

COPY

THE CITY OF SAN DIEGO

WESCO SALES CORPORATION

Percentage Lease

DOCUMENT NO. 18192
FILED JUL 17 1995
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and WESCO SALES CORPORATION, a California corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operation and maintenance of a commercial facility entailing the sale of fishing supplies, sporting goods related to marine activities, marine hardware and supplies, marine fuel and lubricants, restaurant, cocktail lounge, and snack bar; the rental of fishing gear, boats, motors, boat slips, dry boat storage, and aquatic sports equipment; and the sale and servicing of outboard motor boats, boat motors, and boat trailers, and of inboard motor boats and sail boats or combinations thereof, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. All uses shall be in accordance with the General Development Plan described in Sections 6.12 and 9.2. The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the City.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above-specified purposes and to diligently conduct the business thereon to produce the most gross income that can be reasonably expected. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY. The type and quality of food service furnished by LESSEE shall qualify for the

conditions and requirements of the "A" Card issued by the Department of Health to operators of food handling establishments.

- 1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.
- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.
- 1.5 Easements and Reservations.
 - a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
 - b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
 - c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in

this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a marina with sales of boats and supplies, boat rentals and repairs, and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be twenty-five (25) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this lease and all LESSEE'S rights to the premises.

SECTION 3: RENT

- 3.1 Time and Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Minimum Rent. The annual minimum rent established for the first five (5) years following the effective date of this lease is One Hundred Thousand Dollars (\$100,000), which is Eight Thousand Three Hundred Thirty-three and 33/100 dollars on a monthly basis.

If the minimum rent is greater than the percentage rent on a calendar month basis, then 1/12 of the annual minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.3, Payment Procedure, hereof.

Provided, however, in the event that the combined total percentage rent payments and monthly installments during any lease year equal or exceed the required annual minimum rent for that year, then for the balance of such year, LESSEE shall discontinue paying monthly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, in the event minimum rents paid plus percentage rents paid exceed the annual minimum rent and also exceed the rent which would have been paid if the percentage rent had been paid on total gross income, the excess over the annual minimum rent shall be credited against the next

payable rent as it becomes due. It is the intent of this provision that LESSEE shall pay monthly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- b. Minimum Rent Reduction. During the renovation and replacement of the boat slips, the City will reduce the minimum rent by the percentage amount of minimum rent attributable to the boat slips as determined by the City Manager. LESSEE will provide City with the total number of boat slips and the number of boat slips to be replaced so that the City will be able to determine the percentage of reduction of the minimum rent. The minimum rent will not be reduced unless approved in writing by the City Manager prior to the beginning of replacing the boat slips. In no event shall the minimum rent be reduced for a period in excess of six months which the parties agree is a reasonable time for completion of the dock replacement.
- c. Minimum Rent Adjustment. Effective at the beginning of the first day of the sixth lease year of this lease and at the beginning of each two and one-half year period thereafter during the term, the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the two (2) years preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.
- d. Percentage Rents. Percentage rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the premises:

Percentages

Business Activities

Three Percent (3%)

Of gross income from sales of petroleum products excepting diesel fuel.

One and One-Half Percent (1-1/2%)

Of gross income from sales of diesel fuel.

Five Percent (5%)

Of gross income from commissions paid to LESSEE on sales involving property sold by LESSEE in which LESSEE has no financial interest.

Three Quarters of One Percent (3/4%)

Of gross income from sales of boats and boat motors, and any boat trailers and other accessories included in the boat and motor sale.

Four Percent (4%)

Of gross income from servicing of boats and motors, sales of boat and motor parts, accessories to boats and motors, and marine hardware.

Three Percent (3%)

Of gross income from sales of food and nonalcoholic beverages.

Six Percent (6%)

Of gross income from sales of alcoholic beverages.

Twenty-Five Percent (25%)

Of gross income from rentals of boat slips and related wet storage.

Twenty-Five Percent (25%)

Of gross income from commissions or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game, or service machines or devices on the premises, including telephones, or 10% of the gross income from any such coin-operated machines or devices owned, rented, or leased by LESSEE or sublessees for use on the premises.

Twenty Percent (20%) Of gross income from rentals for small boat storage.

Ten Percent (10%) Of gross income from all other authorized activities.

The City Manager, in his sole discretion and subject to review of similar percentage rates paid by other LESSEES in Mission Bay, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, hereof as may be approved in writing by the City Manager. Provided, however, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, hereof.

- e. Percentage Rate Adjustment. At least four (4) months prior to the end of the tenth year of the term of this agreement and at least four (4) months prior to the end of each ten-year period thereafter, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid CITY effective upon the first day of the succeeding ten-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section 3.2f., below. In no event shall any adjustment result in a decrease in any percentage rental rate. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said ten-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth. The City Manager shall have the sole discretion to waive the appraisal process if it is concluded by the City Manager that no significant change in percentages is appropriate.
- f. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY and LESSEE. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a qualified professional independent real

estate appraiser who in turn will select a third qualified professional independent real estate appraiser, which third appraiser will be employed to set the percentage rates to be applied to LESSEE'S percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. In the event the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. Subject to the limitations contained herein regarding no reduction in percentage rates, CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment.

In establishing the percentage rates for the items under controversy, the appraiser shall consider CITY'S property as a fee simple absolute estate, and as vacant and available for a full lease term equal to the initial full term of this lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the ten-year period, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s). IN NO EVENT, HOWEVER, SHALL ANY RENT ADJUSTMENT RESULT IN ANY DECREASE IN ANY PERCENTAGE RENTAL RATE.

- 3.3 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to

rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year.
- b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
- c. The percentage rental due CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current lease year.
- e. Payment in the greater of the two following amounts:

One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this lease and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.
- (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

- 3.4 Gross Income. "Gross income" or "gross receipts," as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer

as a separate charge), sales of fixtures and equipment, deposits taken as security for return, any assessments made for construction or maintenance of common areas made by or performed by LESSEE or Sublessees, discounts and allowances to customers and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

3.5 Inspection of Records.

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE.
- c. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described under Section 3.5a., Records, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease. CITY may exercise its right to inspect and audit under this subsection, once each lease year without cause.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses. CITY may exercise its right to inspect and audit under this subsection, once each year without cause. The books and records required to be kept under this subsection 3.5 shall refer solely to those which are related to the leased premises.

- d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):
 - (1) The audit(s) reveal an underpayment of more than five percent (5%) or more than \$10,000, whichever is less,

between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit(s); or

- (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.
- (3) Subject to the requirements of the California Public Records Act, CITY shall hold all sales figures and related information and records and reports obtained from LESSEE, in confidence, except as may be necessary for the enforcement of CITY's rights under this lease.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.6, Delinquent Rent and Audit Fees, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- e. Default. LESSEE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.

- 3.6 Delinquent Rent and Audit Fees. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the 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%)], which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s)

discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.7 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.
- 3.8 Development as Additional Consideration. LESSEE agrees that additional and substantial consideration for granting this lease is LESSEE'S obligation to develop the leased premises in accordance with the CITY-approved Development Plan identified in Section 6.12, Development Plan, hereof.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or

occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired.

The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as hereinafter set forth in Section 4.4, Additional Consideration, commencing at the effective date of such proposed sublease of the majority portion of the leasehold or assignment and shall further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Sections 6.12 and 9.2, Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions;

and architectural, engineering, and attorneys' fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to the CITY as hereinafter set forth in Section 4.4, Additional Consideration therefrom. LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must approve every person or entity which will have a financial interest in this lease. The CITY's approval will not be unreasonably withheld, so long as all such persons and entities are of good character and reputation in the community.

