

# **OPTION TO GROUND LEASE AGREEMENT**

THIS OPTION TO GROUND LEASE AGREEMENT ("Agreement") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, ("District"), and PACIFIC GATEWAY, LTD, a California limited partnership ("Optionee").

#### WITNESSETH:

WHEREAS, the District owns certain 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 ("District's Lands");

WHEREAS, pursuant to that certain Amended, Restated, and Combined Lease, dated as of December 5, 1995, by and between District and Optionee (as amended by that certain Agreement for Amendment of Lease Amendment No. 1 dated February 6, 1996 and that certain Agreement for Amendment of Lease Amendment No. 2 dated as of \_\_\_\_\_\_, 20\_\_\_, collectively the "Original Lease"), District leases to Optionee, and Optionee leases from District, for the term and upon the conditions set forth therein, a portion of District's Lands, which lands are more particularly described on Exhibits "A" and "B" attached hereto (and are hereinafter referred to as the "Premises"); and.

WHEREAS, Optionee desires to obtain and the District is willing to give to Optionee an option to amend, restate and combine the terms of the Original Lease for the Premises upon the terms and conditions of the Original Lease, as such Original Lease is amended following the Effective Date but prior to the Exercise Notice (the "Lease"), as modified solely by the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto mutually agree as follows:

- GRANT OF OPTION: Subject to the conditions set forth in this Agreement, District hereby grants Optionee an option to enter into an Amended, Restated, and Combined Lease ("ARC Lease") for the Premises ("Option") in accordance with the covenants and conditions set forth in this Agreement.
- 2. OPTION AGREEMENT TERM: Unless otherwise extended by written agreement by the parties, the term ("Option Agreement Term") of this Option shall commence on the Effective Date ("Option Agreement Commencement Date") and shall expire at 5:00 p.m. (Pacific Time) on November 30, 2061. Notwithstanding any other provision of this Agreement, Optionee's right to exercise the Option and execute the ARC Lease will automatically terminate and be of no further force and effect if the Lease is terminated or the Option not properly exercised before the expiration of the Option Agreement Term.

### 3. TERMS OF THE ARC LEASE:

- a. Term of the ARC Lease. The term of the ARC Lease (the "ARC Lease Term") shall be for a period from the ARC Lease Term Commencement Date until November 30, 2083.
- b. Rental during the ARC Lease Term. During the ARC Lease Term, Optionee shall pay to the District Rental pursuant to the terms of the Lease: (i) Minimum Annual Rent; and (ii) percentage rents payable with respect to Optionee's gross income. During the ARC Lease Term, such percentage rents shall be as set forth in the Lease. Except for the percentage rent set forth in Paragraph 2(b)(1), all percentage rents payable pursuant to Paragraph 2(b) of the Lease shall remain unchanged in the ARC Lease. Paragraph 2(b)(1) of the ARC Lease shall reflect percentage rents being paid on Guest Room Gross Income in the following amounts beginning with the ARC Lease Term Commencement Date whenever such ARC Lease Term Commencement Date occurs:

Time Period	Percentage Rental
December 1, 2016 through November 30, 2036	Seven percent (7%)
December 1, 2036 through November 30, 2046	Seven and one-quarter percent (7.25%)
December 1, 2046 through November 30, 2056	Seven and one-half percent (7.5%)
December 1, 2056 through November 30, 2066	Seven and three-quarters percent (7.75%)
December 1, 2066 through November 30, 2076	Eight percent (8%)
December 1, 2076 through November 30, 2083	Eight and one-quarter percent (8.25%)

c. Except as set forth in paragraphs 3.a and 3.b above, all terms, conditions and provisions of the ARC Lease shall be the same as the Lease.

**CONDITIONS PRECEDENT:** Optionee will have no right to exercise the Option if Optionee is in default under the Lease at the time of such exercise.

