

## Attachment C to Agenda File No. 2017- 0371

### AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 1

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

WHEREAS, Lessor and Lessee, on the 1st day of January, 2009, entered into a Lease of certain tidelands in the city of San Diego, California, which Lease is on file in the Office of the Clerk of Lessor bearing Document No. 54591; and

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

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

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

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

(1) Percentage Rent

January 1, 2017 - December 31, 2026	11.0%
January 1, 2027 - December 31, 2036	11.25%
January 1, 2037 - December 31, 2046	11.35%
January 1, 2047 – December 31, 2048	11.45%

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

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

- 3(i) In addition, effective January 1, 2017, only to the extent not already excluded from gross income pursuant to the above, gross income shall not include any amounts set aside by Lessee for dredging projects within the Leased Premises or the debt on such dredging projects, whether such amounts are collected as special assessments, dues, percentage of slip rents, or otherwise. Such amounts may only include amounts existing in the Southwestern Yacht Club Reserve 4 as of January 1, 2017 or placed therein after January 1, 2017.

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

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

Capital improvements under this subparagraph shall only include expenditures that usually increase the value (efficiency, productivity, or use utility) or the life expectancy of the improvements; are not recurring in nature; and exceed \$20,000 or more. Deferred maintenance and expenditures for repairs to keep the existing improvements in good condition are specifically excluded. Items that separately would not qualify under this subparagraph may be considered collectively as part of an overall plan of renovation or redevelopment. Capital improvements under this subparagraph may include public art expenditures that otherwise would not qualify under this subparagraph. Non-realty property may be given consideration by the District, in its sole and absolute discretion, depending on property type. An example of this would be the purchase by industrial tenants of specialized fixtures or equipment that are necessary for its operation. The cost of environmental cleanup is specifically

excluded as a capital improvement under this subparagraph.

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

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

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

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

**F. New Paragraph 15.1 DREDGING is hereby added to read as follows:**

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

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

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

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(ABSTRACT ON FOLLOWING PAGE)

**I. ABSTRACT OF LEASE AMENDMENT NO. 1:**

This is the final Paragraph and Abstract of Lease Amendment No. 1, dated \_\_\_\_\_, between SAN DIEGO UNIFIED PORT DISTRICT, Lessor, and SOUTHWESTERN YACHT CLUB, 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 January 1, 2009 as amended by this Lease Amendment No. 1, 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 and Lease Amendment No. 1, which are incorporated in this Abstract by this reference.

The term is 40 years, beginning January 1, 2009 and ending on December 31, 2048. This Lease Amendment No. 1 shall become effective as of January 1, 2017.

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

DATED: \_\_\_\_\_, 20\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
GENERAL COUNSEL

By:   
Assistant Deputy

**SAN DIEGO UNIFIED PORT DISTRICT**

By: \_\_\_\_\_  
Shaun D. Sumner  
Assistant Vice President,  
Real Estate Development

**SOUTHWESTERN YACHT CLUB,  
a California non-profit corporation**

By:   
Signature

PRINT NAME: ANDREW BERNERT

PRINT TITLE: COMMODORE

**Legal Description for  
SOUTHWESTERN YACHT CLUB  
TIDELAND LEASE  
Parcel / Drawing No 002-001  
Within Corporate Limits of SAN DIEGO**