- 4.4 Additional Consideration in the Event of Assignment, Majority Subletting, or Refinancing. LESSEE acknowledges that CITY expends considerable sums for maintenance of Mission Bay Park areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable

extent in consideration for the continued maintenance of adjacent park areas. Therefore, LESSEE and CITY agree that in the event of an assignment; in the event of a subletting of the majority portion of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the Development Plan as described in Section 6.12 hereof, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments, less \$2.25 million for the cost of improvements described in Section 9.12, hereof, reduced annually by \$90,000. In determining the two percent (2%) transfer fee, costs of the closing the transaction (i.e., commissions, title policies, appraisal and survey costs) shall be excluded from the gross amount paid provided that such amounts shall not exceed two percent (2%) of the proceeds of the subject transaction, and such closing and investment costs shall be the only exclusions from such gross proceeds in determining the two percent (2%) transfer fee. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgement from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);

- b. Such other assignment for which the City Manager determines that the legal equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

4.5 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.5a.(1) hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or

beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Right of Substitution. Any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

4.6 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue

for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.

- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
 - f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- 4.7 Control by Specified Individuals or Entities. The corporation named herein as LESSEE shall remain owned and controlled by the Frank W. Butler Trust, Frank W. Butler as trustee, at least to the extent of 95 percent of the issued stock of said corporation, and he shall actively administer and supervise the business enterprise operated on the premises. In the event Mr. Butler becomes incapacitated, then the stockholders shall select a manager acceptable to CITY to so administer and supervise the lease operations. Sale or transfer of stock or divestment of any interest in said corporation, except as provided for in subsection 4.4 by the Frank W. Butler Trust, Frank W. Butler as trustee, in excess of 5 percent shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2, Assignment and Subletting, hereof; provided, however, that the stock of any stockholder may be assigned to his or her spouse or direct lineal heirs upon notification in writing to CITY.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000). Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without thirty (30) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- (2) Modification. By providing LESSEE sixty (60) days' prior written notice, CITY may require the reasonable revision of amounts and coverages to bring insurance amounts and coverages into line with comparable marinas in San Diego County. Said revisions shall not occur more than once every three (3) years. Due consideration shall be given to inflation and additional risks as reflected by court awards in the community. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE

shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage causing more than Ten Thousand (\$10,000.00) Dollars worth of damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration; or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY shall not allow any deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage and LESSEE is encouraged to maintain business interruption insurance.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects, whether apparent or latent, in the premises.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the construction, operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Sections 6.12 and 9.2, Development Plan, hereof and with all applicable laws.

- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall cause to be deposited with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or, at CITY'S option, it may be placed in an escrow or other trust approved by CITY.
- 6.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorneys' fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or

- b. cause to be filed with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.8 Taxes. Subject to the laws of appeal, LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees, and assessments will not reduce any rent due CITY.

6.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, fixtures which are permanently affixed to the premises, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one-hundred-eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures, and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

- c. LESSEE-owned machines, appliances, equipment (other than fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
 - f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.
- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays included but not limited to the submissions and approvals set forth in Sections 6.12 and 6.14 below, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.12 Development Plan. LESSEE agrees to develop and maintain at all times during the lease term, the leased premises, in accordance with the General Development Plan approved by the City Manager, which plan is hereby incorporated by this reference. Said development of the leased premises includes new docks at an estimated cost of \$2,500,000. The general contents and provisions of the Development Plan are described in Section 9.2 hereof. The City

Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval, and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY.

- 6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks, except as required and approved in the implementation of the improvements required by Section 9.2 and shall in no event allow the release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's Office as City Clerk Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon

receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.14 Coastal Commission Approval. LESSEE shall comply with the California Coastal Act, at its sole cost, and apply to the San Diego Regional Coastal Commission or other such authorized state body for any necessary coastal development permit authorizing construction of the required improvements, including the new docks, in the Coastal Zone. LESSEE will proceed with diligence to obtain such permit, but if unable to do so within twelve (12) months after the effective date of this lease, this lease will, at CITY'S option, terminate. In such event, this lease will remain in full force and effect as to every provision except the improvements shown in Section 9.2, Development Plan, will not be required and the lease will expire effective May 31, 1997.
- 6.15 Failure to Meet Development Schedule. Should LESSEE fail to complete construction in accordance with the schedule of development of the General Development Plan hereof, it is specifically agreed by LESSEE and CITY that CITY will be entitled to damages in

the amount of Four Hundred Dollars (\$400.00) for every day of failure to meet said schedule of development until completion of development, said amount representing liquidated damages therefor. In the event that construction is not completed within 24 months following the date specified for completion in the Development Plan, CITY may, at its option, terminate this lease.

6.16 Redevelopment Plan. LESSEE agrees that it shall submit and CITY agrees that it shall consider a Redevelopment Plan based on the following terms and conditions:

- a. On or before the fifth lease year, LESSEE will prepare and submit a proposed Redevelopment Plan which shall include new or modified uses of the above-described property which are compatible with the purposes of MISSION BAY PARK and highest and best use of the real property. LESSEE shall propose lease modifications necessary to accomplish the redevelopment and CITY agrees it shall consider granting a lease extension if warranted by the Redevelopment Plan.
- b. LESSEE will provide CITY with a projection of anticipated income to the CITY from the uses proposed in the Redevelopment Plan together with a projection of income from the same premises as utilized at the time that the Plan is submitted.
- c. The Plan shall be prepared by individuals or companies acceptable to the CITY. The CITY shall have the right to hire consultants to determine the validity, financial feasibility and similar considerations with respect to the Plan.
- d. The Plan shall be prepared at no cost to the CITY.
- e. Prior to approval of the Plan, LESSEE shall be required to provide CITY with financial and other information with respect to any operating entity which might administer the operation of the activities proposed in the Plan in the event the operator of said activities is other than LESSEE.
- f. The CITY may, at its sole discretion, accept, reject or modify the Redevelopment Plan and LESSEE agrees to be bound by such acceptance or rejection, or to negotiate such modifications.

SECTION 7: GENERAL PROVISIONS

7.1 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status or physical disability in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities,

privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 7.5 Equal Opportunity. LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. Upon CITY request, LESSEE will submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions that LESSEE will take to achieve the CITY'S goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities. Further, LESSEE will cause the foregoing provisions to be inserted in all subleases and all subcontracts for any work covered by this lease so that such provisions will be binding upon each sublessee and subcontractor.

LESSEE understands that failure to comply with the requirements listed above and/or submitting false information in response to these requirements may result in termination of this lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

LESSEE acknowledges that the CITY seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE is encouraged to solicit applications for employment, bids and proposals for subcontracts, and work associated with this lease from local residents and firms as opportunities occur. LESSEE is encouraged to hire qualified local residents and firms.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease shall be unilaterally and immediately terminated by CITY if the contractor or LESSEE knowingly employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of

the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.

7.13 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.14 Schedule of Prices. All prices of merchandise, equipment, and services of LESSEE and its sublessees shall be comparable with prices of like merchandise, equipment, and services offered in Mission Bay or San Diego Bay.