4. **EXERCISE OF OPTION:** Optionee may exercise the Option only by delivering to the District written notice of its election to do so ("Exercise Notice") on or before May 31, 2061 (the date of such exercise, the "Exercise Date"). Within ninety (90) days following receipt of the Exercise Notice, District shall prepare the ARC Lease for execution in the same form as the Lease as it exists as of the Exercise Date

incorporating only those changes as are set forth in Paragraph 3 of this Agreement. Upon receipt of the ARC Lease conforming to the requirements of this Agreement, Optionee shall deliver to the District properly executed copies of the ARC Lease in duplicate, together with a Memorandum of ARC Lease (the "Memorandum") in recordable form. In the event Optionee timely exercises the Option and delivers to the District executed copies of the ARC Lease in duplicate, then the Executive Director of the District (or authorized representative) shall promptly thereafter execute the ARC Lease and Memorandum in duplicate. The Executive Director of the District shall deliver the ARC Lease and Memorandum executed by the District to Optionee no later thirty (30) days following Optionee's delivery of the ARC Lease to the District. Optionee shall pay all costs of recording the Memorandum.

- 5. ARC LEASE COMMENCEMENT: It is understood and agreed that the commencement date of the ARC Lease Term (the "ARC Lease Term Commencement Date") shall be the first day of the month following the month in which the ARC Lease is mutually executed and delivered by District and Optionee pursuant to Paragraph 4 above.
- 6. RESTRICTIONS ON AGREEMENT TRANSFERS: This Agreement shall be subject to the terms and provisions of the Lease relating to any transfers thereof, including but not limited to Paragraph 9 Assignment-Sublease of the Lease (collectively, the "Transfer Provisions"), provided, however, all references therein to (i) "Lessee" shall mean "Optionee," (ii) "Lessor" shall mean the "District," (iii) "this Lease" shall mean this Agreement, and (iv) "Leased Premises" shall mean the Premises. In the event that the Lease shall be assigned to a transferee in accordance with the Transfer Provisions, then this Agreement shall automatically be assigned to such transferee, effective as of the date of such assignment of the Lease.
- 7. NOTICES: Notices given or to be given by District or Optionee to the other may be personally served upon District or Optionee or any person hereafter authorized by either in writing to receive such notice, may be served by nationally recognized overnight courier service or may be served by certified letter addressed to the appropriate address hereinafter set forth or to such other address as District and Optionee may hereafter designate by written notice. If served by certified mail, forty-eight (48) hours after deposit in the U.S. Mail, service will be considered completed and binding on the other party. All notices and payments shall be made as follows:
  - a. All notices to Optionee shall be given or sent by nationally recognized overnight courier service or certified mail to:

Pacific Gateway, Ltd.
Attn: Asset Manager – San Diego Marriott Marquis & Marina c/o Host Hotels & Resorts, L.P.
Rockledge Drive, Suite 1500
Bethesda, MD 20817

### With a copy to:

Host Hotels & Resorts Attn: General Counsel Rockledge Drive, Suite 1500 Bethesda, MD 20817

b. All notices and payments to the District shall be given or sent by certified mail to:

Director
Real Estate Department
San Diego Unified Port District
3165 Pacific Highway
P. O. Box 120488
San Diego, CA 92112-0488

- c. Any party may designate a different address by giving written notice as set forth in this paragraph.
- 8. **TIME IS OF THE ESSENCE**: Time is of the essence of all the express conditions contained herein, and failure of Optionee to so perform within the time limits stated shall automatically terminate Optionee's rights hereunder.
- 9. **PREMISES "AS IS, WITH ALL FAULTS"**: Optionee understands and agrees that the Premises will be leased in an "as is, with all faults" condition and that improvements, grading, filling, removal of existing improvements, shoreline protection and relocation of utility lines, if applicable, shall be made and performed by Optionee at the sole cost and expense of Optionee.
- 10. **TERMINATION OF OPTION:** In the event that Optionee fails to fulfill and comply with any of the above conditions or the Lease terminates, or in the event the Option Agreement Term expires without having been duly exercised, the Option shall automatically expire and terminate without notice to Optionee and all rights of Optionee arising out of the Option shall immediately cease. Optionee agrees to execute, acknowledge, and deliver to the District within thirty (30) days after written request, a Quitclaim Deed or other recordable document required by a title insurance company selected by the District to remove any cloud of the Option from the Premises if the Lease terminates or in the event the Option Agreement Term expires without having been duly exercised.
- 11. FORCE MAJEURE: Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, inclement weather, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, notwithstanding anything to the contrary contained herein, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage.

