

COPY

FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE is executed by and between the CITY OF SAN DIEGO, a municipal corporation (hereinafter referred to as "CITY") and WESCO SALES CORPORATION (hereinafter referred to as "LESSEE").

HERETOFORE, CITY and WESCO SALES CORPORATION entered into that certain lease agreement dated and filed July 17, 1995 in the Office of the City Clerk as Document No. 0018192. Said lease agreement required the renovation of the Marina Facilities to be completed by April 30, 1997 or penalties of \$400 per day would accrue. In addition, LESSEE was to submit a Redevelopment Plan on or before the fifth lease year.

WHEREAS, the CITY and LESSEE hereto desire to amend said agreement, to allow for construction of a new Dockmaster's Office & Marina Facilities Building rather than renovation, acceleration of the Redevelopment Plan in the manner herein set forth, and waiving of the current penalty in exchange for a revised penalty date based on completion of the General Development Plan (Amended).

NOW, THEREFORE, for good and valuable consideration, mutually exchanged between the parties, the parties hereby agree that the following Sections are amended as follows:

- 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 General Development Plan (Amended) described in Sections 6.12 Development Plan and 9.2 General Development Plan (Amended) hereof and with all applicable laws.
- 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 including but not limited to the submissions and approvals set forth in Sections 6.12, 6.14 and 6.15 as amended herein, 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.

DOCUMENT NO. 00-18527

FILED JUN 08 1998
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

- 6.12 Development Plan. LESSEE agrees to develop, at no cost to CITY, the leased premises, in accordance with the General Development Plan, as heretofore amended and approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. Said development of the leased premises includes new docks at an estimated cost of \$1,500,000 and redevelopment of the land area improvements in a phased redevelopment at an additional cost of approximately \$2,156,000. The general contents and provisions of the Development Plan (Amended) are described in Section 9.2 (Amended) hereof. The City Manager or his designee, with LESSEE'S approval of any change requiring extra expense to LESSEE, shall have the authority to authorize changes to the plan, provided that the basic concept may not be modified without City Council approval and LESSEE'S consent, 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 and complete development as scheduled shall constitute a major default and subject this lease to termination by CITY as set forth herein.
- 6.14 Coastal Commission Approval. LESSEE shall comply with the California Coastal Act, at its sole cost, and apply to the San Diego Coast Regional Commission or other such authorized state body for any necessary coastal development permit authorizing the construction of improvements in the Coastal Zone. LESSEE will proceed with diligence to obtain such permit(s), but if unable to obtain such permit(s) despite LESSEE'S best efforts within twenty four (24) months from the effective date of this lease amendment, this lease will remain in full force and effect as to every provision except development of the improvements shown in Section 9.2 Development Plan (Amended) will not be required and the lease will expire effective July 31, 2002.
- 6.15 Failure to Meet Development Schedule. In the event LESSEE fails to complete construction in accordance with the Redevelopment Schedule of the General Development Plan hereof, it is specifically agreed by LESSEE and CITY that CITY will be entitled to liquidated damages in the amount of Four Hundred Dollars (\$400.00) per day for every day LESSEE fails to meet the completeness date for each phase set forth in the Redevelopment Schedule. In the event that construction is not completed within 12 months following the date specified for completion of all phases of the General Development Plan (Amended), CITY may, at its option, terminate this lease with no further action required by City.
- 6.16 Redevelopment Plan (Amended). LESSEE herein submits and CITY approves, subject to all necessary permits, approvals and inspections by other City Departments, the attached Development Plan and Redevelopment Schedule as described in attached EXHIBIT 9.2. General Development Plan (Amended).

6.17 Water Quality. No discharge of sewage into marina waters or waters of Mission Bay is allowed. LESSEE agrees to require and monitor the placement of dye tablets in the holding tanks of any and all vessels moored at this marina. No vessel may moor at this marina without holding tank facilities. Dye tablets shall be required for all vessels moored at the marina and be made available for all boaters at the Dockmaster's Office. Presence of dye tablets will be checked at first occupancy at the marina and periodically thereafter. Pump-out facilities are available at several locations on Mission Bay.

Nothing herein is intended to change any other terms or conditions of the existing lease agreement.