7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

- 7.16 Supersedure. It is mutually agreed that this lease, upon its commencement date, supersedes and annuls that certain lease executed on September 27, 1956; with Dana Landing, a California corporation, City Clerk Document 541839, and amended by City Clerk Documents 641091, 648500, 666416, 738539, 741283, and 755165; and assigned by City Clerk Documents 622497, 648461, 738519, 741282, 755104, 755164, and 765363, whereby Wesco Sales Corporation is the successor in interest to Dana Landing, Inc. Said lease, as amended and assigned, is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.17 Public Access. LESSEE shall allow the general public access to the perimeter walkways around the entire leased premises at all times in so far as practicable unless closure is allowed with the City Manager's prior written consent.
- 7.18 Boat Advertising. LESSEE shall spend annually a sum equal to three percent (3%) of LESSEE'S gross income from sale of boats for the purpose of advertising boat sales in Mission Bay.
- 7.19 Transient Slip Facilities. LESSEE shall maintain a minimum of five (5) slips, which shall be specially marked for use by transient boats only. In no event shall these slips designated for transients be rented or occupied by the same person or boat for longer than seventy-two (72) consecutive hours. It is the intent of this condition to provide overnight slip space for boats normally berthing outside the Mission Bay area. Any method of circumventing this provision in violation of the intent herein expressed shall be construed as a breach of this condition and may result in termination of this lease.
- 7.20 Live Bait.
- a. LESSEE may sell bait in connection with the purpose of this lease but may not maintain any live bait receivers within the water area of the leased premises, as long as adequate supplies are available in the opinion of the City Manager from other sources within Mission Bay. Provided that LESSEE cannot obtain bait of sufficient quantity and/or quality at a price comparable to other bait receivers in the San Diego area, in the opinion of the City Manager, upon written permission from the City Manager, LESSEE may install, maintain, and operate bait receivers on the

leased premises or at such other sites as may be acceptable to the City Manager.

- b. The City shall not contract or lease to more than 4 retail providers of marine fuel in Mission Bay Park.

7.21 Damaged Equipment. LESSEE shall salvage if possible within 24 hours any property, real or personal, of LESSEE'S declared by CITY to be a menace to navigation or a nuisance within Mission Bay and to salvage or cause to be salvaged any sunken vessel or property upon the leased premises, irrespective of ownership. CITY may require that any boats not kept in a clean and operable condition be removed from the leased premises.

7.22 Enforcement of Live-Aboard Regulation. LESSEE shall be responsible for the enforcement, both within and in connection with the leased premises, of the following live-aboard regulation:

"No person shall remain overnight on board any watercraft or houseboat in Mission Bay Park unless the watercraft or houseboat has a self-contained toilet on board that does not discharge into the waters of the Bay. No owner of any watercraft or houseboat shall allow it to be occupied overnight in Mission Bay Park for a period of more than ninety (90) days, whether successive or cumulative, during any one calendar year. A watercraft or houseboat is presumed to be occupied overnight when there are one or more persons on board after midnight. The lessees of Mission Bay Park lands are primarily responsible for the enforcement of this subsection on the water abutting their leased premises."

The above Live-Aboard Regulation is presently set forth in the San Diego Municipal Code Section 63.25.71 and is subject to amendment or modification by the City Council. LESSEE also agrees to comply or secure compliance with any such amendment or modification.

7.23 Local Coastal Program. Should a local coastal program (hereinafter the "Local Coastal Program") ever be adopted for the Mission Bay Park segment of the CITY Local Coastal Program, and should the Local Coastal Program provide for the collection of a traffic impact mitigation fee from commercial lessees in Mission Bay Park in order to fund all or a portion of the cost of a beach shuttle or other substantially similar public access improvements, LESSEE agrees to

contribute its fair and equitable share, as calculated pursuant to the Local Coastal Program, to such a traffic impact mitigation program; provided that the amount payable by LESSEE shall be reasonable and shall not exceed the amount LESSEE would have paid had the entire amount to be funded by traffic impact mitigation fees been reasonably, equitably, and fairly apportioned among all of the commercial lessees in Mission Bay Park. This Section shall not be altered or amended without the prior written approval of the California Coastal Commission or an amendment to California Coastal Permit No. 6-93-75/EL.

- 7.24 Boat Rentals. For purposes of this lease, "vessels" include ships of all kinds, motorboats, sailboats, personal watercraft, and every structure adapted to be navigated from place to place upon the water for recreation or for the transportation of merchandise or persons. LESSEE shall be permitted to rent vessels to the general public subject to prior written approval from the City Manager as to the number and type of vessels available for rent. The City Manager may, upon written notice to LESSEE and with reasonable cause, modify any approval previously given. LESSEE shall carry commercial general liability insurance, the amounts and coverages of which shall be based upon the City Manager's assessment of the risk associated with the rental operation.

All vessels for rent which are required by law to be registered with the California Department of Motor Vehicles shall be currently registered as rental vessels and carry proper registration numbers and stickers. All vessels for rent shall be identified by LESSEE through the use of distinctive markings or logos. Each rental vessel shall be equipped with a waterproof map detailing all current regulations and activity zones for Mission Bay, along with all safety equipment required by law. At any time that LESSEE is renting a vessel or vessels, LESSEE shall have at least one operational chase boat and staff to operate it available on the waters of Mission Bay. No rental vessel may be stored on public property outside the leasehold. LESSEE agrees that the City Manager or his designees shall have the authority to immediately terminate any rental activities which are not in conformance with the stipulations of this lease or current boating regulations.

7.25 Plastic Food Containers.

- a. LESSEE shall not, after the effective date of this agreement, provide to its customers any prepared food in polystyrene foam.

food packing, nor shall LESSEE, obtain or keep any polystyrene foam food packing of a type, design and condition suited for providing prepared food to its customers for consumption off the leased premises.

- b. LESSEE'S food packaging for prepared food to be consumed on the premises or for takeout food shall be degradable, and LESSEE shall provide upon demand evidence in the form of paid invoices to indicate the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. LESSEE'S food packaging for prepared food to be consumed off the premises shall be biodegradable unless LESSEE demonstrates to the satisfaction of CITY that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE. In the event that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE, LESSEE may limit its use of such packaging to the amount actually available.
- c. For purposes of this lease, the following definitions are applicable:
 - (1) "Prepared food" means foods or beverages which are prepared on the leased premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further prepared to be consumed.
 - (2) "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on the leased premises.
 - (3) "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are purchased in order to be consumed off the leased premises.

7.26 Trash and Refuse. LESSEE shall provide containers on or immediately adjacent to the leased premises to receive trash and refuse generated aboard vessels using LESSEE'S docking or launching facilities. Refuse containers shall be located so as to be conveniently used by occupants of vessels using LESSEE'S facilities and shall be of sufficient size and number to contain the refuse generated aboard all vessels using LESSEE'S facilities. The containers shall be covered and emptied regularly enough to prevent them from overflowing or

creating unhealthful, unsightly, or unsanitary conditions. The contents of the containers shall be disposed of by LESSEE or others acting pursuant to LESSEE'S direction at authorized landfills or other garbage reception areas as provided under law applicable at the time of collection.

- 7.27 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:
1. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 2. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
 3. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
 4. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
 5. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

SECTION 8: SIGNATURES

8.1 Signature Page

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date JUL 17 1995

By



Deputy City Manager

Real Estate Asset Director

LESSEE: WESCO SALES CORPORATION

Date

Dec 5, 1994

By



Frank W. Butler, President

APPROVED as to form and legality this 24 day of July, 19 95.

JOHN W. WITT, City Attorney

By



Deputy City Attorney

NRS:LMF:rc
11/04/94

SECTION 9: EXHIBITS

9.1 Legal Description - Exhibit "A"

That parcel of land in the City of San Diego, County of San Diego, State of California, being a portion of the Tidelands and submerged or filled lands of False Bay, also known as Mission Bay and that portion of the Pueblo Lands of San Diego; according to map thereof by James Pascoe, a copy of which is on-file in the Office of the County Recorder of said San Diego County and is known as Miscellaneous Map No. 36, described as follows:

Beginning at the Southeast corner of Lot 24 of Block 10 in the Resubdivision of Blocks 7, 8, 10, and a portion of Block 9 and Lot "A" of Inspiration Heights, according to Map thereof No. 1700 filed in the Office of the County Recorder of San Diego County; thence along the Southerly line of said Lot, South $89^{\circ}55'56''$ West (Record North $89^{\circ}59'00''$ West) 25.00 feet to a point of tangent curve in the boundary of said Lot; thence South $00^{\circ}04'04''$ East, 2 feet to a line which is parallel with and 2.00 feet Southerly at right angles from the Southerly line of said Block 10; thence along said parallel line North $89^{\circ}55'56''$ East, 249.70 feet; thence North $05^{\circ}30'02''$ West, 104.06 feet to the United States Coast and Geodetic Survey, triangulation station "Old Town," (the Lambert Grid-Coordinates California Zone 6 for said station "Old Town" are x equals 1,712,415.17 and y equals 213,819.22 and said triangulation station is located at latitude $32^{\circ}45'02.845''$ longitude $117^{\circ}11'07.200''$), said station "Old Town" being the point of origin for the San Diego City Engineer's Mission Bay Park Coordinate System; thence North 5,826.93 feet and West 14,684.48 feet to the TRUE POINT OF BEGINNING; the Mission Bay Park Coordinates of said TRUE POINT OF BEGINNING being North 5,826.93 feet and West 14,684.48 feet; thence North $63^{\circ}30'00''$ West, a distance of 567.16 feet to the coordinates North 6,079.99 and West 15,192.03; thence North $28^{\circ}30'02''$ West, a distance of 462.48 feet to coordinates North 6,486.42 and West 15,412.71; thence North $61^{\circ}29'58''$ East, a distance of 297.95 feet to the beginning of a non-tangent curve, concave Southeasterly having a radius of 1,355.00 feet; thence Northeasterly along the arc of said curve a distance of 178.55 feet to coordinates North 6,743.91 and West 15,014.72; thence South $36^{\circ}29'04''$ East, a distance of 75.00 feet to a point in a 1,280.00 foot radius curve, concave Southeasterly; thence Northeasterly along the arc of said curve a distance of 125.00 feet to coordinates North 6,752.91 and West 14,866.15; thence South $19^{\circ}51'24''$ East, a distance of 302.87 feet to coordinates North 6,468.04 and West 14,763.28; said point being also the beginning of a 475.00 foot radius curve, concave Westerly; thence Southerly along the arc of said curve through a central angle of $09^{\circ}38'54''$ a distance of 79.99 feet to the beginning of a compound 195.00 foot radius curve, concave Westerly; thence Southerly along the arc of said curve through a central angle of $16^{\circ}45'30''$, a distance of 57.04 feet to coordinates North 6,334.08 and West 14,740.74; thence South $06^{\circ}33'00''$ West, a distance of 132.02 feet to coordinates North 6,202.92 and West 14,755.80, said point being also the beginning of a 185.00 foot radius tangent curve, concave Easterly; thence Southerly and Southeasterly along the arc of said curve through a central angle of $46^{\circ}53'50''$, a distance of 151.42 feet to the beginning of a 215.00 foot radius reverse curve, concave Westerly; thence Southeasterly and Southerly along the arc of said curve through a central angle of $66^{\circ}50'50''$, a distance of 250.84

feet to the TRUE POINT OF BEGINNING and containing 4.09 acres of land area and 4.67 acres of water area.

EXCEPTING that portion described as follows:

Beginning at a Northeasterly angle point in the above described land, the Mission Bay Park coordinates of said point being North 6,752.91 and West 14,866.15; thence South 19°51'24" East, 140.00 feet; thence South 60°17'51" West, 347.91 feet to a point on a 131.21 foot radius curve, concave Easterly, the radius of which bears South 68°34'25" West to said point; thence Northerly along said curve 74.20 feet through an angle of 32°24'04" to a compound 100.04 foot radius curve; thence Northerly along said curve 61.09 feet through an angle of 34°59'14"; thence along the radius of a 1,355.00 foot radius curve, concave Southeasterly, North 44°02'17" West, 75.00 feet to a point on the arc of said curve; thence Northeasterly along said curve through an angle of 07°33'00", a distance of 178.55 feet to coordinates North 6,743.91 and West 15,014.72; thence South 36°29'04" East, a distance of 75.00 feet to a point in a 1,280.00 foot radius curve, concave Southeasterly; thence Northeasterly along the arc of said curve, a distance of 125.00 feet to the TRUE POINT OF BEGINNING.

When LESSEE and CITY agree to an updated legal description of the premises, the parties shall prepare, date and initial a new legal description and delineation of the lease premises and attach the same to this Lease Agreement in lieu of the existing legal description and delineation thereof.

LMF:rc
2/15/95

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EXHIBIT 9.2 GENERAL DEVELOPMENT PLAN

DEVELOPMENT SCHEDULE

Phase I: Fuel Dock Replacement

Completion Date: Completed.

Construction of the new fuel dock was completed August 1, 1993. The fuel tanks will be replaced by 1998 to meet federal standards. Estimated cost of tank replacement - \$100,000 to \$150,000.

Phase II: Boat Slip & Dock Replacement

Completion Date: Six months from lease commencement.

Construction of new boat slips including all piling and ramps. Number of boat slips to be agreed upon by LESSEE and CITY.

Phase III: Marina Facilities

Completion Date: April 30, 1997.

1. Renovate dockmaster's office, toilet rooms, showers and lockers.
2. Renovate exterior, including new concrete and asphalt paving; re-striping of parking area; new security lighting; landscaping; expansion of perimeter concrete walk to property line.
3. Underground utilities.
4. Construct new enclosure for dry boat storage including security fencing, lighting and controlled access.

The architectural treatment of the new construction and renovation will be consistent with the proposed future building program and the Mission Bay Master Plan.

Failure to complete development as required herein shall constitute a material and substantial default and, at CITY'S option, shall subject this lease to termination.

ESTIMATED COST OF IMPROVEMENTS

Phase I:	<u>Fuel Dock Replacement</u>	\$124,425.00
Phase II:	<u>Boat Slip & Dock Replacement</u>	\$1,625,000.00
Phase III:	<u>Marina Facilities</u>	\$365,000.00*

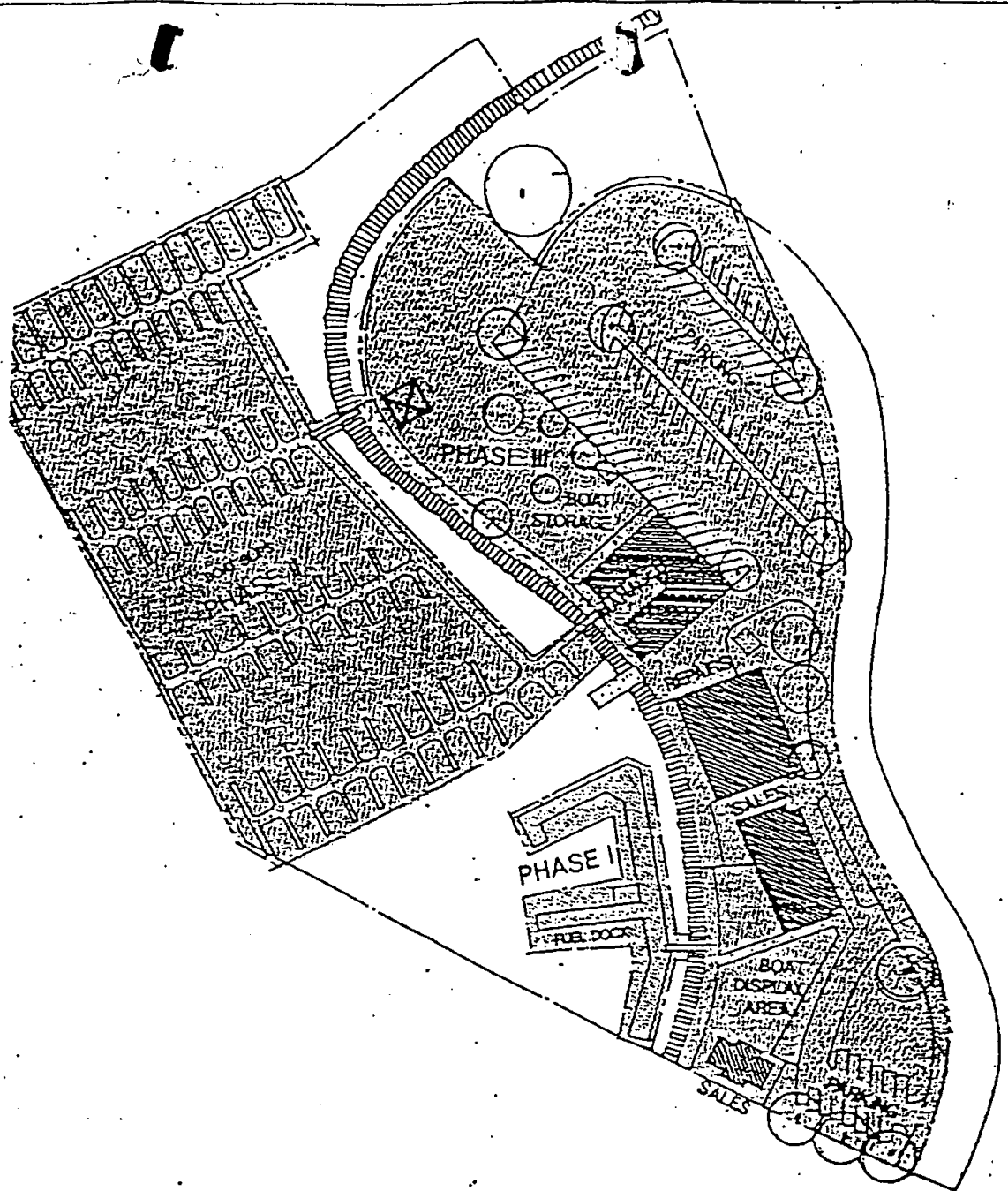
Total Redevelopment Estimated Cost To Be Funded Solely by Lessee:	\$2,114,425.00
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*Marina Facilities