- 12. **THIRD PARTIES**: Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Optionee and the District and their respective permitted successors and assigns. Nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.
- 13. **ATTORNEY'S FEES**: In the event of any dispute between the parties hereto involving the covenants or conditions contained in this Agreement or arising out of the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including (without limitation) attorneys' fees (including for work performed by in-house attorneys) and costs.
- 14. **COMPUTATION OF TIME PERIODS**: If any date or time period specified in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, such date will automatically be extended until 5:00 p.m., Pacific Time, of the next day which is not a Saturday, Sunday or federal, state or legal holiday.
- 15. **AMENDMENT TO THIS AGREEMENT:** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties.
- 16. **NO WAIVER**: The waiver or failure to enforce any provision of this Agreement will not operate as a waiver of such party's right to enforce future breaches of any such provision or any other provision of this Agreement.
- 17. APPLICABLE LAW: This Agreement will be governed by and construed and enforced in accordance with the laws of the State of California.
- 18. **ENTIRE AGREEMENT**: This Agreement supersedes all prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between District and Optionee as to the option to enter into the ARC Lease.
- 19. **PARTIAL INVALIDITY**: If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion will be deemed severed from this Agreement and the remaining parts of this Agreement will remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Agreement.
- 20. **CAPTIONS:** All captions to, or headings of, the paragraphs or sub-paragraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement and will not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.
- 21. **COUNTERPARTS:** This Agreement 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.

- 22. **MEMORANDUM OF OPTION AGREEMENT:** District and Optionee agree that a Memorandum of this Agreement may be recorded by Optionee in the real property records of the San Diego County Recorder's Office.
- 23. NO BROKERS: District and Optionee hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Agreement, and that they know of no real estate broker or agent who is entitled to a commission in connection with this Agreement. Each party agrees to indemnify, defend, protect and hold the other party harmless from and against any and all claims with respect to any commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent. The terms of this Paragraph 23 shall survive the expiration or earlier termination of this Agreement.

(SIGNATURE PAGE FOLLOWS)

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and the year first above written.

APPROVED AS TO FORM AND LEGALITY GENERAL COUNSEL	SAN DIEGO UNIFIED PORT DISTRICT
By:Assistant/Deputy	By: Tony Gordon Director, Real Estate
	PACIFIC GATEWAY, LTD., a California limited partnership
	By: S.D. Hotels LLC, its general partner
	Ву:
	Signature PRINT NAME:
	PRINT TITI F

SDUPD D2 No 1550529

#### PARCEL NO. 1

Beginning at Harbor Line Station No. 458 on the U.S. Bulkhead Line, as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426", approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California, said Harbor Line Station being the TRUE POINT OF BEGINNING of Parcel No. 1; thence leaving said Harbor Line Station north 50°19'08" west a distance of 37.88 feet; thence north 89°06'03" west a distance of 71.79 feet to the most southeasterly corner of an area now under lease to Manchester Resorts, L.P., as amended, recorded in the Office of the San Diego Unified Port District Clerk, July 16, 1993 as Document No. 30146; thence along the easterly limits of said leasehold north 0°53'57" east a distance of 201.00 feet; thence south 89"06'03" east a distance of 80.02 feet; thence north 33°36'20" east a distance of 408.12 feet to a point on the southerly right of way line of Harbor Drive, as said that portion of Harbor Drive was established as and for a public street by the City of San Diego Council Resolution No. 285377, adopted February 27, 1995, and filed in the Office of the City Clerk; thence along said southerly right of way south 57°50'58" east a distance of 204.44 feet to a point on a curve concave to the southwest having a radius of 949.00 feet, the center of which bears south 26°41'28" west; thence southeasterly along said curve and continuing along said southerly right of way line of Harbor Drive through a central angle of 6°54'52" an arc distance of 114.53 feet to a point which bears north 33°36'20" east from the center of said 949.00 foot radius curve, said point being on the southerly right of way line of that portion of Harbor Drive established as and for a public street by City of San Diego Council Resolution No. 259568, adopted November 7, 1983, also filed in the Office of the City Clerk, said point also being on a line parallel with and distant 152.00 feet southwesterly from that traverse line commonly known as the Williams Base Line (south 56°23'41" east-record), as said Williams Base Line is delineated on map entitled "Map of the Lands Transferred to the San Diego Unified Port District Pursuant to Chapter 67, Statutes of 1962, 1st E.S., Vicinity of San Diego Bay, San Diego County, California," filed in the Office of the San Diego County Recorder, May 28, 1976, as Miscellaneous Map No. 564, File No. 76-164686; thence continuing along said right of way line of Harbor Drive and the said parallel line south 56°23'40" east a distance of 794.92 feet; thence leaving said southerly right of way line of Harbor Drive and said parallel line south 78°36'20" west a distance of 300.32 feet; thence south 11°23'40" east a distance of 499.62 feet; thence south 50°19'08" east a distance of 370.00 feet; thence south 39°40'52" west a distance of 150.00 feet to a point on the above described U. S. Bulkhead Line; thence along said U. S. Bulkhead Line north 50°19'08" west a distance of 1,475.43 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 759,267 square feet or 17.43 acres of tideland area.