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

**PARCEL NO. 1- LAND AREA**

Commencing at a 3" diameter brass disk monument stamped "SDUPD-001" 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 South 60°24'02" West a distance of 81.81 feet (calculated) to a point on the U.S. Bulkhead Line at angle point Station 406, as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California, said point also being the TRUE POINT OF BEGINNING of Parcel No. 1; thence along said U.S. Bulkhead Line South 32°06'58" West a distance of 1.38 feet; thence leaving said U.S. Bulkhead Line North 25°26'46" West a distance of 42.82 feet; thence North 55°34'43" West a distance of 89.25 feet; thence South 88°50'22" West a distance of 0.70 feet; thence North 00°01'25" West a distance of 56.86 feet; thence North 89°58'35" East a distance of 0.94 feet; thence North 00°01'25" West a distance of 3.74 feet to a point on said U.S. Bulkhead Line at angle point Station 416; thence along said U.S. Bulkhead Line North 48°28'37" East a distance of 733.13 feet to U.S. Bulkhead Line angle point Station 414; thence South 54°02'33" East a distance of 189.99 feet to U.S. Bulkhead Line angle point Station 412; thence South 35°57'30" West a distance of 297.69 feet to U.S. Bulkhead Line angle point Station 410; thence South 48°28'37" West a distance of 250.00 feet to U.S. Bulkhead Line angle point Station 408; thence South 64°53'25" West a distance of 274.07 feet to U.S. Bulkhead Line angle point Station 406, said point also being the TRUE POINT OF BEGINNING of Parcel No. 1, containing 176,977 square feet or 4.06 acres of tidelands area.

