MASTER GROUND LEASE AGREEMENT

by and between

COUNTY OF ORANGE

and

DANA POINT HARBOR PARTNERS, LLC

Dated as of October 29, 2018

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MASTER GROUND LEASE AGREEMENT DANA POINT HARBOR

THIS MASTER GROUND LEASE AGREEMENT ("**Lease**") is made and entered into as of the 29th day of October, 2018 ("**Effective Date**"), by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**"), as lessor, and DANA POINT HARBOR PARTNERS, LLC, a California limited liability company (together with its permitted successors and assigns, "**Lessee**"), as lessee. County and Lessee may be referred to herein each, individually, as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, County is the fee owner of that certain real property (the "**Property**") located in the City of Dana Point and comprised of the land described on **Exhibit A-1** attached hereto and depicted on **Exhibit A-2** attached hereto, together with all the Improvements (as defined below) located thereon;

WHEREAS, County and Lessee have entered into that certain Option to Lease dated as of July 30, 2018 (the "**Option Agreement**"), pursuant to which County granted Lessee an option (the "**Option**") to lease the Property in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, the redevelopment and renovation of the Property, all in accordance with the terms and provisions hereof; and

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. DEFINITIONS AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the following meanings:

1.1.1 "AAA" shall have the meaning set forth in Subsection 5.18.

1.1.2 "ABATEMENT PERIOD" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.3 "ACCOUNTING YEAR" shall have the meaning set forth in Section 15.7.

1.1.4 "ACTUAL COST" shall mean (a) the out-of-pocket costs and expenses actually incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors (including the use of County's environmental consultant), (b) costs incurred in connection with appraisals, (c) the reasonable value of services actually provided by County's in-house counsel, and (d) the reasonable value of services actually provided by County's lead lease negotiator/administrator

and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below County department head) required by the lead lease negotiator/administrator for technical expertise or assistance. In those instances in which Lessee is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Lessee.

1.1.5 "ADJUSTMENT DATE" shall have the meaning set forth in Subsection 4.2.1(b).

1.1.6 "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Subsection 4.3.

1.1.7 "AFFILIATE" means, with respect to any person (which is used herein includes an individual, trust or entity), which directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person.

1.1.8 "AFFORDABLE HOTEL" shall have the meaning set forth in Subsection 1.1.129.

1.1.9 "AGGREGATE TRANSFER" shall have the meaning set forth in Subsection 4.3.1(a).

1.1.10 "ALTERATIONS" means, with respect to each Component, the construction of any alterations or modifications to the Improvements located on such Component or the construction of any new Improvements on the Property, at any time during the Term, excluding the Redevelopment Work and Subsequent Renovation.

1.1.11 "ANTENNAE" shall have the meaning set forth in Subsection 3.2.2(d).

1.1.12 "ANNUAL MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.13 "ANNUAL RENT" shall have the meaning set forth in Subsection 4.2.

1.1.14 "APPLICABLE LAWS" shall have the meaning set forth in Subsection 1.2.1.

1.1.15 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the Prime Rate plus three percent (3%) per annum; provided, however, that the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws.

1.1.16 "APPLICABLE REDEVELOPMENT COSTS" mean, with respect to each Component, all reasonable market standard out-of-pocket Hard Costs paid to third parties for the construction of the Redevelopment Work on such Component, including the profit,

overhead and general conditions paid to the general contractor that is responsible for the construction of the Redevelopment Work for such Component; provided, however, if such general contractor or other third party is an Affiliate of Lessee, then Lessee must be able to demonstrate to County's reasonable satisfaction (which may entail, for example and without limitation, providing County with competitive pricing from unaffiliated third parties, if requested by County), that such amounts are not in excess of then-current competitive market-based rates for comparable quality of work. Notwithstanding the above, Bellingham Marine, an Affiliate of Lessee, utilizes dock materials and systems that are proprietary to Bellingham Marine and unique within the industry for dock construction. As such, if Lessee uses Bellingham Marine to perform the dock construction work within the Marina Component as part of the Redevelopment Work, Lessee shall demonstrate that it has received competitive market rate pricing for such work by providing County with evidence reasonably satisfactory to County of the pricing that Bellingham Marine has charged unrelated third party customers for comparable work that has been recently completed (i.e., within 18 months of performing such work within the Harbor). Evidence of such pricing shall include, without limitation, copies of paid invoices from Bellingham Marine for said unrelated third party work. If County determines that Lessee paid any of its Affiliates any amount in excess of the foregoing limitations, then 120% of such excess shall be deducted from Applicable Redevelopment Costs. For example, if Lessee paid an Affiliated general contractor $2,500,000 for work that it is determined could have been performed, if competitively priced, for $2,000,000, then the Applicable Redevelopment Cost associated with such work shall be $1,900,000 (i.e., the difference of $2,500,000 - $2,000,000 = $500,000, plus an additional 20% of such $500,000 = $100,000, for a total of $600,000 which amount is then subtracted from the original $2,500,000).

1.1.17 "APPROVED PROPOSAL SUBMITTALS" shall have the meaning set forth in Section 5.1.

1.1.18 "APPROVED RETAIL SUBLEASE" shall have the meaning set forth in Subsection 12.1.3.

1.1.19 "APPROVED SLIP LEASE" shall have the meaning set forth in Subsection 12.1.3.

1.1.20 "APPROVED STORAGE LEASE" shall have the meaning set forth in Subsection 12.1.3.

1.1.21 "AS-BUILT PLANS" shall have the meaning set forth in Subsection 5.8.7.

1.1.22 "ASSIGNMENT STANDARDS" shall have the meaning set forth in Section 12.2.

1.1.23 "ASSUMED CONTRACTS" means all those leases and other contracts listed on **Exhibit E** attached hereto, which contracts County has assigned to Lessee, and Lessee has taken assignment of, effective as of the Effective Date, as contemplated by the Option Agreement.

1.1.24 "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Orange, California, or its designee.

1.1.25 "AWARD" shall have the meaning set forth in Subsection 6.1.3.

1.1.26 "BASE PERIOD" shall have the meaning set forth in **Exhibit F**.

1.1.27 "BENEFICIAL INTEREST" shall have the meaning set forth in Subsection 4.3.1(b).

1.1.28 "BMP FACT SHEETS" shall have the meaning set forth in Subsection 10.2.2(b)(3).

1.1.29 "BMPs" shall have the meaning set forth in Subsection 10.2.2(b)(3).

1.1.30 "BOARD" shall mean the Board of Supervisors for the County of Orange.

1.1.31 "BOUTIQUE HOTEL" shall have the meaning set forth in Subsection 1.1.129.

1.1.32 "BREAKWATER" shall have the meaning set forth in Subsection 3.2.2(f).

1.1.33 "BRIDGE STRUCTURE" shall have the meaning set forth in Subsection 10.7.

1.1.34 "BUSINESS DAY" shall have the meaning set forth in Section 16.6.

1.1.35 "CAD Files" shall have the meaning set forth in Subsection 5.8.7.

1.1.36 "CALCULATION NOTICE" shall have the meaning set forth in Subsection 4.3.6(b)

1.1.37 "CAPITAL IMPROVEMENT FUND" shall have the meaning set forth in Section 5.16.

1.1.38 "CASp" shall have the meaning set forth in Section 10.11.

1.1.39 "CASp REPORT" shall have the meaning set forth in Section 10.11.

1.1.40 "CDP" shall mean the Dana Point Harbor Revitalization, Commercial Core Project, Coastal Development Permit (CDP13-0018), as amended from time to time.

1.1.41 "CERTIFICATE OF OCCUPANCY" means a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval required for legal use and occupancy of any of the Improvements.

1.1.42 "CHANGE OF OWNERSHIP" shall have the meaning set forth in Subsection 4.3.1(c).

1.1.43 "CHANGE OF CONTROL" shall have the meaning set forth in Subsection 4.3.1(d).

1.1.44 "CHIEF REAL ESTATE OFFICER" shall mean the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Lessee, such other person as may be designated by the Board.

1.1.45 "CITY" shall mean the City of Dana Point, California.

1.1.46 "CLAIMS" shall have the meaning set forth in Subsection 8.1.

1.1.47 "CO DATE" means, (a) with respect to the Commercial Core Component, the date of the issuance of a Certificate of Occupancy for the Improvements in the Commercial Core identified as the "Retail Center" on **Exhibit A-2**, (b) with respect to the Hotel Component, the date of the issuance of a Certificate of Occupancy for the Hotel Improvements, and (c) with respect to the Marina Component, the date the last of the Marina Improvements has been completed in accordance with the building permit issued therefor as reasonably determined by the Governmental Authority that issued such building permit.

1.1.48 "COASTAL ACT" shall mean the California Coastal Act of 1976, as codified in Public Resources Code, Section 30000 et seq., as amended from time to time.

1.1.49 "COMMENCEMENT OF CONSTRUCTION" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.50 "COMMERCIAL CORE" or "COMMERCIAL CORE COMPONENT" means the Component of the Property identified as such on **Exhibit A-2** and currently operated by Vintage Marina Partners, LP ("**Commercial Core Operator**") pursuant to that certain Operating Agreement for the operation of the Commercial Core, entered into by and between the County and Commercial Core Operator, as of February 6, 2001.

1.1.51 "COMPONENT" means each of three (3) portions of the Property including the Commercial Core, Hotel and Marina (both Wet Marina and Dry Marina), the boundaries and location of which are identified on **Exhibit A-2,** subject to Lessee's right to reallocate portions of the Property wherein marina related services are provided and which are currently located within the Commercial Core Component to the Marina Component, subject to the reasonable consent of the County. In addition, subject to the limitations contained herein, Lessee shall have the right to consolidate or re-allocate the management of the parking areas on the Property, in whole or in part.

1.1.52 "CONDEMNATION" shall have the meaning set forth in Subsection 6.1.1.

1.1.53 "CONDEMNOR" shall have the meaning set forth in Subsection 6.1.4.

1.1.54 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index for Los Angeles- Riverside-Orange County [All Urban Consumers-All Items, not seasonally adjusted (Base Period 1982-84=100)], as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as is published by the U.S. Government shall be used, and if none is so published, then another index generally recognized and authoritative shall be substituted by the Chief Real Estate Officer.

1.1.55 "CONSTRUCTION CHANGE DIRECTIVE" shall have the meaning set forth in Subsection 5.7.3.

1.1.56 "CONSTRUCTION SCHEDULE" shall have the meaning set forth in Subsection 5.3.2.

1.1.57 "CONTROLLING INTEREST" shall have the meaning set forth in Subsection 12.2.4.

1.1.58 "COST" shall have the meaning set forth in Subsection 1.1.96(b)(13).

1.1.59 "COUNTY" shall have the meaning set forth in the preamble to this Lease. Any reference to the County herein, unless expressly stated to the contrary, shall refer to the County solely in its capacity as owner of the Property and not the County in its capacity as a land use or other governmental approval authority.

1.1.60 "COUNTY DOCUMENTS" shall mean those certain documents, materials and other information relating to the Property provided by the County to Lessee prior to the Effective Date pursuant to the Option Agreement, including without limitation, the documents, materials and other information described on **Exhibit L** attached hereto.

1.1.61 "COUNTY INDEMNIFIED PARTY" and "COUNTY INDEMNIFIED PARTIES" shall have the meaning set forth in Section 8.1.

1.1.62 "COUNTY OPTION" shall have the meaning set forth in Subsection 12.2.4.

1.1.63 "COUNTY OPTION PRICE" shall have the meaning set forth in Subsection 12.2.4.

1.1.64 "COUNTY PARTIES" shall have the meaning set forth in Subsection 10.2.2(b)(2).

1.1.65 "COUNTY'S HARBOR OFFICE" shall have the meaning set forth in Section 11.15.

1.1.66 "CREO OFFICE" shall mean the Office of the Chief Real Estate Officer, County Executive Office, Orange County.

1.1.67 "DAMP" shall have the meaning set forth in Subsection 10.2.2(b)(3).

1.1.68 "DATE OF TAKING" shall have the meaning set forth in Subsection 6.1.2.

1.1.69 "DRB SPECIFICATION" shall have the meaning set forth in Subsection 5.18.

1.1.70 "DRY MARINA" means the land-side portions of the Marina Component, which consists of all portions of the Marina Component excluding the Wet Marina.

1.1.71 "DRY STORAGE IMPROVEMENTS" shall mean the overnight boat dry storage area located within the Marina Component.

1.1.72 "EFFECTIVE DATE" shall have the meaning set forth in the preamble to this Lease.

1.1.73 "ENCUMBRANCE" shall have the meaning set forth in Subsection 13.1.1(2).

1.1.74 "ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 13.1.1(2) and 13.1.1(3).

1.1.75 "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or, in the event such index is no longer published or otherwise available, such substitute index that is generally recognized and authoritative shall be substituted by the Chief Real Estate Officer.

1.1.76 "EQUITY ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 13.1.1(4).

1.1.77 "EQUITY FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 13.2.1(c).

1.1.78 "EVENT(S) OF DEFAULT" shall have the meaning set forth in Section 14.1.

1.1.79 "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in Subsection 4.2.3(c).

1.1.80 "EXCLUDED DEFAULTS" shall have the meaning set forth in Subsection 13.3.3.

1.1.81 "EXCLUDED HARBOR PATROL OFFICE" shall have the meaning set forth in Section 11.13.

1.1.82 "EXCLUDED IMPROVEMENTS" shall have the meaning set forth in Subsection 1.2.5.

1.1.83 "EXCLUDED TRANSFERS" shall have the meaning set forth in Subsection 4.3.1(e).

1.1.84 "EXEMPT INDIVIDUAL BOAT TRANSACTION" shall have the meaning set forth in Subsection 3.2.2(g).

1.1.85 "EXISTING EIR" shall have the meaning set forth in Subsection 5.5.7.

1.1.86 "EXTENDED TIME" shall have the meaning set forth in Section 16.8.

1.1.87 "FINAL CO DATE" shall have the meaning set forth in Section 7.1.

1.1.88 "FINAL PLANS AND SPECIFICATIONS" shall have the meaning set forth in Subsection 5.4.3.

1.1.89 "FINANCING EVENT" shall have the meaning set forth in Subsection 13.1.1(1).

1.1.90 "FIRST ADJUSTMENT DATE" shall have the meaning set forth in Subsection 4.2.1(b).

1.1.91 "FIRST OFFER NOTICE" shall have the meaning set forth in Section 11.13.

1.1.92 "FORCE MAJEURE" shall mean any inability of a Party to perform any non-monetary obligation under this Lease due to fire or other casualty, earthquake, flood, tornado or other natural disaster, civil disturbance, war, organized labor dispute (if unrelated to the specific business practices of Lessee or its Sublessees, or its or their respective contractors, agents, representatives, or consultants), freight embargo, governmental order or other unforeseeable event beyond the reasonable control of the Party required to perform the subject obligation, including, in the case of a delay in the commencement or completion by Lessee of the Redevelopment Work for any Component or the Subsequent Renovation thereof, a delay in such construction caused by a hidden and unforeseeable condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Property which Lessee was unaware of and could not reasonably have foreseen as of the commencement of such construction activity, although Lessee shall, to the extent possible, commence and complete the portions, if any, of the work not impacted by such delay within the timeframes set forth in this Lease. In addition, in the case of the construction of the Redevelopment Work or Subsequent Renovation, Force Majeure shall also include (a) Unreasonable County Action, as defined in and subject to the terms and conditions of Section 5.7 of this Lease; and (b) any delays resulting from legal challenges under the California Environmental Quality Act or otherwise that are brought by third parties that challenge or appeal any governmental approvals or entitlements that are required to be obtained by Lessee before Lessee can commence the Redevelopment Work or Subsequent Renovation, as applicable, an injunction or restraining order against the performance of the Redevelopment Work or Subsequent Renovation issued pursuant to a court action, or a delay in processing any approvals or permits by the California Coastal Commission resulting from the failure of the California Coastal Commission to timely respond to a submittal or application or to take action in

connection therewith; provided that (i) the plaintiff seeking such injunction or restraining order is not Lessee or any Affiliate of Lessee, (ii) the injunction or restraining order is not being sought as a result of any act or omission which would be a default by Lessee under this Agreement, (iii) Lessee shall diligently pursue and shall exhaust all commercially reasonable efforts to accomplish (x) the defense of such legal challenge to a final, non-appealable judgment regardless of whether Lessee is a named party in the action, (y) the removal of any such restraining order or injunction, as applicable, and/or (z) the response or other action required of the California Coastal Commission, and (iv) in no event shall any delay or series of delays resulting from the circumstances described in this clause (b) result in a delay, when taken in the aggregate, of more than three (3) years.

1.1.93 "FORECLOSURE TRANSFER" shall have the meaning set forth in Subsection 13.2.1(a).

1.1.94 "FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 13.2.1(b).

1.1.95 "GOVERNMENTAL AUTHORITIES" or "GOVERNMENTAL AUTHORITY" shall mean the City, County, State, United States of America, California Coastal Commission and/or any other local, state or federal governmental or quasi-governmental entity with jurisdiction over the Property.

1.1.96 "GROSS RECEIPTS" shall mean, with respect to each Component, the aggregate of (A) for any portion of the Property which is subject to an arms-length Sublease to a person or entity which is not an Affiliate of Lessee, all money (including, without limitation, "alternative" currencies, such as cryptocurrency and its equivalent), cash receipts, or other things of value received by Lessee, whether for cash or credit, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense or real property tax reimbursements, percentage rent payments, lease payments and fees and commissions made or earned by Lessee, and (B) for any portion of the Property on which Lessee or an Affiliate of Lessee operates a business or enterprise, or generates income from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on such Component of the Property, whether delivery of items sold is made from the property or not, whether services are actually performed or not, all money, cash receipts, or other things of value received by Lessee, including but not limited to sales, fees and commissions made or earned by Lessee, from rentals (other than rentals generated from Subleases and covered under Subsection 1.1.96(A) above) and the rendering or supplying of services and the sale of goods, wares or merchandise, hotel room revenues and resort fees, each of which shall be calculated in accordance with the accounting method described in the penultimate sentence of Section 15.1 except as herein otherwise provided (such operation described within this Subsection 1.1.96(B)) being referred to herein as a "**Lessee Business Operation**"). There shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit (but the value of any free rent period shall not be imputed as Gross Receipts), collection costs, discounts from credit card operations (except as provided in Subsection 1.1.96(b)(11) below), insurance and taxes, except as otherwise set forth herein. Notwithstanding the foregoing, and for the avoidance of doubt:

(a) Gross Receipts shall include, among other things, the following items:

(1) entry, rental, license and other fees of any nature or kind charged by Lessee (including but not limited to deposits accepted by Lessee upon the application of such deposit to a transaction or the forfeit of such deposit and excluding any deposit under a Sublease to the extent addressed in (b)(2) below);

(2) sales of merchandise, goods, wares, products, food, beverages and services;

(3) gift certificates at the time sold;

(4) any sums deposited into any coin-operated vending machine or other device maintained on the Property, regardless of the ownership of the machine or device, or whether such sums are removed and counted by Lessee or others, and regardless of what percentage thereof Lessee is entitled to receive except for pay telephones and newspaper racks;

(5) any commission or surcharge received by Lessee from the operation of any automatic teller machines on the Property;

(6) if pay telephones are owned by Lessee, gross receipts shall be the gross amount deposited or charged for use of the telephones or if pay telephones are owned and operated by a third party, gross receipts shall be the commission or payment received by Lessee;

(7) for newspaper racks gross receipts shall be the commission or payment received by Lessee from racks owned and operated by a third party;

(8) all sums received for officer and employee meals, including meals, snacks and drinks from vending machines provided solely for use by employees, the actual charge, if any, paid by officers or employees for food and beverage while on duty;

(9) all rentals, license fees and similar sums received in connection with any advertising on the Property via signage, billboards, and similar;

(10) all rebates, kickbacks, credits (hidden or otherwise), and similar received by Lessee in consideration for granting rights in the Property or any portion thereof; and

(11) all other funds received by Lessee from sales by any Sublessee, concessionaire or licensee of Lessee on the Property, subject to the exclusions set forth hereinbelow.

(b) Gross Receipts shall not include any of the following items (provided, however, that excluding the amount of the following items from Gross Receipts may not

be double counted as a credit towards or offset against the amount of items that are to be included in Gross Receipts):

(1) direct taxes imposed upon the consumer and collected therefrom by Lessee such as, without limitation, retail sales taxes, excise taxes (other than boater possessory interest tax to the extent received by Lessee), transient occupancy taxes, or related direct taxes paid periodically by Lessee to a governmental agency accompanied by a tax return statement;

(2) security deposits paid by a Sublessee to Lessee to be held by Lessee as security for Sublessee's obligations under its Sublease, license or permit, except to the extent Lessee allocates or applies any portion of such security deposit to unpaid rent or other amounts owed by such Sublessee to Lessee, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application;

(3) goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or Sublessee and not for the purpose of consummating a sale made in, about or from the Property;

(4) an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Property; provided that whenever Lessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

(5) sales of fixtures, equipment or property which are not Lessee's stock in trade;

(6) receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

(7) interest earned by Lessee on funds arising from the Property or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

(8) tips and gratuities paid to employees;

(9) receipts from vending machines used solely by employees of the business operation;

(10) fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card; provided, however, that the amounts excluded under this Subsection 1.1.96(a)(10) in connection with a particular business operation shall not exceed the actual charges for such matters;

(11) interest or other charges paid by customers of Sublessees for the extension of credit;

(12) amounts received for services rendered by a live-aboard Sublessee of an individual slip in connection with the operation by such live-aboard Sublessee of an in-home business on the boat of such live-aboard, as long as the primary purpose of Sublessee's use of the boat is for residential occupancy and such in-home business is an incident to such residential use; or

(13) payments received by Lessee from a Sublessee for the Cost of such Sublessee's submetered, actual or estimated allocation of electricity provided (A) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Property; (B) the reimbursed sum is in an amount equal to the Cost of the Sublessee's electricity; and (C) the amount received is actually credited against the cost of the Sublessee's electricity (i.e. the Sublessee is not also separately charged for electricity paid for hereunder). For the purpose of this Subsection (13), the "**Cost**" of a Sublessee's electricity shall mean the actual out-of-pocket costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's bill that is allocable to the Sublessee based on such Sublessee's submetered, actual or estimated consumption of electricity, and in paying the portion of any third party meter or submeter reading and service charge to each meter or submeter that is actually read and a direct allocation of the meter or submeter service charge to each such submeter that is serviced. County shall have the right to reasonably challenge the legitimacy or amount of any Cost. The terms and provisions of this Subsection (13) shall also be applicable to other submetered or estimated utility charges, such as water, gas, telephone, internet, sewer and trash, to the extent that it is customary for Sublessees to be responsible for such other utility charges.

(14) Bad debt losses shall not be deducted from Gross Receipts unless the obligation being converted to a bad debt loss was previously included in Gross Receipts.

(c) Chief Real Estate Officer, with the reasonable consent of Lessee, Auditor-Controller and County Counsel may further reasonably interpret the definition of Gross Receipts from time to time, with such interpretations to be a guideline in implementing Subsection 4.2.2(a) of this Lease.

1.1.97 "GROSS TRANSFER PROCEEDS" shall have the meaning set forth in Subsection 4.3.1(f).

1.1.98 "HARD COSTS" means those costs listed in Classifications 01 through 16 of the Construction Specifications Institute (1995 edition), together with contingency earned or awarded to the general contractor, insurance, contractor fees and bonds, but in no event may such amounts be duplicative.

1.1.99 "HAZARDOUS SUBSTANCES" shall mean any hazardous or toxic substance, material, product, byproduct, or waste, which is or shall become regulated by any governmental entity, including without limitation, the County acting in its governmental capacity, the State, or the United States government, including, without limitation, the following:

(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive; and

(c) any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "solid waste" or similarly defined substance pursuant to any Applicable Laws.

1.1.100 "HOTEL" or "HOTEL COMPONENT" means the Component of the Property identified as the Hotel on **Exhibit A-2** including, without limitation, the hotel currently known as the "Dana Point Marina Inn" and associated amenities, and currently operated by Great Western Hotel Operator ("**Hotel Operator**") pursuant to that certain Operating Agreement for the operation of the Hotel, entered into by and between the County and Hotel Operator, dated as of June 8, 2009.

1.1.101 "HOTEL DEEMED COMPLETION DATE" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.102 "HOTEL CAPITAL RESERVE FUND" shall have the meaning set forth in Subsection 5.17.1.

1.1.103 "HOTEL OPERATOR" shall have the meaning set forth in Subsection 1.1.100.

1.1.104 "IMMEDIATE FAMILY" shall have the meaning set forth in Subsection 4.3.1(e)(3).

1.1.105 "IMPROVEMENT PROJECT" shall have the meaning set forth in Subsection 5.5.

1.1.106 "IMPROVEMENTS" means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems (including, without limitation, all utility lines, transformer vaults and other utility facilities constructed or installed by Lessee upon the Property, to the extent not owned by a utility company or other third party provider), docks, slips, end-ties and other anchorage improvements, and other improvements now or hereafter located on the Property, whether existing as of the Effective Date or as constructed by Lessee, any Sublessee, or otherwise, as the case may be.

1.1.107 "IMPROVEMENT COSTS" shall mean the total actual out-of-pocket cost to the Lessee of planning, designing, financing and constructing the Redevelopment Work

in accordance with the Final Plans and Specifications, as of the applicable calculation date. The Improvement Costs shall include all Hard Costs and Soft Costs (without duplication) incurred in connection with the Redevelopment Work, including but not limited to: costs of grading and site preparation; costs of construction and required onsite and offsite improvements, including architectural, engineering and design fees, reproduction costs, and development, permit, and inspection fees charged by any public agency incurred and paid by the lessee; general contractor's fee; premium for performance or completion bonds; title insurance premiums and endorsement costs; survey costs; hazardous materials remediation costs; construction loan interest; consulting and professional fees (including without limitation legal, accounting, environmental and financial consulting fees) paid to third parties with respect to the design and construction of the Redevelopment Work; all ad valorem property taxes and assessments imposed with respect to the Property; insurance premiums; and costs of securing the Redevelopment Work. Notwithstanding the foregoing, Improvement Costs shall (i) exclude any such costs to the extent such costs are reimbursable by tenants under Subleases, and (ii) be reduced by any monetary contributions from the County including without limitation contributions towards the cost of constructing parking structures or other improvements included in the Redevelopment Work.

1.1.108 "INCOME APPROACH" shall have the meaning set forth in Section 6.5.

1.1.109 "INITIAL CURE PERIOD" shall have the meaning set forth in Subsection 13.6.3(b)(1)).

1.1.110 "INSTITUTIONAL LENDER" shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company, commercial credit corporation, real estate investment trust, pension trust or real estate mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided that such other type of lender has total assets of at least $2,000,000,000 and capital/statutory surplus or shareholder's equity of at least $500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender). Institutional Lender shall mean and include the Affiliates of such Institutional Lender without regard to such Affiliate's total assets or shareholder equity. Institutional Lender shall not include any so-called "sovereign wealth funds" unless otherwise approved by County in its sole discretion.

1.1.111 "INTERIM MILESTONE(S)" shall have the meaning set forth in Subsection 5.3.2.

1.1.112 "INTERIM MILESTONE DATE" shall have the meaning set forth in Subsection 5.3.1.

1.1.113 "LANDSIDE IMPROVEMENTS" means all Improvements on the Property other than the Marina Improvements.

1.1.114 "LATE FEE" shall have the meaning set forth in Subsection 4.2.3(e).

1.1.115 "LCP" means the Dana Point Local Coastal Program Amendment 1-08, as amended from time to time.

1.1.116 "LEASE" shall have the meaning set forth in the preamble above.

1.1.117 "LEASE YEAR" shall have the meaning set forth in Section 2.1.

1.1.118 "LESSEE" shall have the meaning set forth in the preamble to this Lease and Subsection 16.5.

1.1.119 "LESSEE BUSINESS OPERATION" shall have the meaning set forth in Subsection 1.1.96.

1.1.120 "LESSEE SALE PRICE" shall have the meaning set forth in Subsection 12.2.4.

1.1.121 "LESSEE'S DELIVERABLES" shall have the meaning set forth in Subsection 5.4.1.

1.1.122 "LESSEE'S FINAL SUBMITTALS" shall have the meaning set forth in Subsection 5.4.3.

1.1.123 "LIP" shall have the meaning set forth in Subsection 10.2.2(b)(3).

1.1.124 "LOAN AMOUNT" shall have the meaning set forth in Subsection 4.3.1(g).

1.1.125 "MAJOR SUBLEASE" shall have the meaning set forth in Subsection 12.1.1.

1.1.126 "MAJOR SUBLESSEE" shall have the meaning set forth in Subsection 12.1.1.

1.1.127 "MARINA" or "MARINA COMPONENT" means the Component of the Property identified as the Marina on **Exhibit A-2**.

1.1.128 "MARINA IMPROVEMENTS" shall mean all docks, gangways, anchorage slips, end-ties and related anchorage Improvements, all as depicted on **Exhibit A-2**.