REVISED:	Page 1 of 3	
ORAWN AS/MN CHECKED AS/AS/A REVIEWED AS/AS/A  APPROVED  MANUS WAS DIRECTOR OF ENGINEERING	SAN DIEGO UNIFIED PORT DISTRICT  TIDELAND LEASE Within Corporate Limits of San Diego PACIFIC GATEWAY, LTD. A California Limited Partnership	DATE 3 NOV. 1995 SCALE 6004 ORABINS NO. 019-003

### PARCEL NO. 1A (Portion of Parcel No. 1)

A nonexclusive public pedestrian and bicycle pathway access easement 14.00 feet in width, lying 7.00 feet on each side of the following described center line:

Commencing at the most southwesterly corner of the above described Parcel No. 1; thence along the westerly line of said Parcel No. 1 north 0°53'57" east a distance of 7.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 1A; thence along a line parallel with and distant 7.00 feet northerly from the southerly limits of the above described Parcel No. 1 south 89°06'03" east a distance of 74.25 feet; thence continuing along said 7.00 foot parallel line south 50°19'08" east a distance of 1,515.78 feet to a point on the southeasterly line of said Parcel No. 1, said point being the POINT OF TERMINUS of Parcel No. 1A, containing 22,260 square feet or 0.51 acre of tideland area.

## PARCEL NO. 1B (Portion of Parcel No. 1)

A nonexclusive public pedestrian access easement 10.00 feet in width, lying 5.00 feet on each side of the following described center line:

Commencing at the most easterly corner of the above described Parcel No. 1; thence along said Parcel No. 1 north 50°19'08" west a distance of 365.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 1B, thence over and across said Parcel No. 1 south 39°40'52" west a distance of 136.00 feet to a point on the northerly limit line of the above described Parcel No. 1A, said point being the POINT OF TERMINUS of Parcel No. 1B, containing 1,360 square feet or 0.03 acre of tideland area.

### PARCEL NO. 2

Beginning at the above described Harbor Line Station No. 458 on the U.S. Bulkhead Line, said Harbor Line Station being the TRUE POINT OF BEGINNING of Parcel No. 2; thence along said U.S. Bulkhead Line south 50°19'08" east a distance of 1,400.58 feet; thence leaving said U.S. Bulkhead Line south 39°40'52" west a distance of 500.00 feet; thence north 50°19'08" west a distance of 1,639.13 feet; thence north 0°08'24" east a distance of 244.10 feet to a point on the southerly line of an area now under lease to the San Diego Seaport Village, Ltd., as amended, recorded in the Office of the San Diego County Recorder, June 3, 1992 as Document No. 0345880; thence along said San Diego Seaport Village, Ltd. leasehold south 89°06'03" east a distance of 246.45 feet; thence north 0°53'57" east a distance of 20.00 feet; thence

REVISED:	Page 2 of 3	
DRAWN AS/MN CHECKED SOURCE REVIEWED	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND LEASE	DATE 3 NOV. 1995 BCALE
Marino W. Back	Within Corporate Limits of San Diego PACIFIC GATEWAY, LTD.	DRAWING NO.
DIRECTOR OF ENGINEERING	A California Limited Partnership	019-003

leaving said San Diego Seaport Village, Ltd. leasehold and along the southerly line of the above described Manchester Resorts, L.P. leasehold south 89°06'03" east a distance of 154.60 feet to the most southwesterly corner of the above described Parcel No. 1; thence leaving said Manchester Resorts, L.P. leasehold and along said Parcel No. 1 south 89°06'03" east a distance of 71.79 feet; thence south 50°19'08" east a distance of 37.88 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 826,936 square feet or 18.98 acres of water covered area.