Sheet 1 of 2

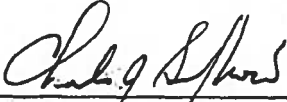
**EXHIBIT "A"**

**PARCEL NO. 2 - WATER AREA**

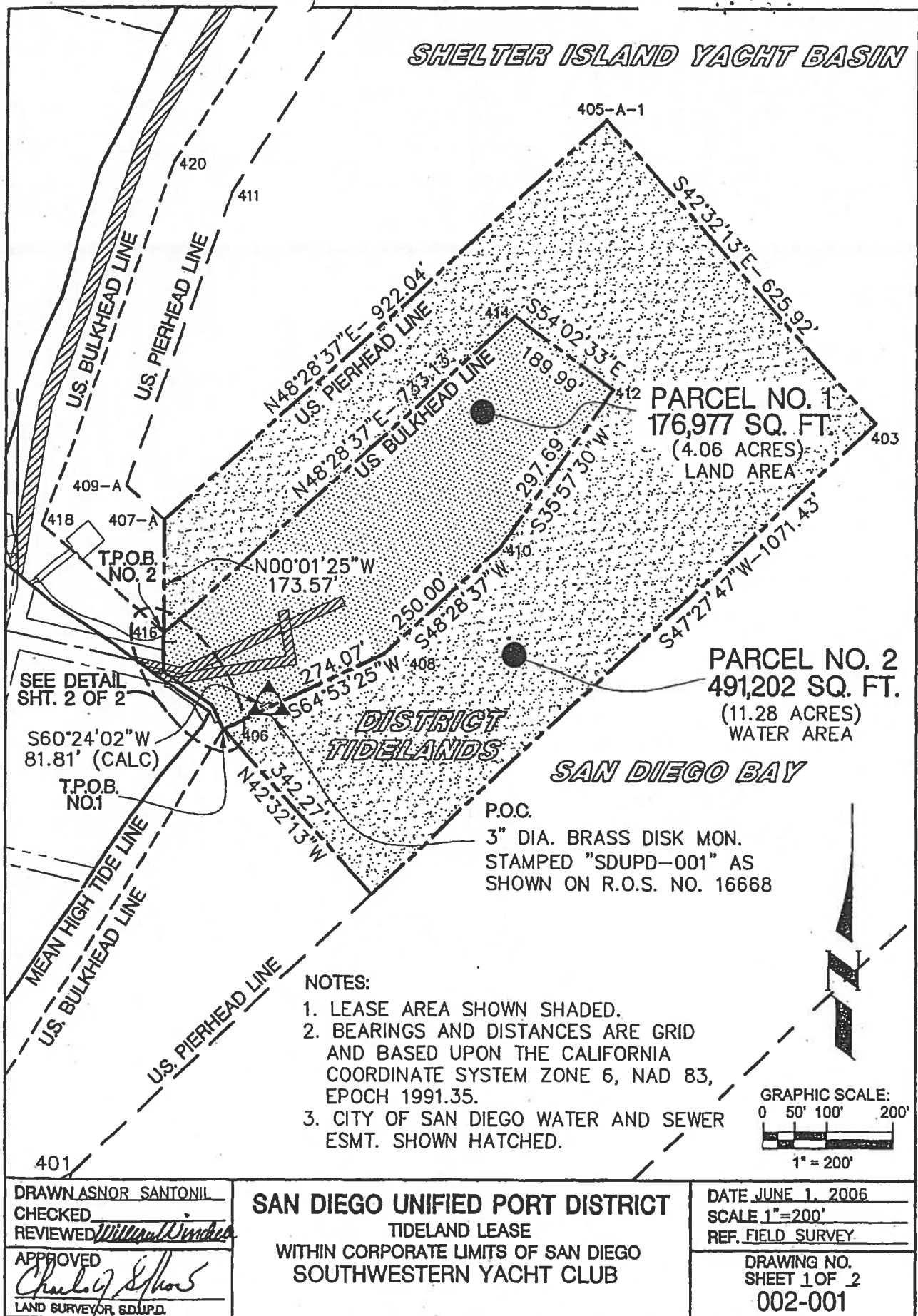
Commencing at said U.S. Bulkhead Line angle point Station 416 as described in Parcel 1, said point also being the TRUE POINT OF BEGINNING of Parcel No. 2; thence North  $00^{\circ}01'25''$  West a distance of 173.57 feet to U.S. Pierhead Line angle point Station 407-A on the U.S. Pierhead Line, as said U.S. Pierhead Line is now established for the Bay of San Diego and delineated on the map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence along said U.S. Pierhead Line North  $48^{\circ}28'37''$  East a distance of 922.04 feet to U.S. Pierhead Line angle point Station 405-A-1; thence South  $42^{\circ}32'13''$  East a distance of 625.92 feet to U.S. Pierhead Line angle point Station 403; thence South  $47^{\circ}27'47''$  West a distance of 1,071.43 feet; thence leaving said U.S. Pierhead Line North  $42^{\circ}32'13''$  West a distance of 342.27 feet to U.S. Bulkhead Line angle point Station 406; thence along said U.S. Bulkhead Line North  $64^{\circ}53'25''$  East a distance of 274.07 feet to U.S. Bulkhead Line angle point Station 408; thence North  $48^{\circ}28'37''$  East a distance of 250.00 feet to U.S. Bulkhead Line angle point Station 410; thence North  $35^{\circ}57'30''$  East a distance of 297.69 feet to U.S. Bulkhead Line angle point Station 412; thence North  $54^{\circ}02'33''$  West a distance of 189.99 feet to U.S. Bulkhead Line angle point Station 414; thence South  $48^{\circ}28'37''$  West a distance of 733.13 feet to U.S. Bulkhead Line angle point Station 416, said point being the TRUE POINT OF BEGINNING of Parcel No. 2, containing 491,202 square feet or 11.28 acres of water covered area.

The above described tidelands areas are delineated on the San Diego Unified Port District Drawing No. 002-001, dated June 1, 2006 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.