Dated 6-12-98, ^{see} 1997

THE CITY OF SAN DIEGO

By Robert J. Collins Jr.
City Manager

WESCO SALES CORPORATION

Dated _____, 1997

By Frank W. Butler
Frank W. Butler, President

APPROVED as to form and legality this 19 day of June, 1998

CASEY GWINN, City Attorney

By William T. Griffith
William T. Griffith, Deputy City Attorney

MFW:csn

4/23/98

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EXHIBIT 9.4 GENERAL DEVELOPMENT PLAN (Amended)

DEVELOPMENT SCHEDULE

Phase I: Fuel Dock Replacement

Completion Date: Completed August 1, 1997

Phase II: Boat Slip & Dock Replacement

Completion Date: Completed January 15, 1997

REDEVELOPMENT SCHEDULE

Individual Phases should be over-lapped end to beginning to ensure completion of each Phase within contracted time period (phases can and should start early). The completion of each individual phase is required by the below agreed upon dates, or the \$400 per day penalty will apply per Section 6.15.

Phase III: Construction of New Dockmaster's Office and Marina Facilities Building, to include underground utility service to all new proposed structures for all phases of development, at an estimated total cost of \$313,500.

Completion Date: The later of a date nine (9) months after obtaining all permits and approvals or **May 31, 1999**.

Phase IV: Construction of New Building (No. 4 on Proposed Master Plan), and related items at an estimated total cost of \$294,500.

Completion Date: The later of a date ten (10) months after obtaining all permits and approvals or **April 30, 2000**.

Phase V: Remodel Existing Office/Sales (Building No.5 on Proposed Master Plan) including parking area adjacent to building at an estimated total cost of \$250,000.00.

Completion Date: The later of a date ten (10) months after obtaining all permits and approvals or **March 31, 2001**.

Phase VI: Construction of new buildings (Nos. 6 and 7 in Proposed Master Plan) and construct part of perimeter walkway, at an estimated total cost of \$1,005,500.00

Completion Date: The later of a date fourteen (14) months after obtaining all permits and approvals or **June 30, 2002**.

Phase VII Rebuild Parking Area, complete perimeter walkway, landscape, irrigation, lighting and miscellaneous marina items at an estimated total cost of \$292,500. **NOTE: This is the final phase of construction. All items required to complete this Redevelopment Plan are to be completed by the end of this phase.**

Completion Date The later of a date three (3) months after obtaining all permits and approvals or **October 31, 2002**.

All construction periods commence from the time all permits and agency approvals are obtained.

The entire cost of Redevelopment shall be paid entirely by Lessee, and is currently estimated to be at least \$2,156,000.00.

The \$400 per day penalty discussed in Section 6.15 will be assessed based upon the completion date set for each phase.

All seven phases set forth herein shall be completed no later than October 31, 2002. Provided that LESSEE has obtained the permits described in Section 6.14 above, a failure to complete all phases of development as required herein shall constitute a material and substantial default and, at CITY'S option, shall subject this lease to termination as set forth in Section 6.15.

EXHIBIT 9.3 PLANS AND PROPOSED BUILDING ELEVATIONS

1. DANA LANDING - EXISTING SITE PLAN
2. DANA LANDING - REDEVELOPMENT PROPOSED MASTER PLAN
3. PHASE III
4. PHASE IV
5. PHASE V
6. PHASE VI
7. Phase VII

LEGEND

- 1 FUEL DOCK
- 2 BOAT SLIPS
- 3 PEDESTRIAN WALK
- 4 MARINA SALES ——— 3,600 SQ FT
- 5 MARINA SALES ——— 5,500 SQ FT
- 6 MARINA SALES ——— 5,440 SQ FT
- 7 MARINA SALES ——— 4,832 SQ FT
- 8 MARINA FACILITIES ——— 1,296 SQ FT