### PARCEL NO. 3

A nonexclusive easement for navigation purposes, to be used in common with others, the area of which is described as follows:

Beginning at the most northwesterly corner of the above described Parcel No. 2, said point lying on the southerly line of the above described San Diego Seaport Village, Ltd. leasehold, said point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence along the southwesterly and southeasterly limits of the above described Parcel No. 2 south 0°08'24" west a distance of 244.10 feet; thence south 50°19'08" east a distance of 1,639.13 feet; thence north 39°40'52" east a distance of 500.00 feet to a point on the southerly line of the above described Parcel No. 1; thence along said southerly line of Parcel No. 1 south 50°19'08" east a distance of 32.00 feet; thence leaving said southerly line of Parcel No. 1 south 39°40'52" west a distance of 564.00 feet: thence north 50°19'08" west a distance of 502.08 feet: thence south 39°40'52" west a distance of 436.08 feet (436.00 feet-record) to a point 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 above described Harbor Lines Map; thence along said U. S. Pierhead Line north 50°19'08" west a distance of 100.00 feet; thence leaving said U. S. Pierhead Line north 39°40'52" east a distance of 436.08 feet (436.00 feet-record); thence north 50°19'08" west a distance of 1,057.71 feet; thence north 0°08'24" east a distance of 301.10 feet to a point on the southerly line of the above described San Diego Seaport Village, Ltd. leasehold; thence along said southerly line south 89°06'03" east a distance of 32.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 174,921 square feet or 4.02 acres of water covered area.

The above described lease and easement areas are those delineated on Drawing No. 019-003, dated 3 November 1995, Sheets 1 through 9, and made a part of this agreement.

Page 3 of 3

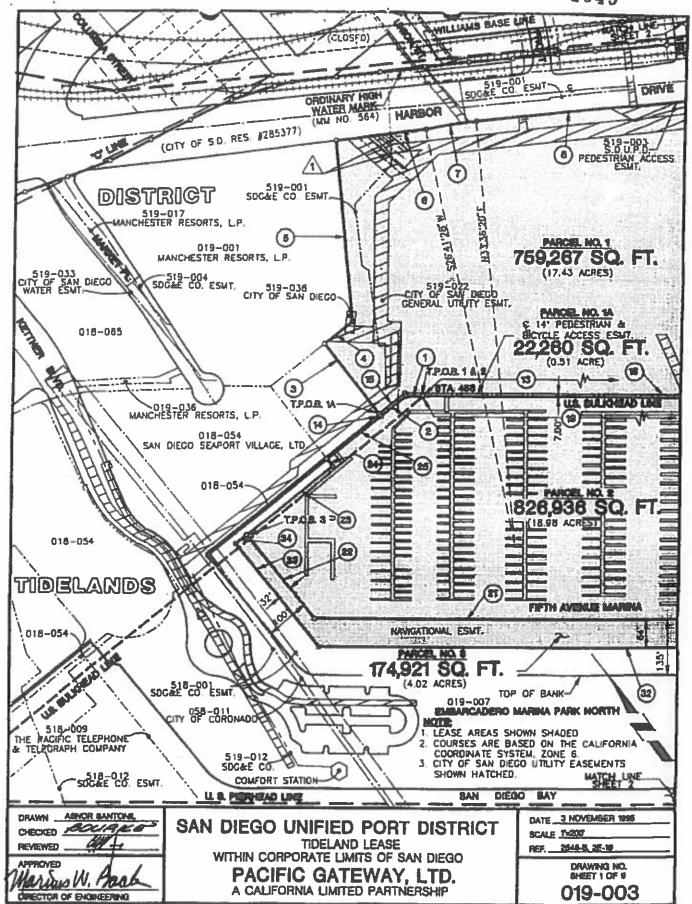
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DIRECTOR OF ENGINEERING