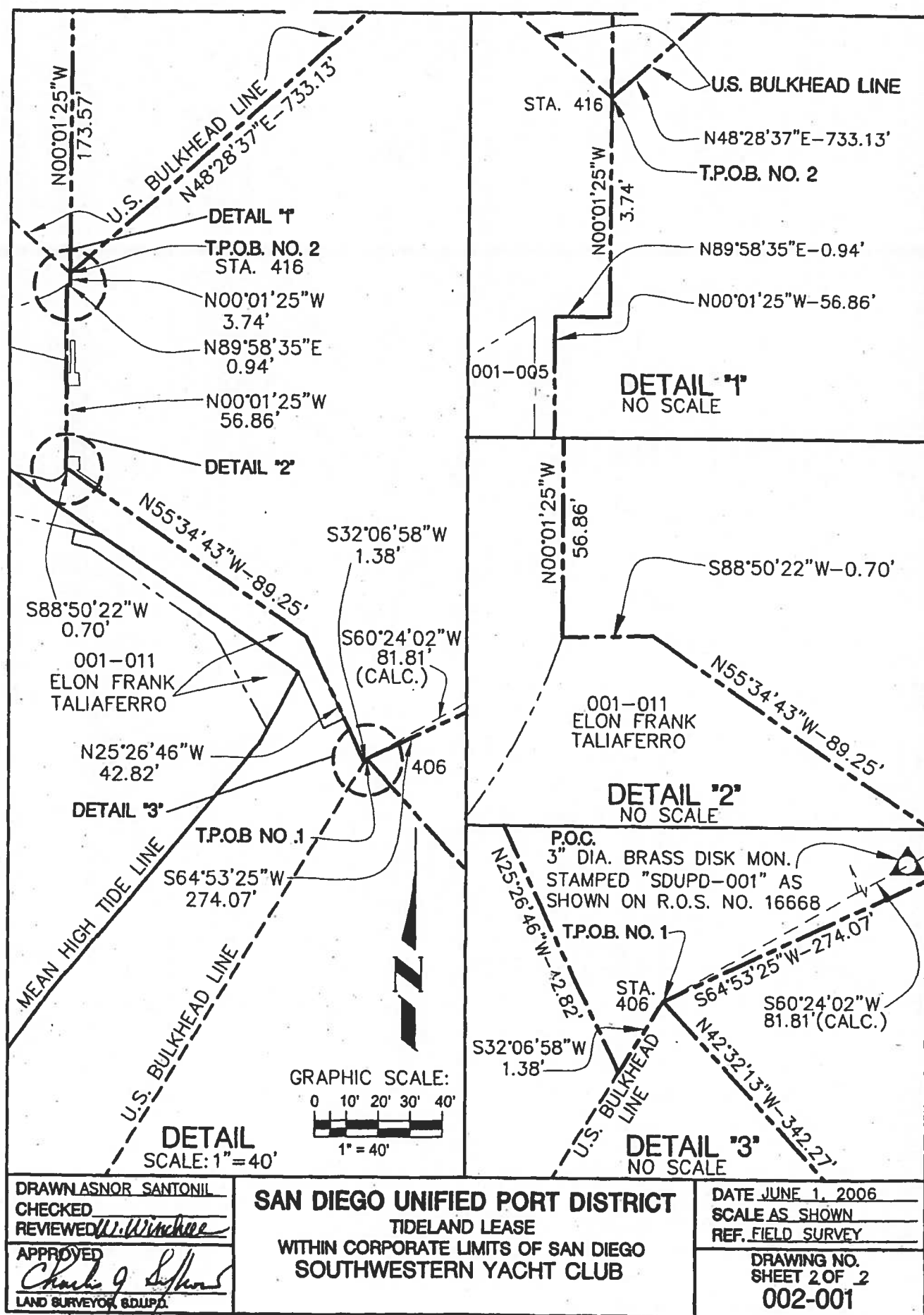
 6-14-06  
 Charles J. Sefkow Date  
 L.S. 7876 Expires 31 Dec. 2006  
 Land Surveyor  
 San Diego Unified Port District





DEVSERV\REM\E2\002-001\002-001\_060106

**EXHIBIT "B"**



DEVSERV\REM\E2\002--001\002--001\_060106



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

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

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

### OPTIONAL

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

#### Description of Attached Document

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

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

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

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

#### Capacity(ies) Claimed by Signer(s)

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

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

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

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

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- ☐ Corporate Officer -- Title(s): \_\_\_\_\_
- ☐ Partner -- ☐ Limited ☐ General
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- ☐ Other: \_\_\_\_\_

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

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**(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)**

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

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

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

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

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

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☐ Corporate Officer -- Title(s): \_\_\_\_\_  
☐ Partner -- ☐ Limited ☐ General  
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☐ Trustee  
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☐ Other: \_\_\_\_\_

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

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