1.	Renovate dockmaster's office, toilet rooms, showers and lockers.	\$210,000.00
2.	Renovate exterior, including new concrete and asphalt paving; re-striping of parking area; new security lighting; landscaping; expansion of perimeter concrete walk to property line.	\$95,000.00
3.	Underground utilities.	\$25,000.00
4.	Construct new enclosure for dry boat storage including security fencing, lighting and controlled access.	\$35,000.00

Total Marina Facilities Cost	\$365,000.00
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2-23-95:devsch.dan:LMF:lmf



DANA LANDING REDEVELOPMENT PLAN

(3) PHASES



PROJECT PLOT PLAN

9.3 Corporate Name.

WESCO SALES CORPORATION
CORPORATE NAME

I, Sharon Day, certify that I am the secretary of the corporation named in the attached agreement; that Frank W. Butler, who signed this agreement on behalf of the corporation, was then President of said corporation; that said agreement was duly signed for and on behalf of said corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on Dec. 5, 1994, and is within the scope of its corporate powers; and that set out below are the names of the officers and directors of said corporation.

By Sharon Day
Secretary

CORPORATE SEAL

Name Frank W. Butler
Title President

Name Sharon Day
Title Secretary

Name Sharon Day
Title Treasurer

Name _____
Title _____

9.3 Corporate Name.

WESCO SALES CORPORATION
CORPORATE NAME

I, Sharon Day, certify that I am the Secretary of the corporation named in the attached agreement; that Frank W. Butler who signed this agreement on behalf of the corporation, was then President of said corporation; that said agreement was duly signed for and on behalf of said corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on Dec. 5, 1994, and is within the scope of its corporate powers; and that set out below are the names of the officers and directors of said corporation.

By Sharon Day
Sharon Day

Secretary

CORPORATE SEAL

Name Frank W. Butler
Title President

Name Sharon Day
Title Secretary

Name Sharon Day
Title Treasurer

Name _____
Title _____

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51A

(O-95-115)

ORDINANCE NUMBER O- 18192 (NEW SERIES)

ADOPTED ON JUL 17 1995

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE CITY MANAGER TO
EXECUTE A 25 YEAR LEASE AGREEMENT WITH WESCO
SALES CORPORATION TO LEASE DANA LANDING IN
MISSION BAY PARK.

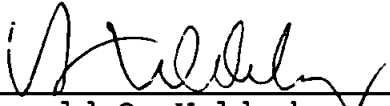
BE IT ORDAINED, by the Council of The City of San Diego, as
follows:

Section 1. That the City Manager be and he is hereby
authorized to execute a 25 year lease agreement with Wesco Sales
Corporation for the property known as Dana Landing in Mission Bay
Park consisting of approximately 3.1 acres of land and 4.3 acres
of water area, with a minimum rent of \$100,000 per year against
various percentage rents, under the terms and conditions set
forth in this agreement on file in the office of the City Clerk
as Document No. OO- 18192.

Section 2. This ordinance shall take effect and be in force
on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

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05/30/95
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O-95-115
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(R-95-1806)

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RESOLUTION NUMBER R-

ADOPTED ON

JUN 28 1995

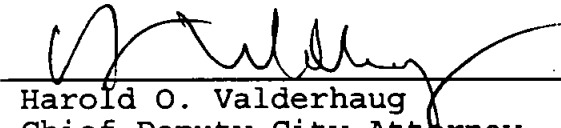
WHEREAS, the Council of The City of San Diego as a Responsible Agency under the California Environment Quality Act of 1970, as amended, ("CEQA") considered the issues discussed in DEP No. 94-0324; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the information contained in the final document, including any comments received during the public review process, has been reviewed and considered by this Council in connection with a 25 Year Lease - Dana Landing.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

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05/30/95
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R-95-1806
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CITY CLERKS OFFICE
SAN DIEGO, CA

XXXXXX

XXXXXX

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

DANA LANDING MARINA LEASE APPROVAL

DEP NO. 94-0324

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. All mitigation measures contained in the Mitigated Negative Declaration (Dep No. 94-0324) shall be made conditions of the lease agreement as may be further described below:

1. Any barges or other types of construction platforms placed above existing eelgrass beds during construction shall be moved every two weeks if the work is done between April and September, and every month if the work is done between October and March.
2. At the conclusion of the construction and repair of the marina facilities, a post-eelgrass study shall be conducted to confirm there have been no impacts to the eelgrass beds. The survey shall be submitted to the Environmental Analysis Section of the Development Services Department for review. Should the post construction survey reveal that eelgrass impacts have occurred, the permittee shall comply with all aspects of the "Southern California Eelgrass Mitigation Policy" (National Marine Fisheries Service, revised August, 1992), to repair the habitat.

The above mitigation monitoring and reporting program will not require additional fees and/or deposits to be collected prior to the issuance of building permits, certificates of occupancy and/or final maps to ensure the successful completion of the monitoring program.

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CITY CLERKS OFFICE
SAN DIEGO, CA

NOTICE OF DETERMINATION

TO: X Recorder/County Clerk
P.O. Box 1750, MS A33
1600 Pacific Hwy, Room 260
San Diego, CA 92101-2422

FROM: City of San Diego
Planning Department
1222 First Avenue, MS 501
San Diego, CA 92101

DEP Number: 94-0324

State Clearinghouse Number: 94071004

Permit Number: 94-0324

Project Title: Dana Landing Construction and Upgrading

Project Location: 2590 Ingraham Street

Project Description: The project will rebuild the docks and upgrade the existing marina facilities and parking lot for Dana Landing.

City Council

This is to advise that the City of San Diego Hearing Officer on June 26, 1995 approved the above described project and made the following determinations:

1. The project in its approved form ___ will, X will not, have a significant effect on the environment.
2. ___ An Environmental Impact Report was prepared for this project and certified pursuant to the provisions of CEQA.
- X A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA. R-286023

Record of project approval may be examined at the address above.

3. Mitigation measures X were, ___ were not, made a condition of the approval of the project.

It is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Development and Environmental Planning Division, Fifth Floor, City Operations Building, 1222 First Avenue, San Diego, CA 92101.