TOTAL BUILDING AREA 20,668 SQ FT

TOTAL PARKING SPACES 152 SPACES

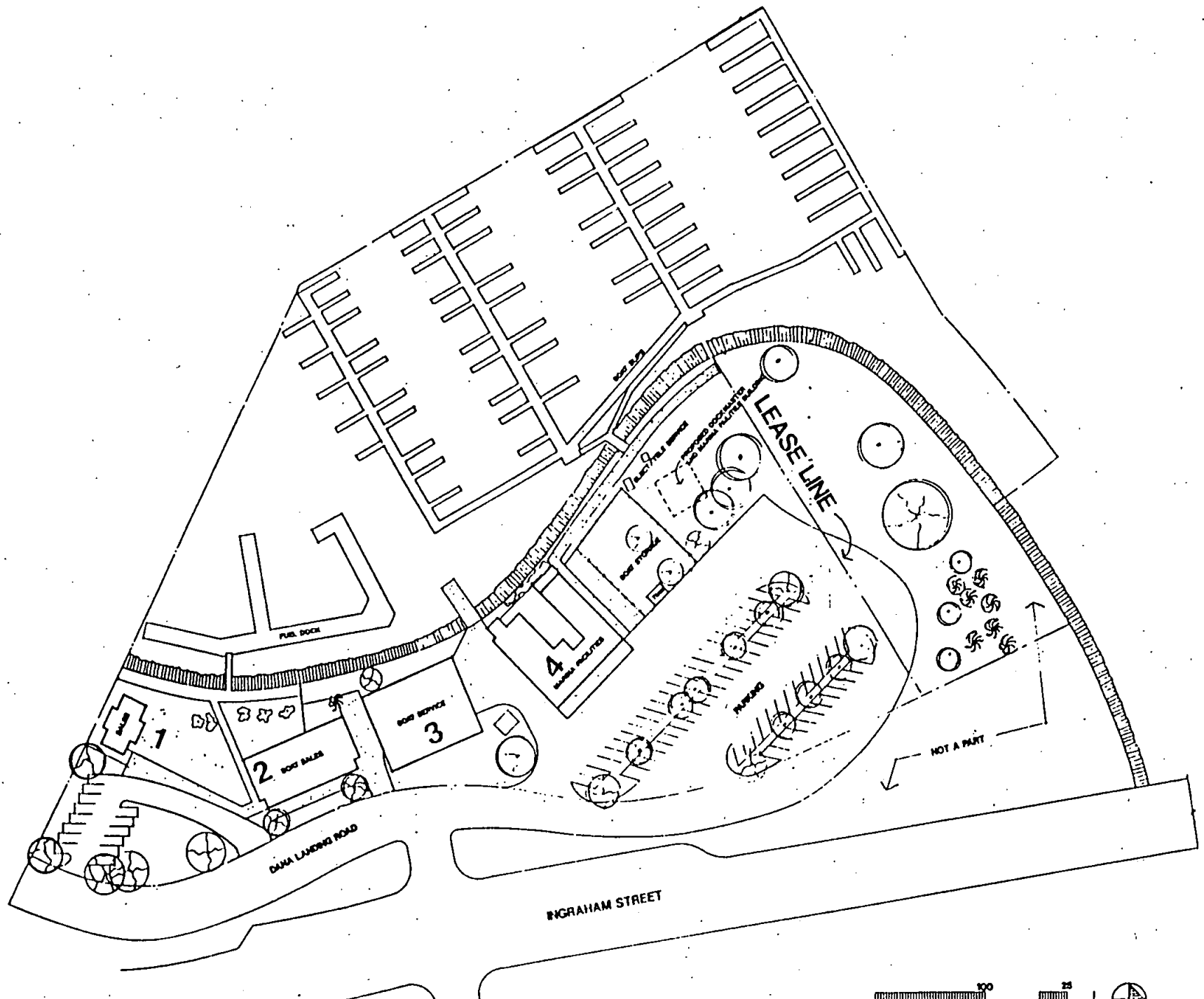
TOTAL BOAT SLIPS 80 SLIPS



DANA LANDING REDEVELOPMENT

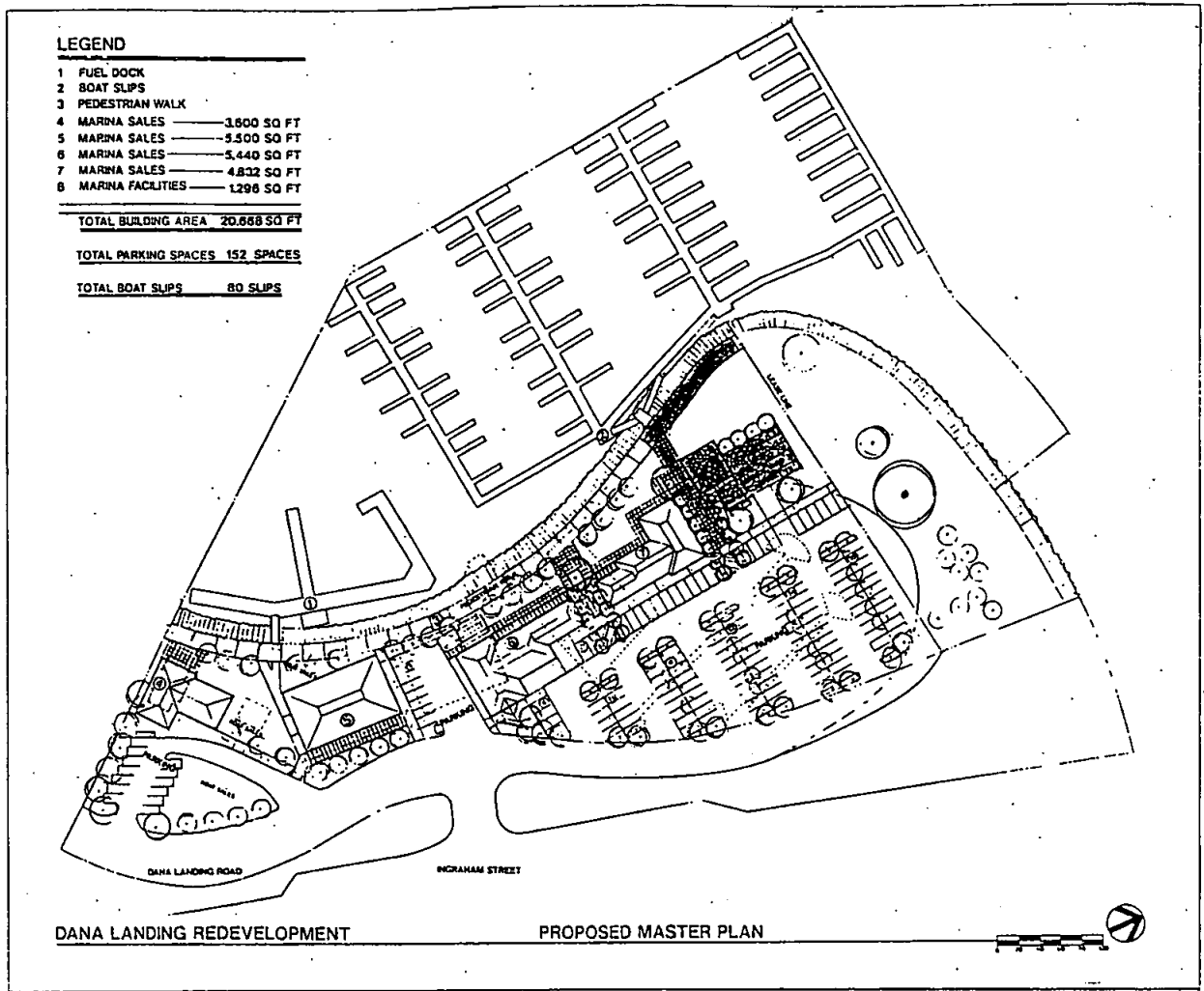