1.1.129 "MATERIAL MODIFICATION" shall mean, with respect to each Component, an Alteration or any modification, revision or other change to the Redevelopment Work or Subsequent Renovation, as applicable, for such Component with respect to which any one of the following applies: (a) for purposes of the Redevelopment Work or Subsequent Renovation, the modification(s), individually or in the aggregate, result in a decrease in the previously approved Budget for such Component by more than ten percent (10%) (provided any decreases to the Required Cost Amount for a Component shall require the County's prior written consent, in its sole and absolute discretion); (b) for purposes of Alterations, the total estimated cost of the same, taken individually or in the aggregate with other modifications or Alterations over any consecutive eighteen (18) month period of time, exceeds ten percent (10%) of the

Improvement Costs for such Component, adjusted to reflect the percentage change in the ENR Index from the date on which the Redevelopment Work for such Component was substantially complete until the date on which Lessee calculates the total estimated cost of the Alterations; (c) the proposed Alteration or modification is structural in nature; (d) the proposed Alteration or modification is not in compliance with the Permitted Uses under this Lease; (e) the proposed Alteration or modification, taken individually or in the aggregate with other modifications or Alterations over any consecutive eighteen (18) month period of time, (i) reduces the total interior square footage of the Improvements within such Component by more than five percent (5%), (ii) reduces the number of parking spaces within such Component by more than five percent (5%), except for a corresponding reduction in the number of parking spaces required for the Improvements within such Component (based on parking ratios required under Applicable Law, without variance) resulting from a reduction in the interior square footage of the Improvements within such Component or changes in the Applicable Law regarding the number of parking spaces required for the Improvements within such Component (without variance), (iii) with respect to the Hotel Component, (A) reduces the number of guest rooms for the "affordable" hotel (e.g., the Marina Inn and its successors) (the "**Affordable Hotel**") below 136 rooms, or (B) would result in a reduction of five percent (5%) or more of the number of guest rooms originally permitted by the Governmental Authorities for the "boutique" hotel, if constructed (the "**Boutique Hotel**"), or (iv) with respect to the Marina Component, reduces the lineal footage of the slips and side ties in the Marina Component by more than ten percent (10%), reduces the lineal footage of the transient slips and side ties in the Marina Component by more than ten percent (10%), or relocates more than twenty percent (20%) of transient slips and side ties in the Marina Component; (f) for purposes of the Redevelopment Work and Subsequent Renovation, the proposed modification would, by itself or when taken with other proposed modifications, result in a delay to the Construction Schedule therefor by more than one hundred eighty (180) days in the aggregate; and (g) the proposed Alteration is a new building, structure, dock, anchorage facility, parking area or roadway, other than those contemplated by the Redevelopment Work or Subsequent Renovation. Notwithstanding anything to the contrary contained in this Lease: (1) Material Modifications under subsections (a) and (f) above shall be subject to the County's review and approval in the sole and absolute discretion of the Chief Real Estate Officer, and otherwise in accordance with the procedures and timeframes for such approval as may be specified in this Lease, and (2) all other Material Modifications to the Redevelopment Work, Subsequent Renovation or Alterations, as applicable, shall, in all instances in this Lease, be subject to the County's review and approval of the Chief Real Estate Officer, which approval shall not be unreasonably withheld, conditioned or delayed, and shall otherwise in accordance with the procedures and timeframes for such approval as may be specified in this Lease.

1.1.130 "MEMORANDUM" shall have the meaning set forth in Section 17.15.

1.1.131 "MINIMUM STANDARDS" shall mean the requirements set forth on **Exhibit G** attached hereto, as modified by County or the CREO Office from time to time in a manner consistent with commercially reasonable standards applicable to other comparable commercial and/or public marina or harbor projects (as applicable) in the County.

1.1.132 "MONTHLY MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.133 "MS4" shall have the meaning set forth in Subsection 10.2.2(a)(4).

1.1.134 "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.135 "NPDES" shall have the meaning set forth in Subsection 10.2.2(b)(2).

1.1.136 "NOTICE OF COMPLETION" shall have the meaning set forth in Subsection 5.8.7.

1.1.137 "OFFERED PROPERTY" shall have the meaning set forth in Section 11.13.

1.1.138 "OPERATING COVENANT EXCEPTIONS" shall have the meaning set forth in Section 3.3.

1.1.139 "OPERATING YEAR" shall have the meaning set forth in Subsection 5.17.1.

1.1.140 "OPTION" shall have the meaning set forth in the Recitals to this Lease.

1.1.141 "OPTION AGREEMENT" shall have the meaning set forth in the Recitals to this Lease.

1.1.142 "OUTSIDE AGREEMENT DATE" shall have the meaning set forth in Subsection 4.3.3(b).

1.1.143 "OWNERSHIP INTERESTS" shall have the meaning set forth in Subsection 13.1.1(1).

1.1.144 "PA/DSS" shall have the meaning set forth in Section 11.10.

1.1.145 "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.146 "PAYMENT BOND" shall have the meaning set forth in Subsection 5.5.4(b).

1.1.147 "PCI/DSS" shall have the meaning set forth in Section 11.10.

1.1.148 "PERCENTAGE RENT" shall have the meaning set forth in Subsection 4.2.2.

1.1.149 "PERCENTAGE SHARE" shall have the meaning set forth in Subsection 4.3.1(h), 4.3.4(a) and 4.3.4(b).

1.1.150 "PERFORMANCE BOND" shall have the meaning set forth in Subsection 5.5.4(a).

1.1.151 "PERMITTED BOAT BROKERAGE BUSINESS" shall have the meaning set forth in Subsection 3.2.2(g).

1.1.152 "PERMITTED CAPITAL EXPENDITURES" shall have the meaning set forth in Section 5.16.2.

1.1.153 "PERMITTED EVENTS" shall have the meaning set forth in Section 11.12.

1.1.154 "PERMITTED USES" shall have the meaning set forth in Section 3.1.

1.1.155 "POST TERM PERSONAL PROPERTY REMOVAL PERIOD" shall have the meaning set forth in Subsection 2.3.2.

1.1.156 "PRELIMINARY PLANS" shall have the meaning set forth in Subsection 5.4.2.

1.1.157 "PRIMARY COVERAGE" shall have the meaning set forth in Subsection 9.1.1.

1.1.158 "PRIME RATE" shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or it successor, or if Bank of America, N.A. and its successor cease to exist then the prime or reference rate announced from time to time by the largest state chartered bank in California in term of deposits.

1.1.159 "PROPERTY" shall have the meaning set forth in the recitals to this Lease.

1.1.160 "PROPERTY MANAGER" shall have the meaning set forth in Section 11.2.

1.1.161 "PROPOSED TRANSFER" shall have the meaning set forth in Subsection 12.2.4.

1.1.162 "PURCHASE MONEY NOTE" shall have the meaning set forth in Subsection 4.3.2(c).

1.1.163 "RECEIVING WATERS" shall have the meaning set forth in Subsection 10.2.2(a)(4).

1.1.164 "RECORDS" shall have the meaning set forth in Subsection 15.1.

1.1.165 "RECOVERY PLAN" means, with respect to each Component, a detailed narrative explanation clearly stating the scope and extent of any and all resource loading, activity re-sequencing and other acceleration activities required for all affected elements of the Redevelopment Work for such Component in order to enable Contractor to: (a) achieve an Interim Milestone for such Component by the applicable Interim Milestone Date; and/or

(b) achieve the CO Date for such Component on or before the applicable Required Construction Completion Date.

1.1.166 "RECOVERY PLAN NOTICE" shall have the meaning set forth in Subsection 5.7.3 of this Lease.

1.1.167 "REDEVELOPMENT WORK" shall have the meaning set forth in Section 5.1.

1.1.168 "REQUIRED CONSTRUCTION COMMENCEMENT DATE" means (a) with respect to the Hotel, March 1, 2023 for the Affordable Hotel, and, if built, March 3, 2025 for the Boutique Hotel, (b) with respect to the Commercial Core, January 1, 2021, and (c) with respect to the Marina, January 1, 2022.

1.1.169 "REQUIRED CONSTRUCTION COMPLETION DATE" means (a) with respect to the Hotel, July 30, 2027 for the Affordable Hotel, and, if built, July 30, 2027 for the Boutique Hotel, (b) with respect to the Commercial Core, December 31, 2024, and (c) with respect to the Marina, December 31, 2027.

1.1.170 "REQUIRED COST AMOUNT" means (a) with respect to the Hotel, Eighteen Million Dollars ($18,000,000.00) in the event one (1) hotel is developed and Ninety Million Dollars ($90,000,000.00) in the event two (2) hotels are developed, (b) with respect to the Commercial Core, Sixty Million Dollars ($60,000,000.00), and (c) with respect to the Marina, Eighty Million Dollars ($80,000,000.00).

1.1.171 "REQUIRED COST ADJUSTMENT DATE" shall have the meaning set forth in Section 5.2.

1.1.172 "RIGHT OF FIRST OFFER" shall have the meaning set forth in Section 11.13.

1.1.173 "SAILING AND EVENT CENTER" shall have the meaning set forth in Section 11.14.

1.1.174 "SECURITY DEPOSIT" shall have the meaning set forth in Section 7.1.

1.1.175 "SOFT COSTS" means architectural, engineering and other predevelopment consulting and professional fees, a developer fee of not to exceed five percent (5%) of Hard Costs, permits and fees, testing and inspection costs, financing costs, interest reserves or interest accrual required by or in connection with Lessee's initial construction financing, legal, accounting and insurance (including title insurance) relating to the Redevelopment Work, but in no event may such amounts be duplicative.

1.1.176 "STATE" shall mean the State of California.

1.1.177 "STORMWATER PERMITS" shall have the meaning set forth in Subsection 10.2.2(b)(2).

1.1.178 "SUBLEASE" shall have the meaning set forth in Subsection 12.1.1.

1.1.179 "SUBLESSEE" shall have the meaning set forth in Subsection 12.1.1.

1.1.180 "SUBSEQUENT RENOVATION" shall have the meaning set forth in Subsection 5.15.1.

1.1.181 "SUBSEQUENT RENOVATION FUND" shall have the meaning set forth in Subsection 5.15.3.

1.1.182 "SUBSEQUENT RENOVATION PLAN" shall have the meaning set forth in Section 5.15.2.

1.1.183 "SUBSTANTIAL COMPLETION" means the completion of the Redevelopment Work, Subsequent Renovation or other work of Improvement (as applicable), including without limitation, the receipt of a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval for legal use and occupancy of the subject Improvements (if applicable with respect to the particular work), subject only to minor punch-list items that do not interfere with the use and occupancy of the subject Improvements, provided that any such minor punch-list items are completed in a diligent manner as soon as reasonably possible thereafter.

1.1.184 "TERM" shall have the meaning set forth in Section 2.1.

1.1.185 "TIDELANDS GRANT" shall have the meaning set forth in Subsection 1.2.2.

1.1.186 "TIME OF THE ESSENCE" shall have the meaning set forth in Section 17.3.

1.1.187 "UMBRELLA COVERAGE" shall have the meaning set forth in Subsection 9.1.1.

1.1.188 "UNAUTHORIZED BOAT BROKERAGE" shall have the meaning set forth in Subsection 3.2.2(g).

1.1.189 "UNINSURED LOSS" shall have the meaning set forth in Section 10.4.

1.1.190 "UNREASONABLE COUNTY ACTION" shall have the meaning set forth in Subsection 5.7.2(a).

1.1.191 "UTILITY EASEMENT" shall have the meaning set forth in Subsection 1.2.4.

1.1.192 "WET MARINA" means the water-side portions of the Marina Component, such as slips, docks, gangways and waterways.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Property for the Term and upon the terms and conditions and subject to the requirements set forth herein.

1.2.1 As-Is. Except as provided in Subsection 1.2.3, Lessee accepts the Property in its present condition notwithstanding the fact that there may be certain defects in the Property, whether or not known to either Party as of the Effective Date. Lessee represents that, pursuant to the Option Agreement, it was afforded a reasonable opportunity to conduct a thorough due diligence investigation of the Property prior to its exercise of the Option and that, prior to the Effective Date, it performed all investigations of the Property that it deemed necessary or appropriate in order to evaluate the condition of the Property and the viability of the Property for Lessee's intended purposes. Lessee hereby accepts the Property on an "AS-IS, WHERE-IS, WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Property, including without limitation: (a) the quality, nature, adequacy and physical condition and aspects of the Property, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, heating, ventilating and air conditioning, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land or Improvements, (b) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (c) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (d) the development potential of the Property, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy, of the Property for any particular purpose, (e) the zoning, entitlements or other legal status of the Property, and any public or private restrictions affecting use or occupancy of the Property, (f) the compliance of the Property with any applicable codes, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions or laws of the applicable Governmental Authorities ("**Applicable Laws**"), including, without limitation, the Coastal Act and relevant provisions of the Americans with Disabilities Act, (g) the presence of any underground storage tank or Hazardous Substances on, in, under or about the Property, the adjoining or neighboring properties, or ground or other subsurface waters, (h) the quality of any labor and materials used in any Improvements, (i) the condition of title to the Property, and (j) the economics of the operation of the Property.

1.2.2 Tidelands Grant. This Lease and the rights and privileges granted Lessee in and to the Property are subject to all covenants, conditions, restrictions, and exceptions of record or apparent, including those which are set out in the Tidelands Grant by the State of California to the County of Orange (Chapter 321, Statutes of 1961, State of California), as amended from time to time ("**Tidelands Grant**"). Nothing contained in this Lease or in any document related hereto shall be construed to imply (a) the conveyance to Lessee of rights in the Property which exceed those owned by the County, or (b) any representation or warranty, either express or implied, relating to the nature or condition of the Property, or County's interest therein.

1.2.3 Title. Subject to the limitations set forth in this Section 1.2, County represents that County owns fee title to the Property and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County in and to the Property, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy the Property pursuant to the terms and conditions of this Lease.

1.2.4 Reservations. Lessee and County expressly agree that this Lease and all of Lessee's rights hereunder shall be subject to: (a) all encumbrances, reservations, licenses, Assumed Contracts, easements and rights of way (including, without limitation, those granted under the Assumed Contracts, if any) existing as of the Effective Date and disclosed to Lessee, whether in the County Documents, referenced in this Lease or otherwise, in, to, over or affecting the Property for any purpose whatsoever; (b) any other encumbrances, reservations, licenses, leases, easements and rights of way consented to by Lessee in writing; (c) all matters of record (including, without limitation, the Tidelands Grant); and (d) the right of County and/or City to install, construct, maintain, service and operate such existing or new sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements (each, a "**Utility Easement**") as may be reasonably required across, upon or under the Property, together with the right of County and/or City to convey such easements and transfer such rights to others; provided, however, that no new Utility Easement shall be located within the Project without the prior written consent of Lessee, which consent shall not be unreasonably withheld, unless the same is necessary for County to comply with its obligations under this Lease, in which case Lessee's consent shall not be required (and in such case, no such Utility Easement shall be located within the footprint of any then-existing building located on the Property). Furthermore, for the avoidance of doubt, County hereby reserves for itself, its invitees, licensees, tenants and the general public, and Lessee shall not prevent, obstruct or materially interfere in any way with, the free flow and passage of: (i) vehicles upon and across all streets and roadways as the same may exist from time to time at the Property, (ii) pedestrians upon and across all sidewalks, walkways, pathways and other access ways as the same may exist from time to time at the Property, and (iii) vessels within the waterways of the Property, excluding temporary obstructions or interference that are necessary for construction, operational, or development activities being conducted by Lessee pursuant to, and in accordance with, the terms and conditions of this Lease; provided that any such temporary obstructions or interference shall not pose a health, safety, or security threat to the public, nor shall the same be permitted to remain in place longer than the permitted duration of the underlying construction, operational, or development activity to which it relates as required under this Lease.

1.2.5 Excluded Improvements. Notwithstanding anything to the contrary set forth in this Lease, the "Property" shall not include the MS4 (including, without limitation, any sewer or storm drain) or other improvements, whether existing as of the Effective Date or installed thereafter, which have been dedicated to (and such dedication has been accepted by) the City or County ("**Excluded Improvements**"); provided, however, that this Lease (as opposed to any separate dedication acceptance or other contractual or legal obligation) shall not create any obligation or liability on the part of County with respect to such Excluded Improvements, if any.

2. TERM; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of the Lease ("**Term**") commenced on the Effective Date. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on the sixty-sixth (66th) anniversary of the Effective Date. For purposes of this Lease, "**Lease Year**" shall mean each calendar year (or partial calendar) during the Term of this Lease. For the avoidance of doubt, and by way of example, Lease Year 1 as used in this Lease shall mean and refer to the calendar year in which the Effective Date occurs, with the following calendar year being Lease Year 2 and so on.

2.2 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease, and except as specifically provided herein, Lessee shall own all Improvements now existing, or hereafter constructed by Lessee, upon the Property, and all alterations, additions or modifications made thereto by Lessee.

2.3 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

2.3.1 County's Election to Receive Improvements. All Improvements located on, in, or under the Property (including all fixtures or equipment affixed thereto) shall remain upon and be surrendered with the Property as part thereof, and title to such Improvements shall vest in County without any compensation to Lessee upon the expiration of the Term or earlier termination of this Lease. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to (a) receive any and all proceeds which are attributable to the Condemnation of Improvements belonging to Lessee immediately prior to the taking of possession by the Condemnor, to the extent provided in Article 6 of this Lease, (b) permit a Sublessee to exercise a right under its Sublease to remove any so-called Sublessee "trade-dress" items installed in or on the interior of space subleased to such Sublessee, provided that Lessee shall be responsible for repairing (or causing its Sublessee to repair) any damage to the Improvements incurred in connection with the removal of such items; or (c) remove any furniture or equipment that is neither permanently affixed to, or reasonably necessary for the operation of, the Property, any signage identifying Lessee (as opposed to other signage used in the operation of the Property and Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Property for the Permitted Uses.

2.3.2 Duty to Remove Personal Property. No later than the expiration of the Term or sooner termination of this Lease (subject to Lessee's rights with respect to the Post Term Personal Property Removal Period described below), Lessee shall remove, at its sole cost and expense, all furniture, equipment and other personal property that is not affixed to the Improvements or reasonably necessary for the orderly operation of the Property or Improvements. Should Lessee fail to remove such furniture, equipment and other personal property prior to the expiration of the Term, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest therein, and County may elect to keep the same upon the Property or to sell, remove, or demolish the same, in which event Lessee shall reimburse County for its Actual Costs incurred in connection with any

such sale, removal or demolition in excess of any consideration received by County as a result thereof. County shall be under no obligation to Lessee to effectuate any such sale of furniture, equipment and other personal property, or, in the case of a sale, to obtain any required level of compensation therefor. Notwithstanding the foregoing, (i) Lessee shall have the right, exercisable by delivering written notice to County not later than thirty (30) days prior to the scheduled expiration date of the Term, to extend the date by which Lessee must complete the removal of the personal property and surrender the Property to County pursuant to Lessee's obligations under this Subsection 2.3.2 to a date not more than one hundred twenty (120) days after the expiration of the Term (the "**Post Term Personal Property Removal Period**"); and (ii) all of Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Property) shall be applicable during the Post Term Personal Property Removal Period, including without limitation, Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for the Post Term Personal Property Removal Period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term multiplied by the number of months in the Post Term Personal Property Removal Period. Such Monthly Minimum Rent amount for the entire Post Term Personal Property Removal Period shall be paid by Lessee, in one lump sum prior to the commencement of the Post Term Personal Property Removal Period.

3. USE OF PROPERTY.

3.1 Specific Primary Use. Subject to Subsection 3.2.2(h) below:

3.1.1 The Commercial Core and the Improvements located thereon shall be used by Lessee solely for the operation and management of: (a) retail, restaurant, bar, restaurant/bar, coffee shop, nightclub or tavern space; administrative offices, museum(s), institutional uses or educational facilities (including a sailing school and Harbor Patrol offices as described below); filming or other television or motion picture activities; leasing to a Permitted Boat Brokerage Business; professional offices which offer services to the general public and which are normally found in first class shopping centers such as escrow offices, title insurance offices, insurance offices, dentists, optometrists, accountants, lawyers, doctors, real estate and stock brokerage offices; and service oriented uses which are normally found in first class shopping centers such as travel agencies, blow-dry bars, hair salons, therapeutic massage (such as Massage Envy), shaving, waxing, insurance agencies, weight loss clinics and financial institutions; live events, performances and demonstrations; catering and event activities; and entertainment oriented uses which are normally found in first class shopping centers such as movie theaters; (b) boat ramp, dry boat storage or storage for other water recreational equipment and marine vessels; dry stack storage, mast-up storage, boat slips, the rental of dry or landside storage facilities; the rental of boats, motors, tackle, or recreational equipment (including, without limitation, wave- runners, paddle boards, kayaks, bicycles, cycles carriages, scooters etc.), the sale or rental of boat related tools and equipment; subject to the limitations in Subsection 3.2.2(h) below, automobile rental; the sale of marine insurance where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning (but only for drop off and pick up of clothing which is cleaned at another location that is not on the Property), boat launch day parking and miscellaneous boater services and boater related services); (c) parking associated with each the foregoing, subject to the terms, conditions and limitations set forth in this Lease; (d) such other related and incidental uses as are specifically approved in writing by the Chief Real Estate

Officer from time to time, in such Chief Real Estate Officer's reasonable discretion; and (e) such other unrelated and non-incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's sole and absolute discretion.

3.1.2 The Hotel and the Improvements thereon shall be used by Lessee solely for the operation and management of hotels, hospitality and related amenities including the following uses and services: (a) hotel, restaurant and limited retail; (b) filming or other television or motion picture activities; (c) catering, banquet and event activities and meeting rooms; (d) spa and recreational activities normally found in first class hotels; (e) ancillary bar, lounge and rooftop venues normally found in first class hotels; (f) cleaning and laundry service, gift shop, resort retail sales, magazine stand, barber or beauty services, travel services, airline ticket services and, subject to the limitations in Subsection 3.2.2(h) below, automobile rental; (g) parking associated with each the foregoing, subject to the terms, conditions and limitations set forth in this Lease; (h) such other related and incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's reasonable discretion; and (i) such other unrelated and non-incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's sole and absolute discretion.

3.1.3 The Marina and the Improvements located thereon shall be used by Lessee solely for the operation and management of a marina similar with the following uses and services: (a) yacht club facilities; (b) boat repair facilities; (c) boat anchorage facilities, including the rental or use of boat slips, anchorages, moorings, dockside gear lockers, dockside storage space, and other water-side facilities; (d) commercial boating activities including, but not limited to, charter boats, bareboat charters and sport fishing; (e) boat rentals; (f) sailing lessons; (g) lockers for boaters; (h) fuel and oil sales; (i) the sale of bait and boat and fishing supplies; (j) boat cleaning and other boater related services including the launch and retrieval of small boats; (k) Permitted Boat Brokerage Business; (l) filming or other television or motion picture activities; (m) the operation of excursion, sightseeing or tour boats, or any water taxi; (n) parking associated with each the foregoing, subject to the terms, conditions and limitations set forth in this Lease; (o) such other related and incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's reasonable discretion; and (p) such other unrelated and non-incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's sole and absolute discretion.

3.1.4 All of the aforementioned uses, as they relate specifically to each Component, shall be referred to herein as the "**Permitted Uses**" of each such Component. Except as specifically provided herein, each Component shall not, without the prior written consent of the Chief Real Estate Officer in the Chief Real Estate Officer's sole and absolute discretion, be used for any purpose other than the Permitted Uses applicable to such Component. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Property, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Property, except for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Property be permitted to be operated or maintained in a manner that renders the Property or any part thereof a fire hazard.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Property and Improvements as set forth in this Lease, the following uses of the Property are expressly prohibited:

(a) The Property shall not be used or developed in any way which violates any Applicable Law, the CDP, the LCP or the Tidelands Grant.

(b) The Property shall not be used or developed in any way in a manner inconsistent with the Permitted Uses.

(c) No condition shall be permitted to exist upon the Property which induces, breeds or harbors infectious plant diseases, rodents or noxious insects, and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Property which create a danger to the health or safety of any persons occupying, using, working at, or patronizing the Property.

(d) Without the prior written reasonable approval of Chief Real Estate Officer, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation (collectively, "**antennae**") shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Property, whether attached to an Improvement or otherwise; provided that the foregoing requirement to obtain Chief Real Estate Officer's approval as to any antennae shall be inapplicable to the extent that such requirement violates Applicable Law; and provided, further that the prior approval by the Chief Real Estate Officer shall not be required for (i) any satellite dish or communication antennae installed as an incident to the use of subleased space for purposes other than the operation of a satellite or communications business, and that is not greater than eighteen inches (18") in diameter and is screened from general view and (ii) the erection of cellular towers by Lessee or its designees provided it is approved by the City and is screened from general view or incorporated into an architectural element of the Improvements.

(e) No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Property, except (i) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as may be necessary to perform water testing or monitoring, or any dewatering program to relieve soil water pressure.

(f) No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on or in any portion of the Property, nor shall any Hazardous Substances be permitted to be generated, treated, stored, released, disposed of, or otherwise deposited in or on, or allowed to emanate from, the Property, including, without limitation, into subsurface waters, provided, however, (i) Hazardous Substances may be stored or used on the Property, so long as such storage and use is of a type and quantity, and conducted in a manner (a) in the ordinary course of business of an otherwise Permitted Use, (b) in accordance with standard industry practices for such Permitted Use, and (c) in compliance with all Applicable Laws, and (ii) Lessee shall have no responsibility for Hazardous Substances released on or under the Property as a result of defects or deficiencies in the Excluded Improvements or the existing breakwater adjacent to the Property identified on **Exhibit H** attached hereto (the "**Breakwater**"), or drainage from the existing drainage channel which empties into the harbor that does not originate from the Property (except to the extent caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees) boat products (including paint and its components such as lead, copper, and zinc) emanating from boats in the harbor, except those emanating from Lessee's boat slip Sublessees. Lessee shall use all reasonable and diligent efforts to cause such boat slip Sublessees, and transient boat owners to the extent feasible, to comply with all applicable BMPs, environmental laws and regulations, and requirements of this Lease. This Subsection 3.2.2(f) shall not impose liability upon Lessee to County for any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Property or any Improvement as long as (I) such Hazardous Substances did not originate at or from the Property, and (II) with respect to Hazardous Substances that did not originate at or from the Property, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees (collectively, the "**Lessee Parties**"). Notwithstanding anything in this Subsection 3.2.2(f) to the contrary, Lessee shall require in its slip rental agreements that, as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels be required to comply with all applicable BMPs, environmental laws and regulations, and the restrictions on Hazardous Substances set forth herein, and all of Lessee's slip leases shall provide that any newly tenanted vessel which does not so comply shall be ineligible for continued slip tenancy on the Property and shall be subject to removal from the Property by Lessee in accordance with Applicable Law for non-compliance with the requirements of the slip lease.

(g) Except for (i) a Permitted Boat Brokerage Business, (ii) an Exempt Individual Boat Transaction, (iii) the sale or lease, or display for sale or lease, of small watercraft by a tenant of interior retail space in the Property, whether in such retail space or from an adjacent sidewalk or other hardscape area (such activity under this clause (iii) is hereby confirmed to constitute retail use under Percentage Rent category (4) of Subsection 4.2.2(a) below), or (iv) any periodic boat show or boating event lasting no more than three (3) consecutive weeks per show or event and taking place no more often than two (2) times per calendar year, no portion of the Property shall be used for the sale or lease, or for the display, storage or exhibition for sale or lease, of new or used boats or watercraft ("**Unauthorized Boat Brokerage**"). A "**Permitted Boat Brokerage**

Business" means the sale or lease, or the display, storage or exhibition for sale or lease, of new or used boats or watercraft by a Sublessee that leases office space for the legitimate operation of such business at the Property, including the display, storage or exhibition of new or used boats or watercraft from anchorage slips leased by such Sublessee in connection with the operation of such sale or leasing brokerage business from the office space leased by such Sublessee at the Property. Each Permitted Boat Brokerage shall display exterior business identification signage. An "**Exempt Individual Boat Transaction**" means the sale or lease by an individual Sublessee of a boat owned and moored by such Sublessee at an anchorage slip leased by such Sublessee at the Property, for personal purposes (whether such sale is consummated with or without the assistance of a third party boat broker) and not in connection with the sale or lease of boats as a business or commercial endeavor or in connection with providing boat brokerage sale or leasing services to others.

(h) In addition to the foregoing restrictions, and without limiting the same, notwithstanding anything in this Lease to the contrary, Lessee shall not lease or permit the use of any portion of the Property for the following: (i) any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters located in the rear of any building); (ii) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (iii) any mortuary; (iv) any establishment selling or exhibiting pornographic materials (except for so-called "adult" material customarily offered on an incidental basis only in first-class bookstores and/or video stores normally found in first class shopping centers); (v) any massage parlor (which shall not include therapeutic massage normally found in first class shopping centers, such as Massage Envy), topless club or "strip joint"; (vi) any heavy manufacturing, refining, smelting, agricultural or mining operation; (vii) any automobile repair business; (viii) any automobile rental business or automobile dealership which maintains its automobile inventory on-site; (ix) any use which is a public or private nuisance, or (x) any uses prohibited under County ordinances.

3.3 Active Public Use.

3.3.1 The Parties acknowledge that County's objective in entering into this Lease is the complete and continuous use of the facilities and amenities located in Dana Point Harbor by and for the benefit of the public, without discrimination as to race, gender, religion, or sexual orientation, and for the generation and realization by County of revenue therefrom. Accordingly, Lessee agrees and covenants that it will (a) operate the Property and Improvements located thereon fully and continuously (except to the extent that Lessee is prevented from doing so due to Force Majeure, temporary interruption as necessary for maintenance and repair, or temporary interruption as necessary to accommodate renovation, alteration or other improvement work required or permitted to be performed by Lessee under this Lease (collectively, "**Operating Covenant Exceptions**")) to accomplish these objectives and consistent with the operation of other comparable facilities or businesses within the County, (b) not to abandon or vacate the Property at any time, and (c) use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.3.2 Notwithstanding anything in this Lease to the contrary, the fishing pier identified on **Exhibit A-2** shall at all times remain a fishing pier that is open and available to the general public for fishing and associated recreational uses, subject to only those temporary closures as may be necessary from time to time for the limited duration of any required maintenance to be performed by Lessee as and to the extent set forth in this Lease.

3.4 Days and Hours of Operation. All Improvements on the Property shall be open every day of the year for at least the operating hours applicable to such Improvements as set forth on **Exhibit G** attached hereto, or, if not specified therein, then for at least the operating hours typical for institutional grade retail projects, hotels and marinas, as applicable, in the Southern California area, subject to (a) the Operating Covenant Exceptions and except for such holidays, if any, during which similar businesses in Dana Point Harbor are customarily closed, and (b) Lessee's right to temporarily close portions of the Property while such portions of the Property are under construction in accordance with the Redevelopment Work or Subsequent Renovation.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs, billboards, flags and banners which are placed on, or are visible from, the exterior of any Improvements shall be consistent with the Permitted Uses, and shall be only of such size, design, wording and color as shall have been specifically submitted to and approved in writing in advance by the City through the applicable entitlements for the Improvement Project. Signs, banners, flags, etc., that are not consistent with the Permitted Uses or that are not approved as set forth herein or consistent with the sign criteria or sign program approved by the City with respect to the Improvement Project may be removed by the CREO Office, at Lessee's sole cost and expense, in the event Lessee fails to remove the same within thirty (30) days following delivery of written notice to Lessee.