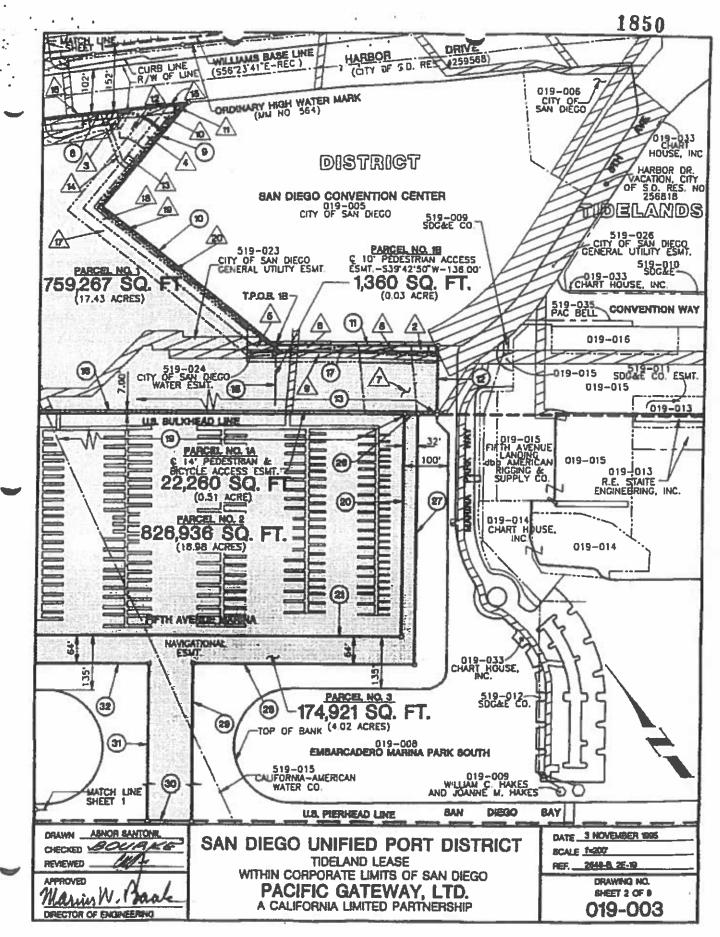
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# SAN DIEGO UNIFIED PORT DISTRICT

TIDELAND LEASE
Within Corporate Limits of San Diego
PACIFIC GATEWAY, LTD.
A California Limited Partnership

DATE 3 NOV. 1995
SCALE 6004
CRAWING NO. 019-003





### TRAVERSE DATA:

- 1 N50'19'08"W-37.88'
- (2) NB9'06'03"W-71.79'
- (3) N0°53'57"E-201.00"
- 4 S89'06'03"E-80.02'
- (5) N33'36'20"E-408.12'
- (a) \$57.50'58"E-204.44"
- (8) S56'23'40"E-794.92'
- 9 S78'36'20"W-300.32'
- S11'23'40"E-499.62'
- (1) S50"19"08"E-370.00"
- (2) \$39'40'52"W-150.00'
- (13) N50' 19'08"W-1,475.43'
- (H) N0'53'57"E-7.00'
- (5) S89'06'03"E-74.25"
- (s) \$50'19'08"E-1,515.78'

- W N50"19'08"W-365.00"
- 18 539'40'52"W-136.00'
- (9) S50"19'08"E-1,400.58"
- (20) S39'40'52"W-500.00'
- (21) N50'19'08"W-1,639.13'
- (22) NO'08'24"E-244.10'
- (23) S89'06'03" E-246.45"
- (24) N0'53'57'E-20.00'
- 25) S89'06'03"E-154.60'
- 29 S50'19'08"E-32.00'
- (27) S39'40'52"W-564.00'
- 28) N50'19'08"W-502.08'
- (436.00'-REC.)
- **③** N50\*19\*08\*W−100.00\*
- (31) N39'40'52"E-436.08'(436.00'-REC.)
- 32 N50\*19'08"W-1,057.71'
- (33) N0'08'24"E-301.10"
- (84) S89'06'03"E-32.00'

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CHECKED SOLGAL GET
REVIEWED APPROVED

DIRECTOR OF ENGINEERING

SAN DIEGO UNIFIED PORT DISTRICT

TIDELAND LEASE WITHIN CORPORATE LIMITS OF SAN DIEGO PACIFIC GATEWAY, LTD.

A CALIFORNIA LIMITED PARTNERSHIP

DATE 3 NOVEMBER 1995

SCALE NO SCALE

PEF. 244-8.25-9

DRAWING NO. SHEET 8 OF 8 019-003