PROPOSED MASTER PLAN





DANA LANDING-EXISTING SITE PLAN



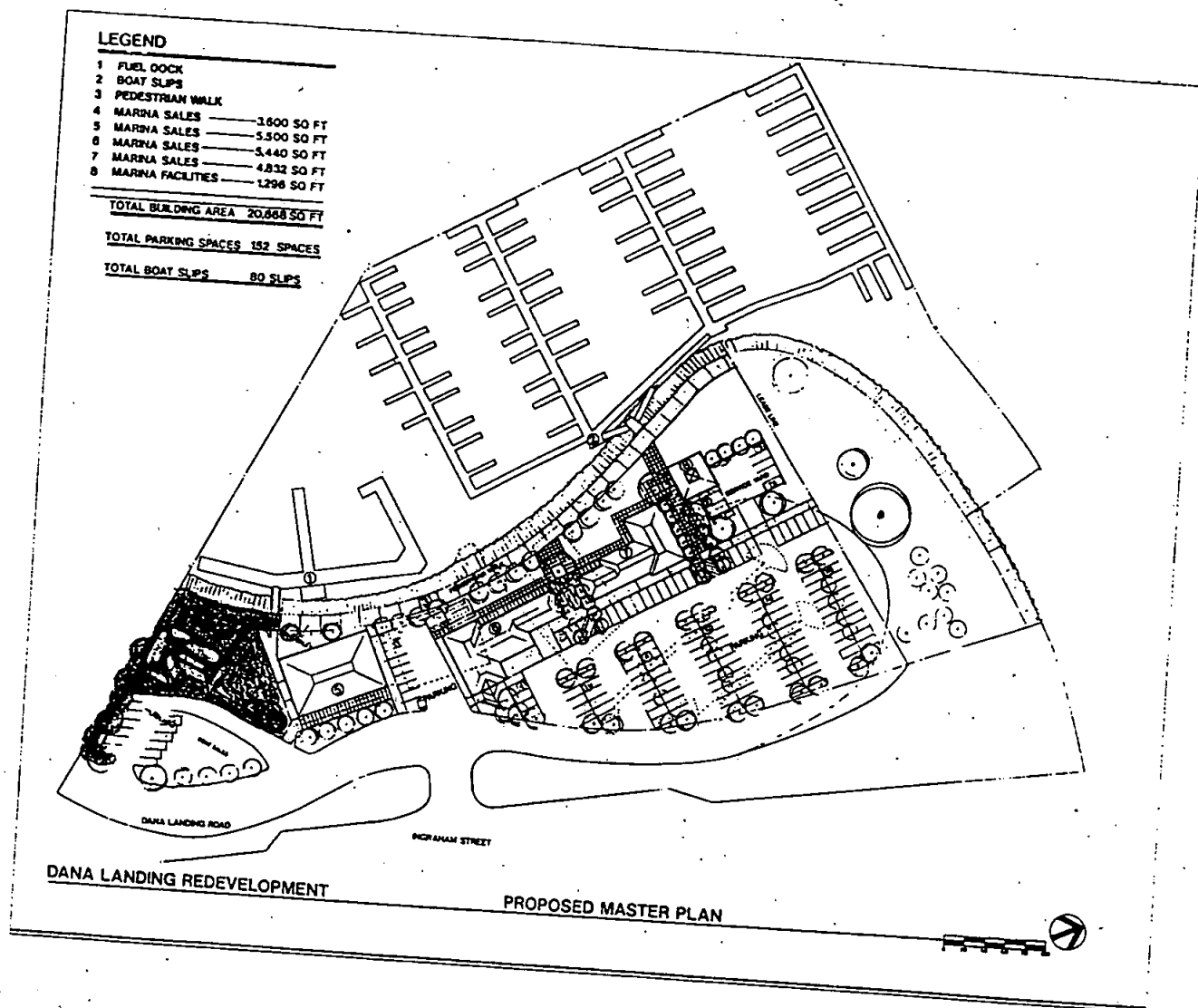


PHASE III

● Construct New Marina Facilities Building (Dockmaster's Office & Toilet Rooms)	\$	224,500
● Remove Existing Dry Boat Storage.		15,000
● Relocate Electrical / Telephone Services for Slips		23,500
(Repair Site Work Where Required)		12,500
● Permits and Professional Fees		38,000