3.6 Compliance with Agreements and Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all required licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Property and/or Improvements. Without limitation of the foregoing, Lessee shall comply with (a) all conditions and requirements of the CDP, LCP and Tidelands Grant, (b) all conditions and requirements set forth in any development agreement(s) entered into by and between Lessee and the City and/or other public agencies with respect to the Redevelopment Work, (c) the terms and conditions of all Assumed Contracts, and (d) all public access requirements of the LCP. Subject to the terms and conditions set forth in Subsection 5.6 below, County shall timely cooperate with Lessee in connection with Lessee's efforts to obtain governmental approvals required in connection with this Lease and the Redevelopment Work.

3.7 Rules and Regulations. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Property and Improvements as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other retail, commercial, hospitality, restaurant, marina and public park facilities in Orange County, and delivered in writing to Lessee, provided such rules and regulations do not materially and adversely impact Lessee's operations or materially increase Lessee's expenses.

4. PAYMENTS TO COUNTY.

4.1 Net Lease. The Parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to County, except as set forth in Subsection 10.7 below. The rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off or other withholding. Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Property and Improvements, including without limitation the parking areas included within the Property.

4.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay or cause to be paid prior to delinquency, directly to the applicable utility providers, all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to the Property.

4.1.2 Taxes and Assessments. Lessee shall pay before delinquency all lawful taxes, assessments, fees, and charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Property for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Property. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option, Lessee's exercise thereof, or the execution of this Lease. Lessee shall have the right to contest the amount of any assessment imposed against the Property or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee; and provided further, Lessee shall pay under protest such assessment pending the outcome of such proceedings so long as neither the tax parcel nor the Property are in danger of being forfeited. County shall not be required to join in any proceedings to contest any assessment unless the provisions of any law, rule or regulation require such proceedings to be brought by or in the name of the County, in which event the County shall join in such proceedings or permit the same to be brought in its name. Lessee will defend, indemnify and save harmless County from any Claims related to such proceedings in accordance with Section 8.1 below. **In accordance with Section 107.6 of the California Revenue and Taxation Code, Lessee is specifically informed, and hereby acknowledges and agrees, that the Property and any fixtures, equipment, or other improvements installed or constructed thereon shall be subject to possessory interest taxes and assessments, and that such taxes and assessments shall be paid by Lessee prior to delinquency. Lessee shall include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee's interest requires the payment of a possessory interest tax**.

4.1.3 No Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by Applicable Law, Lessee hereby waives any and all rights, if any, to make repairs at the

expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

4.2 Rental Payments; Payment; Adjustments. Throughout the Term, Lessee shall pay to County (a) the Annual Minimum Rent described in Subsection 4.2.1 below, and (b) the Percentage Rent described in Subsection 4.2.2 below. For purposes of this Lease "**Annual Rent**" shall mean the aggregate of the Annual Minimum Rent and Percentage Rent.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent.

(a) Initial Annual Minimum Rent; Payment. During the Term, Lessee shall pay to County, for each Component, the minimum rent set forth on **Exhibit F** attached hereto (subject to adjustment pursuant to Subsection 4.2.1(b) below) (the "**Annual Minimum Rent**"). Provided that Tenant faithfully performs all of the terms and conditions of this Lease and there is no Event of Default, the Annual Minimum Rent for the Commercial Core, Hotel and Dry Marina Components will be abated on a Component-by-Component basis during the period (the "**Abatement Period**") that the Redevelopment Work for such Component is commenced through and until the earlier of (i) the CO Date for such Component, or (ii) the Required Construction Completion Date for such Component; provided, however, for the Hotel Component, the Abatement Period shall end upon the first of the foregoing dates to occur for either the Affordable Hotel or the Boutique Hotel notwithstanding that work on the other of such hotels may not be complete, and such earlier date shall be referred to in this Lease as the "**Hotel Deemed Completion Date**". Notwithstanding the foregoing, and for the avoidance of doubt, the Annual Minimum Rent for each Component shall continue to adjust as set forth in Subsection 4.2.1(b) below during the Abatement Period for such Component. For purposes hereof, the date upon which the commencement of the Redevelopment Work for a particular Component has occurred will be the first date that visible construction activity for such Component (as opposed to the delivery of goods and materials or erection of fencing) has occurred ("**Commencement of Construction**"). Lessee shall provide written notice to County of the Commencement of Construction and the CO Date for each Component promptly upon the occurrence thereof. Annual Minimum Rent for each Lease Year shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent for such Lease Year (the "**Monthly Minimum Rent**"); provided, however, if any period during which the Annual Minimum Rent is calculated is less than a full calendar year, then the Annual Minimum Rent for such period shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

(b) Adjustments to Annual Minimum Rent. With respect to each Component, commencing on the first anniversary of the Effective Date (in each instance, the "**First Adjustment Date**") and recurring as set forth on **Exhibit F** attached hereto (each an "**Adjustment Date**"), the Annual Minimum Rent for such Component shall be adjusted as set forth on **Exhibit F** attached hereto.

4.2.2 Percentage Rent. Commencing on the Effective Date, Lessee shall pay to County, an amount ("**Percentage Rent**") for any given month equal to (i) the aggregate of all amounts set forth below in Subsection 4.2.2(a), to the extent Gross Receipts are generated from such Component, less (ii) (A) the Annual Minimum Rent payable by Lessee for such Component during such month, and (B) all amounts required to be paid by Lessee to reimburse to any tenant at the Property whose tenancy predates the Effective Date a security deposit, to the extent the required amounts are not transferred to Lessee by County as of the Effective Date. Notwithstanding the foregoing, subject to the limitations set forth on **Exhibit F** attached hereto, Percentage Rent for the Hotel Component shall be abated for the initial thirty (30) months following the Effective Date.

(a) Categories of Percentage Rent. Gross Receipts from each transaction, sale or activity of Lessee (or from any Sublessee pursuant to Subsection 4.2.2(c)) on, from or within the Property, or as a result of operations from the Property (e.g., internet sales), shall be reported under one or more of the following percentage categories, as applicable:

(1) TEN PERCENT (10%) of Gross Receipts commencing on the Effective Date through the fifteenth (15th) anniversary of the Effective Date and ELEVEN PERCENT (11%) of Gross Receipts thereafter from boat slips (including, without limitation, transient slips), anchorages, moorings, dockside gear lockers, dockside storage space, and other water-side facilities;

(2) TEN PERCENT (10%) of Gross Receipts from dry stack storage or mast-up storage;

(3) TWENTY PERCENT (20%) of Gross Receipts from overnight trailer storage located within the designated overnight storage surface parking lot;

(4) FIVE PERCENT (5%) of Gross Receipts from (i) any other dry or landside storage facilities, (ii) the rental or other fees for boats, motors, tackle, recreational equipment (including, without limitation, wave- runners, paddle boards, kayaks, etc.), tools, equipment, (iii) launch and retrieval of small boats, (iv) the sale of live bait, (v) the sale of fuel or oil, or (vi) miscellaneous boater services;

(5) THREE AND SEVEN-TENTHS PERCENT (3.7%) of Gross Receipts commencing on the Effective Date through the fifteenth (15th) anniversary of the Effective Date and FIVE AND SEVEN-TENTHS PERCENT (5.7%) thereafter from the lease, use or occupancy of space for (a) office (including boat brokerage), administrative offices, museum(s), institutional uses or educational facilities (including a sailing school as described below) or yacht club purposes; (b) retail sales, service and ancillary uses within the Commercial Core Component; (c) the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on premises sale of alcoholic beverages except as provided for in Subsection 4.2.2(a)(9) below, (d) the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, take-out food operations and (e) facilities

featuring entertainment, excluding movie theaters, which is provided for in Subsection 4.2.2(a)(17) below;

(6) FIVE PERCENT (5%) of Gross Receipts from the lease, use or occupancy of space used for the display of new or used boats, recreational vehicles, trailers or trailer cabanas, or for filming or other television or motion picture activities;

(7) FOUR PERCENT (4%) from the Gross Receipts for the lease, use or occupancy of the boat repair shop;

(8) With respect to services such as car rental, the sale of marine insurance where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning, and other similar activities where earnings are normally on a commission basis, FIVE PERCENT (5%) of the Gross Receipts therefrom;

(9) FIVE PERCENT (5%) of Gross Receipts from the lease, use or occupancy of space for both events and catering of events which are not held at the hotel;

(10) With respect to service enterprises other than those operated within the Commercial Core Component or at the hotel, including, without limitation, cable television, internet, satellite, telecommunication or other antennae fees, telephone and other utility services, and valet parking services, FIVE PERCENT (5%) of the Gross Receipts therefrom;

(11) TEN PERCENT (10%) of Gross Receipts generated from parking operations;

(12) FIVE PERCENT (5%) of the Gross Receipts from the rental of boats or from other commercial boating activities including, but not limited to, charter boats, bareboat charters and sport fishing, or from the rental of bicycles, cycles carriages, scooters or other similar equipment;

(13) FIVE PERCENT (5%) of the Gross Receipts from the installation or operation of coin-operated vending or service machines;

(14) FIVE PERCENT (5%) of Gross Receipts from club dues, initiation fees, and assessments received by Lessee, except that separate assessments for capital improvements may be exempted;

(15) FIVE PERCENT (5%) of Gross Receipts from the operation of excursion, sightseeing or tour boats, or any water taxi;

(16) FIVE PERCENT (5%) of Gross Receipts from boat haul-out or for boat repair, including maintenance, repair, painting, tugboat, salvage and boat

pump-out services and similar activities, except that this subsection is subject to Subsection 4.2.2(a)(7) above with respect to the operation of the boat repair shop;

(17) THREE AND SEVEN-TENTHS PERCENT (3.7%) of Gross Receipts commencing on the Effective Date through the fifteenth (15th) anniversary of the Effective Date and FIVE AND SEVEN-TENTHS PERCENT (5.7%) of Gross Receipts thereafter from any movie theater operation;

(18) Intentionally omitted;

(19) SIX PERCENT (6%) of Gross Receipts from the existing Marina Inn hotel room revenue commencing from the Effective Date through the date the same is permanently closed to the public. Thereafter, THREE PERCENT (3%) of Gross Receipts from the Affordable Hotel and Boutique Hotel room revenue, as applicable, commencing on the fourth (4th) anniversary of the Affordable Hotel Operation Date or Boutique Hotel Operation Date, as applicable, and continuing through the eighteenth (18th) anniversary of the Effective Date, and FOUR PERCENT (4%) of Gross Receipts thereafter from hotel room revenue from the applicable hotel; and

(20) TWO PERCENT (2%) of Gross Receipts from other hotel operations, including, but not limited to hotel parking, banquet events, restaurants, lounges, bars, rooftop venues, spa services, resort fees and other hotel services and activities commencing on the Effective Date.

(b) Interest, Service Fees or Late Charges. Interest, service fees or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be included in the calculation of Gross Receipts.

(c) Sublessees in Business.

(1) Effect of Sublessees Doing Business. Subject to Subsection 1.1.96(b)(14) above, if a Sublessee directly pays any common area maintenance payments, common area operating expense or real property tax reimbursements in lieu of reimbursement of such expenses under its lease for the space it occupies, then such costs and expenses shall be added to and included in the Gross Receipts under the applicable provision in Subsection 4.2.2(a) above.

(2) Allocation Between Office Space and Anchorage Slips. The rent or other Gross Receipts payable by a Sublessee described under Subsection 3.2.2(g) for the office space leased by such Sublessee, and the rent or other Gross Receipts payable by such Sublessee for the anchorage slips leased by such Sublessee, shall each be separately allocated between such office space and anchorage slips consistent with relative fair market rental value such that there is no artificial manipulation of the rent or other Gross Receipts payable by such Sublessee under the applicable provision in Subsection 4.2.2(a) above.

(d) No Expansion of Permitted Uses. Lessee acknowledges that (i) Article 3 of this Lease provides for the Permitted Uses of the Property and that the Percentage Rent categories listed in Subsection 4.2.2(a) above may not all be applicable to this Lease and are in no way intended to expand or modify the Permitted Uses, and (ii) the Percentage Rent categories set forth in Subsection 4.2.2(a) above are intended merely as a guideline in determining the appropriate categories for charging Percentage Rent.

(e) New Categories of Percentage Rent.

(1) If, with the prior written approval of County or Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently a Permitted Use and as to which there is no specific Percentage Rent category set forth in Subsection 4.2.2(a) above applicable to such additional or related use, then concurrent with the approval by County or Chief Real Estate Officer of such specific additional use, Chief Real Estate Officer and Lessee shall negotiate in good faith to establish the specific Percentage Rent to be applied to such use.

(2) If, without the prior written approval of Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently permitted under this Lease, then Lessee shall pay to County SEVENTY-FIVE PERCENT (75%) of Gross Receipts generated by such non-permitted use as Percentage Rent therefor.

4.2.3 Payment and Late Fees.

(a) Monthly Minimum Rent Payment. Monthly Minimum Rent shall be paid by Lessee to County in advance on or before the first (1st) day of each calendar month during the Term. Concurrently with each payment of Monthly Minimum Rent, Lessee shall deliver to County a statement setting forth the amount of Monthly Minimum Rent being paid by Component, and with respect to the Hotel Component and Marina Component, such statement shall separately set forth the amount of Monthly Minimum Rent being paid for each sub-component thereof (i.e., the Boutique Hotel and Affordable Hotel sub-components for the Hotel Component, and the Wet Marina and Dry Marina for the Marina Component) as more particularly described on **Exhibit F** attached hereto.

(b) Percentage Rent; Reporting and Payment. On the last business day of each month during the Term, Lessee shall, with respect to each Component, (i) deliver to the County a separate report (in a form acceptable to County, and signed by Lessee) summarizing (A) the total Gross Receipts generated from operations on such Component during the preceding calendar month (including Gross Receipts generated by Sublessees, if reported under its Sublease, and Gross Receipts generated in connection with any Lessee Business Operation), including such backup as County may reasonably require from time to time, and for the Hotel and Marina Components, shall include a breakdown of Gross Receipts by sub-component as described in Subsection 4.2.3(a) above, and (B) the amount of Percentage Rent resulting therefrom (including by sub-component, as applicable), and (ii) concurrently with its delivery of such report to the County, pay to County a sum equal to the total of the percentages listed in Subsection 4.2.2 above generated from operations on such Component for such previous month, less the

installment of Monthly Minimum Rent applicable to such Component and paid to County for such previous month. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Subsection 4.2.3(c) below. Lessee agrees to and shall comply with, and shall cause all Sublessees (other than those described in Subsection 4.2.2(c)) to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 15 of this Lease.

(c) Excess Payments Credit. If payments of Monthly Minimum Rent and Percentage Rent actually made by Lessee in a particular Lease Year exceed the total Annual Minimum Rent and Percentage Rent that would have been due for such Lease Year if computed on an annual basis at the end of such Lease Year, Lessee shall be permitted to credit that excess amount ("**Excess Percentage Rent Payment**") against the succeeding monthly installments of Annual Minimum Rent otherwise due under this Subsection 4.2.3 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days after County's verification of such overpayment, which County agrees to use its reasonable efforts to diligently complete after receipt by County of all information required for County to calculate the Excess Percentage Rent Payment and to resolve any audits of Percentage Rent.

(d) Delivery of Payments; No Statements. All payments under this Lease shall be made via wire transfer to the following:

Bank Name:	Wells Fargo Bank
Account Name:	Revenue Recovery
Routing / ABA:	[redacted]
Account #:	
Lease Name:	Dana Point Harbor

The designated place of payment and filing may be changed at any time by the Chief Real Estate Officer upon ten (10) days' written notice to Lessee. Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand.

(e) Late Fees; Interest. In the event any payment under this Lease is not received by County by the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("**Late Fee**") equal to five percent (5%) of the delinquent amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable hereunder; provided, however, with regard to the first such failure in any twelve (12) month period, such late charge shall be waived to the extent Lessee cures such failure within five (5) business days following Lessee's receipt of written notice from County that the same was not received when due. Any

unpaid rent due, together with any Late Fees thereon, shall bear interest at an annual rate equal to the Applicable Rate, computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County); provided, however, with respect to any obligation of an Encumbrance Holder in connection with the exercise of its cure rights under Article 13 below, interest accrual on any particular obligation for periods prior to the Encumbrance Holder's acquisition of leasehold title to the Property shall be limited to a maximum of three (3) years.

4.3 Payment Upon Changes of Ownership & Financing Events. Except as otherwise provided in this Subsection 4.3, each time Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer), or (b) a Financing Event, Lessee shall pay to County (i) an administrative charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("**Administrative Charge**"), plus (ii) in the event the proposed Change of Ownership or Financing Event is consummated, a Percentage Share, subject to the remaining provisions of this Section 4.3. Notwithstanding anything herein to the contrary, Excluded Transfers shall not be deemed to create an obligation to pay County a Percentage Share and no Percentage Share shall be payable in connection with either (A) the initial construction financing obtained in connection with the Redevelopment Work, or (B) the initial capitalization of Lessee for purposes of performing the Redevelopment Work. The provisions of this Section 4.3 shall apply to all transfers of Beneficial Interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of this Section 4.3, and the principles set forth herein, shall apply to any transfer or series of transfers primarily structured for the purpose of avoiding the obligation to pay a Percentage Share set forth in this Section 4.3 and which, when viewed together, would otherwise constitute a Change of Ownership.

4.3.1 Definitions. For purposes of this Lease:

(a) "**Aggregate Transfer**" shall mean the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute Beneficial Interests in Lessee or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than Excluded Transfers) occurring since the later of (i) the Effective Date, or (ii) the most recent Change of Ownership upon which an Administrative Charge was paid to County; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

(b) "**Beneficial Interest**" shall mean the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of

ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as applicable, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the Beneficial Interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Lessee or a Major Sublease shall have any liability to County under this Lease.

(c) "**Change of Ownership**" shall mean (i) any transfer by Lessee of a thirty-two percent (32%) or greater direct ownership interest in the Lessee's leasehold estate under this Lease, (ii) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a thirty-two percent (32%) or greater direct ownership interest in such Major Sublease, (iii) any transaction or series of related transactions not described in Subsections 4.3.1(c)(i) or (ii) which constitute an Aggregate Transfer of thirty-two percent (32%) or more of the Beneficial Interests in Lessee or a Major Sublessee, and/or (iv) a Change of Control of Lessee or a Major Sublessee.

(d) "**Change of Control**" shall mean any transaction whereby person(s) or entity(ies) in the aggregate acquire(s): (i) a Beneficial Interest in Lessee or a Major Sublessee possessing the voting power (other than voting rights accruing only in the event of a default, breach or event of noncompliance) holding the majority of the voting control of Lessee (whether by merger, consolidation, reorganization, combination, sale or transfer of the Lessee's equity interests (such as membership, stock or partnership interests), voting agreement, proxy, power of attorney or otherwise); or (ii) all or substantially all of the Lessee's assets determined on a consolidated basis.

(e) "**Excluded Transfers**" shall mean Changes of Ownership resulting from the following:

(1) a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, to any other direct or indirect partner, shareholder or member of Lessee (or to a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure), including transfers to such transferring partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in

Subsection 4.3.1(e)(3) below) of any direct or indirect partner, shareholder or member of Lessee who is an individual;

(2) a transfer to a spouse (or to a domestic partner if domestic partners are afforded property rights under then-existing Applicable Laws) in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

(3) a transfer of ownership interests in Lessee or in constituent entities of Lessee (A) to a member of the "**immediate family**" of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (B) to a trust for the benefit of a member of the immediate family of the transferor, or (C) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this Subsection 4.3.1(e)(3) is the result of gift, devise, intestate succession or operation of law, but expressly excluding any such transfers that are the result of a sale of such ownership interest.

(4) a transfer of a Beneficial Interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock (or securities) is (are) traded publicly on a national stock exchange or traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

(5) a mere change in the form, method or status of ownership, as long as there is no change in the actual beneficial ownership of this Lease, Lessee or a Major Sublease, and such transfer does not involve an intent to avoid Lessee's obligations under this Lease with respect to a Change of Ownership;

(6) any transfer to the County resulting from a Condemnation by County; or

(7) any assignment of the Lease by Lessee to a parent, or wholly-owned subsidiary or Affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest or Change of Control of Lessee.

(f) "**Gross Transfer Proceeds**" shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (without deduction for costs or any other amounts), but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair market value of the interests transferred; provided, if Lessee and County are unable to agree upon such fair market value, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.

(g) "**Loan Amount**" shall mean the gross principal amount of any Financing Event after the Effective Date.

(h) "**Percentage Share**" shall mean the applicable amount determined pursuant to Subsection 4.3.4 of this Lease.

4.3.2 Determining Value of Changes of Ownership and Financing Events Under Certain Scenarios.

(a) Changes of Ownership Involving Multiple Assets. For purposes of determining the Gross Transfer Proceeds from a transaction or event that involves both a Change of Ownership and also the transfer of other assets or interests unrelated to this Lease, a Major Sublease or Beneficial Interests in Lessee or a Major Sublessee (as applicable), the proceeds of such transaction or event shall be apportioned to this Lease, a Major Sublease and/or Beneficial Interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests, on the other hand, in proportion to the ratio of the fair market value of the Beneficial Interest in the Lease being transferred relative to the value of the total consideration payable for all the assets being transferred. If there is any dispute regarding such valuation, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.

(b) Financing Events Involving Multiple Assets. For purposes of determining the Percentage Share from a financing transaction that involves both a Financing Event under this Lease and a financing in which other assets or interests unrelated to this Lease, a Major Sublease or Beneficial Interests in Lessee or a Major Sublessee secure the financing, the principal amount of such financing transaction shall be apportioned to this Lease, a Major Sublease and/or Beneficial Interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests that also secure the financing, on the other hand, in proportion to the ratio of (i) the fair market value of the Beneficial Interest in the Lease, to (ii) the aggregate fair market value of the assets securing such financing, including the Beneficial Interest in the Lease. The fair market value of such Beneficial Interest in the Lease will be the value attributable to such fair market value by the lender involved in such Financing Event, or, failing any such lender valuation, then in accordance with the procedure set forth in Subsection 4.3.3.

(c) Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration in the manner prescribed in Subsection 4.3.3.

4.3.3 Determination of Fair Market Value.

(a) Agreement on Fair Market Rental Value; Amendment. In the event the County and Lessee are required to determine the fair market value hereunder (including that of any Component) and the County and Lessee are unable to agree upon the fair market value within thirty (30) days from the end of the applicable response period, if any, or from the date that such fair market value determination is required to be made hereunder if no response period is specified (the "**Outside Agreement Date**") using their best good-faith efforts, then fair market rental value shall be determined in accordance with Subsection 4.3.3(b) below. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

(b) Disagreement on Fair Market Rental Value; Arbitration. If County and Lessee fail to reach agreement on or prior to the Outside Agreement Date, then, unless the Parties agree otherwise in writing, the determination of fair market value shall be arbitrated as follows:

(1) Within ten (10) days after the Outside Agreement Date, each Party, at its own cost and by giving notice to the other Party, shall appoint an independent California MAI licensed real estate appraiser and a member of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers, who has no financial interest in County or Lessee, who has no ongoing relationship with County or Lessee and who has at least ten (10) years' experience in appraising fair market values of comparable facilities or businesses within the County and, to the extent available, within the Dana Point and neighboring beach-city sub-market, to appraise and determine the fair market value. If, in the time provided, only one (1) Party shall give notice of appointment of such an appraiser, the single appraiser appointed shall determine the fair market value.

(2) If each Party appoints an appraiser within the allotted timeframe, the two (2) appraisers shall independently, and without consultation, prepare a written determination of the fair market value within thirty (30) days after their appointment taking into consideration the terms and provisions applicable to the calculation of the fair market value set forth in Subsection 4.3.3(a) above. Each appraiser shall seal its respective determination after completion. After both determinations are completed, the resulting estimates of fair market value shall be opened simultaneously and compared. If, in the time provided, only one (1) appraiser shall submit a written determination of fair market value, the fair market value shall be the fair market value determined by said single appraiser.

(3) If the values of the two appraisers appointed by the Parties differ, and the Parties do not otherwise then agree as to the determination of fair market value within ten (10) days following the opening of the appraisals, then the two (2) appraisers shall designate a single appraiser, who shall be qualified under the same criteria as set forth hereinabove for qualification of the initial two (2) appraisers, except that the third appraiser shall not have been previously engaged

by County or Lessee for any purpose. If the two (2) appraisers have not agreed on the appraiser after ten (10) days, either County or Lessee, by giving ten (10) days' written notice to the other Party, may apply to the then Presiding Judge of the Superior Court of Orange County, acting in his or her private and nonjudicial capacity, for the selection of a single appraiser who meets the qualifications set forth in this subsection above. The third appraiser shall make an appraisal of the fair market value, taking into account into consideration the terms and provisions applicable to the calculation of the fair market value set forth in Subsection 4.3.3(a) above. Within thirty (30) days after selection and without consultation with the first two (2) appraisers, the third party appraiser shall select the fair market value of one of the initial two (2) appraisers that the third appraiser determines is closest, on a dollar basis, to the fair market value determined by the third appraiser. Each Party may submit written material to the third appraiser, with a copy to the other Party, on the issue of fair market value. Such third appraiser shall provide written notice to County and Lessee of its determination of fair market value, and such determination shall be binding upon County and Lessee.

(4) Each Party shall pay the fees and expenses of its own appraiser, and fifty percent (50%) of the fee of the third appraiser, if applicable.

(5) The appraisers shall have no power to modify the provisions of the Lease, and their sole function shall be to determine the fair market rental value in accordance with this subsection.

4.3.4 Determining Percentage Share.

(a) Upon a Change of Ownership. In the event of a Change of Ownership, the "**Percentage Share**" shall be one percent (1%) of the Gross Transfer Proceeds from such Change of Ownership.

(b) Upon a Financing Event. With respect to a Financing Event, the "**Percentage Share**" shall be an amount equal to one percent (1%) of the Loan Amount of such Financing Event.

(c) Limitations; No Duplication. Notwithstanding any contrary provision of this Subsection 4.3.4, in the calculation of Gross Transfer Proceeds and Loan Amount derived from a Financing Event taking place concurrently with a Change of Ownership, the Percentage Share shall be based on the greater of the Gross Transfer Proceeds and the Loan Amount.

(d) Calculating Percentage Share. Before any Change of Ownership or Financing Event for which Percentage Share may be due, Lessee shall provide County with its detailed calculation of the Percentage Share. No Change of Ownership or Financing Event shall occur until agreement is reached on the calculation of Percentage Share; provided, however, that a Change of Ownership or Financing Event shall be permitted to occur without such agreement as long as County and Lessee make mutually

acceptable arrangements for the preservation of any additional Percentage Share (plus interest at the Interest Rate) that might be due to County over and above that reflected in the Lessee's calculation should any such dispute be resolved in favor of County. Percentage Share shall be due and payable concurrently with the Change of Ownership or Financing Event giving rise to the obligation to pay Percentage Share (or, with respect to any disputed amount, upon resolution of the dispute) and, in the situation of a Change of Ownership, shall be the joint and several obligation of the transferee and transferor.

4.3.5 Determining Gross Transfer Proceeds.

(a) Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in Subsection 4.3.1(c)(ii), Subsections 4.3.4(a) and 4.3.4(b) shall apply (as applicable), except that any rents or other amounts received by Lessee from the Major Sublessee, a percentage of which is passed through to County under any provision of this Lease (other than payment of Percentage Share), shall be disregarded in the computation of Gross Transfer Proceeds.

(b) Other Transfers. With respect to any Change of Ownership that is not an Excluded Transfer and is not described in Subsections 4.3.4(a) through 4.3.4(c) above (e.g., a transfer of a Beneficial Interest in Lessee or a Major Sublessee), Subsections 4.3.4(a) through 4.3.4(c) shall apply to such Change of Ownership (as applicable).

4.3.6 Payment of Administrative Charge and Percentage Share.

(a) Deposit Towards Administrative Charge. A deposit of Ten Thousand Dollars ($10,000) toward the Administrative Charge shall be due and payable by Lessee to County upon Lessee's notification to County of the proposed Change of Ownership (other than an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Percentage Share shall be due and payable in accordance with Subsection 4.3.6(d) below. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the amount of the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under this Section 4.3. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay to County the balance of the Administrative Charge otherwise allowable under Section 4.3 within thirty (30) days after receipt of the notice from County setting forth the amount of the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice.

(b) Calculation of Payment. At the time of Lessee's request for County approval of the proposed transaction (or in the case of a transaction, if any, as to which a Percentage Share is payable but County's approval is not required, then at the time of Lessee's notice to County of the transaction, but in no event later than the consummation

of the transaction), Lessee shall present (or cause to be presented) to County its calculation of the Percentage Share (if any) anticipated to be derived therefrom ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Percentage Share. Within sixty (60) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Percentage Share set forth therein. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Lessee with the reason or reasons for such disagreement. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the amount of the Percentage Share in respect thereof, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that, at the closing of the transaction (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Percentage Share, and (ii) Lessee shall deposit the disputed portion of the Percentage Share into an interest bearing escrow account for the mutual benefit of Lessee and County (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed to the Party entitled thereto following the final resolution of the dispute by a court of competent jurisdiction, or earlier settlement of the dispute by the Parties.

(c) Party Responsible for Payment. With respect to a Change of Ownership giving rise to the Administrative Charge and Percentage Share, the obligation to pay the Administrative Charge and Percentage Share shall be the joint and several obligation of the transferee and transferor.

(d) Timing for Payment. The Percentage Share and the balance of the Administrative Charge not already deposited with the County in accordance with Subsection 4.3.6(a) above, if any, shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership (other than an Excluded Transfer) or Financing Event giving rise to the obligation to pay such amounts, regardless of whether or not money is transferred by the parties in connection with such consummation.