Analyst: Teasley

Telephone: (619) 236-6538

Filed by: Elise Harmon
Signature

Elise Harmon
Title

Reference: California Public Resources Code, Sections 21108 and 21152.



Development and Environmental
Planning Division
236-6460

Mitigated Negative Declaration

DEP No. 94-0324
SCH No. 94071004

SUBJECT: Dana Landing Construction & Upgrading. COUNCIL APPROVAL of a lease between the City of San Diego and Wesco Sales Corporation for Dana Landing, that would include the rebuilding of the docks and upgrading of the existing marina facilities and parking lot. The project is located at 2590 Ingraham Street on City owned tidelands. The site falls within the Coastal Zone and is part of the Mission Bay Park Community Plan Area. Applicant: Wesco Sales Corporation

- I. PROJECT DESCRIPTION: See attached Initial Study.
- II. ENVIRONMENTAL SETTING: See attached Initial Study.
- III. DETERMINATION:

The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect. The specific mitigation identified in Section V of this Mitigated Negative Declaration will protect the site from any long term impacts. The project now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an Environmental Impact Report will not be required.

IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above Determination.

V. MITIGATION, MONITORING AND REPORTING PROGRAM:

The following two conditions shall be incorporated into the lease between the City of San Diego and Wesco Sales Corporation.

1. Any barges or other types of construction platforms placed above existing eelgrass beds during construction should be moved every two weeks if the work is done between April and September, and every month if done between October and March.
2. At the conclusion of the construction and repair of the marina facilities, a post-eelgrass study shall be conducted to confirm there have been no impacts to the eelgrass beds. The survey shall be submitted to the Environmental Analysis Section of the Planning Department for review. Should the post construction survey reveal that eelgrass impacts have

occurred, the permittee shall comply with all aspects of the "Southern California Eelgrass Mitigation Policy", (National Marine Fisheries Service, revised August, 1992) to repair the habitat.

VI. PUBLIC REVIEW DISTRIBUTION:

Draft copies or notice of this Mitigated Negative Declaration were distributed to:

State Clearinghouse
State Department of Fish and Game
State Park and Recreation Department
State Water Quality Control Board (WQCD)
Mission Bay Park Committee
Mission Bay Lessees
California coastal commission
U.S. Army Corp of Engineers
Wesco Sales Corporation, Applicant
Richard Levor, Dana Landing, Agent
City of San Diego
 Councilmember Roberts, District 2
 John C. Leppert, City Managers Office
 Park & Recreation Department
 Property Department
 Planning Department

VII. RESULTS OF PUBLIC REVIEW:

- (X) No comments were received during the public input period.
- () Comments were received but did not address the draft Mitigated Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.
- () Comments addressing the findings of the draft Mitigated Negative Declaration and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of draft Mitigated Negative Declaration No. 94-0324 and any Initial Study material are available in the office of the Development and Environmental Planning Division for review, or for purchase at the cost of reproduction.


Jean Cameron, Senior Planner
City Planning Department

July 1, 1994
Date of Draft Report

August 5, 1994
Date of Final Report

Analyst: Kenneth Teasley

City of San Diego
Planning Department
DEVELOPMENT AND ENVIRONMENTAL PLANNING DIVISION
1222 First Avenue, Mail Station 501
San Diego, CA 92101
(619) 236-6460

INITIAL STUDY
DEP No. 94-0324
SCH No. 94071004

SUBJECT: Dana Landing Construction & Upgrading. COUNCIL APPROVAL of a lease between the City of San Diego and Wesco Sales Corporation for Dana Landing that would include the rebuilding of the docks and upgrading of the existing marina facilities and parking lot. The project is located at 2590 Ingraham Street on City owned tidelands. The site falls within the Coastal Zone and is part of the Mission Bay Park Community Plan Area. Applicant: Wesco Sales Corporation

I. PURPOSE AND MAIN FEATURES:

The proposed project would remove the existing 164 docks and flotation system and replace them with new docks and pilings equaling the same number of boatslips. As well, an upgrade of the existing marina facilities and parking area would be undertaken. The reconfigured parking area would contain 190 spaces. Access to the site would be from Ingraham street. The unzoned area contains 4.67 acres.

II. ENVIRONMENTAL SETTING:

The project site is located to the west of Ingraham Street and just north of West Mission Bay Drive. The site is unzoned but designated for recreational use under the Progress Guide and General Plan and the Mission Bay Coastal Access Study.

The proposed site is surrounded by Mission Bay and recreational land to the north, south, east and west.

III. ENVIRONMENTAL ANALYSIS: See attached Initial Study checklist.

IV. DISCUSSION:

Biology

Mission Bay Park contains valuable natural resources, including high quality marine habitat supporting sensitive species. The "Mission Bay Park Natural Resource Management Plan" was prepared in 1990 by the City of San Diego Park and Recreation Department to protect and manage natural resources in the Park, and to insure its viable productivity. As indicated in the management plan, the Dana Landing boat docks lie

above an eelgrass meadow. Eelgrass (Zostera Marina) is an aquatic grass which grows on the low intertidal to high subtidal slopes in Mission Bay and the Flood Control Channel. Eelgrass play a particularly important role in the marine ecology of bay and channel waters as a primary and secondary food source for fish and bird species.

The extent of the eelgrass beds fluctuate in response to seasonal conditions and water quality. Eelgrass grows in water as shallow as +1 Mean Lower Low Water (MLLW) down to -6 MLLW where the water temperature is warm with good light. Shading from dock structures and boats prevent eelgrass growth. As well, turbidity caused by propeller action, dredging and construction activities in shallow areas may also impact growth. The last major eelgrass beds in southern California are found in Mission Bay and San Diego Bay. This limited distribution increases the importance of eelgrass habitat in Mission Bay.

An eelgrass survey was conducted at the project site during June, 1994, for the purpose of delineating the existing eelgrass beds. The survey revealed the presence of high quality eelgrass. Conclusions of the survey indicated no long-term impacts to the habitat if the docks are placed in the same location as the existing docks. Short-term impacts could occur, due to shading, if barges or other types of construction platforms are placed over existing eelgrass beds for extended periods of time.

V. RECOMMENDATION:

On the basis of this initial evaluation:

_____ The proposed project would not have a significant effect on the environment, and a NEGATIVE DECLARATION should be prepared.

 X Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described in Section IV above have been added to the project. A MITIGATED NEGATIVE DECLARATION should be prepared.

_____ The proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT should be required.

PROJECT ANALYST: Teasley

Attachments: Location Map
Initial Study

III. ENVIRONMENTAL ANALYSIS:

This Initial Study checklist is designed to identify the potential for significant environmental impacts which could be associated with a project. All answers of "yes" and "maybe" indicate that there is a potential for significant environmental impacts and these determinations are explained in Section IV.