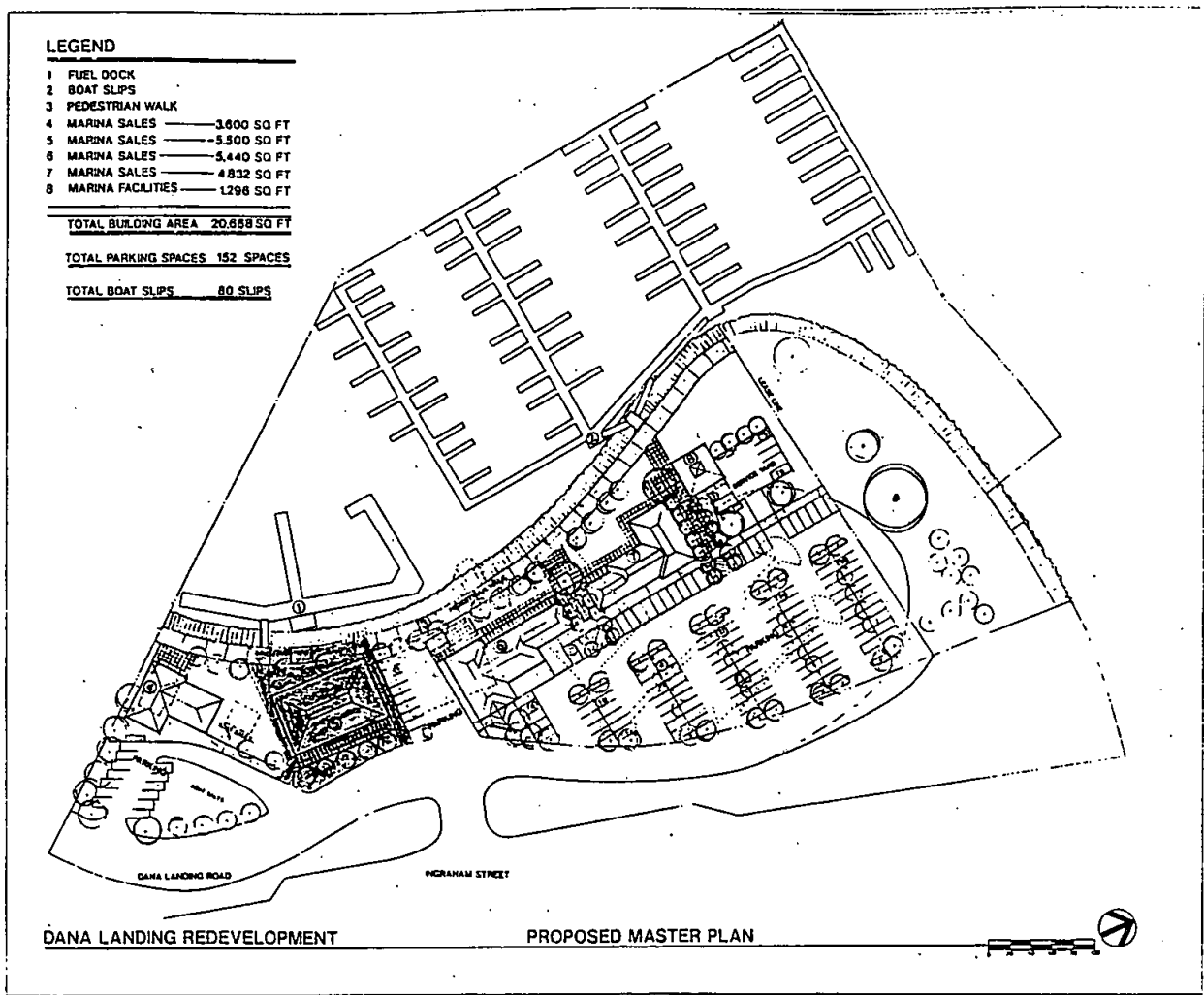
TOTAL **\$** **313,500**

Total Construction Period for This Phase Ten (10) Months After Securing All Permits



PHASE IV

● Build New Structure to Replace Building I (Building No. 4 on Plan Above)	\$	
● Demo Existing Building, Construct New Patio & Trellis Area (After new structure is completed)		238,750
● Construct New Pedestrian Walk, Including Lighting, Landscape & Irrigation.		10,500
● Permits and Professional Fees		12,000
TOTAL		33,250
	\$	294,500
Total Construction Period for This Phase Ten (10) Months After Securing All Permits		