(e) Remedies Upon Failure to Make Timely Payment. Any Percentage Share, or part thereof, not paid when due shall be subject to a late fee of five percent (5%) of the amount due, together with interest on such Percentage Share at the Applicable Rate from the date due until paid; provided, however, that in the case of a good faith dispute as to the correct amount of the Percentage Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Percentage Share and, at the closing of the transaction, deposits the disputed portion thereof in an interest bearing escrow account with an escrow holder reasonably acceptable to both Parties and in an escrow opened for the mutual benefit of Lessee and County (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed portion) to secure payment thereof. In the event that the proceeds of the transaction giving rise to the obligation to pay Percentage Share are comprised, in whole or in part,

of assets other than cash, then the cash payment of the Percentage Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in Subsection 4.3.1(c)(ii) above, the Percentage Share shall be payable to County as and when the Lessee's proceeds from the Gross Transfer Proceeds (or the value thereof) are received by Lessee. In the event that the Administrative Charge or Percentage Share is not paid when due with respect to the Beneficial Interest in this Lease, then such failure shall constitute an Event of Default under this Lease and the County shall have the remedies set forth in Subsection 14 hereof in addition to the remedies provided in this Subsection 4.3.6(e).

4.4 Shareholder, Partner, Member, Trustee and Beneficiary List. As part of the submission for approval of a Change of Ownership or Financing Event, and upon the request of County, Lessee shall provide County with an updated schedule listing the names and mailing addresses of (a) all shareholders, partners, members and other holders of equity or Beneficial Interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (b) all shareholders, partners, members and other holders of equity or Beneficial Interests in any of the constituent shareholders, partners, members or other holders of equity or Beneficial Interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a ten percent (10%) or greater Beneficial Interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a ten percent (10%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review all such information so obtained. Lessee agrees to use its commercially reasonable and diligent efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of ten percent (10%) or greater Beneficial Interests in Lessee or a Major Sublessee.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 Redevelopment Work. Following the Effective Date, Lessee shall perform certain redevelopment and renovation work (collectively, the "**Redevelopment Work**") with respect to each Component as set forth for each Component in the County-approved Conceptual Plans, Budget, Construction Schedule, Marketing Plan, Financial Plan and Management Plan attached to this Lease as **Exhibit B** (collectively, the "**Approved Proposal Submittals**"). Lessee shall perform the Redevelopment Work for each Component in accordance with (a) the Approved Proposal Submittals, as same may be revised from time to time in accordance with this Lease, (b) the Final Plans and Specifications, as same may be revised from time to time in accordance with this Lease, (c) all governmental permits and conditions for approval thereof including, without limitation, the LCP and CDP, (d) Lessee's obligations under this Lease, (e) all Applicable Laws, (f) the terms and conditions of the Assumed Contracts, and (g) consistent with the Permitted Uses set forth in Article 3 above.

5.2 Cost of Redevelopment Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the performance of the Redevelopment Work (including all design, engineering, entitlement and construction activities). With respect to each Component, Lessee shall expend on the Redevelopment Work for such Component not less than the Required Cost Amount applicable to such Component; provided, however, only Applicable Redevelopment Costs will apply towards the Required Cost Amount. Lessee acknowledges and agrees that (a) the Required Cost Amount for a Component is not the maximum amount that Lessee is required to expend for Applicable Redevelopment Costs on such Component, and (b) Lessee shall be required to perform the Redevelopment Work for such Component in accordance with the requirements and standards set forth in this Article 5 even if the Applicable Redevelopment Costs necessary to do so exceed the applicable Required Cost Amount. Applicable Redevelopment Costs shall not include any soft costs, including without limitation: (i) architectural, design and engineering fees; (ii) governmental permit fees; (iii) project oversight and management fees; (iv) costs for furniture, fixtures and equipment; (v) accounting, legal and insurance costs incurred in connection with the Redevelopment Work; or (v) construction loan fees, costs or interest. The Applicable Redevelopment Costs shall also exclude the Option Price and Extension Fee (as such terms are defined in the Option Agreement), syndication fees and costs, and any imputed cost or value of the existing Improvements as of the Effective Date. As the Parties anticipate that a significant period of time will elapse between the Effective Date and the commencement of the Redevelopment Work on some or all of the Components, the Required Cost Amount for each Component will be increased as of the date that construction of the Redevelopment Work for such Component commences (each, a "**Required Cost Adjustment Date**") by the same percentage increase in the Consumer Price Index during the period from the Effective Date through and until the month during which a Required Cost Adjustment Date occurs.

5.3 Schedule of Redevelopment Work.

5.3.1 Subject to Sections 5.3.2 and 5.7 below, Lessee shall, with respect to each Component, (a) commence the Redevelopment Work no later than the applicable Required Construction Commencement Date for such Component, (b) achieve each Interim Milestone by the date (the "**Interim Milestone Date**") set forth for the same in the Construction Schedule for such Component, and (c) achieve the CO Date for such Component no later than the applicable Required Construction Completion Date for such Component. Following Commencement of Construction of the Redevelopment Work for each Component, Lessee shall diligently continue performance of such Redevelopment Work through completion thereof in accordance with the Construction Schedule, as same may be amended from time to time with the approval of Chief Real Estate Officer pursuant to Subsection 5.3.2 below.

5.3.2 A schedule for the commencement, performance and completion of the Redevelopment Work for each Component (each, a "**Construction Schedule**") is included in the Approved Proposal Submittals. The Construction Schedule includes, with respect to each Component: (a) the Required Construction Commencement Date for such Component, (b) the anticipated CO Date for such Component, (c) the Required Construction Completion Date and (d) all interim milestones between the Required Construction Commencement Date and Required Construction Completion Date (collectively, "**Interim Milestones**" and each, an "**Interim Milestone**") that Lessee and County reasonably agree are relevant to tracking the

likelihood that the Redevelopment Work for such Component will be completed by the applicable anticipated CO Date for such Component. Lessee shall not make any Material Modifications to the Construction Schedule without the prior written approval of Chief Real Estate Officer obtained in accordance with the procedure set forth below in this Subsection 5.3.2. Chief Real Estate Officer shall have thirty (30) days following receipt of any requested Material Modifications to the Construction Schedule within which to approve or disapprove such submission in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.3.2 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S PROPOSED CHANGE(S) TO THE CONSTRUCTION SCHEDULE. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF SUCH CHANGE(S) TO THE CONSTRUCTION SCHEDULE."

Failure of Chief Real Estate Officer to approve or disapprove such requested change to the Construction Schedule in writing within said additional twenty (20) day period shall be deemed approval of the same. Concurrently with any disapproval of such proposed change by Chief Real Estate Officer, Chief Real Estate Officer shall disclose to Lessee in writing Chief Real Estate Officer's objections to the proposed change together with its proposed modification that will be necessary to obtain Chief Real Estate Officer's approval. Chief Real Estate Officer's approval of any changes to the Construction Schedule shall not relieve or otherwise affect Lessee's obligations under this Lease with respect to the commencement and completion of the Redevelopment Work on or before the respective required dates for such commencement and completion set forth in Subsection 5.3.1 above.

5.3.3 Lessee acknowledges that the principal inducement to County to enter into this Lease is the timely commencement, performance and completion by Lessee of the Redevelopment Work. If Lessee fails to comply with its obligations under this Article 5 to commence and complete the Redevelopment Work for each Component by the applicable Required Construction Commencement Date and Required Construction Completion Date, respectively (as such dates may be extended pursuant to the provisions of this Article 5 or Section 5.7 below), then such failure shall be deemed an Event of Default giving rise to County's remedies under Section 14.3 below.

5.3.4 Lessee acknowledges that (a) certain private enterprises operating on property leased from County adjacent to the Property may require access to their properties via the Property at all times during the course of the Redevelopment Work, and (b) the Redevelopment Work pertaining to the Marina Improvements must be performed in phases in a manner reasonably acceptable to Chief Real Estate Officer. Lessee shall schedule the Redevelopment Work in such a way as to minimize interruption with such private business

enterprises and in compliance with all requirements for notices and accommodation of existing slip tenants under their leases.

5.4 Plans and Specifications.

5.4.1 Schematics and Narrative. Within one hundred eighty (180) days following the Effective Date, Lessee shall, with respect to each Component, submit to Chief Real Estate Officer six (6) sets of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the Improvements to be constructed by Lessee on each Component (collectively, "**Lessee's Deliverables**"). The Lessee's Deliverables shall (a) identify and illustrate all boundaries of the Property and of each Component, and all affected rights-of-way or other areas reserved to County or third parties which are located thereon, (b) clearly delineate the architectural theme or motif of the Improvements, (c) include references to the size of each Improvement in terms of height and interior square feet, and (d) be consistent, in all material respects, with the Approved Proposal Submittals previously approved by Chief Real Estate Officer, or otherwise include a detailed explanation of the reasons for any material deviations from the Approved Proposal Submittals. After receipt of the Lessee's Deliverables, Chief Real Estate Officer shall have sixty (60) days within which to approve or disapprove such submission in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such sixty (60) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.4.1 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S DELIVERABLES. YOUR FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF THEM."

Failure of Chief Real Estate Officer to approve or disapprove Lessee's Deliverables in writing within said additional twenty (20) day period shall be deemed approval of the same. Chief Real Estate Officer's approval shall not be unreasonably withheld, conditioned or delayed. Concurrently with any disapproval of Lessee's Deliverables by Chief Real Estate Officer, Chief Real Estate Officer shall disclose to Lessee in writing Chief Real Estate Officer's objections to Lessee's Deliverables together with its proposed modifications that will be necessary to obtain Chief Real Estate Officer's approval. Any subsequent Material Modifications to Lessee's Deliverables previously approved by Chief Real Estate Officer shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.1.

5.4.2 Preliminary Plans and Specifications. As soon as reasonably practicable after Chief Real Estate Officer's approval of the Lessee's Deliverables pursuant to Subsection 5.4.1 and in accordance with the deliverables schedule set forth in the Construction Schedule for the applicable Component, Lessee shall, with respect to each Component, submit to Chief Real Estate Officer six (6) sets of preliminary plans, outline specifications and construction

cost estimates for the Redevelopment Work on such Component (collectively, the "**Preliminary Plans**"). The Preliminary Plans for each Component shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the Lessee's Deliverables for such Component previously approved by Chief Real Estate Officer and be consistent, in all material respects, with the Lessee's Deliverables, the Approved Proposal Submittals previously approved by Chief Real Estate Officer for such Component, or otherwise include a detailed explanation of the reasons for all material deviations from the Approved Proposal Submittals. Lessee shall identify on all documents submitted with the Preliminary Plans to the CREO Office, all Material Modifications and other difference in the scope, size, configuration, arrangement or motif of the designed Improvements from those described in the previously approved Lessee's Deliverables. The Preliminary Plans shall be of a detail and scope that is typically associated with design development drawings. Chief Real Estate Officer shall have thirty (30) days from receipt within which to approve or reasonably disapprove the Preliminary Plans submitted for each Component, provided that it shall be reasonable for the Chief Real Estate Officer to disapprove said preliminary plans on the grounds that, among other things, they include Material Modifications to the applicable Lessee's Deliverables, Construction Schedule or Construction Budget previously approved by Chief Real Estate Officer in accordance with this Section 5.4, or otherwise do not reflect a natural evolution from the previously approved Lessee's Deliverables. Chief Real Estate Officer shall have thirty (30) days following receipt of Preliminary Plans for a Component or any subsequent change to the Preliminary Plans for a Component, within which to approve or disapprove such Preliminary Plans or Material Modification in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.4.2 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S PRELIMINARY PLANS FOR A COMPONENT OR ANY MATERIAL MODIFICATIONS TO THE PRELIMINARY PLANS FOR A COMPONENT. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF SUCH PRELIMINARY PLANS FOR A COMPONENT ANY SUBSEQUENT CHANGE TO THE PRELIMINARY PLANS FOR A COMPONENT."

Failure of Chief Real Estate Officer to approve or disapprove such submitted Preliminary Plans for a Component or any such submitted change to the Preliminary Plans for a Component in writing within said additional twenty (20) day period shall be deemed approval of the same. Any subsequent Material Modifications to the Preliminary Plans previously approved by Chief Real Estate Officer shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.2.

5.4.3 Final Plans and Specifications. As soon as reasonably practicable after Chief Real Estate Officer's approval of the Preliminary Plans for a Component, Lessee shall submit for approval by Chief Real Estate Officer six (6) complete sets of final plans, detailed

specifications and a construction cost estimate for the Redevelopment Work for such Component, together with one (1) set of appropriate structural computations, identical to those requested or required by the Chief Real Estate Officer incident to the issuance of building permits under the relevant provisions of the Orange County Building Code (collectively, "**Lessee's Final Submittals**"). Lessee shall file duplicate copies of Lessee's Final Submittals with the CREO Office, together with the necessary and appropriate applications for building permits. Lessee shall clearly identify in the Lessee's Final Submittals all differences in the scope, size, configuration, arrangement or motif of the Redevelopment Work from those described in Lessee's Preliminary Plans previously approved for such Component. Chief Real Estate Officer shall have thirty (30) days after receipt of Lessee's Final Submittals for a Component within which to approve or disapprove such submission, and Chief Real Estate Officer may disapprove such submission only on the grounds that (a) they do not reflect a natural evolution from or that they materially differ from Lessee's Preliminary Plans previously approved for such Component, or (b) any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Chief Real Estate Officer as a part of the previously approved Lessee's Preliminary Plans do not meet the requirements for the Improvements set forth in this Article 5. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.4.3 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S FINAL SUBMITTALS. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF LESSEE'S FINAL SUBMITTALS."

Failure of Chief Real Estate Officer to approve or disapprove such requested change to Lessee's Final Submittals in writing within said additional twenty (20) day period shall be deemed approval of the same.

Concurrently with any disapproval by Chief Real Estate Officer of Lessee's Final Submittals or any subsequent Material Modification thereto, County shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Chief Real Estate Officer's reasons for objecting Lessee's Final Submittals or Material Modifications thereto. Chief Real Estate Officer's approval shall not be required of any non-Material Modification. Any subsequent Material Modifications to any previously approved Lessee's Final Submittals (the "**Final Plans and Specifications**") shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.3.

5.5 Conditions Precedent to the Commencement of Construction. Lessee shall not commence any Redevelopment Work, Subsequent Renovation or Alterations (including, without limitation, grading or other construction-related activities) (each, an "**Improvement Project**") until each and all of the following conditions have been satisfied; provided, however, County acknowledges that the Redevelopment Work for each Component may be performed in phases

and, accordingly, Lessee may commence with the Redevelopment Work on one Component upon satisfaction of all such conditions applicable to such Component, even if all conditions to the commencement of Redevelopment Work on the other Components have not yet been satisfied:

5.5.1 Permits and Other Approvals. Lessee shall have (a) provided the CREO Office with satisfactory evidence that Lessee has met all requirements of applicable Governmental Authorities for the commencement of the applicable Improvement Project, and (b) obtained, and furnished the CREO Office with copies of, all permits, licenses, clearances and other approvals from the applicable Governmental Authorities for the commencement of such Improvement Project. With respect to the Redevelopment Work, commencing on the Effective Date and continuing on or before the fifteenth (15th) day of each calendar month thereafter until the commencement of such work, Lessee shall provide County with a written status report documenting Lessee's efforts to obtain all required permits, licenses, clearances and other approvals from the applicable Governmental Authorities for the Redevelopment Work. Subject to the terms and conditions set forth in Subsection 5.6 below, County shall timely cooperate with Lessee in connection with Lessee's efforts to obtain governmental approvals required in connection with this Lease and the Redevelopment Work.

5.5.2 Selection of Improvement Project Professionals. Chief Real Estate Officer shall have provided Lessee with written approval of (a) Lessee's choice of general contractor(s), architect(s) of record and structural engineers for the Improvement Project, and (b) the terms and conditions of the form contracts to be entered into by and between Lessee and such contractors, architects and engineers with respect to the Improvement Project.

5.5.3 Approval of Improvement Project Contracts. Chief Real Estate Officer shall have provided Lessee with written approval of all contracts to be entered into between Lessee and all general contractor(s), architect(s) and structural engineer(s) approved pursuant to Subsection 5.5.2 above.

5.5.4 Performance and Payment Bonds. Lessee shall, at its own cost and expense, have purchased and furnished County with copies of the following corporate surety bonds (or with the substitute security set forth below) not less than ten (10) days prior to the Commencement of Construction of the Improvement Project, which bonds (or other security) must be in form and content reasonably satisfactory to County or provide evidence of construction financing and cash deposits in an amount equal to not less than one hundred percent (100%) of the amount of all Hard Costs set forth in the most recently updated Construction Budget for the applicable Improvement Project approved by County as set forth above:

(a) A corporate surety performance bond ("**Performance Bond**") issued by a surety company licensed to transact business as such in the State, with a coverage limit of not less than one hundred percent (100%) of the amount of all Hard Costs set forth in the most recently updated Construction Budget for the applicable Improvement Project approved by County as set forth above. The Performance Bond and its issuer shall be subject to the prior approval of County, which approval may not be unreasonably withheld. The Performance Bond shall name Lessee as principal, said issuer as surety, County as obligee and any Encumbrance Holder as additional obligee, assuring full and

satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Improvement Project.

(b) A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State, with Lessee as principal, said company as surety, County as obligee and any Encumbrance Holder as additional obligee, with a coverage limit of not less than one hundred percent (100%) of the total construction cost anticipated to be incurred in connection the Improvement Project, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the construction of the Improvement Project or for labor used thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "**Payment Bond**"). The Payment Bond and its issuer shall be subject to the prior approval of County, which approval may not be unreasonably withheld.

In the event that construction is performed by a licensed general contractor on behalf of Lessee in accordance with this Lease, and provided that such contractor provides County with a bond or bonds compliant with this Subsection and are in all material respects reasonably satisfactory to County and otherwise compliant with this Subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required above.

5.5.5 Alternative Security. If Lessee elects not to provide the Payment Bonds and/or the Performance Bonds as set forth above, then Lessee shall provide County any of the following alternative security: (a) a completion guaranty, in form and substance acceptable to Chief Real Estate Officer, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Chief Real Estate Officer, to comply with the terms of such guaranty in view of the potential financial responsibility involved, or (b) a letter of credit on such terms and issued by such bank as Chief Real Estate Officer may approve in Chief Real Estate Officer's sole discretion, in an amount equal to one hundred percent (100%) of the anticipated construction costs for the Improvement Project, and allowing County to draw thereon to complete construction of the Improvement Project if (i) same is not completed by Lessee prior to the required completion date set forth in the applicable construction contract, or (ii) an Event of Default has occurred under this Lease and remains uncured following the expiration of any applicable cure periods under this Lease; or any combination of the above and the bonds described in Subsection 5.5.4 above. In addition, Chief Real Estate Officer shall have the authority to accept in lieu of the Payment Bonds, so- called "Subguard" insurance in such amount, on such terms and issued by such carrier as Chief Real Estate Officer may require in Chief Real Estate Officer's sole discretion. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co- beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this Subsection 5.5.5 shall be delivery by Lessee to County of an opinion of counsel from a law firm and in a form acceptable to County and opining that the applicable Improvement Project does not constitute a public work of improvement requiring the delivery of the bonds described in Subsection 5.5.4 above.

5.5.6 Evidence of Financing. Lessee shall have provided County with evidence that it has access to sufficient financial resources, whether in the form of debt or equity, to complete construction of the Improvement Project within the applicable time periods approved for such construction and such evidence shall be subject to the approval of Chief Real Estate Officer in Chief Real Estate Officer's reasonable discretion. Without limiting the generality of the foregoing, Lessee shall deliver to the CREO Office, for Chief Real Estate Officer's review and approval, copies of all notes, guaranties, construction loan and/or permanent loan commitments, as applicable, evidence of equity commitments, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Property. With regard to the Redevelopment Work, Lessee acknowledges and agrees that, prior to commencing with the Redevelopment Work on any one Component, it shall be required to satisfy this condition with respect to such Component. Lessee shall keep County apprised of the status of its discussions and negotiations with the potential sources of Lessee's funding for the Improvement Project, including the identity of the sources (for both construction and permanent financing) that Lessee is considering for each Component from time to time.

5.5.7 Environmental Requirements. Concurrently with, or prior to the submission of the Preliminary Plans for the Redevelopment Work and for any subsequent development, redevelopment and/or renovation plans that significantly change the project outlined in the Preliminary Plans, Lessee shall submit to the CREO Office a preliminary analysis, prepared at Lessee's expense, of the effect that each Component of the Redevelopment Work may have on the environment and an analysis of whether additional or new environmental review, above and beyond the existing Dana Point Harbor Revitalization Final Environmental Impact Report (FEIR) 591 (the "**Existing EIR**"), is required. The analysis shall include all information and documentation that the applicable Governmental Authority requires in order to determine whether further environmental review, including a subsequent or supplement to the Existing EIR, or an addendum, or new documentation including a project-level Negative Declaration, Mitigated Negative Declaration or Environmental Impact Report will be necessary for the applicable work. At least sixty (60) days prior to the submission of any required further or new environmental documentation to the applicable Governmental Authority, Lessee shall submit to the CREO Office a draft of the environmental documentation for review and comment. Prior to Commencement of Construction, Lessee shall provide evidence that any required environmental documentation has been certified, approved, or adopted by the applicable Governmental Authority.

5.6 County Cooperation. County, in its proprietary capacity, shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Redevelopment Work, the Subsequent Renovation, and Alterations, as applicable. Such cooperative efforts may include the County's joinder in any application for such approval, consent, permit or variance, where joinder therein by the County is required or helpful; provided, however, that such cooperation by County shall be at Lessee's sole cost and expense, and Lessee shall reimburse County for the Actual Cost incurred by the County in connection with such joinder or cooperative efforts within two (2) business days after Lessee's receipt of written demand from County. Notwithstanding the foregoing, Lessee and County acknowledge that (a) the approvals given by County under this

Lease are approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code, (b) such approvals in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the Redevelopment Work, any Subsequent Renovation, and Alterations on the Property, or the operation and use of such Improvements, (c) the County's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease, and (d) the County's duty to cooperate shall be limited to those items or matters that the County has otherwise approved or consented to in accordance with the terms of the Lease, to the extent the County's approval or consent is required.

5.7 Delays in Commencement and Completion of Redevelopment Work.

5.7.1 Force Majeure. Following Commencement of Construction of the Redevelopment Work for any Component, Lessee shall thereafter diligently pursue the completion of the Redevelopment Work for each Component by the applicable Required Construction Completion Date, subject to Force Majeure as set forth below. If Lessee is delayed in commencing construction, achieving an Interim Milestone for a Component by the applicable Interim Milestone Date, or completing the Redevelopment Work for a Component, and in each case such delay is due to Force Majeure, then the Required Construction Commencement Date, Interim Milestone Date and/or the CO Date for such Component, as applicable, shall be extended by the period of the delay caused by such Force Majeure, but only to the extent that a Force Majeure event actually causes a delay in the commencement and/or completion of construction (as applicable). Notwithstanding the foregoing, any extension of time in the Construction Schedule as a result of a Force Majeure event shall be limited to the period of the delay caused by the Force Majeure event and no such delay shall be considered to have commenced unless Lessee notifies Chief Real Estate Officer in writing of the commencement of such delay within ten (10) days after Lessee's discovery of the Force Majeure event. Lessee and Chief Real Estate Officer shall discuss and attempt to agree on the length of time of any entitled delay due to a Force Majeure event. If they are unable to agree within thirty (30) days after County's receipt of written notice from Lessee of the occurrence of a Force Majeure event, then the length of permitted change to the Construction Schedule shall be determined by arbitration pursuant to Section 5.18 below.

5.7.2 Unreasonable County Action.

(a) In the case of the Redevelopment Work and the Subsequent Renovation, the definition of Force Majeure shall also include delays in the commencement and completion of the Redevelopment Work or Subsequent Renovation (as applicable) due to Unreasonable County Action. For the purposes of this Lease, "**Unreasonable County Action**" means any of the following that occurs after the Effective Date: (i) the County's failure to provide required joinder, if any, as fee title owner of the Property, in Lessee's submittal to the applicable governmental agency of the Final Plans and Specifications for the Redevelopment Work or Subsequent Renovation (as applicable) after same have been approved by the CREO Office; or (ii) County's failure, within a reasonable time following receipt of written notice from Lessee requesting same, to take such actions, in its proprietary capacity and at no cost or expense to County, that are reasonably requested

by Lessee and which are necessary for Lessee to proceed with the permitting and approval process for the Redevelopment Work or Subsequent Renovation (as applicable); or (iii) the taking by the County of actions in its proprietary capacity, without Lessee's consent, which are in conflict with County's obligations under this Lease and actually delay the receipt of any permits or approvals required for the Redevelopment Work or Subsequent Renovation (as applicable); or (iv) the County's failure to comply with the time periods imposed upon the County under Section 5.4 above. Nothing contained in Section 5.6 above, this Section 5.7 or any other provisions of this Lease shall be construed as obligating the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. County's failure to expedite County's customary regulatory permit or approval process shall not be deemed an Unreasonable County Action. Notwithstanding anything to the contrary in this Section, Unreasonable County Action will only entitle Lessee to an extension of time, if (A) within five (5) days following Lessee's discovery of the alleged Unreasonable County Action, Lessee notifies the CREO Office in writing of the specific conduct comprising the alleged Unreasonable County Action, and the next opportunity, if any, for County to rectify such alleged conduct, and (B) County fails to cure the alleged Unreasonable County Action by the cure date set forth in such notice. If Lessee fails to deliver such notice to the CREO Office, then notwithstanding any contrary provision of this Section 5.7, Lessee shall not be entitled to any extension for any delay caused by an alleged Unreasonable County Action that occurred prior to the date of Lessee's notice described in this Subsection (a).

(b) Within ten (10) business days following the CREO Office's receipt of a notice alleging Unreasonable County Action, Chief Real Estate Officer shall meet with Lessee or its authorized representative in order to determine whether any Unreasonable County Action has occurred and, if so, how such Unreasonable County Action can be rectified and the duration of the delay caused by such Unreasonable County Action. If Chief Real Estate Officer determines that Unreasonable County Action has occurred and that County can and will take rectifying action, then Lessee shall be entitled to an extension of the applicable Construction Schedule dates actually impacted by such Unreasonable County Action, subject to the length of such extension not exceeding the actual amount of delay directly caused by the Unreasonable County Action. If Chief Real Estate Officer determines that Unreasonable County Action has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Chief Real Estate Officer shall establish the length of the delay likely to be caused by the Unreasonable County Action and the applicable Construction Schedule dates will be extended accordingly.

(c) If, within ten (10) business days following the CREO Office's receipt of Lessee's notice alleging Unreasonable County Action, Chief Real Estate Officer and Lessee have not agreed in writing as to whether delay due to Unreasonable County Action has occurred or the length of such delay, then the matter shall be determined by arbitration pursuant to Section 5.18 below.

5.7.3 Recovery Plans. If progress of the Redevelopment Work for a Component falls materially behind schedule and the Chief Real Estate Officer reasonably

determines that Lessee is in jeopardy of not achieving the CO Date for such Component on or before the applicable Required Construction Completion Date, then County may issue a written notice (each a "**Recovery Plan Notice**") to Lessee identifying areas of concern and requiring that Lessee provide a Recovery Plan detailing the measures to be implemented by Lessee in order to recover any lost time in the Construction Schedule. Lessee shall, within fifteen (15) days after receipt of a Recovery Plan Notice, provide a Recovery Plan to County. Within thirty (30) days after County's receipt of a Recovery Plan from Lessee, County shall instruct Lessee in writing whether or not to proceed with the Recovery Plan as submitted, or in accordance with reasonable revisions thereto required by County (a "**Construction Change Directive**"). Upon Lessee's receipt of the Construction Change Directive, Lessee shall instruct its contractors to implement the Recovery Plan as soon as reasonably possible and any additional costs associated with implementation of the Recovery Plan shall be borne by Lessee. Lessee's failure (a) to provide a Recovery Plan within the time requirements provided for in this Subsection 5.7.3, or (b) to implement immediately a Recovery Plan upon receipt of a Construction Change Directive to do so, shall each be a material breach of this Agreement.

5.8 Manner of Construction.

5.8.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein including, without limitation, the Redevelopment Work, the Subsequent Renovation and Alterations, shall be accomplished by Lessee with due diligence, in a first-class workmanlike matter, with good and sufficient materials and in compliance with all Applicable Laws and Lessee's obligations under this Lease. Lessee shall take all commercially reasonable steps to minimize any damage, disruption or inconvenience to the general public (including without limitation owners and tenants of neighboring properties, and tenants under slip leases) caused by such work and shall make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County, its employees, contractors and agents harmless from and against all Claims arising out of or in connection with the performance of such work, except to the extent that such Claims are caused by the willful misconduct or active or sole gross negligence of County, its employees, contractors or agents. Lessee shall, during the course of such work, (a) utilize such measures customarily used in connection with commercial construction projects to control dust, noise and other undesirable consequences of construction work, and (b) use commercially reasonable efforts to minimize the materially adverse effects associated with construction projects in well populated and developed areas of Southern California.

5.8.2 Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Property to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Property and other persons.

5.8.3 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.8.4 Compliance with Insurance, Construction Documents and Laws; Issuance of Permits. With respect to any and all construction work on the Property, including without limitation the Redevelopment Work, Subsequent Renovation and Alterations, Lessee shall (a) not commence such work until after satisfaction of the conditions set forth in Section 5.5 and providing County with evidence of its compliance with the insurance requirements for such work set forth in Article 9 below, (b) complete such work in substantial compliance with applicable construction documents submitted to and approved by County in accordance with the review and approval procedures set forth in Sections 5.3 and 5.4, and (c) cause such work to be performed in compliance with all required permits and Applicable Laws then in effect, including, without limitation, the LCP and CDP. Lessee shall have the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for such work and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.8.5 Notice to Chief Real Estate Officer; Damage to County Improvements. Lessee further agrees to keep the CREO Office apprised of the progress of the Redevelopment Work, the Subsequent Renovation and any Alterations so that Chief Real Estate Officer may timely inspect the Property to assure proper safeguarding of any County-owned improvements existing on or around the Property, including but not limited to seawalls and neighboring properties. If any County-owned improvement is damaged in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Property to make such repairs at Lessee's sole cost and expense, in which event Lessee shall reimburse County for all Actual Costs incurred by County in making such repairs within two (2) business days after Lessee's receipt of written demand from County.

5.8.6 Rights of Access. Representatives of the County shall, following reasonable advance written notice to Lessee, have the right to access the Property and the Improvements thereon, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of construction work being performed. Lessee shall have the right to have a representative present to accompany the representatives of County in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage to person or property, County shall have the right to enter upon the Property immediately and without notice to or accompaniment by Lessee.