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
A. <u>Geology/Soils</u> . Will the proposal result in:			
1. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards? <u>No such geologic hazards on site</u>	___	___	<u>X</u>
2. Any increase in wind or water erosion of soils, either on or off the site? <u>Project is for eelgrass protection</u>	___	___	<u>X</u>
B. <u>Air</u> . Will the proposal result in:			
1. Air emissions which would substantially deteriorate ambient air quality? <u>No air emissions</u>	___	___	<u>X</u>
2. The exposure of sensitive receptors to substantial pollutant concentrations? <u>No such concentrations on or near site</u>	___	___	<u>X</u>
3. The creation of objectionable odors? <u>Protection of eelgrass beds</u>	___	___	<u>X</u>
4. The creation of dust? <u>Minimal at most during construction</u>	___	___	<u>X</u>
5. Any alteration of air movement in the area of the project? <u>Air movement would not be altered</u>	___	___	<u>X</u>
6. A substantial alteration in moisture, or temperature, or any change in climate, either locally or regionally? <u>No climate changes would result from this project</u>	___	___	<u>X</u>

Yes Maybe No

C. Hydrology/Water Quality. Will the proposal result in:

- | | | | | |
|----|--|---|---|----------|
| 1. | Changes in currents, or the course or direction of water movements, in either marine or fresh waters?
<u>No change in currents would occur</u> | — | — | <u>X</u> |
| 2. | Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff?
<u>No change to present runoff or drainage</u> | — | — | <u>X</u> |
| 3. | Alterations to the course or flow of flood waters?
<u>Project area is tidelands</u> | — | — | <u>X</u> |
| 4. | Discharge into surface or ground waters, or in any alteration of surface or ground water quality, including, but not limited to temperature, dissolved oxygen or turbidity?
<u>Some temporary turbidity during construction may occur</u> | — | — | <u>X</u> |
| 5. | Discharge into surface or ground waters, significant amounts of pesticides, herbicides, fertilizers, gas, oil, or other noxious chemicals?
<u>Such substances would not be discharged into surface or ground waters</u> | — | — | <u>X</u> |
| 6. | Change in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?
<u>No such changes would occur</u> | — | — | <u>X</u> |
| 7. | Exposure of people or property to water related hazards such as flooding?
<u>Project is located in tidelands</u> | — | — | <u>X</u> |
| 8. | Change in the amount of surface water in any water body?
<u>Not applicable</u> | — | — | <u>X</u> |

Yes Maybe No

D. Biology. Will the proposal result in:

- | | | | | |
|----|---|---|---|---|
| 1. | A reduction in the number of any unique, rare, endangered, sensitive, or fully protected species of plants or animals?
<u>Project to protect eelgrass beds</u> | — | — | X |
| 2. | A substantial change in the diversity of any species of animals or plants?
<u>Protection of eelgrass in tidelands</u> | — | — | X |
| 3. | Introduction of invasive species of plants into the area?
<u>No invasive plant species would be used</u> | — | — | X |
| 4. | Interference with the movement of any resident or migratory fish or wildlife species?
<u>No interference with wildlife species would result</u> | — | — | X |
| 5. | An impact on a sensitive habitat, including, but not limited to streamside vegetation, oak woodland, vernal pools, coastal salt marsh, lagoon, wetland, or coastal sage scrub or chaparral?
<u>Project to protect eelgrass habitat</u> | — | — | X |
| 6. | Deterioration of existing fish or wildlife habitat?
<u>Project would protect fish habitat</u> | — | — | X |

E. Noise. Will the proposal result in:

- | | | | | |
|----|---|---|---|---|
| 1. | A significant increase in the existing ambient noise levels?
<u>No noise associated with eelgrass</u> | — | — | X |
| 2. | Exposure of people to noise levels which exceed the City's adopted noise ordinance?
<u>See E.1 above</u> | — | — | X |
| 3. | Exposure of people to current or future transportation noise levels which exceed standards established in the Transportation Element of the General Plan?
<u>See E.1 above</u> | — | — | X |

Yes Maybe No

F. Light, Glare and Shading. Will the proposal result in:

- | | | | | |
|----|--|-----|-----|----------|
| 1. | Substantial light or glare?
<u>No glare would result</u> | ___ | ___ | <u>X</u> |
| 2. | Substantial shading of other properties?
<u>Project below sea level</u> | ___ | ___ | <u>X</u> |

G. Land Use. Will the proposal result in:

- | | | | | |
|----|--|-----|-----|----------|
| 1. | A land use which is inconsistent with the adopted community plan land use designation for the site?
<u>Project consistent with proposed plan</u> | ___ | ___ | <u>X</u> |
| 2. | A conflict with the goals, objectives and recommendations of the community plan in which it is located?
<u>Project consistent with proposed plan</u> | ___ | ___ | <u>X</u> |
| 3. | A conflict with adopted environmental plans for the area?
<u>Project consistent with proposed plans</u> | ___ | ___ | <u>X</u> |
| 4. | Land uses which are not compatible with aircraft accident potential as defined by a SANDAG Airport Land Use Plan (ALUP)?
<u>Site not subject to an ALUP</u> | ___ | ___ | <u>X</u> |

H. Natural Resources. Will the proposal result in:

- | | | | | |
|----|---|-----|-----|----------|
| 1. | The prevention of future extraction of sand and gravel resources?
<u>Site not suitable for extraction</u> | ___ | ___ | <u>X</u> |
| 2. | The conversion of agricultural land to nonagricultural use or impairment of the agricultural productivity of agricultural land?
<u>Site not suitable for agriculture</u> | ___ | ___ | <u>X</u> |

- I. Recreational Resources: Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities?
Existing recreational opportunities would not be impacted
- | | | |
|-----|-----|----------|
| ___ | ___ | <u>X</u> |
|-----|-----|----------|

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
J. <u>Population</u> . Will the proposal alter the planned location, distribution, density, or growth rate of the population of an area? <u>Project will have no impact on the surrounding population</u>	___	___	<u>X</u>
K. <u>Housing</u> . Will the proposal affect existing housing in the community, or create a demand for additional housing? <u>No impact on current or future housing</u>	___	___	<u>X</u>
L. <u>Transportation/Circulation</u> . Will the proposal result in:			
1. Traffic generation in excess of specific/ community plan allocation? <u>No increase in traffic will result</u>	___	___	<u>X</u>
2. An increase in projected traffic which is substantial in relation to the capacity of the street system? <u>No increase in traffic will result</u>	___	___	<u>X</u>
3. An increased demand for off-site parking? <u>Proposed project will not increase demand for parking</u>	___	___	<u>X</u>
4. Effects on existing parking? <u>No effect on existing parking</u>	___	___	<u>X</u>
5. Substantial impact upon existing or planned transportation systems? <u>No impact on transportation system</u>	___	___	<u>X</u>
6. Alterations to present circulation movements including effects on existing public access to beaches, parks, or other open space areas? <u>No alteration to present circulation system</u>	___	___	<u>X</u>
7. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians? <u>No such increased hazards</u>	___	___	<u>X</u>

Yes Maybe No

M. Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:

a. Fire protection? <u>Area services are adequate</u>	—	—	<u>X</u>
b. Police protection? <u>Area services are adequate</u>	—	—	<u>X</u>
c. Schools? <u>Area services are adequate</u>	—	—	<u>X</u>
d. Parks or other recreational facilities? <u>Area services are adequate</u>	—	—	<u>X</u>
e. Maintenance of public facilities, including roads? <u>Area services are adequate</u>	—	—	<u>X</u>
f. Other governmental services? <u>Area services are adequate</u>	—	—	<u>X</u>

N. Utilities. Will the proposal result in a need for new systems, or require substantial alterations to existing utilities, including:

a. Power? <u>All utilities available</u>	—	—	<u>X</u>
b. Natural gas? <u>All utilities available</u>	—	—	<u>X</u>
c. Communications systems? <u>All utilities available</u>	—	—	<u>X</u>
d. Water? <u>All utilities available</u>	—	—	<u>X</u>
e. Sewer? <u>All utilities available</u>	—	—	<u>X</u>
f. Storm water drainage? <u>All utilities available</u>	—	—	<u>X</u>
g. Solid waste disposal?	—	—	<u>X</u>

Yes Maybe No

All utilities available

- O. Energy. Will the proposal result in the use
of excessive amounts of fuel or energy? X
No excessive energy would be required
- P. Water Conservation. Will the proposal result in:
1. Use of excessive amounts of water? X
No excessive water would be required
 2. Landscaping which is predominantly
non-drought resistant vegetation? X
Eelgrass is below sealevel
- Q. Neighborhood Character/Aesthetics. Will the
proposal result in:
1. The obstruction of any vista or scenic
view from a public viewing area? X
Eelgrass beds are below sealevel
 2. The creation of a negative aesthetic
site or project? X
Project would not create a negative
aesthetic site
 3. Project bulk, scale, materials, or style
which will be incompatible with surrounding
development? X
Bulk, scale, materials and style
compatible with surrounding area
 4. Substantial alteration to the existing
character of the area? X
Project compatible with existing
character of the area
 5. The loss of any distinctive or landmark
tree(s), or a stand of mature trees? X
No such trees on site
 6. Substantial change in topography or ground
surface relief features? X
No substantial change to the topography