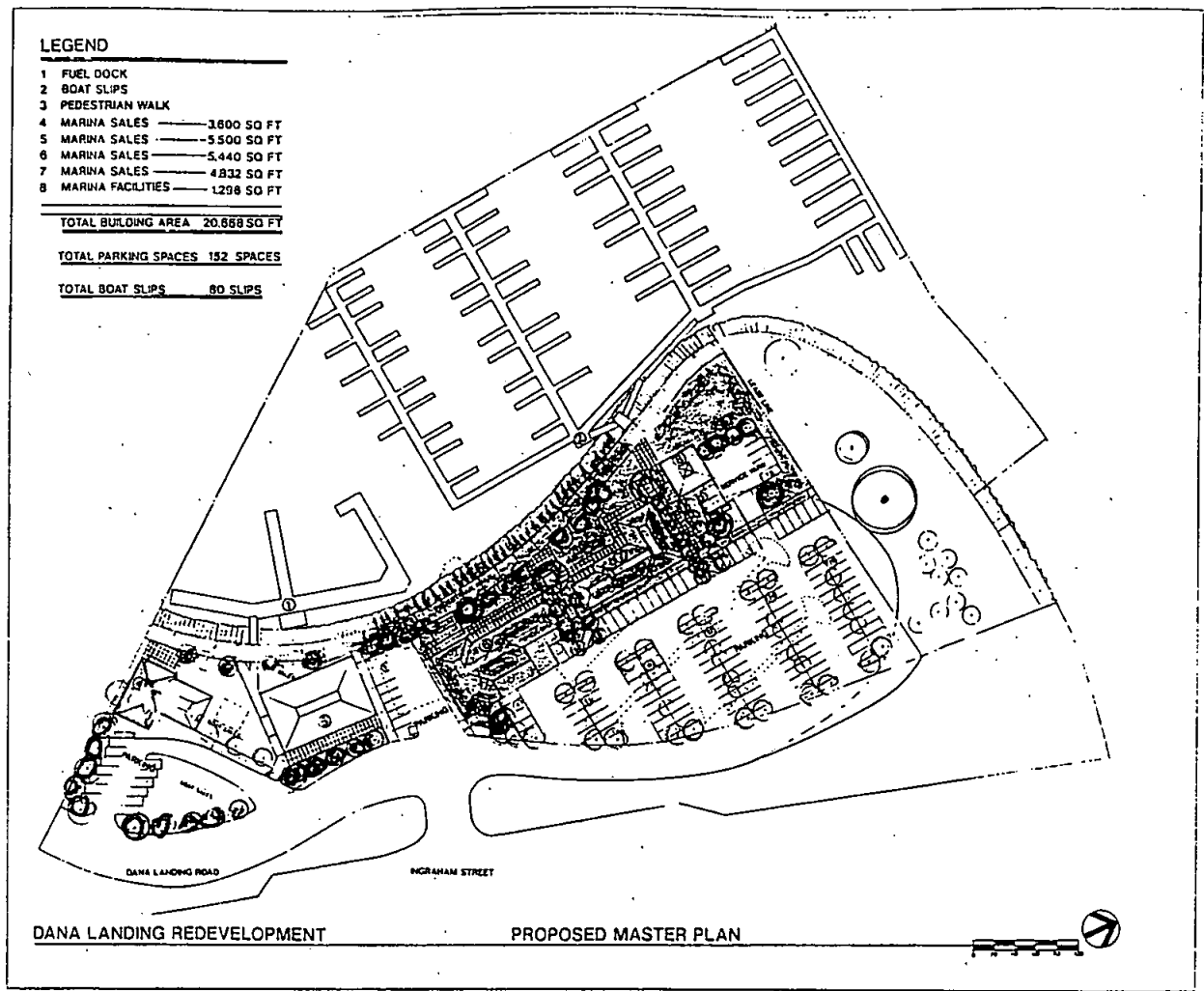


PHASE V

● Remodel Existing Building (No. 5 on Plan Above)	\$ 212,750
● Reconstruct Exterior Walk(s) and Parking Area.	18,500
● Permits and Professional Fees.	18,750

TOTAL \$ 250,000

Total Construction Period for This Phase Ten (10) Months After Securing All Permits



PHASE VI

● Construct New Buildings (No. 6 and 7)	\$	
Remove (2) Existing Structures, Regate Site Area ..		744,625
● Construct New Walk Areas, Remove Existing Ramp, Reconstruct Rip Rap and Sloped Areas		112,125
● Construct New Site Improvements Relating to Landscape Design; Install New Irrigation and Planted Areas		45,250
● Miscellaneous Site Improvements		25,500
● Permits & Professional Fees.		78,000
TOTAL	\$	<u>1,005,500</u>
Total Construction Period for This Phase Fourteen (14) Months After Securing All Permits		