5.8.7 Notice of Completion; As-Built Drawings. Upon completion of the Redevelopment Work, the Subsequent Renovations, or any Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Orange a Notice of Completion (the "**Notice of Completion**") with respect to the Improvements and Lessee shall deliver to County, at no cost to County, (a) two (2) sets of Conoflex or Mylar final as-built plans and specifications of the

Improvements (or such portions thereof as affected by the work and as to which plans would customarily be prepared (e.g., excluding those components of interior renovations as to which plans are not applicable)) (the "**As-Built Plans**"), (b) a magnetic tape, disk or other storage device containing the As-Built Plans in a form usable by County, to County's satisfaction, on County's computer aided mapping and design equipment (CAD files are also to be converted to Acrobat Reader (*.pdf format), which shall be included on the disk or CD ROM) ("**CAD Files**"), and (c) a copy of the final construction costs for the construction of such Improvements.

5.9 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the Redevelopment Work, Subsequent Renovation, or Alterations shall provide, in form and content satisfactory to County, that (a) all plans and drawings prepared by such architects, design professionals or contractors relating to the Property will be deemed "work for hire" and owned by Lessee, (b) such plans and drawings are assigned by Lessee to County as security for Lessee's performance hereunder, and (c) upon the termination of this Lease for any reason, ownership of such plans and drawings will be deemed vested in County.

5.10 Alterations; Prior Approval Required. Lessee shall not make any Alterations that constitute a Material Modification without the prior written approval of Chief Real Estate Officer, the standard for which approval shall be as set forth in Subsection 1.1.129 above. Notwithstanding anything in this Article 5 to the contrary, all Alterations shall be made and performed by Lessee subject to the terms and conditions of Sections 5.4 through 5.6, inclusive, as well as Sections 5.8 through 5.14, inclusive. For the avoidance of doubt, prior to, and as a condition precedent to any rights under this Lease to commence construction of any Alterations, Lessee shall submit to the CREO Office, for Chief Real Estate Officer's approval, the plans, specifications, budget, schedule and other materials listed above in Section 5.4 pertaining to such Alterations.

5.11 Permitted Alterations. For the avoidance of doubt, no Alteration which is: (a) required by a Governmental Authority in connection with obtaining such Governmental Authority's approval of the applicable Alteration, (b) required to be performed by Lessee in order to comply with Applicable Laws, or (c) an interior tenant improvement made by Lessee to an existing Improvement in connection with a retail Sublease on the Commercial Core Component, shall require the prior approval of County unless the same would otherwise constitute a Material Modification as set forth in Subsection 1.1.129 above. Prior to commencing any Alteration involving an expenditure in excess of One Hundred Thousand Dollars ($100,000.00), Lessee shall (i) provide County with written notice of such anticipated Alteration(s) (including a description of the work to be done, the dollar amount of the Alterations already performed by Lessee during the immediately preceding twelve (12) month period, the estimated budget for the proposed Alterations, and copies of the permits obtained for such work), and (ii) upon completion of such work, furnish to County a copy of As-Built Plans and CAD Files reflecting the work performed.

5.12 Protection of County. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Property or any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other

person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the Property or County.

5.13 Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Property any notices which County may deem necessary for the protection of County, the Property and the Improvements thereon from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days' prior written notice of the commencement of any work to be done on the Property in order to enable County timely to post such notices.

5.14 Prompt Payment. Lessee shall make, or cause to be made, prompt payment (subject to reasonable dispute) of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Property and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Property and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any Claims on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it. In the event any lien is recorded on the Property, Lessee shall, within twenty (20) days after receipt of notice thereof, furnish a bond which, in accordance with the provisions of Applicable Law, results in the removal of such lien from the Property.

5.15 Subsequent Renovation of Marina and Commercial Core.

5.15.1 Schedule for Completion of Subsequent Renovation. In addition to the Redevelopment Work, Lessee shall be required to complete an additional renovation of the Improvements during the remaining Term of the Lease in accordance with the terms and provisions of this Section 5.15 (the "**Subsequent Renovation**"). The construction of the Subsequent Renovation shall be commenced by Lessee by such date as will reasonably permit the completion of the Subsequent Renovation by not later than December 31, 2045; provided, however that Lessee shall not commence the Subsequent Renovation prior to January 1, 2042. Lessee shall substantially complete the Subsequent Renovation by not later December 31, 2045. The Subsequent Renovation shall consist of such renovation and construction work as necessary to revitalize and upgrade the exterior, the common areas (both exterior and interior) and the landscaping of the Improvements for each Component to a condition and appearance at least equal to that of the Improvements as of the CO Date for such Component. The parties agree that the Subsequent Renovation shall not be required to include renovation or replacement of the Marina Improvements if the useful life of the Wet Marina Improvements installed in connection with the Redevelopment Work extends beyond the Term, as reasonably determined by the County.

5.15.2 Subsequent Renovation Plan. Prior to the commencement of the Subsequent Renovation, Lessee shall submit to the CREO Office a renovation plan for the Subsequent Renovation (the "**Subsequent Renovation Plan**"), which renovation plan shall (a) describe the proposed renovation work in such detail as reasonably requested by Chief Real Estate Officer, (b) include a design, governmental approval and construction schedule for the work described therein, (c) include a budget for all work costs, and (d) address such other matters as Chief Real Estate Officer reasonably requests. The Subsequent Renovation Plan shall be submitted by Lessee to County not later than such date as, taking into consideration the approval periods described in this Section 5.15 and Section 5.4 above, and the estimated time required to obtain all necessary governmental approvals and permits, will reasonably be expected to allow Lessee to complete the Subsequent Renovation by the date required under this Section 5.15. Chief Real Estate Officer shall have sixty (60) days after receipt of the Subsequent Renovation Plan within which to reasonably approve or disapprove the Subsequent Renovation Plan, or to approve the Subsequent Renovation Plan subject to conditions imposed by Chief Real Estate Officer in Chief Real Estate Officer's reasonable judgment. If Chief Real Estate Officer fails to approve or disapprove the Subsequent Renovation Plan within such sixty (60) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.15.2 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S SUBSEQUENT RENOVATION PLAN. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF LESSEE'S SUBSEQUENT RENOVATION PLAN."

Failure of Chief Real Estate Officer to approve or disapprove the Subsequent Renovation Plan in writing within said additional twenty (20) day period shall be deemed approval of the same. If Chief Real Estate Officer disapproves a proposed Subsequent Renovation Plan, he or she shall do so by written notice to Lessee stating the reasons for such disapproval. Upon Chief Real Estate Officer's approval or deemed approval of the Subsequent Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Subsequent Renovation and to commence and complete the Subsequent Renovation in accordance with the Subsequent Renovation Plan and the terms and conditions of this Article 5. The plans, specifications, budgets and schedule for the Subsequent Renovation shall all be subject to the prior written approval of Chief Real Estate Officer and the procedure for obtaining such approval shall be the same as set forth above Section 5.4 with respect to Redevelopment Work.

5.15.3 Subsequent Renovation Fund. With respect to each of the Marina and Commercial Core Components, commencing with the first January 15 that is ten (10) years after the earlier of the CO Date for such Component or the Required Construction Completion Date for such Component, and continuing until the completion of the Subsequent Renovation, Lessee shall establish and maintain a reserve fund (the "**Subsequent Renovation Fund**") in accordance with the provisions of this Subsection 5.15.3 for the purpose of funding the cost of the Subsequent Renovation; provided, however, that Lessee's obligation to perform the Subsequent

Renovation shall not be limited to the funds available in the Subsequent Renovation Fund. The Subsequent Renovation Fund shall be held in an account established with a reputable financial institution reasonably acceptable to Chief Real Estate Officer (which shall include Lessee's Encumbrance Holder) into which deposits shall be made by Lessee pursuant to this Subsection 5.15.3. Commencing on the first January 15 set forth hereinabove, and continuing on the 15th of each month thereafter during the period which the Subsequent Renovation Fund is required to be maintained by Lessee hereunder, Lessee shall make a monthly deposit to the Subsequent Renovation Fund in the following amounts:

(a) Commercial Core Sub-Fund: one-half of one percent (0.5%) of Gross Receipts derived from the Commercial Core for the immediately preceding month.

(b) Marina Sub-Fund: one-half of one percent (0.5%) of Gross Receipts derived from the Marina for the immediately preceding month, unless no reserve is required for the Wet Marina Improvements pursuant to Subsection 5.15.1 above, in which case, such percentage shall be derived from the Dry Storage Improvements for the immediately preceding month.

All interest and earnings on the Subsequent Renovation Fund shall be added to the Subsequent Renovation Fund, but shall not be treated as a credit against the Subsequent Renovation Fund deposits required to be made by Lessee pursuant to this Subsection 5.15.3. Upon thirty (30) days' prior written notice from Chief Real Estate Officer to Lessee no more often than quarterly, Lessee shall deliver to the CREO Office evidence reasonably satisfactory to Chief Real Estate Officer of the account in which the Subsequent Renovation Fund exists and a report that details all deposits to, earnings on, withdrawals from and the balance of the Subsequent Renovation Fund. In lieu of monthly deposits to the Subsequent Renovation Fund, Lessee and Chief Real Estate Officer may mutually agree upon substitute arrangements satisfactory to Chief Real Estate Officer, in its sole discretion, for the establishment of an adequate security source for the performance of the Subsequent Renovation, such as a bonding mechanism or a letter of credit.

5.15.4 Disbursements from Renovation Fund. Disbursements shall be made from the Subsequent Renovation Fund only for costs for the design, permitting, entitlements and construction of the Subsequent Renovation which have been reasonably approved by Chief Real Estate Officer. Notwithstanding the foregoing, no more than ten percent (10%) of the total cost to complete the Subsequent Renovation shall be applied towards soft construction costs. Prior to the disbursement of any amounts from the Subsequent Renovation Fund, Lessee shall furnish to the CREO Office applicable invoices, mechanic lien waivers, evidence of payment and other back-up materials reasonably acceptable to Chief Real Estate Officer concerning the use of amounts from the Subsequent Renovation Fund. Chief Real Estate Officer shall have no obligation to approve the disbursement of amounts from the Subsequent Renovation Fund unless and until Chief Real Estate Officer has approved Lessee's Subsequent Renovation Plan and Lessee has furnished to the CREO Office evidence reasonably satisfactory to Chief Real Estate Officer that Lessee has sufficient financial resources (taking into consideration the Subsequent Renovation Fund) to pay for all costs of such Subsequent Renovation. If this Lease is terminated for any reason prior to the completion of the Subsequent Renovation, then any funds remaining in the Subsequent Renovation Fund as of the date of termination shall be released to County in

addition to any other rights or remedies that County may have with respect to such early termination of the Lease. Only after the Subsequent Renovation of all the Improvements has been completed in accordance with this Section 5.15 and paid for in full by Lessee shall the balance of any funds then remaining in the Subsequent Renovation Fund be released to Lessee.

5.15.5 Security Interest. Lessee hereby grants to County a lien and security interest in and to the Subsequent Renovation Fund to secure Lessee's payment of the Subsequent Renovation work pursuant to this Lease. Such lien and security interest shall be in addition to any landlord's lien provided by law. This Lease shall constitute a security agreement under the Commercial Code of California so that County shall have and may enforce a security interest in the Subsequent Renovation Fund. Lessee agrees to execute as debtor and deliver such financing statement or statements and any further documents as County may now or hereafter reasonably request to protect such security interest pursuant to such code. County may also at any time file a memorandum of this Lease as a financing statement. County, as secured party, shall be entitled to all rights and remedies afforded as secured party under such code, which rights and remedies shall be in addition to County's liens and rights provided by law or by the other terms and provisions of this Lease.

5.16 Capital Improvement Fund for Marina and Commercial Core.

5.16.1 With respect to each of the Marina and Commercial Core Components, commencing with the first January 15 that is seven (7) years after the earlier of the CO Date for such Component or the Required Construction Completion Date for such Component, Lessee shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.16 for the cost of Permitted Capital Expenditures for the Property. Deposits to the Capital Improvement Fund shall be segregated into the following two (2) sub-funds: (a) a sub-fund for the Commercial Core Improvements, and (b) a sub-fund for the Marina Improvements. All Capital Improvement Fund deposits attributable to Gross Receipts derived from a particular Component shall be deposited into the sub-fund for such Component, and amounts shall be dispersed from such sub-fund only for Permitted Capital Expenditures for such Component. All interest and earnings on each sub-fund of the Capital Improvement Fund shall be added to such sub-fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.16. On or before the fifteenth (15th) day of each month during the Term and continuing until the time set forth in Subsection 5.16.5 below, Lessee shall make a monthly deposit to each sub-fund of the Capital Improvement Fund in the following amounts:

(a) Commercial Core Cap-Fund: one-half of one percent (0.5%) of Gross Receipts derived from the Commercial Core for the immediately preceding month until the completion of the Subsequent Renovation, and then one percent (1%) of Gross Receipts derived from the Commercial Core for the immediately preceding month thereafter.

(b) Marina Improvements Cap-Fund: one-half of one percent (0.5%) of Gross Receipts derived from the Marina Improvements for the immediately preceding month.

5.16.2 The Parties acknowledge and agree that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Property, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems after the completion of the Redevelopment Work ("**Permitted Capital Expenditures**"). Notwithstanding any contrary provision of this Lease, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work or the Subsequent Renovation. In addition, the Capital Improvement Fund shall not be used for building additions, new project amenities consisting of equipment (e.g., barbeques or fitness equipment) or new common area furniture. Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the Improvements or their major systems in a good, operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Furthermore, Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee. By way of example, set forth on **Exhibit D** attached to this Lease are examples of categories of Permitted Capital Expenditures that qualify as proper costs to be funded from the Capital Improvement Fund, as well as categories of expenditures that do not qualify as proper costs to be funded from the Capital Improvement Fund. All specific purposes and costs for which Lessee desires to utilize amounts from the Capital Improvement Fund shall be subject to Chief Real Estate Officer's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

5.16.3 The Capital Improvement Fund shall be held in a separate account established with a reputable financial institution (including Lessee's Encumbrance Holder) reasonably acceptable to Chief Real Estate Officer into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.16. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder for capital improvements, provided that such Encumbrance Holder acknowledges that such amounts shall be administered in accordance with, and shall be subject to, the terms and conditions of this Section 5.16. On or before January 15 and July 15 of each year (and at any other time within thirty (30) days prior written notice from Chief Real Estate Officer to Lessee) Lessee shall deliver to the CREO Office evidence reasonably satisfactory to Chief Real Estate Officer of the account in which the Capital Improvement Fund exists and a report that details all deposits to, earnings on, withdrawals from and the balance of the Capital Improvement Fund.

5.16.4 No disbursements shall be made from the Capital Improvement Fund to cure deficiencies arising from the failure of Lessee to maintain and repair the Improvements in accordance with the requirements of this Lease. Disbursements shall be made from the Capital Improvement Fund for costs reasonably approved by Chief Real Estate Officer and that satisfy the requirements of this Section 5.16. Capital Improvement Funds shall be used only after all other sources such as warranty proceeds and product insurance funds are exhausted (or determined to be unavailable). For the purpose of obtaining Chief Real Estate Officer's prior

approval of any Capital Improvement Fund disbursements, Lessee shall submit to the CREO Office on an annual calendar year basis a capital expenditure plan for the upcoming year that details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Chief Real Estate Officer's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Chief Real Estate Officer as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Chief Real Estate Officer (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to the CREO Office for Chief Real Estate Officer's approval revisions to the then-current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Chief Real Estate Officer applicable invoices, evidence of payment, mechanic lien waivers, and other back-up materials reasonably acceptable to Chief Real Estate Officer concerning the use of amounts from the Capital Improvement Fund.

5.16.5 No Capital Improvement Fund deposits shall be required to be made by Lessee during the final year of the Term of the Lease.

5.16.6 If this Lease is terminated for any reason prior to the end of the Term, then any funds remaining in the Capital Improvement Fund as of the date of termination shall be released to County in addition to any other rights or remedies that County may have with respect to such early termination of the Lease. Furthermore, the balance of any funds remaining in the Capital Improvement Fund upon the expiration of the Term of this Lease shall be delivered to County.

5.16.7 Lessee hereby grants to County a lien and security interest in and to the Capital Improvement Fund to secure Lessee's payment of the Permitted Capital Expenditures. Such lien and security interest shall be in addition to any landlord's lien provided by law. This Lease shall constitute a security agreement under the Commercial Code of California so that County shall have and may enforce a security interest in the Capital Improvement Fund. Lessee agrees to execute as debtor and deliver such financing statement or statements and any further documents as County may now or hereafter reasonably request to protect such security interest pursuant to such code. County may also at any time file a memorandum of this Lease as a financing statement. County, as secured party, shall be entitled to all rights and remedies afforded as secured party under such code, which rights and remedies shall be in addition to County's liens and rights provided by law or by the other terms and provisions of this Lease.

5.17 Capital Reserve Fund for Hotel Component.

5.17.1 Commencing on the Hotel Deemed Completion Date and continuing thereafter through the balance of the Term, Lessee shall establish and maintain a capital replacement reserve fund with a reputable financial institution reasonably acceptable to the Chief Real Estate Officer (the "**Hotel Capital Reserve Fund**") and shall deposit into said fund a minimum of the following amounts: (i) for the first Operating Year, two percent (2%) of Gross Receipts derived from the Hotel Component for said year; (ii) for the second Operating Year,

three percent (3%) of the of Gross Receipts derived from the Hotel Component for said year; and (iii) for the third and each subsequent Operating Year through the balance of the Term, four and one-half percent (4.5%) of the of Gross Receipts derived from the Hotel Component for each said year. All interest and earnings on funds deposited into the Hotel Capital Reserve Fund shall be kept in said fund but shall not be credited against the minimum deposits required hereunder. For purposes hereof, "**Operating Year**" shall mean each year following the Hotel Deemed Completion Date.

5.17.2 Within thirty (30) days after the close of each Operating Year during the Term, Lessee shall submit to Lessor (a) evidence that Lessee has deposited the required minimum amount in the Hotel Capital Reserve Fund for the previous Operating Year (based upon Lessee's accounting for Gross Receipts that is due at that time), (b) an itemization of all withdrawals from and expenditures of funds deposited into the Hotel Capital Reserve Fund in the preceding Operating Year and the purpose thereof, and (c) the balance remaining in the Hotel Capital Reserve Fund at the time the annual report is prepared.

5.17.3 The Hotel Capital Reserve Fund shall not be pledged or encumbered, except to a permitted Encumbrance Holder or to an industry recognized hotel chain of comparable quality to the national or regional hotel chains and management companies listed on **Exhibit J**, and shall be used only for capital expenditures for additions, replacements, renovations, or significant upgrades of or to the Improvements on the Hotel Component, including fixtures and equipment, that have a useful life of not less than five (5) years which benefit the Hotel Component and which are approved in advance by the Chief Real Estate Officer, which approval(s) shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Lessee acknowledges that its responsibility to maintain, repair, and replace the Hotel and related Improvements as required hereunder shall not be limited or restricted based on the amount of funds held from time to time in the Hotel Capital Reserve Fund.

5.17.4 Upon the expiration or earlier termination of this Lease, all funds in the Hotel Capital Reserve Fund shall be allocated first to any repairs, maintenance, replacements, and renewals necessary to place the Hotel in the physical condition required by this Lease, as reasonably determined by County, and any excess shall be the sole property of Lessee.

5.18 Expedited Arbitration. Given the importance of completing the Redevelopment Work in accordance with the Construction Schedule, the Parties acknowledge and agree that it will be in both Parties' best interests to submit to expedited binding arbitration in accordance with the procedures set forth in this Section 5.18, all disputes between the Parties concerning the reasonableness of the Chief Real Estate Officer's withholding of approvals required pursuant to this Article 5 with respect to the Redevelopment Work. Therefore, if Lessee delivers written notice to County disputing the reasons for any denial or withholding of such approvals, then either Party shall have the right to submit such dispute to expedited, binding arbitration before an arbitrator selected by the Parties in accordance with the American Arbitration Association's (the "**AAA**") Dispute Resolution Board Guideline Specification, Section 1.02 (D) (the "**DRB Specification**"), dated December 1, 2000. As soon as reasonably possible following the Effective Date, the Parties shall initiate the procedure to nominate an arbitrator in accordance with the DRB Specification and with no direct or indirect affiliation with either Party, with the

intention that such arbitrator shall, to the extent reasonably possible, be the arbitrator appointed to decide on all disputes between the Parties to be decided by arbitration pursuant to this Section 5.18. When evaluating claims regarding the reasonableness of the County's withholding any approval, the arbitrator shall be instructed to give primary consideration to the Parties' intent as reflected by the provisions set forth in this Lease and may consult with, or seek information from, either or both Parties, or any other persons with special knowledge or expertise relating to the dispute in question including, without limitation, any architect or contractor engaged to perform work at the Property. The arbitrator shall be instructed to adjudicate solely on the reasonableness of the County's denial of approval, and to deliver written notice of his/her findings to both Parties as soon as reasonably possible. The arbitrator's determination as to the reasonableness of a denial of approval shall be final and binding on the Parties. Each Party shall be responsible for one-half (1/2) of (a) the Arbitrator's fees and costs, and (b) costs associated with renting a venue for the arbitration. If two or more disputes exist at the same time that are the subject of arbitration in accordance with this Section 5.18, then the Parties shall use their commercially reasonable best efforts to cause all such disputes to be arbitrated in one arbitration proceeding, rather than successive proceedings or concurrent but separate proceedings.

6. CONDEMNATION.

6.1 Definitions.

6.1.1 Condemnation. "**Condemnation**" means (a) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (b) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2 Date of Taking. "**Date of Taking**" means the earliest of (a) the date that the Condemnor has the right of occupancy pursuant to an order for possession issued by a court asserting jurisdiction over the Property; (b) the date that the final order of Condemnation is issued in the event of a transfer by power of eminent domain; or (c) title is transferred to any Condemnor through voluntary sale or transfer, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.3 Award. "**Award**" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

6.1.4 Condemnor. "**Condemnor**" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties' Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any Condemnation of all or any part of the Property, any Improvements on the Property or any interest in this Lease by Condemnation, the rights and obligations of the Parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Property are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Property or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Property is rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Property shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction, Lessee's business on the Property could not be operated at a commercially reasonable economic level taking into consideration the amount of funds, if any, in excess of the Award, necessary to continue such operation. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the Date of Taking. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5 below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such Condemnation shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Property as nearly as possible to its value, condition and character immediately prior to such Condemnation, taking into account, however, any necessary reduction in size or other change resulting from the Condemnation; provided, however, that in case of a Condemnation for temporary use, Lessee shall not be required to effect restoration until such Condemnation is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Property is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Property not so taken (a "**Partial Taking**"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Property not so taken to the fair market value of the entire Property immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date, as described in Subsection 4.2.1(b) above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Rent paid by Lessee to County prior to the Date of Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Property which remains after the Partial Taking bears to the fair market value of the entire Property immediately prior to the Partial Taking. If the Parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "**Income Approach**"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waivers. Each Party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either Party to petition the Orange County Superior Court to terminate this Lease in the event of a Partial Taking of the Property.

6.7 Payment of Award. Awards and other payments on account of a Condemnation, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

6.7.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Condemnation, other than a total Condemnation or a Partial Taking which results in termination hereof or a taking for temporary use, shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in monthly installments equal to the sum set forth in Lessee's written request for payment submitted to County together with supporting invoices and documentation demonstrating that the requested sums are for payments to contractors, consultants, architects, engineers, counsel, or materialmen engaged in the restoration of the Property and any Improvements. Such requested sums shall be paid by County to Lessee or its designee(s) within thirty (30) days after County has received such request in writing reasonably supported by accompanying invoices and documentation. In the event that County disputes any sum requested by Lessee pursuant to the preceding sentence, County shall promptly pay the undisputed portion and provide Lessee with a written notice detailing the reasons for County's dispute. Thereafter, the Chief Real Estate Officer and Lessee shall promptly meet and negotiate in good faith to resolve any dispute. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (a) the then value of County's interest in the Property (including its interest hereunder), and (b) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the Condemnation pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments. In case of a Condemnation described in this Subsection 6.7.1, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

6.7.2 Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Subsection 6.7.1 above.

6.7.3 Total Condemnation and Partial Taking with Termination. Net Awards and Payments received on account of a total Condemnation or a Partial Taking which results in the termination of this Lease shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of (a) the sum of: (i) the present value of all Annual Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Property (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term, plus (ii) the present value of the portion of the Property (with the Improvements thereon) subject to the taking from and after the expiration of the Term, or (b) in the event of a Partial Taking, the present value of the fair market rental value

of the portion of the Property (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term; and then,

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Property plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then,

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Property, determined as of the date of such taking, less payments made under paragraph "Second" above. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4; and then,

Fourth: The balance shall be paid to County.

If County is the condemning authority in connection with a total Condemnation or a Partial Taking that results in the termination of the Lease, and such total Condemnation or Partial Taking pertains to only Lessee's interest, then Lessee shall be entitled to the entire amount of any Net Awards and Payments.

In the event of a total Condemnation or a Partial Taking that results in the termination of this Lease, County shall promptly pay or authorize the payment to Lessee of all sums held by County or third parties in the Capital Improvement Fund, the Subsequent Renovation Fund and the Security Deposit.

6.7.4 Disputes. Any dispute under this Article 6 concerning the fair market value of the Property or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the Parties, shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

7. SECURITY DEPOSIT.

7.1 Amount and Use. Lessee shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in an amount equal to Three Hundred Thousand Dollars ($300,000.00), until such time as the Redevelopment Work for the Property has been completed and the final CO Date for the same has occurred (the "**Final CO Date**"). Following the Final CO Date, such sum shall be reduced to One Hundred Twenty-Five Thousand Dollars ($125,000.00), and as long as no Event of Default by Lessee then exists under the Lease, shall be reduced to Zero Dollars ($0.00) upon the date which is ten (10) years following the Final CO Date. The Security Deposit shall secure Lessee's performance of all the terms, covenants, and conditions of this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, (b) any other Events of Default of Lessee under this Lease, and (c) any other amounts or damages to which County is entitled under this Lease. The Security Deposit shall be applied at the discretion of

County, and may be commingled by County with County's other funds. Lessee shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer, in County's sole discretion. To the extent the Security Deposit is cash, a letter of credit or other non-interest bearing form, no interest shall accrue or be paid thereon. However, if the Security Deposit is in a form of a certificate of deposit, savings deposit, or is otherwise interest bearing, then as long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease. Regardless of the form of the Security Deposit, all or any portion of the principal sum thereof shall be available unconditionally to Chief Real Estate Officer for correcting any default or breach of this Lease by Lessee and Lessee's successors or assigns, or for payment of expenses incurred by County as a result of an Event of Default hereunder by Lessee or Lessee's successors or assigns, as set forth herein.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 14.1.2, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

7.4 Waivers. Lessee hereby waives the provisions of California Civil Code Section 1950.7, and all other provisions of Applicable Law, now or hereinafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a

landlord (or its successors) any obligation with respect to the handling or return of security deposits.

8. INDEMNITY; RELEASE.

8.1 Indemnification. Except to the extent caused by the willful misconduct or active or sole gross negligence of any County Indemnified Party, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County, the Board, and their respective, officers, elected and appointed officials, representatives, agents, consultants, contractors, counsel, employees, volunteers, tenants, licensees, invitees, successors and assigns (collectively, "**County Indemnified Parties**" and each individually, "**County Indemnified Party**") and the Property, from any and all claims, costs, losses, demands, damages, expenses (including, without limitation, expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County) or liability (collectively, "**Claims**"), to the extent arising from or caused by (a) the operation, maintenance, use, or occupation of the Property or the Improvements by Lessee or its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, including any occurrence in or on the Property or Improvements, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, (c) the failure of Lessee, its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any Applicable Law, or (d) the performance of the Redevelopment Work, the Renovation Work or any Alterations by Lessee or Lessee's agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees. The obligation of Lessee to so relieve, defend, indemnify, protect, and save harmless the County Indemnified Parties shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease. If any County Indemnified Party or the Property is named as co-defendant in a lawsuit that is the subject of this Article 8, Lessee shall immediately notify County of such fact in writing and shall represent such County Indemnified Party or Property in such legal action unless County undertakes to represent such County Indemnified Party or Property as co-defendant in such legal action, in which event, Lessee shall pay to County its litigation costs, expenses, and attorneys' fees. If, in connection with any such lawsuit, judgment is entered against any County Indemnified Party or the Property and Lessee by a court of competent jurisdiction because of the concurrent liability of such County Indemnified Party and Lessee, County and Lessee agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

8.2 Release. Lessee hereby releases and waives all Claims and recourse against the County Indemnified Parties, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Lease, except Claims arising from the willful misconduct or active or sole gross negligence of County Indemnified Parties. For the avoidance of doubt, and without limiting the foregoing, Lessee hereby waives, withdraws, releases, and relinquishes any and all Claims (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County and the County Indemnified Parties which Lessee now has or may have or asserts in the future which are based upon any (a) defects in the physical condition of the Property and the soil

thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument, except as set forth in Section 10.12, or (b) injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Lessee, of Lessee's employees, invitees, customers, or of any other person in or about the Property or the Improvements caused by or resulting from any peril which may affect the Property or Improvements, including fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Property or the Improvements, whether such damage or injury results from conditions arising upon the Property or from other sources. Without limiting the generality of the waivers set forth in this subsection, and notwithstanding anything in this Lease to the contrary, at no time shall County be responsible or liable to Lessee for any lost profits, lost economic opportunities or any form of consequential, punitive or exemplary damages as the result of any actual or alleged breach by County of its obligations under this Lease. It is the intention of the Parties that the foregoing release shall be effective with respect to all matters, past and present, known and unknown, suspected and unsuspected. Lessee realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses which are presently unknown, unanticipated and unsuspected, and Lessee further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Lessee nevertheless hereby intends to release, discharge and acquit County, the County Indemnified Parties and the Property from any such unknown losses, damages, liabilities, costs and expenses. In furtherance of this intention, Lessee hereby expressly waives any and all rights and benefits conferred upon it by the provisions of California Civil Code Section 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

By initialing this subsection below, Lessee acknowledges that it has read, is familiar with, and waives all benefit of the provisions of California Civil Code Section 1542 set forth above to the extent described in this subsection, and agrees to all of the provisions of Section 8.2 above.

