
- a. Extraordinary repairs;
 - b. New subsurface utility installations;
 - c. Structural modifications;
 - d. Substantial upgrades and renovations;
 - e. Replacements involving substantially different materials;
 - f. Modifications resulting in a change of use or increased occupancy or seating;
 - g. Reduction in parking space count or size;
 - h. Removal of trees;
 - i. Paving any area greater than 25 square feet.
5. Staff shall review all plan submittal to ensure compliance with BPC Policies, proposals approved by the Board, the Port Master Plan and applicable environmental mitigation requirements.
6. Plan submittals shall be in accordance with the Port's "Guidelines for Tenant Project Plan Submittals" (UPD Form 736).
7. Plans that have material variation from those previously approved by the Board shall be resubmitted for Board approval.
8. Staff shall inspect projects during construction to ensure substantial compliance with approved plans.
9. One set of all approved tenant plans shall be permanently retained by the District.

10. Approval of plans shall be conditioned on applicant providing the District with copies of any application made to any governmental regulatory agency within 5 (five) days of making said application and a copy of any permit, license or other authorization issued by any governmental regulatory agency within 10 (ten) days of its receipt.

RESOLUTION NUMBER AND DATE: 2008-178, dated September 2, 2008 (Supersedes BPC Policy 357, Resolution 2006-88, dated May 2, 2006; Resolution 2004-38, dated March 30, 2004; Resolution Number 91-332, dated October 15, 1991; Resolution Number 91-258, dated August 20, 1991; and Resolution Number 74-93, dated May 14, 1974)



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