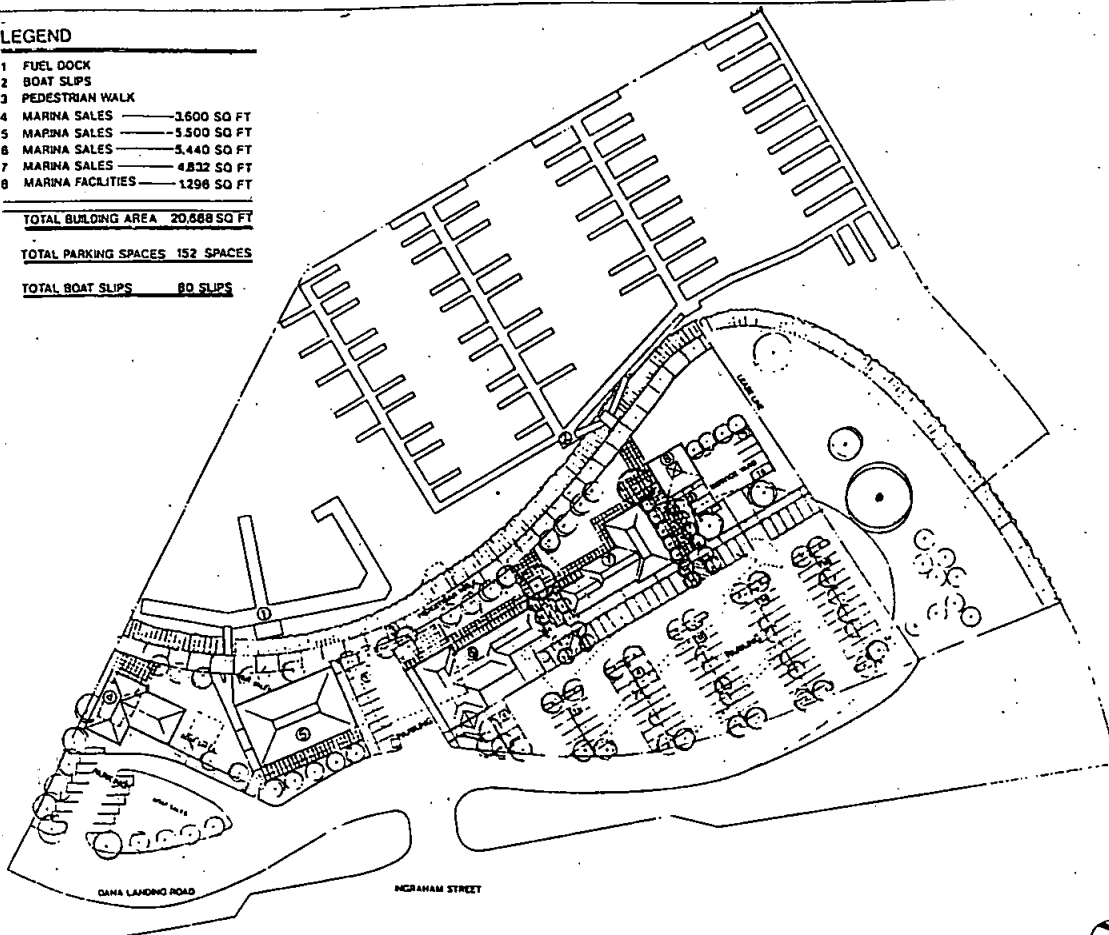
LEGEND

- 1 FUEL DOCK
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- 6 MARINA SALES ——— 5,440 SQ FT
- 7 MARINA SALES ——— 4,832 SQ FT
- 8 MARINA FACILITIES ——— 1,296 SQ FT

TOTAL BUILDING AREA 20,668 SQ FT

TOTAL PARKING SPACES 152 SPACES

TOTAL BOAT SLIPS 80 SLIPS



DANA LANDING REDEVELOPMENT

PROPOSED MASTER PLAN

PHASE VII

◆ Rebuild Parking Area, Including Lighting Standards, Landscape, Irrigation, Sidewalks.	\$ 247,438
◆ Incorporate Park Area into New Program (Now Owned & Maintained by Parks Dept.)	
◆ Relocate Existing Water System.	23,125
◆ Permits & Professional Fees.	21,937

TOTAL

\$ 292,500

Total Construction Period for This Phase Four (3) Months After Securing All Permits

ORDINANCE NUMBER O- 18527 (NEW SERIES)

ADOPTED ON JUN 08 1998

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO
EXECUTE A FIRST AMENDMENT TO LEASE WITH WESCO
SALES CORPORATION (DANA LANDING) FOR
ACCELERATION OF THE REDEVELOPMENT PLAN.

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

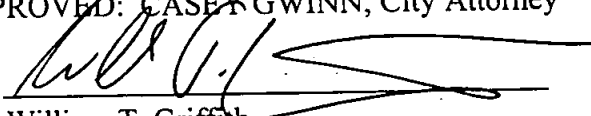
Section 1. That the City Manager is authorized to execute, for and on behalf of The City of San Diego, a First Amendment to Lease with Wesco Sales Corporation (Dana Landing) for acceleration of the Redevelopment Plan in lieu of renovation of existing facilities and waiver of current renovation schedule penalties in exchange for a revised penalty date based on completion of the General Development Plan (Amended), under the terms and conditions set forth in that First Amendment to Lease on file in the office of the City Clerk as Document No.

OO- 18527

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

APPROVED: CASEY GWINN, City Attorney

By


William T. Griffith

Deputy City Attorney

WTG:cdk
05/07/98
Or.Dept:REA
Job:253223
O-98-130
Form=leaseo.frm

Passed and adopted by the Council of The City of San Diego on

June 8, 1998 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, STALLINGS, MCCARTY

VARGAS, MAYOR GOLDING

NAYS: NONE.

NOT PRESENT: WARDEN

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O- 18527 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

May 26, 1998 and on June 8, 1998

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Peggy Rogers, Deputy