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Lessee's Initials

9. INSURANCE.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease, Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State by the Insurance Commissioner and having a "general policyholders rating" of at least A- and VIII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	$20,000,000
Products/Completed Operations Aggregate:	$20,000,000
Personal and Advertising Injury:	$10,000,000
Each Occurrence:	$10,000,000

Lessee may satisfy the above coverage limits with a combination of primary coverage ("**Primary Coverage**") and excess liability coverage ("**Umbrella Coverage**") (as long as (a) Lessee's Primary Coverage is at least Two Million Dollars ($2,000,000) per occurrence, Two Million Dollars ($2,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Subsection 9.1.1.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than One Million Dollars ($1,000,000) of Primary Coverage and One Million Dollars ($1,000,000) of Umbrella Coverage, for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." During any period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage (written on ISO form CA 99 37 or its equivalent) with limits of not less than Three Million Dollars ($3,000,000) for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State and for which Lessee is responsible (if applicable), and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1,000,000
Disease - policy limit:	$1,000,000
Disease - each employee:	$1,000,000

9.1.4 Commercial Property insurance covering damage to the Property, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) or its equivalent, excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than $250,000 or 5% of the property value, whichever is less, and also including business interruption, including loss of rent equal to eighteen (18) months of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Property and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Property or all of the existing Improvements are being demolished in connection with the construction of Redevelopment Work, the obligation to provide insurance under this Subsection 9.1.4 shall not be applicable so long as the insurance coverage described in Subsection 9.1.5 below is carried.

9.1.5 For construction projects on the Property, including the Redevelopment Work, any other Alterations or restoration of the Improvements, Lessee or Lessee's contractor or subcontractors will provide the following insurance (County reserves the right to determine the coverage and coverage limit required on a project by project basis):

(a) Builder's Risk Course of Construction. Such insurance shall insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) or equivalent. This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils). This insurance shall be written on a completed-value basis and cover the entire value of the construction project, against loss or damage until completion and acceptance by Lessee.

(b) General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the Redevelopment Work or Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (i) in the case of the Redevelopment Work, three (3) years after the date the Redevelopment Work is completed and accepted by the Lessee, or (ii) in the case of Alterations after the completion of the Redevelopment Work, such period after the date such Alterations are completed and accepted by Lessee as reasonably determined by County, but not to exceed three (3) years after such completion and acceptance.

(c) Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as reasonably required by the County for the Redevelopment Work or Alterations. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

(d) Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.). This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this Subsection 9.1.5(d) shall be (i) Three Million Dollars ($3,000,000) with respect to the prime architect for the Redevelopment Work (or such lesser amount as required by Chief Real Estate Officer for the prime architect in connection with any subsequent Alterations), and (ii) One Million Dollars ($1,000,000) with respect to each other contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Redevelopment Work or subsequent Alterations, provided that Chief Real Estate Officer shall have the discretion to reduce the coverage limits under this clause (ii) if appropriate in the judgment of Chief Real Estate Officer based on the nature and scope of the services being provided.

(e) Asbestos Liability or Contractors Pollution Liability. Such insurance shall be required if construction requires remediation of asbestos or pollutants, and if such insurance is available. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as reasonably required by the County for the Redevelopment Work or Alterations.

(f) Marine-Specific Coverages. For any construction projects on the water or aboard any vessel on the water, Lessee agrees to maintain, or cause its contractors and subcontractors to maintain, in addition to the insurance described in this Subsection 9.1.5 above, the following types and amounts of insurance (County reserves the right to determine the coverage and minimum limits required on a project by project basis):

Coverage	Minimum Limit(s)
Protection & Indemnity (with Jones Act)	$5,000,000 per occurrence $10,000,000 aggregate
Marine General Liability	$10,000,000 per occurrence $20,000,000 aggregate
Longshore and Harbor Workers' Compensation	Statutory
Hull and Machinery	Actual Cash Value
Contractors' Pollution Liability (including coverage for NODS)	$5,000,000 per occurrence $10,000,000 aggregate

The Protection & Indemnity coverage shall apply to all crewmembers, and shall be written on Form SP23 or equivalent and be based on either a primary or excess layer. The Hull and Machinery coverage shall insure the replacement cost of the vessels and shall be written on a form using the American Institute Hull Clauses or equivalent. The Contractors' Pollution Liability coverage shall be written on a form underwritten by WQIS, EPG, Safe Harbor or equivalent.

9.1.6 If the use of the Property or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars ($5,000,000) per occurrence and an annual aggregate of Ten Million Dollars ($10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an

extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Subsections 9.1.4 and 9.1.5(a) shall name County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 13.8, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the insurance proceeds received with respect to a loss are less than $500,000 (as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, except as expressly provided to the contrary in this Lease, Lessee shall be obligated to use the insurance proceeds received by Lessee to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 10 hereof. Subject to Section 13.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, shall be filed with the CREO Office no later than the Effective Date, provided that the evidence of the insurance coverage required under Subsection 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Redevelopment Work or Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding $25,000 or such other commercially reasonable amount as approved by the Chief Real Estate Officer; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the CREO Office or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with the CREO Office. Subject to the limitations set forth above in this Article 9, any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 Additional Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(1) that County and its respective Board and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(2) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(3) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(4) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(5) to the extent of the indemnification obligations of Lessee in favor of any additional insureds, the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(6) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(7) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(8) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(9) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor. In the event the coverage required hereunder becomes obsolete or unavailable from domestic insurance companies meeting the requirements of this Lease (excluding customized policies such as those from Lloyds of London), the parties shall reasonably cooperate to modify the coverage on commercially reasonable terms.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Subsections 9.1.1, 9.1.2 and 9.1.3 shall be subject to adjustment as of each fifth (5th) anniversary of the Effective Date, consistent with the amounts of such liability insurance then being required by County for other comparable facilities or businesses within the County, including any adjustments then being approved by County (if any), based on differences in size, scope, uses or risks between the Property and such other developments. In no event shall the amounts of liability insurance be decreased as a result of such adjustment. Following such adjustment, the Parties shall execute an amendment to this Lease setting forth the adjusted insurance provisions.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Property which involves injury or property damage over Fifty Thousand Dollars ($50,000.00) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. Such notification shall be made in writing within seventy-two (72) hours after Lessee first becomes aware of the claim or threatened claim.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Continuously throughout the Term, Lessee shall maintain the Property, including paved or unpaved ground surfaces and Improvements thereon (excluding the Excluded Improvements), in a safe, clean, wholesome and sanitary condition, in compliance with all Applicable Laws and in conformance with the Minimum Standards at Lessee's sole cost and expense; provided, however, prior to the earlier of the applicable CO Date or the Required Construction Completion Date for a Component, Lessee shall (i) not be obligated to perform any capital improvements for such Component that would otherwise be required in order to comply with the Minimum Standards if (A) such capital improvements would need to be removed, replaced or substantially altered in connection with the Redevelopment Work, or (B) would be materially more expensive to construct or install as an isolated improvement relative to the cost to construct or install such improvement as a part of the Redevelopment Work as reasonably approved by County, and/or (ii) be entitled to close-off portions of the Marina and Commercial Core Components if such portions, in their then-existing condition, create a danger to the health or safety of any persons occupying, using, working at, or patronizing such Component. Furthermore, notwithstanding the foregoing, with respect to the Hotel Component, Lessee shall make interim capital improvements to the existing Hotel and expend not less than Five Hundred Thousand and no/100 Dollars ($500,000.00) thereon within twenty-four (24) months of the Effective Date and shall provide documentation to County (in a form that can be audited by County) supporting the expenditure of such third-party costs and expenses. The Hotel Component and Commercial Core Component shall be maintained commencing upon completion of the Redevelopment Work at a level commensurate with institutional grade hotel and retail developments in the Southern California area and the Marina Component shall be maintained at a level commensurate with first-class marinas in the Southern California area and, at a minimum, in conformance with the Minimum Standards. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Property and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Property in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and

alterations and replacements thereto, except as otherwise provided in this Article 10 (except that during periods of construction of the Redevelopment Work or Alterations or reconstruction of damaged or destroyed Improvements, Lessee's obligations as to the areas of the Property under construction shall be controlled by Article 5 of this Lease). Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Chief Real Estate Officer to Lessee incident to the provisions of this Article 10. For the avoidance of doubt, and by way of example, Lessee's responsibilities under this Section 10.1 shall include, without limitation, the obligation to maintain, repair, operate and (subject to the limitations set forth below) replace of each of the following (the location of each of which is identified on **Exhibit H** attached hereto unless otherwise specified elsewhere in this Lease): (a) boat pump-out replacement, services and similar activities; (b) seawall (provided, however, that Lessee's replacement obligation for the seawall shall be limited to replacing specific segments thereof an as-needed basis because the same has been, for example, damaged beyond repair or is beyond its useful life, and such replacement obligation shall not require Lessee to perform the wholesale replacement of the entire seawall unless the entire seawall is damaged or destroyed, and provided further that with respect to that portion of the seawall that is located outside the boundaries of the Property, Lessee shall have no obligation to repair or restore any damage to the seawall to the extent the same is caused by: (i) the actions of the County, its agents, employees, tenants or contractors working at the direction of the County or its tenants (other than Lessee or its Affiliates or Sublessees), or (ii) third parties that are not agents, employees or tenants of Lessee or its Affiliates or Sublessees, or contractors working at the direction of Lessee or its Affiliates or Sublessees); (c) buoys & navigational aids within the harbor; (d) derelict vessel abatement anywhere within the Harbor; (e) fishing pier, (f) streets, roadways (other than Dana Drive and Island Way, which will be maintained by County) and sidewalks within the Property; (g) shelters, restrooms and park-scape within the parks located within the Property designated on **Exhibit A-2**; (h) the surface and landscaping on the Bridge Structure; (i) all trees and parking lots within the Property boundaries; and (j) the dredging of that portion of the harbor designated on **Exhibit A-3**, portions of which lie outside the Property; provided this responsibility for dredging shall in no way affect or supplant any responsibility that the Army Corps of Engineers may have for dredging, to the extent such responsibility exists. To the extent any such items to be maintained are located outside of the Property boundaries, Lessee shall coordinate the timing and performance of such maintenance work with the County through the County Public Property Permit system.

Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Property and the building footprints on the Property at a level commensurate with the standards set forth above with respect to each Component. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Property free and clear of rubbish and litter. County in its proprietary capacity shall have the right with reasonable notice to enter upon and inspect the Property at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Property. The exclusion of the Excluded Improvements from Lessee's maintenance obligations under this Section 10.1 shall not relieve Lessee from the obligation to repair and restore any damage to the Excluded Improvements caused by Lessee, its agents, employees, Sublessees or contractors, or by Improvements installed or constructed by or on behalf of Lessee, and Lessee hereby agrees to perform such repair or restoration work at Lessee's sole cost and expense.

10.2 Specific Maintenance Obligations. Without limiting the generality of Lessee's maintenance obligations in Section 10.1 above, the following provisions shall also apply during the Term:

10.2.1 Marina Maintenance. During the Term, Lessee shall complete float repair and replacement for the docks on an as-needed basis. Following the construction of the Marina Improvements pursuant to the Redevelopment Work, any requirement for subsequent repair of such Marina Improvements due to a deficiency notice issued by the CREO Office shall be accomplished with new materials and parts rather than patching or other like method. Such required replacement of deficiency-cited items with wholly new parts and materials shall, however, be limited to the specific item in disrepair and shall not connote a requirement, for maintenance purposes, that areas or items surrounding the deficient item be replaced with new materials and/or parts.

10.2.2 Environmental Policies; Water Quality and MS4 Program.

(a) Protection of Environment. Without limiting Lessee's obligations elsewhere in this Lease, during the Term, Lessee shall take all reasonable measures available to:

(1) Avoid any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about Lessee's facilities.

(2) Maintain a reasonable noise level on the Property so that persons in the general neighborhood will be able to comfortably enjoy the other facilities and amenities in the area.

(3) Prevent the light fixtures of the Property from emitting light that could negatively affect neighboring homeowners, or the operation of cars, boats, or airplanes in the area.

(4) Prevent all pollutants from Lessee's operations on the Property from being discharged, including petroleum products of any nature, except as may be permitted in accordance with any applicable permits. Lessee and all of Lessee's agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants emanating from the Property do not enter the Municipal Separate Storm Sewer System (including but not limited to curbs and gutters and drainage channel) (collectively, "**MS4**"), or directly impact "**Receiving Waters**", which include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean.

(5) The County may enter the Property and/or review Lessee records at any time to assure that activities conducted on the Property comply with the requirements of this Subsection.

(b) Water Quality and MS4. During the remaining Term of the Lease, Lessee shall comply with any water quality management requirements hereafter enacted by the County, the Orange County Flood Control District and cities within the County, as co-

permittees (hereinafter collectively referred to as "**County Parties**") related to the permits addressed in this subsection below, in order to comply with permitting or similar obligations imposed on the County Parties, provided such requirements are imposed on a non-discriminatory basis. Such requirements shall include, without limitation, the following:

(1) Lessee and all of Lessee's Sublessees, agents, employees and contractors shall use commercially reasonable and diligent efforts to conduct operations under this Lease so as to assure that pollutants generated from the Property do not enter the MS4, and to ensure that pollutants do not directly impact Receiving Waters.

(2) The San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("**NPDES**") permits ("**Stormwater Permits**") to the County Parties. The NPSES permits regulate the discharge of pollutants from areas within the County, including the Property leased under this Lease. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the MS4 and Receiving Waters. For the avoidance of doubt, the County Parties shall retain the right to enter upon the Property to perform such actions as are necessary or desirable for the County Parties to comply with the terms, conditions and requirements of the NPDES, Stormwater Permits, and similar water quality rules and regulations promulgated from time to time by federal, state and/or local regulatory agencies.

(3) To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan ("**DAMP**") which includes a Local Implementation Plan ("**LIP**") for each jurisdiction that contains Best Management Practices ("**BMPs**") that parties using properties within the County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "**BMP Fact Sheets**") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

(4) BMP Fact Sheets that apply to uses authorized under this Lease include, but are not limited to, the BMP Fact Sheets that are attached hereto as **Exhibit I.** These BMP Fact Sheets may be modified during the Term of the Lease, and the Chief Real Estate Officer shall provide Lessee with any such modified BMP Fact Sheets. Lessee, its agents, contractors, representatives and employees and all persons authorized by Lessee to conduct activities on the Property shall, throughout the Term of the Lease, comply with the BMP Fact

Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

(5) Lessee may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the CREO Office for review and approval prior to implementation.

(6) Chief Real Estate Officer may enter the Property and/or review Lessee's records at any reasonable time during normal business hours to assure that activities conducted on the Property comply with the requirements of this section. Lessee may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

(7) While Lessee is permitted to use the existing sewer and MS4 within the Property and the harbor for outflows permitted under Applicable Law, County reserves the right to require Lessee to participate in a water quality management plan to minimize impacts on harbor and ocean waters on a non-discriminatory basis similar to other retail, commercial, hospitality, restaurant, marina and public park facilities in the County if required in order to comply with permitting or similar obligations imposed on the County Parties.

(8) Notwithstanding anything to the contrary contained herein, Lessee shall not be responsible for remediating, managing or reducing contamination emanating from the existing drainage channel which empties into the harbor, to the extent that such pollutants do not emanate from or are generated and enter the drainage channel as a result of Lessee's or any Lessee's Parties' use or activities on the Premises. Lessee shall not be responsible for pollutants entering into the drainage channel from boat products (including paint and its components such as lead, copper, and zinc) emanating from boats in the harbor, except those emanating from Lessee's boat slip Sublessees. Lessee shall use all reasonable and diligent efforts to cause such boat slip Sublessees, and transient boat owners to the extent feasible, to comply with all applicable BMPs and environmental laws and regulations, and requirements of this Lease. The parties acknowledge that the Harbor was listed as impaired for copper, zinc, and bacteria in the water column in 2010, with a Total Maximum Daily Load requirement targeted for completion (and in place) in 2019. The cost for any existing or future compliance with the foregoing Total Maximum Daily Load requirement shall not be borne by the Lessee, however this clause shall not limit Lessee's other obligations under this Subsection 10.2.2.

10.3 Maintenance Deficiencies.

10.3.1 Notice; Time to Cure. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Sections 10.1 through 10.2.2 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's written deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Subsection 10.3.1), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 14 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars ($100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured. Notwithstanding the foregoing, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

10.3.2 Determination of Deficiency Period. For purposes of determining the number of items of deficiency set forth in a deficiency notice received from County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.3 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to the CREO Office within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with the CREO Office, then Chief Real Estate Officer shall exercise Chief Real Estate Officer's reasonable discretion in considering Lessee's contest. If Lessee's contest is made on a reasonable and good faith basis, then, in cases that do not include health, safety or any emergency condition, the cure period for the deficiency notice shall be tolled during the period between the date the CREO Office receives written notice of such contest and continuing until Chief Real Estate Officer notifies Lessee in writing that Chief Real Estate Officer accepts or denies Lessee's contest. The One Hundred Dollars ($100) per diem amount set forth in this Section 10.3 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.3 within fifteen (15) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.4 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Property or any Improvements located thereon (other than the Excluded Improvements, except to the extent damage thereto is caused by the Lessee, its agents, employees, Sublessees or contractors, or to Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.4, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.4, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Property where all or substantially all of the Improvements on the Property (other than the Excluded Improvements) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "**Uninsured Loss**"), and where all of the following occur:

10.4.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this Subsection 10.4.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.4.2 No more than sixty (60) days following the giving of the notice required by Subsection 10.4.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris and other rubble from the Property; secure the Property against trespassers; and, at County's election, remove all remaining Improvements on the Property.

10.4.3 No more than sixty (60) days following the giving of the notice required under Subsection 10.4.1, Lessee delivers to County a quitclaim deed to the Property in recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Property and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.4.4 Within fifteen (15) days following County's receipt of the notice referred to in Subsection 10.4.1 County has not received both (a) written notice from any Encumbrance Holder objecting to such termination and (b) an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.5 No Option to Terminate for Insured Casualty. Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Property where the damage or destruction results from a cause required to be insured against by this Lease.

10.6 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, Chief Real Estate Officer may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time as reasonably established by Chief Real Estate Officer, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 14.5.

10.7 County Obligation to Make Repairs; Breakwater and Bridge Structure. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Property; provided, however, that Chief Real Estate Officer shall in its good faith discretion consider the application of funds toward the maintenance, repair and replacement of the Breakwater and the structural aspects of the bridge depicted on **Exhibit H** attached hereto (the "**Bridge Structure**") (both of which structures the Parties acknowledge and agree are not part of the Property) if and to the extent such funds are made available to Chief Real Estate Officer for such uses by County and its Board, or otherwise. Chief Real Estate Officer shall undertake such maintenance, repair and replacement, if any, with due diligence consistent with the funding provided. In the event the Breakwater or the Bridge Structure is in imminent danger of collapse or has collapsed, Chief Real Estate Officer shall promptly request funding from the Board for repair or replacement as may be necessary to avoid or repair such collapse. Except as expressly provided in this Section 10.7, County shall have no obligation to maintain or repair the Breakwater or the Bridge Structure. Furthermore, nothing herein shall relieve Lessee from liability for any damage to either the Breakwater or the Bridge Structure caused by Lessee, its agents, employees, Sublessees or contractors, or by the construction of the Improvements by or on behalf of Lessee.

10.8 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Property. Any entry by County onto the Property pursuant to this Section 10.8, and any entry onto the Property to perform work on the Breakwater pursuant to Section 10.7 above, shall be made in accordance with the following requirements: (a) prior to entry onto the Property, County shall cause each of its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Property, which insurance coverage shall be consistent with County's insurance requirements generally applicable to County contractors, and shall name Lessee and any then-current Encumbrance Holder as an additional insured; (b) County's contractors shall comply with industry standard safety requirements; and (c) County shall repair, or cause its contractors to repair, any damage to the Property caused by the activities of County and/or it contractors on the Property pursuant to this Section 10.8 or Section 10.7. If repair of the Breakwater requires access to the Property, County and Lessee agree to cooperate to define a work and/or access area that is reasonably acceptable to both parties.

10.9 Notice of Damage. Lessee shall give prompt notice to County of any fire or damage affecting the Property or the Improvements from any cause whatsoever.

10.10 Waivers. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of any statutes (including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code) or court decisions which provide a party to a Lease with a right to abatement of rent or termination of this Lease when leased property is damaged or destroyed and agree that such event shall be exclusively governed by the terms of this Lease.

10.11 Accessibility Disclosure. In compliance with its disclosure obligations under Section 1938 of the California Civil Code, County hereby notifies Lessee that, as of the Effective Date, the Property has not been inspected by a Certified Access Specialist (as referred to in Section 1938 of the California Civil Code). As such, County hereby advises Lessee as follows:

> "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

If Lessee elects to have a Certified Access Specialist ("**CASp**") inspect the Property, then Lessee shall: (a) provide County with prior written notice of such election and mutually agree with County on the arrangements for the time and manner of the CASp inspection, (b) promptly give County a copy of the resulting report (the "**CASp Report**") upon receipt, (c) be responsible, at its sole cost and expense, for the cost of the CASp Report and for completing any repairs or modifications that are necessary to correct violations of construction-related accessibility standards noted in the CASp Report and any additional work necessitated thereby (all of which Lessee shall complete as expeditiously as possible following the issuance of the CASp Report and in compliance with this Lease (including without limitation Section 5), and (d) not disclose and cause its partners, members, officers, directors, managers, shareholders, employees, agents, brokers and attorneys to not disclose the CASp Report to any person other than County (and except as necessary for Lessee to complete the repairs and corrections of violations noted in the CASp Report) without first obtaining the prior written consent of County (which consent shall not be unreasonably withheld) or if disclosure is required by law. Lessee's obligation to indemnify County and the County Indemnified Parties under Section 8.1 above shall apply equally to Claims arising out of any CASp investigation initiated by Lessee, including as a result of any violations discovered thereby.

10.12 Dana Point Harbor Water Quality. Notwithstanding anything to the contrary set forth in this Lease, Lessee shall not be responsible during the Term for the cost of undertaking any improvements required to: (a) improve the circulation of water in the Dana Point Harbor, (b) to improve the water quality in the Dana Point Harbor, or (c) to engage in other activities designed to improve the environmental condition of Dana Point Harbor over the condition as it exists on the Effective Date, and/or as might be required as a part of the Redevelopment Work or any Subsequent Renovation. The foregoing shall not negate or limit Lessee's responsibilities under Subsections 3.2.2(f) or 10.2.2.

11. OPERATIONAL OBLIGATIONS OF LESSEE.

11.1 Standards of Operation. Continuously throughout the Term, Lessee shall operate the Property in a manner reasonably comparable to other comparable facilities or businesses within the County, and in accordance with the Minimum Standards. The Minimum Standards shall not be modified without the prior written consent of the Chief Real Estate Officer, which consent may be granted or withheld in the Chief Real Estate Officer's sole discretion.

11.2 Property Manager. Continuously throughout the Term, Lessee shall employ a competent manager for each Component of the Property ("**Property Manager**"), who shall be responsible for the day to day full-time management, operation, maintenance, cleanliness, and general order of such Component. Each Property Manager shall have the requisite skill, experience and expertise for the type of operation being conducted on the applicable Component, and, with respect to (a) the Marina Component: (i) the Property Manager shall be an experienced, professional marina management firm, and (ii) the executive management of the such Property Manager shall have a minimum of ten (10) years' experience in the successful management and operation of marinas comparable quality to the Marina to be operated and maintained on the Marina Component, (b) the Commercial Core Component: (i) the Property Manager shall be an experienced and qualified manager of first class or institutional retail projects, and (ii) the executive management of the such Property Manager shall have a minimum of ten (10) years' experience in the successful management and operation of first class or institutional retail projects, and (c) the Hotel Component: (i) the Property Manager and hotel franchisor shall each be an industry recognized hotel chain of comparable quality to the national or regional hotel chains and management companies listed on **Exhibit J**, (ii) the executive management of each of the Property Manager and hotel franchisor responsible for the management of the Hotel shall have a minimum of ten (10) years' experience in the successful franchising of hotels of comparable quality to the Hotel to be operated and maintained on the Hotel Component, and (iii) each of the Property Manager and hotel franchisor shall have or will be in a position to participate in a nationwide reservation system. County hereby approves the Property Managers and hotel franchisors identified on **Exhibit J** without the need for further County consent; provided, however, prior to engaging such pre-approved Property Manager or hotel franchisor, Lessee shall nevertheless be required to provide County with the information that would have been required of Lessee if the County's approval of such Property Manager or hotel franchisor were required. Any Property Manager or hotel franchisor that is not a pre-approved Property Manager per **Exhibit J** or that is not an Affiliate of Lessee shall be subject to Chief Real Estate Officer's prior written approval, which approval shall not be unreasonably withheld. Concurrently with submitting its request for approval of a Property Manager or hotel franchisor, Lessee shall submit to Chief Real Estate Officer all information needed to

demonstrate compliance with the criteria set forth herein and thereafter, upon Chief Real Estate Officer's request, Lessee shall cooperate with County and provide such additional information as Chief Real Estate Officer may reasonably request relating to such criteria or other factors bearing upon Chief Real Estate Officer's approval of the Property Manager. If Chief Real Estate Officer disapproves a proposed Property Manager hotel franchisor, he or she shall do so by written notice to Lessee stating the reasons for such disapproval. Each approved Property Manager and hotel franchisor shall be vested with the authority of Lessee with respect to the supervision over the operation and maintenance of the applicable Component of the Property, including the authority to enforce compliance by Lessee's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Lessee shall provide County with the name and contact information for the Property Manager (and hotel franchisor) for each Component, and shall continuously throughout the Term update such information as changes occur. Lessee expressly agrees that any notice herein required to be served upon Lessee may, at the option of County or Chief Real Estate Officer, be personally served upon the Property Manager (and/or hotel franchisor) and that such service shall have the same force and effect as service upon Lessee. If during the Term in the reasonable judgment of Chief Real Estate Officer the then current Property Manager or hotel franchisor is performing in an unsatisfactory manner, then the Chief Real Estate Officer shall advise Lessee of the particular deficiencies in such operations and Lessee shall use commercially reasonable and diligent efforts to cause such manager to correct such behavior or shall replace such Property Manager or hotel franchisor with a new management firm or hotel franchisor with personnel experienced in managing institutional quality projects and which complies with the requirements above. If during the Term the then current Property Manager or hotel franchisor terminates its contract, then Lessee shall have the right to replace such Property Manager or hotel franchisor with another management firm or hotel franchisor which complies with the requirements above. Notwithstanding anything in this Lease to the contrary, and for the avoidance of doubt, Lessee shall be solely responsible to County for the continued operation of the Property in accordance with the terms and conditions of this Lease, and Lessee's employment of a Property Manager or a hotel franchisor to assist Lessee with the same shall not relieve Lessee of liability for any breach of such obligations.

11.3 Slip Rent Roll & Slip Compliance Obligations. On or before July 1 of each year during the Term, Lessee shall deliver to Chief Real Estate Officer a rent roll report which contains the following information with respect to every vessel (including floating homes) moored in the water at the Property to Lessee's knowledge: (a) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (b) the state registration or federal document number, and name (if any), of the vessel; (c) whether the vessel is a power vessel, sailing vessel or floating home; and (d) the slip number and length of the vessel, and whether the vessel is presently authorized by Lessee for liveaboard tenancy. Lessee shall require in its slip rental agreements that, as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels be required to be seaworthy and all of Lessee's slip leases shall provide that any newly tenanted vessel which is not seaworthy shall be ineligible for continued slip tenancy on the Property and shall be subject to removal from the Property by Lessee in accordance with Applicable Law for non-compliance with the requirements of the slip lease. The requirements of the two preceding sentences shall not be applicable to any vessel which is specifically exempted from seaworthiness requirements by Applicable Law. In the event Lessee is advised that any vessel has been determined to not be

seaworthy by the Harbor Patrol, Lessee shall use commercially reasonable and diligent efforts to enforce the foregoing provisions in its slip leases.

11.4 Transient Docks. Lessee shall make available not less than one thousand four hundred ninety-five (1,495) lineal feet of slips to be reserved for transient boat docking purposes at market rates established by Lessee in the areas designated in the Approved Proposal Submittals. Lessee shall be responsible for ensuring that the transient slips are in compliance with all Applicable Laws for the use described in this Section 11.4.

11.5 Slip Priority; Waitlists. During the Option Period, County and Lessee have agreed upon a procedure for allocating slips within the harbor to parties that are interested in leasing the same following completion of the Redevelopment Work for the Wet Marina, including without limitation, current tenants and/or licensees under existing Slip Leases and those individuals or entities identified on existing waitlists that County has provided to Lessee. The prioritization of offers made for occupancy of future slip space are based, in part, on an acknowledgment of the order and longevity of the foregoing existing agreements and waitlists. Following the completion of the Redevelopment Work for the Wet Marina, Lessee agrees to implement such procedure and shall not make any material modifications to such procedure without the prior reasonable approval of the Chief Real Estate Officer.

11.6 Right to Work and Minimum Wage Laws.

11.6.1 In accordance with the United States Immigration Reform and Control Act of 1986, Lessee shall require its employees that directly or indirectly service the Property, pursuant to the terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. Lessee shall also require and verify that its contractors or any other persons servicing the Property, pursuant to the terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

11.6.2 Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and California Labor Code Section 1178.5, Lessee shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Property, in any manner whatsoever. Lessee shall require and verify that all its contractors or other persons servicing the Property on behalf of the Lessee also pay their employees no less than the greater of the Federal or California Minimum Wage.

11.6.3 Lessee shall comply and verify that its contractors comply with all other Federal and State laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Property or terms and conditions of this Lease.

11.6.4 Notwithstanding the minimum wage requirements provided for in this Section 11.6, Lessee, where applicable, shall comply or cause its contractors or subcontractors to comply with the prevailing wage and related requirements, as provided for in Subsection 11.7 below.

11.7 Labor Code Compliance. Lessee acknowledges and agrees that all construction performed by or on behalf of Lessee per the terms of this Lease shall be governed by, and

performed in accordance with, all Applicable Laws, including without limitation, and to the extent applicable, the California Labor Code and the provisions thereunder concerning the payment of prevailing wage.

11.8 Public Contract Code Compliance. To the extent required by Applicable Law, Lessee shall comply, and shall cause its Sublessees, contractors and subcontractors to comply, with all County ordinances and public contracting laws regarding public works contracts, including, but not limited to, the bidding requirements under the California Public Contracts Code.