Yes Maybe No

7. The loss, covering or modification of any unique geologic or physical features such as a natural canyon, sandstone bluff, rock outcrop, or hillside with a slope in excess of 25 percent? — — X

No such features on site

R. Cultural Resources. Will the proposal result in:

1. Alteration of or the destruction of a prehistoric or historic archaeological site? — — X

No such resources on site

2. Adverse physical or aesthetic effects to a prehistoric or historic building, structure, object, or site? — — X

No such resources on site

3. Adverse physical or aesthetic effects to an architecturally significant building, structure, or object? — — X

No such structures on site

4. Any impact to existing religious or sacred uses within the potential impact area? — — X

No such uses on site

S. Paleontological Resources. Will the proposal result in the loss of paleontological resources? — — X

No paleontological loss will occur

T. Human Health/Public Safety. Will the proposal result in:

1. Creation of any health hazard or potential health hazard (excluding mental health)? — — X

No such health hazards would be created.

2. Exposure of people to potential health hazards? — — X

Same as above

Yes Maybe No

3. A future risk of an explosion or the release of hazardous substances (including but not limited to gas, oil, pesticides, chemicals, radiation, or explosives)?
Same as above

_____ _____ X

U. Mandatory Findings of Significance.

1. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?
No change in resources

_____ _____ X

2. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)?
No such long term impacts

_____ _____ X

3. Does the project have impacts which are individually limited, but cumulatively considerable (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)?
No such short term impacts

_____ _____ X

4. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?
Commercial use with no such impacts

_____ _____ X

INITIAL STUDY CHECKLIST

REFERENCES

A. Geology/Soils

- ☒ City of San Diego Seismic Safety Study, Updated June 1983.
- ☐ USGS San Diego County Soils Interpretation Study -- Shrink-Swell Behavior, 1969.
- ☐ Geology of the San Diego Metropolitan Area, California.
- ☐ U.S. Department of Agriculture Soil Survey - San Diego Area, California, Part I and II, December 1973.
- ☐ Site Specific Report: _____

B. Air

- ☒ Regional Air Quality Strategies (RAQS) - APCD.
- ☐ State Implementation Plan.
- ☐ Site Specific Report: _____

C. Hydrology/Water Quality

- ☐ Flood Insurance Rate Map (FIRM), September 29, 1989.
- ☒ Federal Emergency Management Agency (FEMA), National Flood Insurance Program - Flood Boundary and Floodway Map, September 29, 1989.
- ☐ Site Specific Report: _____

D. Biology

- ☐ Community Plan - Resource Element
- ☐ City of San Diego Vernal Pool Maps
- ☐ California Department of Fish and Game Endangered Plant Program - Vegetation of San Diego, March 1985.
- ☐ Sunset Magazine, New Western Garden Book - Rev. ed. Menlo Park, CA - Sunset Magazine.
- ☐ Robinson, David L., San Diego's Endangered Species, 1988.
- ☐ California Department of Fish and Game, "San Diego Vegetation", March 1985.
- ☐ California Department of Fish and Game, "Bird Species of Special Concern in California", June 1978.
- ☐ State of California Department of Fish and Game, "Mammalian Species of Special Concern in California", 1986.
- ☐ State of California Department of Fish and Game, "California's State Listed Threatened and Endangered Plants and Animals", January 1, 1989.
- ☐ Code of Federal Regulations, Title 50, Part 10, "List of Migratory Birds."

Code of Federal Regulations, Title 50, Part 17, "Endangered and Threatened Wildlife and Plants", January 1, 1989.

Site Specific Report: _____

E. Noise

Community Plan

San Diego International Airport - Lindbergh Field CNEL Maps, January 1987 - December 1987.

Brown Field Airport Master Plan CNEL Maps.

Montgomery Field CNEL Maps.

NAS Miramar CNEL Maps, 1976.

San Diego Association of Governments - San Diego Regional Average Weekday Traffic Volumes 1984-88.

San Diego Association of Governments - Average Daily Traffic Map, 1989.

San Diego Metropolitan Area Average Weekday Traffic Volume Maps, SANDAG, 1989.

Lindbergh Field Airport Influence Area, SANDAG Airport Land Use Commission.

☒ City of San Diego Progress Guide and General Plan.

Site Specific Report: _____

F. Light, Glare and Shading

☐ Site Specific Report: _____

G. Land Use

☒ City of San Diego Progress Guide and General Plan.

Community Plan.

Airport Land Use Plan.

☒ City of San Diego Zoning Maps

FAA Determination

H. Natural Resources

☒ City of San Diego Progress Guide and General Plan.

☒ U.S. Department of Agriculture, Soil Survey - San Diego Area, California, Part I and II, December 1973.

California Department of Conservation - Division of Mines and Geology, Mineral Land Classification.

Division of Mines and Geology, Special Report 153 - Significant Resources Maps.

I. Recreational Resources

- ☒ City of San Diego Progress Guide and General Plan.
- ☐ Community Plan.
- ☐ Department of Park and Recreation
- ☐ City of San Diego - A Plan for Equestrian Trails and Facilities, February 6, 1975.
- ☐ City of San Diego - San Diego Regional Bicycling Map
- ☐ City of San Diego - Open Space and Sensitive Area Preservation Study, July 1984.
- ☐ Additional Resources: _____

J. Population

- ☐ City of San Diego Progress Guide and General Plan.
- ☐ Community Plan.
- ☐ Series VII Population Forecasts, SANDAG.

K. Housing

- ☐ _____

L. Transportation/Circulation

- ☐ City of San Diego Progress Guide and General Plan.
- ☐ Community Plan.
- ☐ San Diego Metropolitan Area Average Weekday Traffic Volume Maps, SANDAG, 1989.
- ☐ San Diego Region Weekday Traffic Volumes 1984-88, SANDAG.
- ☐ Site Specific Report: _____

M. Public Services

- ☐ City of San Diego Progress Guide and General Plan.
- ☐ Community Plan.

N. Utilities

- ☐ _____

O. Energy

- ☐ _____

P. Water Conservation

- ☐ Sunset Magazine, New Western Garden Book. Rev. ed. Menlo Park, CA: Sunset Magazine.

Q. Neighborhood Character/Aesthetics

- ☐ City of San Diego Progress Guide and General Plan.
- ☐ Community Plan.
- ☐ Local Coastal Plan.

R. Cultural Resources

- ☒ City of San Diego Archaeology Library.
- ☐ Historical Site Board List.
- ☐ Community Historical Survey: _____
- ☐ Site Specific Report: _____

S. Paleontological Resources

- ☒ Kennedy, Michael P., and Gary L. Peterson, "Geology of the San Diego Metropolitan Area, California. Del Mar, La Jolla, Point Loma, La Mesa, Poway, and SW 1/4 Escondido 7 1/2 Minute Quadrangles," California Division of Mines and Geology Bulletin 200, Sacramento, 1975.
- ☐ Kennedy, Michael P., and Siang S. Tan, "Geology of National City, Imperial Beach and Otay Mesa Quadrangles, Southern San Diego Metropolitan Area, California," Map Sheet 29, 1977.
- ☐ Site Specific Report: _____

T. Human Health/Public Safety

- ☒ San Diego County Hazardous Materials Management Division
- ☐ FAA Determination
- ☐ State Assessment and Mitigation, Unauthorized Release Listing, Public Use Authorized July 13, 1989.