11.9 Pricing. Lessee shall at all times maintain a complete list or schedule of the prices charged by Lessee for all goods or services, or combinations thereof, supplied to the public on or from the Property, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. The foregoing shall not be deemed a requirement for Lessee to maintain such lists or schedules of the prices charged by Sublessees. Said prices will be "market rate" pricing as reasonably determined by Lessee; provided, however, that in all events such prices shall be consistent with the limitations on pricing as mandated by the Tidelands Grant. In addition to the foregoing, with respect to the Slip Leases specifically, Lessee shall be required to provide advance written notice to County and all tenants and/or licensees under existing Slip Leases of any raises in the slip rental rates, which notice shall include Lessee's rationale for such raise as well as its methodology for determining the same.

11.10 Payment Card Compliance. Should Lessee conduct credit/debit card transactions in conjunction with Lessee's business with the County, on behalf of the County, or as part of the business that Lessee conducts on the Property, Lessee covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard ("**PCI/DSS**") and Payment Application Data Security Standard ("**PA/DSS**") compliant and will remain compliant with such standards, or any successor standards, during the entire duration of its conduct of such activities, provided such standards remain applicable. Notwithstanding the foregoing, with respect to the Hotel Component, Lessee shall be permitted to comply with the payment card standards imposed by a franchisor or operator under a management agreement under the "flag" of a national or regional hotel chain utilizes, provided such standards are substantially similar to the PCI/DSS and PA/DSS standards. Lessee agrees to immediately notify County in the event Lessee should ever become non-compliant at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days after the commencement of any such interruption. Upon demand by County, Lessee shall provide to County written certification of Lessee's PCI/DSS and/or PA/DSS compliance, or, if applicable, proof that any other standard implemented by Lessee with respect to the Hotel Component as contemplated above complies with the PCI/DSS and/or PA/DSS standards and that Lessee complies with the same.

11.11 Administration of County Space. For the avoidance of doubt, County does not grant or delegate to Lessee any of County's governmental powers (statutory, implied, administrative, or otherwise) with respect to the Property.

11.12 Holiday and Event Coordination. Lessee agrees that County shall have the right from time to time to host or co-host certain community events or displays on or about the

Property that typically coincide with various holidays on up to five (5) occasions per year, including without limitation those listed on **Exhibit K** attached hereto (the "**Permitted Events**"). County shall coordinate the location, dates, duration and scope of the Permitted Events with Lessee prior to the occurrence of the same in each instance. County shall provide Lessee with a proposed calendar of such proposed events no later than September 30 of each calendar year proposing the Permitted Events for the following calendar year. The Permitted Events shall be conducted within those portions of the Property reasonably approved by Lessee. Lessee and County agree to reasonably cooperate with each other in connection with the Permitted Events, including the planning and execution of the Permitted Events, provided that all costs and expenses associated with the Permitted Events shall be borne by County or other sponsoring party (including, but not limited to, the City), including but not limited to, advertising, promotions, marketing, signage and wayfinding, additional lighting requirements, valet services, extraordinary parking management services, catering, staging, entertainment, decorations, materials and supplies, staffing, security, utilities, clean-up, etc. For the avoidance of doubt, Lessee shall not conduct, nor permit any of its Sublessees to conduct, any events or other activities within the waterways of Dana Point Harbor without first obtaining all applicable permits for the same.

11.13 Exclusion of Harbor Patrol Office; Right of First Offer. The parties acknowledge and agree that building depicted on **Exhibit A-2** as the Harbor Patrol Office (the "**Excluded Harbor Patrol Office**") is not a part of the Property. County, at its sole cost and expense, shall maintain or cause to be maintained the Excluded Harbor Patrol Office in a safe, clean, wholesome and sanitary condition, in compliance with all Applicable Laws, and, if and to the extent such funds are made available to Chief Real Estate Officer for such uses by County and its Board, in compliance with the Minimum Standards. In the event that County discontinues its use of the Excluded Harbor Patrol Office (the "**Offered Property**"), and desires to lease the same to a third party, then prior to entering into negotiations with any third party tenants, County shall provide Lessee with written notice of its intention to lease the Offered Property (the "**First Offer Notice**"). Lessee shall thereafter have a right of first offer (the "**Right of First Offer**") with respect to leasing the Offered Property. If Lessee wishes to exercise the Right of First Offer, then Lessee shall deliver written notice to County of Lessee's intention to exercise its Right of First Offer with respect to the entirety of the Offered Property within thirty (30) days after County's delivery of the First Offer Notice to Lessee. If Lessee does not exercise the Right of First Offer within said thirty (30) day period, or if Lessee timely exercises the Right of First Offer but County and Lessee are unable for a period of sixty (60) days after Lessee has provided written notice of its election to exercise the Right of First Offer to reach agreement on the material terms of Lessee's lease of such Offered Property to both parties' satisfaction, in each party's sole and absolute discretion, then Lessee's Right of First Offer with respect to the Offered Property shall terminate and County shall be free to lease such Offered Property to any third party in accordance with County's policies and procedures. Notwithstanding the foregoing, Lessee shall have no Right of First Offer and County shall have no obligation to deliver a First Offer Notice (a) if, as of the date County would otherwise deliver such First Offer Notice, an Event of Default exists under this Lease, and/or (b) during the last five (5) years of the Term.

11.14 Sailing and Event Center. The parties acknowledge and agree that the sailing and event center and associated docks and parking as depicted on **Exhibit A-2** (collectively, the

"**Sailing and Event Center**") are not currently a part of the Property. Notwithstanding the foregoing, the parties may amend this Lease to incorporate the Sailing and Event Center as part of the Property upon such terms and conditions as the parties may mutually agree in their sole and absolute discretion; provided that such terms and conditions must include, among other things, that the underlying purpose and operations of the Sailing and Event Center will be preserved by Lessee.

11.15 Short-Term License for Orange County Dana Point Harbor Office. Effective as of the Effective Date, in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessee hereby grants to County: (a) an exclusive license to continue to enter and use the space that County has been using for its harbor offices on the second (2nd) floor of the building identified as the Orange County Dana Point Harbor Office on **Exhibit A-2** attached hereto (the "**County's Harbor Office**"), and (b) a non-exclusive license to use, in common with other occupants of such building, the stairways, elevators, hallways, driveways for vehicle ingress and egress, walkways and other facilities and common areas appurtenant to the County's Harbor Office. County shall use County's Harbor Office for general administrative and office purposes and any lawful purpose incident thereto. County shall be responsible for its own utilities (water, gas and electricity) as well as its own telephone and internet service. The licenses set forth in this subsection shall be coupled with an interest, at no additional cost to County, and shall be irrevocable until March 1, 2019, at which time such licenses shall terminate and be of no further force or effect. For the avoidance of doubt, in connection with such licenses, and during the term thereof, County shall also be entitled to park in the parking lot adjacent to the County's Harbor Office without fee or cost. Effective as of March 1, 2019, the foregoing licenses shall terminate, and County shall vacate and surrender the County's Harbor Office to Lessee in its then-existing "as-is" condition, with no obligation of County to make any improvements or repairs thereto.

12. ASSIGNMENT AND SUBLEASE.

12.1 Subleases.

12.1.1 Definition. The term "**Sublease**" shall mean any lease, license, permit, concession, or other interest in the Property or the Improvements, or a right to use the Property or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of one or more Components is sometimes referred to in this Lease as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Lease as a "**Major Sublessee**". For the avoidance of doubt, with respect to the Hotel Component, no hotel franchise or management agreement, room reservation or event area reservation shall constitute a "Sublease" hereunder, but the same shall be subject to the County's prior written approval as and to the extent set forth in Section 11.2 above.

12.1.2 Approval Required. At least thirty (30) days prior to the proposed effective date of (a) any Sublease that is not a Major Sublease, Approved Retail Sublease,

Approved Slip Lease or Approved Storage Lease, or (b) any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or assignment or amendment thereof), to Chief Real Estate Officer for approval, which approval shall not be unreasonably withheld or conditioned. To the extent practical, Chief Real Estate Officer shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Chief Real Estate Officer. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Property subject to the Sublease. If Chief Real Estate Officer disapproves a Sublease, Chief Real Estate Officer shall notify Lessee in writing of the reason or reasons for such disapproval.

12.1.3 No Approval Required. Notwithstanding any contrary provision of this Article 12, but subject to Section 3.1 of this Lease, Lessee shall not be required to obtain County's approval of (a) any Sublease or license of retail space in the ordinary course, as long as such Sublease or license agreement pertains to no more than 7,500 rentable square feet of interior space in the Improvements (which threshold shall apply to the cumulative square footage leased by a particular Sublessee if such Sublessee has more than one Sublease), there are no substantive revisions to any of the required lease provisions described on **Exhibit M** attached hereto, and the term of such Sublease or license does not exceed one hundred twenty (120) months, inclusive of any option or renewal periods (each, an "**Approved Retail Sublease**"), (b) any Sublease or license of an individual dry stack storage space in the ordinary course (but not the master lease of multiple units) to a person or persons, as long as such Sublease or license agreement is in the form of the standard dry stack storage lease hereafter submitted to and approved in writing by County (each, an "**Approved Storage Lease**"), or (c) any Sublease or license of an individual anchorage slip in the ordinary course (but not the master lease of more than five (5) slips) to a person or persons (each, a "**Slip Lease**"), as long as such Sublease or license agreement is in the form of the standard anchorage slip hereafter submitted to and approved in writing by County (each, an "**Approved Slip Lease**"). The terms and provisions of Sections 12.2 and 12.3 of this Lease shall not be applicable to Approved Storage Leases or Approved Slips Leases. Upon request by County, Lessee shall furnish County with a current rent roll respecting the Approved Storage Leases and Approved Slip Leases and a copy of all of such Approved Storage Leases and Approved Slip Leases.

12.1.4 Non-Disturbance Agreements. With respect to any Sublease approved by County that (a) is with a Sublessee that is a national or regional retailer or restaurant chain, and (b) pertains to more than 7,500 rentable square feet of interior space in the Improvements (which threshold shall apply to the cumulative square footage leased by a particular Sublessee if such Sublessee has more than one Sublease), County agrees, upon written request from Lessee, to execute and deliver a non-disturbance and attornment agreement using County's standard form.

12.1.5 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable entity of other comparable facilities or businesses. With respect to the Hotel Component, County agrees that each of the national or regional hotel chains and management companies listed on **Exhibit J** shall be deemed to be reputable. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major

Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Property, not less than forty- five (45) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 12.2.

12.2 Approval of Assignments and Major Subleases. Except as specifically provided in this Article 12, Lessee shall not, without the prior written consent of County (which consent shall be based upon factors including, without limitation, those described in **Exhibit C** hereto ("**Assignment Standards**"), which shall be applied in a commercially reasonable manner), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege herein, or enter into a Major Sublease affecting the Property, or license the use of all or substantially all of the Property. Any Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee (as opposed to an assignment of the Lease) shall not require County consent if it is an Excluded Transfer. If such Change of Ownership with respect to beneficial ownership interests is not an Excluded Transfer, then it shall require County's consent as if it constituted an assignment of Lessee's interest in this Lease. For the avoidance of doubt, any actual assignment of Lessee's interest in this Lease shall require County's consent even if it is an Excluded Transfer. In addition, for purposes of this provision, the following (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning at least one-third of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity which owns, or is a general partner or managing member of an entity which owns, an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County's consent. These same limitations and approval requirements as to Lessee's interest under the Lease shall also apply with respect to the Sublessee's interest under a Major Sublease.

12.2.1 County's Use of Discretion and Limitation on Permissible Assignees. Prior to the CO Date for each Component, County shall have the right to withhold its consent to any assignment or Major Sublease for such Component in County's sole and absolute discretion. After the CO Date for a Component, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease for such Component. If County withholds its consent to an assignment or Major Sublease after the CO Date for the applicable Component, County shall notify Lessee in writing of the reason or reasons for such disapproval.

12.2.2 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any interest herein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or

against Lessee, or by any other process of law including, without limitation, bankruptcy proceedings.

12.2.3 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

(a) Prior to entering into any agreement requiring the approval of County pursuant to Sections 12.1 or 12.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information reasonably relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Sublease, and any other documents which set forth any proposed agreement regarding the Property and the information set forth in Subsection 12.2.3(e). County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request.

(b) In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

(c) Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 12 and shall provide such response in no more than thirty (30) days.

(d) Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment (without any duplication with any Administrative Charge payable under Subsection 4.3).

(e) Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(1) Nature of the Assignee. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision- making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder.

(2) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(3) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Property (unless the assignment is pursuant to a Change of Ownership that is an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only Beneficial Interests in the constituent owners of Lessee, and following such transfer there is no intended change in the financing plan for the operation and improvement of the Property) and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Property and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (a) equity capital; (b) sources and uses of funds; (c) terms of financing; (d) debt service coverage and ratio; and (e) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Property. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(4) Business Plan. County shall be provided with the proposed assignee's business plan for the Property (unless the assignment is pursuant to a Change of Ownership that constitutes an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the business plan for the Property), including pro forma financial projections for the Property for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(5) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(6) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which

may be identified by County, whether identified before or after the date of the proposed assignment.

(7) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Property.

(8) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Property and any proposed alterations or improvements to the Property. Additionally, County shall be provided with any and all other non-confidential information which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Property, contracts in excess of $25,000 affecting the Property, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Property. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

(f) Non-disturbance. Upon the written request of Lessee, County shall agree to execute a subordination, non-disturbance and attornment agreement and a ground lessor's estoppel certificate in favor of any Major Sublessee, or any national or regional hotel chains or management companies listed on **Exhibit J** attached hereto, using County's standard form for the same.

(g) Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as reasonably approved or supplied by County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

12.2.4 County Right to Recapture. If Lessee proposes to assign its interest in this Lease, proposes to enter into any Major Sublease affecting the Property or proposes to transfer a Controlling Interest in Lessee, in each case excluding any Excluded Transfer (with any such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire, which notice shall include the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. For purposes hereof, a "**Controlling Interest**" in Lessee shall mean fifty percent (50%) or more of the direct or indirect Beneficial Interest in Lessee. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided in this Subsection 12.2.4. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, Lessee

shall deliver to County an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months. During the term of the County Option, Lessee shall make the Property and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. At Lessee's request, any third party granted access to the Property or Lessee's books and records pursuant to this Subsection 12.2.4 shall be required to execute a right-of-entry and confidentiality agreement on commercially reasonable terms. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "**County Option Price**") which represents (a) three percent (3%) of the Lessee Sale Price, plus (b) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (i) fails to elect to cause Lessee to issue the County Option within said thirty (30) day period, or (ii) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (i) or (ii), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) so long as (A) the actual price for the Proposed Transfer is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee, and (B) the transfer is consummated not later than twelve (12) months after the later of (i) or (ii) (which twelve (12) month period shall be extended to the extent the closing is delayed due to a delay by County in approving the transaction within sixty (60) days after County has received a notice from Lessee requesting County's approval of such transaction and all information required by County under this Lease to permit County to evaluate the transaction). In the event of a proposed Major Sublease, County's election shall pertain to such portion of the Property subject to the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Property, Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Property retained by Lessee and Annual Minimum Rent shall be reduced as of the date of the acquisition to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Property remaining with Lessee to the fair market value of the entire Property immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the acquisition. Upon the next Adjustment Date, as described in Subsection 4.2.1(b) above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent paid by Lessee to County prior to the date of such acquisition shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Property which remains after such acquisition bears to the fair market value of the entire Property immediately prior to such acquisition. If the Parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.2. Any determinations of fair market value made pursuant to this Section 12.2.4 in connection with any arbitration proceeding shall be predicated upon the Income Approach. In the event that County elects to recapture all or any portion of the Property as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably

necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this Subsection 12.2.4 shall not apply to (I) Financing Events, or (II) those events identified in Subsection 4.3.1(e)(2) of this Lease.

12.2.5 County Credits Toward Purchase Price. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Percentage Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price, plus (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any (including a provisional credit in an amount reasonably acceptable to County for any amounts that may arise from an audit by County, but that have not yet been determined as of that date), with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In the case of any unpaid rental amounts that may be found to be owing to County in connection with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the Parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

12.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for in this Lease, each and all of the provisions, agreements, terms, covenants, and conditions of this Lease contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of Lessee's heirs, executors, administrators, successors and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Furthermore, any transferor of any interest in this Lease or the Property or Improvements shall remain primarily liable for all obligations hereunder and shall be subject to the terms and provisions of this Lease. County may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee.

13. ENCUMBRANCES.

13.1 Financing Events.

13.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Section 4.3:

(1) "**Financing Event**" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance; for purposes of Subsection 13.1.2 below and Subsections 4.2.4 through 4.3.1(e) above, a "**Financing Event**" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease.

(2) "**Encumbrance**" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (i) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants), or (ii) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "**Encumbrance Holder**") as security for a loan.

(3) "**Encumbrance Holder**" shall also be deemed to include any and all Affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such Affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease.

(4) "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

13.1.2 County Approval Required. Lessee may, with the prior written consent of Chief Real Estate Officer (except as set forth in Subsection 13.1.3 below), which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Chief Real Estate Officer, consummate one or more Financing Event(s). Lessee shall submit to the Chief Real Estate Officer a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event (collectively, the "**Financing Documents**"). The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Chief Real Estate Officer. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Chief Real Estate Officer shall have twenty (20) days to grant or withhold approval of the preliminary loan package and its preliminary approval or disapproval of the Financing Event, subject to confirmation that the substantially complete loan documents conform to the preliminary loan package. Chief Real Estate Officer shall have ten (10) days after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event. If not

approved by Chief Real Estate Officer in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Chief Real Estate Officer and, if so requested in writing by Lessee, Chief Real Estate Officer shall within ten (10) days of such request deliver to Lessee a written description of Chief Real Estate Officer's objections to said proposed Financing Event. Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the Parties in connection with any approved Encumbrance shall be filed with the Chief Real Estate Officer not later than fifteen (15) days after the effective date thereof. The same rights and obligations set forth above in this Subsection 13.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

13.1.3 No County Approval Required. Notwithstanding anything to the contrary contained in Subsection 13.1.2 above, so long as: (i) any two of Burnham-Ward Properties, LLC, Bellwether Financial Group, Inc. or Olson Real Estate Group, Inc. remain members of Lessee and hold collectively not less than sixty-six percent (66%) of the membership interests of Lessee, and (ii) no transfer of the Beneficial Interest of either of such two remaining entities shall have occurred since the Effective Date, then Lessee may consummate one or more Financing Event(s) without with the prior written consent of Chief Real Estate Officer, subject to the following terms and conditions:

(a) As soon as reasonably practicable following Lessee's receipt of the Financing Documents (which may include draft documents), but in all cases no later than ten (10) Business Days prior to executing the same, Lessee shall submit the Financing Documents for each applicable Financing Event to the Chief Real Estate Officer for the Chief Real Estate Officer's review for the purpose of confirming the same comport with the requirements set forth in this Subsection 13.1.3. One (1) copy of any and all security devices or instruments as finally executed or recorded by the Parties in connection with any such approved Encumbrance shall be filed with the Chief Real Estate Officer not later than fifteen (15) days after the effective date thereof.

(b) The Encumbrance Holder shall be an Institutional Lender.

(c) The Encumbrance shall cover no interest in any real property other than Lessee's interest in the Property and Improvements or some portion thereof, and the leasehold estate of Lessee under this Lease. The Encumbrance shall be fully subordinate to Lessor's fee title in and to the Property and all of Lessor's rights set forth in this Lease and shall state on its face that it does not encumber in any way Lessor's fee interest in the Property or Lessor's rights set forth in this Lease.

(d) Prior to the completion of the Redevelopment Work, Encumbrances may be made only for the purposes of financing necessary and appropriate to pay Improvement Costs.

(e) Prior to completion of the Redevelopment Work, the total amount of all loans secured by Encumbrances recorded against the Property shall not exceed seventy-five percent (75%) of the budgeted Improvement Costs across all Components

collectively, as the Budget for said Improvement Costs may be revised from time to time in accordance with this Lease.

(f) Subsequent to completion of the Redevelopment Work, the total amount of all loans secured by Encumbrances recorded against the Property shall not exceed seventy-five percent (75%) of the fair market value of Lessee's leasehold interest in the Property across all Components, collectively, or for any particular Component, individually, as determined by either (i) the appraisal selected by the Institutional Lender to conduct the appraisal in connection with the Financing Event (provided such appraisal is actually relied upon by the applicable Encumbrance Holder in connection with Lessee's loan approval) or (ii) a licensed California appraiser retained at Lessee's sole cost and expense who is a member of the Appraisal Institute and who has a minimum of ten (10) years' experience appraising properties comparable to the Property and Improvements to be developed on the Property, with the Chief Real Estate Officer or his or her designee having the right of reasonable approval or disapproval of the appraisal in connection with this subsection (ii) alternative; provided, however, that Lessee shall not be deemed to be in default of this Subsection 13.1.3(f) if a loan or loans secured by Encumbrances recorded prior to completion of the Redevelopment Work in compliance with Subsection 13.1.3(e), including any amendment(s) or extension(s) of such loan(s) that do(es) not increase the total outstanding principal balance of such loan(s) and whether or not such amendment(s) or extension(s) occur(s) prior or subsequent to completion of the Redevelopment Work, exceed(s) seventy-five percent (75%) of the fair market value of Lessee's leasehold interest in the Property. In addition, it is understood and agreed that the loan-to-value ratio constraint in this Subsection 13.1.3(f) shall be made only at the time Lessor is determining whether to approve or disapprove the proposed Encumbrance and thereafter this Subsection 13.1.3(f) shall not limit, restrict, invalidate, or result in the disapproval of any such Encumbrance or any amendment or extension of any such Encumbrance that does not increase the total outstanding principal balance of the loan secured by such Encumbrance if the fair market value of Lessee's leasehold interest in the Property that was relied upon by Lessor in approving the Encumbrance declines.

(g) All rights acquired by an Encumbrance Holder under an Encumbrance shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease, and to all rights of County hereunder, none of which covenants, conditions, and restrictions is or shall be waived by County by reason of the giving of such Encumbrance. Notwithstanding the foreclosure of any such Encumbrance, Lessee shall remain liable for the payment of the accrued but unpaid rent reserved in this Lease while Lessee remains in possession of the Property and Improvements.

(h) Promptly upon the recording of an Encumbrance, Lessee shall, at its own expense, cause to be recorded in the Official Records of Orange County a written request executed and acknowledged by County for a copy of all notices of default and all notices of sale under the Encumbrance as provided by Applicable Law to be provided to the Chief Real Estate Officer. Inclusion of a request for notice having the effect described above in the body of the recorded Encumbrance shall constitute compliance with this provision.

(i) County shall not be required to amend this Lease, nor undertake any additional obligations, nor be obligated to forego any rights under this Lease, in connection with any such Financing Event.

(j) The Encumbrance Holder shall acknowledge in the Encumbrance that any amounts in the Subsequent Renovation Fund, Capital Improvement Fund and/or the Hotel Capital Reserve Fund, and any condemnation awards and/or insurance proceeds relating to the Property shall be administered in accordance with, and shall be subject to, the terms and conditions of this Lease.

13.2 Consent Requirements In The Event of a Foreclosure Transfer.

13.2.1 Definitions. For the purposes of this Lease:

(a) "**Foreclosure Transfer**" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof.

(b) "**Foreclosure Transferee**" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer.

(c) "**Equity Foreclosure Transferee**" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

13.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer and no Percentage Share shall be payable in connection therewith.

13.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (a) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under Subsection 13.3.1 below, and (b) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults. For clarification purposes, the right to a single transfer under this Subsection shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Subsection.

13.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

13.3.1 Any Encumbrance Holder which is an Institutional Lender, shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with Subsection 13.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (a) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (b) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

13.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in Subsection 13.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults).

13.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Property, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (a) is an incurable non-monetary default, (b) is a non-monetary default that can only be cured by a prior lessee, (c) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (d) relates to any obligation of a prior lessee to pay any Percentage Share (collectively, "**Excluded Defaults**"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to Subsection 13.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Subsection 13.3.3 shall also inure to the benefit of the Lessee.

13.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

13.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 13.2.3, shall trigger (a) any obligation to pay an Administrative Charge nor any Percentage Share, (b) any acceleration of any financial obligation of Lessee under this Lease, (c) any recapture right on the part of County, or (d) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 13.2.3, shall be deemed to be excluded from the definition of "Change of

Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in Subsection 13.2.3), so that there may be more than one "single subsequent transfer" benefited by this Subsection.

13.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction and Redevelopment Work described in Section 5.1 or Section 5.15 above (other than any obligations to make deposits into the Subsequent Renovation Fund) shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this Subsection 13.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

13.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (a) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 13 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (b) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 13 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

13.4 No Subordination. County's rights in the Property and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with Subsection 13.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Property under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

13.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 13) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination without the prior written consent of each such then existing

Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

13.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

13.6.1 Right to Cure. Each Encumbrance Holder, Major Sublessee and, for the Hotel Component, each approved hotel franchisor and Property Manager, shall have the right, at any time during the term of its Encumbrance, Major Sublease, property management agreement or franchise agreement, as applicable, and in accordance with the provisions of this Article 13, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

13.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 14.5 or imposing the daily payment set forth in Section 10.3), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Encumbrance Holder and Major Sublessee which has notified Chief Real Estate Officer in writing of its interest in the Property or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder, Major Sublessee and, for the Hotel Component, each approved hotel franchisor and Property Manager, shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein (provided, however, County shall not be required to send such notice to the hotel franchisor and/or Property Manager for the Hotel Component). If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the cure rights set forth in this Section 13.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.3.

13.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder, Major Sublessee, and, for the Hotel Component, each approved hotel franchisor and Property Manager, in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder, Major Sublessee, and, for the Hotel Component, each approved hotel franchisor and Property Manager, may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty-five (35) days after its receipt of the aforesaid notice of default (provided, however, County shall not be required to send such notice to the hotel franchisor and/or Property Manager for the Hotel Component). If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder, Major Sublessee or, for the Hotel Component, the approved hotel franchisor or Property Manager.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 14.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "**initial cure period**"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee or, for the Hotel Component, an approved hotel franchisor or Property Manager, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in Subsection 13.6.3(a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

13.7 New Lease.

13.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee

(according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Subsection 13.7.1 within thirty (30) days after the occurrence of such termination, which notice shall state (a) that the Lease has terminated in accordance with this Subsection 13.7.1, and (b) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Subsection 13.7.1, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Property. From and after the effective date of the new lease, the Encumbrance Holder (or its Affiliate) shall have the same rights to a single transfer that are provided in Subsection 13.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 13. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 12 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

13.7.2 Priority of New Lease. The new lease made pursuant to Subsection 13.7.1 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee interest in the Property first arising or attaching to the Property from and after the Effective Date, and any future fee mortgagee or other future holder of any lien on the fee interest in the Property is hereby given notice of the provisions hereof.

13.8 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (a) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the Improvements on the Property (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (b) any funds required to be held in the Subsequent Renovation Fund, the Capital Improvement Fund and/or the Hotel Capital Reserve Fund (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder

desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

13.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Property following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

13.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Property shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

13.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Property, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

14. DEFAULT.

14.1 Events of Default. The following are deemed to be "**Events of Default**" and, each an "**Event of Default**" hereunder:

14.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, deposits to the Subsequent Renovation Fund, the Capital Improvement Fund and/or the Hotel Capital Reserve Fund), within ten (10) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon at the Applicable Rate and the applicable Late Fee, within such ten (10) day period.

14.1.2 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Lease if not cured within ten (10) days after written notice of such failure.

14.1.3 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other non-monetary promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty (30) days after written notice of Lessee's failure to perform from Chief Real Estate Officer; provided, however, that where Lessee's performance of such non-monetary covenant, condition or agreement is not reasonably susceptible of completion within such thirty (30) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty (30) day period, County will not exercise any remedy available

to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time. Notwithstanding any contrary provision of this Subsection 14.1.3, the proviso set forth in the immediately preceding sentence providing for an extension of the cure period beyond the thirty (30) day period shall not be applicable to any failure of Lessee to comply with the Required Construction Commencement Date or Required Construction Completion Date set forth in Section 5.1 (as such dates may extended pursuant to Section 5.7).

14.1.4 Non-Use of Property. The abandonment (as defined in California Civil Code Section 1951.3), vacation, or discontinuance of use of the Property, or any substantial portion thereof, for a period of thirty (30) days after written notice by County, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease; provided, however, if an individual Sublessee of retail, office or restaurant space on the Property fails to remain open for business to the public, then such failure to remain open for business shall not constitute an Event of Default under this Subsection 14.1.4 if Lessee uses its reasonable and diligent efforts to recover possession of the applicable space from the Sublessee and re-subleases such space to another Sublessee as soon as reasonably possible on terms acceptable to a prudent business person under then current market circumstances. In addition, notwithstanding any contrary provision of this Subsection 14.1.4, an Event of Default shall not be triggered under this Subsection 14.1.4 due to the termination of operations by a Sublessee as long as Lessee diligently attempts to re-sublease and re-open such Sublessee's space as soon as reasonably possible after Lessee obtains possession of the Sublessee's space.

14.1.5 Dry Stack Ground Lease. The occurrence of an "Event of Default" under that certain Master Ground Lease Agreement entered into by and between County and Dana Point Harbor Partners Drystack, LLC, dated as of even date herewith.

Any notice required to be given by County pursuant to Section 14.1 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

14.2 Limitation on Events of Default. Except with respect to breaches or defaults with respect to the payment of money, Lessee shall not be considered in default as to any provision of this Lease (and no late fees or interest will be incurred) to the extent such default is the result of or pursuant to any process, order, or decree of any court or regulatory body with jurisdiction, or any other circumstances which are physically or legally impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

14.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 13.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

14.3.1 Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination effective thirty (30) days thereafter. Upon the expiration of such

thirty (30) day period absent cure by Lessee, this Lease and all of Lessee's rights in the Property and in all Improvements shall terminate. Promptly after such termination, Lessee shall surrender and vacate the Property and all Improvements in broom-clean condition, and County may re-enter and take possession of the Property and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this Subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in Subsection 14.4.4. County agrees to use reasonable efforts to mitigate damages, and shall permit such access to the Property as is reasonably necessary to permit Lessee to comply with its removal obligations.

14.3.2 Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Property and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the Parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

14.3.3 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Subsection 14.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Property unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 14.2, hereof. County agrees to use reasonable efforts to mitigate damages.

14.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section 14.3, County shall be entitled to recover from Lessee as damages:

14.4.1 The worth at the time of award of the unpaid rent and other charges, which had been earned as of the date of the termination hereof; plus

14.4.2 The worth at the time of award of the amount by which the unpaid rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; plus

14.4.3 The worth at the time of award of the amount by which the unpaid rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus

14.4.4 Any other amount necessary to compensate County for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Property, expenses of reletting, including necessary repair, renovation and alteration of the Property, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of

rubble, debris and other above-ground Improvements, attorney's fees, court costs, expert witness costs, any unpaid Administrative Charges, Percentage Shares, and any other reasonable costs; plus

14.4.5 Any other amount which County may by law hereafter be permitted to recover from Lessee to compensate County for the detriment caused by Lessee's default.

The term "rent" as used herein shall be deemed to be and to mean the Annual Minimum Rent, Percentage Rent and all other sums required to be paid by Lessee pursuant to the terms of this Lease. All such sums, other than the Annual Minimum Rent, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in Subsections 14.4.1 and 14.4.2 above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in Subsection 14.4.3 above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of the Applicable Rate.

14.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (a) one hundred ten percent (110%) of the amount expended by County to cure such default, and (b) the amount expended by County to cure such default, plus one thousand dollars ($1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render County liable for any loss or damage resulting from the same.

14.6 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease. County's pursuit of any of the remedies provided for in this Lease shall not preclude its pursuit of any of the other remedies or relief available to County at law, in equity or otherwise (whether or not stated in this Lease), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rental due to County hereunder or of any damages accruing to County by reason of the violation of any of the terms, provisions, and covenants herein contained (except as may otherwise be expressly provided herein).

14.7 No Waiver; Surrender. County's acceptance of rental following an Event of Default shall not be construed as County's waiver of such Event of Default. No waiver by County of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or default. No act or thing done by County or County's agents during the term of this Lease shall be deemed

an acceptance of a surrender of the Property, and no agreement to accept a surrender shall be valid unless in writing and signed by County.

14.8 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days' notice to any person having a recorded interest pertaining to County's interest in this Lease or the Property, provided County provides written notice to Lessee of the identity of such person and the address of such person prior to the delivery of the foregoing notice from Lessee specifying in detail County's failure to perform. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall be limited to the value of County's equity interest in the Property and its right to insurance proceeds in connection with the policies required under Article 9 hereof, and nothing else. Any and all claims or actions against County accruing hereunder shall be absolutely barred unless such action is commenced within twelve (12) months of the event or action giving rise to the default.

14.9 Waiver. Lessee hereby waives any and all rights of reinstatement, redemption or relief from forfeiture granted under any present and future laws (including without limitation under California Civil Code Section 3275 or California Code of Civil Procedure Sections 1174 and 1179) in the event County obtains the right to possession of the Property by reason of the violation by Lessee of any of the covenants and conditions of this Lease or otherwise.

15. ACCOUNTING.

15.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Percentage Share and other sums due under this Lease, Lessee and all Sublessees in connection with any Lessee Business Operation shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Chief Real Estate Officer, true, accurate, and complete records (as defined herein below) and double-entry books of account for the current and five (5) prior Lease Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Property separate and apart from those in connection with Lessee's (or an applicable Sublessee's, as applicable) other business operations, if any. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize either: (a) the accrual method of accounting, or (b) a modified method of accounting, modified in that (i) expenses are accrued on an approximate basis each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, (ii) Gross

Receipts are reported monthly on a cash basis, and (iii) depreciation is calculated on a tax basis rather than a GAAP basis. For purposes hereof, "**records**" shall mean full and accurate books and accounts, records, cash receipts, and other pertinent data as necessary or appropriate for the purpose of this Lease as reasonably determined by the Auditor-Controller showing Lessee's financial operations pertaining to this Lease, the Property and each Component. Such books and records shall be organized in a manner that separately itemizes each of the separate components of Gross Receipts.

15.2 Cash Registers. To the extent retail sales are conducted on the Property in connection with any Lessee Business Operation, or other cash or credit sales of goods or services are conducted in connection with any Lessee Business Operation, all such sales shall be recorded by means of cash registers, point-of-sale computers, or other comparable devices as reasonably determined by the Auditor-Controller which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the CREO Office in advance of installation for Chief Real Estate Officer's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Lessee's obligations set forth in this Section 15.2 include Lessee's obligation to insure that Lessee's Sublessees in connection with any Lessee Business Operation (including licensees, permittees, concessionaires and any other occupants of any portion of the Property which constitute any Lessee Business Operation) keep records sufficient to permit County and County's auditors to determine the proper levels of Percentage Rent and other sums due under this Lease.

15.3 Statement; Payment. No later than the last business day of each calendar month, Lessee shall deliver to County a detailed statement showing (a) the Gross Receipts during the preceding calendar month, (b) Lessee's calculation of the amount payable to County under Section 4.2, and (c) Lessee's calculation of the deposits required to be made into each sub-fund for the Subsequent Renovation Fund, the Capital Improvement Fund and the Hotel Capital Reserve Fund, and accompany such statement with remittance of the amount so shown to be due. For the avoidance of doubt, such statement shall include all gross revenues prior to the permitted deductions under Section 1.1.96(b) so that County can verify the calculation of Gross Receipts.

15.4 Availability of Records; County's Audit Right.

15.4.1 Retention of Records; Examination. Books of account and records for the then current and five (5) prior Lease Years as hereinabove required shall be kept or made available at the Property or at another location within the County, and County and other governmental authorities shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records for the previous five (5) year period, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of

Gross Receipts derived from occupancy of the Property and the compliance of Lessee with the terms of this Lease and other governmental requirements. Except in the event of a dispute between the parties and otherwise except as required by Applicable Law, including without limitation the California Public Records Act (Government Code Sections 6250 *et seq.*), Lessee's books and records shall remain confidential. No contingency based auditor shall be permitted to participate in such audit.

15.4.2 Entry by County. Upon at least one (1) business day advance notice, County and its duly authorized representatives or agents may enter upon the Property at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

15.4.3 Survival. This Section 15.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

15.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its Sublessee's in connection with any Lessee Business Operation) original records and books of account at the Property or at a location within the County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by Lessee in accordance with this Lease and the rent due as determined by said audit, then Lessee shall pay the County's Actual Cost of County's audit, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Subsection 4.2.3.

15.6 Additional Accounting Methods. Upon written notice from County, County may require the installation of any additional accounting methods or machines which are typically used by major commercial real estate management companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

15.7 Accounting Year. The term "**Accounting Year**" as used herein shall mean each calendar year during the Term.

15.8 Annual Financial Statements. Within ninety (90) days after the end of each Accounting Year, or at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall furnish to County a set of audited and certified financial statements audited by category of Percentage Rent set forth in Subsection 4.2.2(a) (including, without limitation, an income statement showing profits and losses, as well as a balance sheet) prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning such financial statements and Gross Receipts (or other fair representation as approved by Auditor-Controller). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Property, notwithstanding that

Lessee may have income and expenses from other activities unrelated to its activities on the Property.

15.9 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees and others conducting business operations on or from the Property which constitute a Lessee Business Operation (and shall include language in all applicable Subleases requiring each applicable Sublessee) to comply with all terms of this Article 15 with respect to the maintenance, form, availability and methodology of accounting records and the delivery to County of audited certified financial statements (audited by category of Percentage Rent set forth in Subsection 4.2.2(a)) and unqualified opinions (or other fair representation as approved by Auditor-Controller) as to Gross Receipts. County shall provide written notice to Lessee of the failure of any Sublessee in connection with any Lessee Business Operation or other person or entity to comply with this Section after County's discovery of such failure, and provide Lessee with the right to cure any failure to so comply by payment to County of amounts which may be owing to County, as shown on an audit conducted by County, or on an audit supplied by Lessee or such Sublessee or other person or entity, and accepted by County, or as otherwise determined pursuant to Section 15.10. In such event County shall permit Lessee to subrogate to any right of County to enforce this provision against such Sublessee or other person or entity, to the extent Lessee does not have a direct right of enforcement against such Sublessee or other person or entity.

15.10 Inadequacy of Records. In the event that Lessee or applicable Sublessees (including applicable licensees or concessionaires) fail to keep the records required by this Article 15 such that a Certified Public Accountant or Auditor-Controller is unable to issue an unqualified opinion as to Gross Receipts (or other fair representation as approved by Auditor-Controller), such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Property, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in the County with comparable business operations, or any other method as reasonably determined by Chief Real Estate Officer and shall utilize such methodology as Chief Real Estate Officer deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of five percent (5%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

16. DEFINITION OF TERMS; INTERPRETATION.

16.1 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

16.2 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English

language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

16.3 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

16.4 Parties Represented by Consultants, Counsel. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsperson shall not apply to this Lease.

16.5 "County" and "Lessee". In any provision relating to the conduct, acts or omissions of Lessee, the term "**Lessee**" shall include Lessee's agents, employees, contractors, invitees, successors or others using the Property with Lessee's expressed or implied permission. In any provision relating to the conduct, acts or omissions of County, the term "**County**" shall include County's agents, employees, contractors, invitees, successors or others using the Property with County's expressed or implied permission.

16.6 Business Days. For the purposes of this Lease, "**business day**" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "Optional Bank Holidays" as defined in Section 7.1 of the California Civil Code.

16.7 Severability. If any term or provision of this Lease is held invalid or unenforceable to any extent under any Applicable Law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

16.8 Time For Chief Real Estate Officer Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Chief Real Estate Officer is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Chief Real Estate Officer either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Chief Real Estate Officer (the "**Extended Time**") and approves such request in writing prior to such Extended Time. If Chief Real Estate Officer does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

16.9 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Chief Real Estate Officer determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or the Board, the time period for County performance of such action shall be

extended as is reasonably necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

17. MISCELLANEOUS.

17.1 Integration. This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein (all of which are incorporated herein by this reference), constitutes the entire agreement between County and Lessee relative to the leasing of the Property. County and Lessee hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.

17.2 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Property throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

17.3 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

17.4 Holding Over.

17.4.1 No Renewal or Extension of Term. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred twenty-five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal, except as expressly provided with respect to any Post Term Personal Property Removal Period.

17.4.2 Failure to Surrender; No Consent. Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Property to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 17.4 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Property upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding ground lessee (or subtenant) arising from such failure to surrender, and any lost profits to County resulting therefrom, provided that County notifies Lessee that Lessee's failure to timely surrender the Property will cause County to incur such lost profits.

17.5 Waiver of Conditions or Covenants. Except as stated in writing by the waiving Party, any waiver by either Party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either Party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that Party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Property or of either Party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either Party shall be construed as being exhausted by the exercise thereof in one or more instances.

17.6 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Property in the case of an Event of Default, or in case of abandonment or vacation of the Property by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Property and remove any and all persons and property whatsoever situated upon the Property and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee. Except to the extent arising out of or caused by the gross negligence or willful misconduct of County, Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Property in the case of an Event of Default, including the removal of persons and property and storage of such property by County and its agents.

17.7 Notice and Service of Process.

17.7.1 Notice Requirement. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 17.7.

17.7.2 Service of Process. If Lessee is not a resident of the State, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with the CREO Office a designation of a natural person residing in the County, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee. If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

17.7.3 Method of Delivery. Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with the CREO Office, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the date of delivery or attempted delivery in the case of registered or certified mail, as evidenced by the mail receipt (but in any case not later than the date of actual receipt).

17.7.4 Required Additional Recipients. Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

17.7.5 Addresses. As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

COUNTY:	County Executive Office Hall of Administration 333 W. Santa Ana Blvd., 3rd Floor Santa Ana, California 92701 Attn: Chief Real Estate Officer Fax: (714) 834-6166
With a Copy to:	Office of County Counsel Hall of Administration 333 W. Santa Ana Blvd., 4th Floor Santa Ana, California 92701 Attn: Michael Haubert, Senior Deputy Fax: (714) 834-2359
and to:	Director OC Parks 13042 Old Myford Road Irvine, California 92602 Fax: (714) 834-2359

LESSEE:	Burnham-Ward Properties, LLC 1100 Newport Center Drive, Suite 200 Newport Beach, California 92660 Attn: Scott Burnham and Bryon Ward Fax: (949) 760-0430
and to:	Bellwether Financial Group, Inc. 450 Newport Center Drive, Suite 590 Newport Beach, California 92660 Attn: Joe Ueberroth Fax: (949) 723-7786
and to:	Olson Real Estate Group, Inc. c/o RD Olson Development 520 Newport Center Drive, Suite 600 Newport Beach, California 92660 Attn: Dustin Schmidt Fax: (949) 271-1080

Either Party shall have the right to change its notice address by written notice to the other Party of such change in accordance with the provisions of this Section 17.7.

17.8 Brokers. If Lessee has engaged a broker in this transaction pursuant to a separate agreement, Lessee shall be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. Lessee hereby agrees to indemnify, defend and hold the County harmless from and against all costs, expenses or liabilities (including attorney fees and court costs, whether or not taxable and whether or not any action is prosecuted to judgment) incurred by County in connection with any Claim by a person or entity for any broker's, finder's or other commission or fee from the County in connection with the Lessee's entry into this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of the Lessee. No broker, finder or other agent of any Party hereto shall be a third-party beneficiary of this Lease.

17.9 No Partnership. This Lease shall not be construed to constitute any form of partnership or joint venture between County and Lessee. County and Lessee mutually acknowledge that no business or financial relationship exists between them other than as County and tenant, and that County is not responsible in any way for the debts of Lessee or any other party.

17.10 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable within five (5) days after Lessee's receipt of written demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

17.11 Attorneys' Fees. In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

17.12 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County.

17.13 Estoppel Certificates. Each Party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other Party, an estoppel certificate stating: (a) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (b) that, to the best knowledge of such Party, the other Party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (c) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease. County shall provide its response to any request for an estoppel certificate using its standard form. Prospective purchasers, Major Sublessees and Encumbrance Holders may rely on such statements.

17.14 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

17.15 Memorandum of Lease. This Lease itself shall not be recorded, but the Parties hereto shall execute and acknowledge a memorandum of lease ("**Memorandum**"), in recordable form and otherwise satisfactory to the Parties hereto, for recording as soon as is practicable on or following the Effective Date. Lessee shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

17.16 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.17 Venue**.** The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in the County, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

17.18 Nondiscrimination. Lessee agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease.

17.19 Public Records. Lessee acknowledges that any written information submitted to and/or obtained by County from Lessee or any other person or entity having to do with or related to this Lease and/or the Property, either pursuant to this Lease or otherwise is a public record

open to inspection by the public pursuant to the California Records Act (Government Code §6250, *et seq*.) as now in force or hereafter amended, or any Applicable Laws in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act. In the event that a public records act request is made for any financial statements and records (not including Gross Receipts Statements) and the County determines that the records must be turned over, the County will give Lessee fifteen (15) days' written notice prior to turning over such records so that Lessee can take any necessary action.

17.20 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Sections 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.21 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County and Lessee have entered into this Lease as of the Effective Date.

DANA POINT HARBOR PARTNERS, LLC,
a California limited liability company

BURNHAM-WARD PROPERTIES, LLC,
a California limited liability company, Manager

By: _____
Name: BRIAN WARD
Title: MANAGER

BELLWETHER FINANCIAL GROUP, INC.,
a California corporation, Manager

By: _____
Name: JOSEPH UEBERROTH
Title: MANAGER

OLSON REAL ESTATE GROUP, INC.,
a California corporation (dba RD Olson Development), Manager

By: _____
Name: Robert D. Olson
Title: Manager

COUNTY OF ORANGE,
a political subdivision of the State of California

By: _____
Chief Real Estate Officer

RECOMMENDED FOR APPROVAL:

CEO/Real Estate

By: _____

APPROVED AS TO FORM:

County Counsel

By: _____ 10/29/18
Senior Deputy

EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY

[Attached hereto]

EXHIBIT A-1

LEGAL DESCRIPTION

DANA POINT HARBOR RFP
FACILITY NO.: HA78H
PARCEL NO.: 155

PARCELS 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, CASITAS PLACE, DANA DRIVE, DEL PRADO, ISLAND WAY AND PUERTO PLACE, IN THE CITY OF DANA POINT, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON THE MAP FILED IN BOOK 32, PAGES 35 THROUGH 40 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,

TOGETHER WITH THAT PORTION OF THE SEPTEMBER 15, 1961 LEGISLATIVE GRANT OF TIDELANDS FROM THE STATE OF CALIFORNIA TO THE COUNTY OF ORANGE SHOWN ON A MAP ATTACHED TO AN AFFIDAVIT RECORDED AUGUST 31, 1965 IN BOOK 7651, PAGE 69 OF OFFICIAL RECORDS IN THE OFFICE OF SAID COUNTY RECORDER, SHOWN ON SAID PARCEL MAP AS WATER WAY AND BOUNDED:

1) GENERALLY SOUTHERLY BY THE NORTHERLY AND EASTERLY LINES OF SAID PARCEL 10, THE NORTHERLY AND WESTERLY LINES OF SAID PARCEL 11, THE WESTERLY, NORTHERLY, NORTHEASTERLY AND EASTERLY LINES OF SAID PARCEL 12,
2) WESTERLY BY THE EASTERLY LINE OF ISLAND WAY,
3) GENERALLY NORTHERLY BY THE SOUTHERLY LINE OF SAID PARCEL 6, THE SOUTHERLY AND EASTERLY LINES OF SAID PARCELS 4 AND 5, THE WESTERLY LINES OF SAID PARCELS 2 AND 3, THE WESTERLY, SOUTHERLY AND EASTERLY LINES OF SAID PARCEL 1, AND
4) GENERALLY SOUTHEASTERLY BY A LINE DESCRIBED AS BEGINNING AT THE EASTERLY TERMINUS OF THAT COURSE IN THE SOUTHERLY LINE OF SAID PARCEL 1, SHOWN ON SAID MAP AS HAVING A BEARING OF S76°55'50"E AND A LENGTH OF 43.48 FEET; THENCE, ALONG THE PROLONGATION OF SAID LINE AND THE SOUTHERLY LINE OF PUERTO PLACE AS SHOWN ON SAID PARCEL MAP, SOUTH 76°03'19" EAST, TO A POINT WESTERLY 13.30 FEET ALONG SAID SOUTHERLY LINE FROM THE SOUTHEASTERLY CORNER OF SAID PUERTO PLACE; THENCE SOUTH 03°37'56" WEST, 484.88 FEET; THENCE SOUTH 58°04'51" WEST TO AN INTERSECTION WITH A LINE PERPENDICULAR TO AND PASSING THROUGH THE NORTHEASTERLY TERMINUS OF THAT COURSE IN THE SOUTHEASTERLY LINE OF SAID PARCEL 12 SHOWN ON SAID PARCEL MAP AS HAVING A BEARING OF N60°28'34"E AND A LENGTH OF 469.67 FEET; THENCE NORTH 28°38'55" WEST ALONG SAID PERPENDICULAR LINE TO SAID NORTHEASTERLY TERMINUS.

TOGETHER WITH PARCELS 20, 22, 23, 24, 25, 26, 27, DANA DRIVE, ISLAND WAY, PRIVATE ROAD AS SHOWN ON DETAIL A AND PRIVATE ROAD AS SHOWN ON DETAIL B, IN SAID CITY, COUNTY AND STATE, AS SHOWN ON THE MAP FILED IN BOOK 68, PAGES 40 THROUGH 44 OF SAID PARCEL MAPS IN SAID OFFICE OF THE COUNTY RECORDER,

EXHIBIT A-1

TOGETHER WITH THAT PORTION OF SAID PARCEL 19 LYING NORTHERLY OF THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID PARCEL 24 AS SHOWN ON LAST SAID PARCEL MAP,

TOGETHER WITH THE SOUTHERLY 70.00 FEET OF THE EASTERLY 120.00 FEET OF SAID PARCEL 18 AS SHOWN ON LAST SAID PARCEL MAP,

TOGETHER WITH THAT PORTION OF SAID SEPTEMBER 15, 1961 LEGISLATIVE GRANT OF TIDELANDS SHOWN AS WATER WAY, 200.00 FEET WIDE, ON LAST SAID PARCEL MAP LYING EASTERLY OF THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID PARCEL 19.

TOGETHER WITH THAT PORTION OF SAID PARCEL 21 SHOWN ON LAST SAID PARCEL MAP, AND TOGETHER WITH THAT PORTION OF SAID SEPTEMBER 15, 1961 LEGISLATIVE GRANT OF TIDELANDS, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AS HAVING A BEARING OF S40°52'30"W AND A LENGTH OF 200.05 FEET ON LAST SAID PARCEL MAP; THENCE SOUTH 40°52'30" WEST, 167.00 FEET ALONG SAID CERTAIN COURSE TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 49°07'19' EAST, 250.00 FEET TO A LINE THAT IS PARALLEL WITH AND 250.00 FEET SOUTHEASTERLY FROM SAID CERTAIN COURSE; THENCE SOUTH 40°52'30" WEST, 145.00 FEET ALONG SAID PARALLEL LINE; THENCE NORTH 49°07'19" WEST, 250.00 FEET TO THE SOUTHWESTERLY PROLONGATION OF SAID CERTAIN COURSE; THENCE NORTH 40°52'30" EAST, 145.00 FEET ALONG SAID SOUTHWESTERLY PROLONGATION TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THOSE PORTIONS OF SAID PARCELS 2, 4, 5 AND ALL OF PARCELS 3 AND 13 OF FIRST SAID PARCEL MAP, AND ALSO EXCEPT THEREFROM THAT PORTION OF WATER WAY, AS SHOWN ON FIRST SAID PARCEL MAP, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 4;

THENCE, ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 4, NORTH 16°21'05" EAST 200.44 FEET (SHOWN AS NORTH 15°28'34" EAST PER SAID MAP) TO THE TRUE POINT OF BEGINNING;

THENCE, LEAVING SAID LINE, NORTH 73°44'47" WEST 305.04 FEET;

THENCE, NORTH 03°41'22" WEST 668.70 FEET;

THENCE, NORTH 01°36'29" WEST 9.56 FEET TO THE NORTHERLY LINE OF SAID PARCEL 4;

THENCE, ALONG SAID NORTHERLY LINE, ALONG THE NORTHERLY AND NORTHEASTERLY LINES OF SAID PARCEL 3, AND ALONG THE EASTERLY LINES OF SAID PARCELS 2 AND 13, THE FOLLOWING FIVE (5) COURSES:

1) NORTH 88°23'32" EAST 516.15 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 725.50 FEET;

2) NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 23°45'23" AN ARC LENGTH OF 300.81 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 30.00 FEET, A RADIAL BEARING TO SAID BEGINNING OF REVERSE CURVE BEARS NORTH 25°21'51" WEST;

3) NORTHEASTERLY AND SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 86°20'22" AN ARC LENGTH OF 45.21 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE WESTERLY AND HAVING A RADIUS OF 480.00 FEET, A RADIAL BEARING TO SAID BEGINNING OF COMPOUND CURVE BEARS NORTH 60°58'31 EAST;

4) SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE 33°02'34" AN ARC LENGTH OF 276.82 FEET;

5) TANGENT TO SAID CURVE, SOUTH 04°01'05" WEST 475.63 FEET;

THENCE, LEAVING SAID LINE, NORTH 87°00'14" WEST 500.86 FEET TO SAID SOUTHEASTERLY LINE OF SAID PARCEL 4;

THENCE, ALONG SAID LINE, SOUTH 16°21'05" WEST 124.04 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPT THEREFROM THAT PORTION OF SAID PARCEL 12 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY CORNER OF SAID PARCEL 12;

THENCE, ALONG THE NORTHEASTERLY BOUNDARY OF SAID PARCEL 12, SOUTH 73°38'55" EAST 86.23 FEET (SHOWN AS SOUTH 74°31'26" EAST PER SAID MAP) TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 125.00 FEET;

THENCE, SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03°37'36" AN ARC LENGTH OF 7.91 FEET;

THENCE, LEAVING SAID CURVE, SOUTH 16°21'05" WEST 108.89 FEET;

THENCE, SOUTH 74°18'41" EAST 36.41 FEET;

THENCE, SOUTH 24°16'46" EAST 35.02 FEET;

THENCE, SOUTH 68°14'41" WEST 43.54 FEET;

THENCE, NORTH 73°12'50" WEST 37.76 FEET;

THENCE, NORTH 35°33'15" WEST 11.47 FEET;

THENCE, NORTH 57°13'50" EAST 11.22 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 1.50 FEET;

EXHIBIT A-1

THENCE, NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 136°01'34" AN ARC LENGTH OF 3.56 FEET;

THENCE, TANGENT TO SAID CURVE, NORTH 78°47'44'' WEST 27.75 FEET;

THENCE, NORTH 22°52'19" WEST 56.01 FEET;

THENCE, NORTH 73°38'55" WEST 15.32 FEET TO THE WESTERLY LINE OF SAID PARCEL 12;

THENCE, ALONG SAID LINE, NORTH 16°21'05" EAST 102.95 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT THEREFROM THAT PORTION OF SAID SEPTEMBER 15, 1961 LEGISLATIVE GRANT OF TIDELANDS SHOWN AS WATER WAY ON FIRST SAID PARCEL MAP, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY CORNER OF SAID PARCEL 12; THENCE ALONG THAT COURSE IN THE WESTERLY LINE OF SAID PARCEL 12 SHOWN AS HAVING A BEARING OF N15°28'34"E AND A LENGTH OF 198.00 FEET, SOUTH 16°21'05" WEST, 159.95 FEET; THENCE NORTH 73°38'55" WEST, 104.00 FEET; THENCE NORTH 16°21'05" EAST, 94.95 FEET; THENCE NORTH 73°38'55" WEST, 126.00 FEET; THENCE NORTH 16°21'05" EAST, 70.00 FEET; THENCE SOUTH 73°38'55" EAST, 230.00 FEET TO THE NORTHERLY PROLONGATION OF SAID WESTERLY LINE; THENCE SOUTH 16°21'05" WEST, 5.00 FEET TO THE POINT OF BEGINNING.

APPROVED
KEVIN HILLS, COUNTY SURVEYOR, L.S. 6617

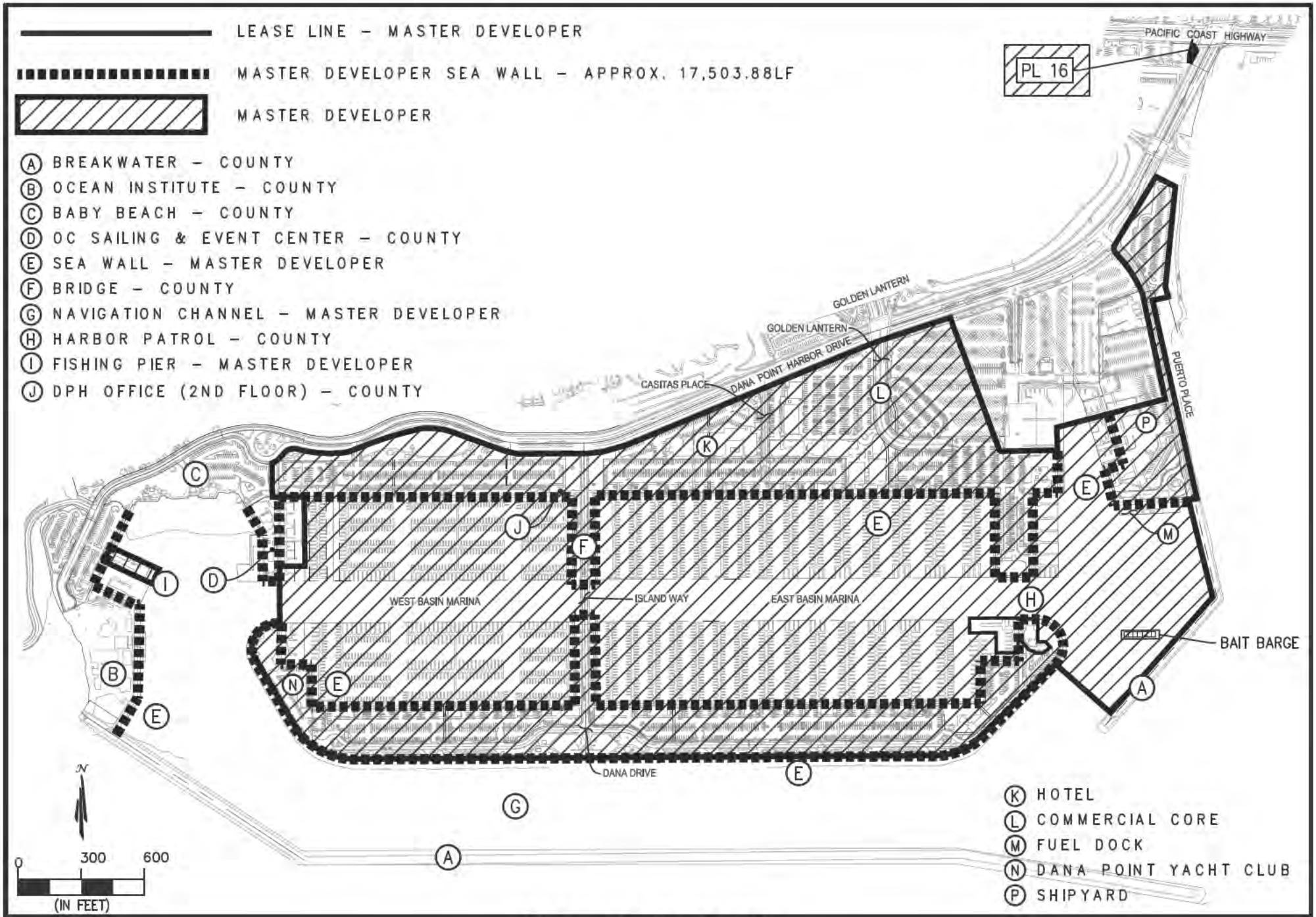
R Rivera DATE: Oct 30, 2018

BY: RAYMOND J. RIVERA, L.S. 8324

EXHIBIT A-2

DEPICTION OF PROPERTY

[Attached hereto]

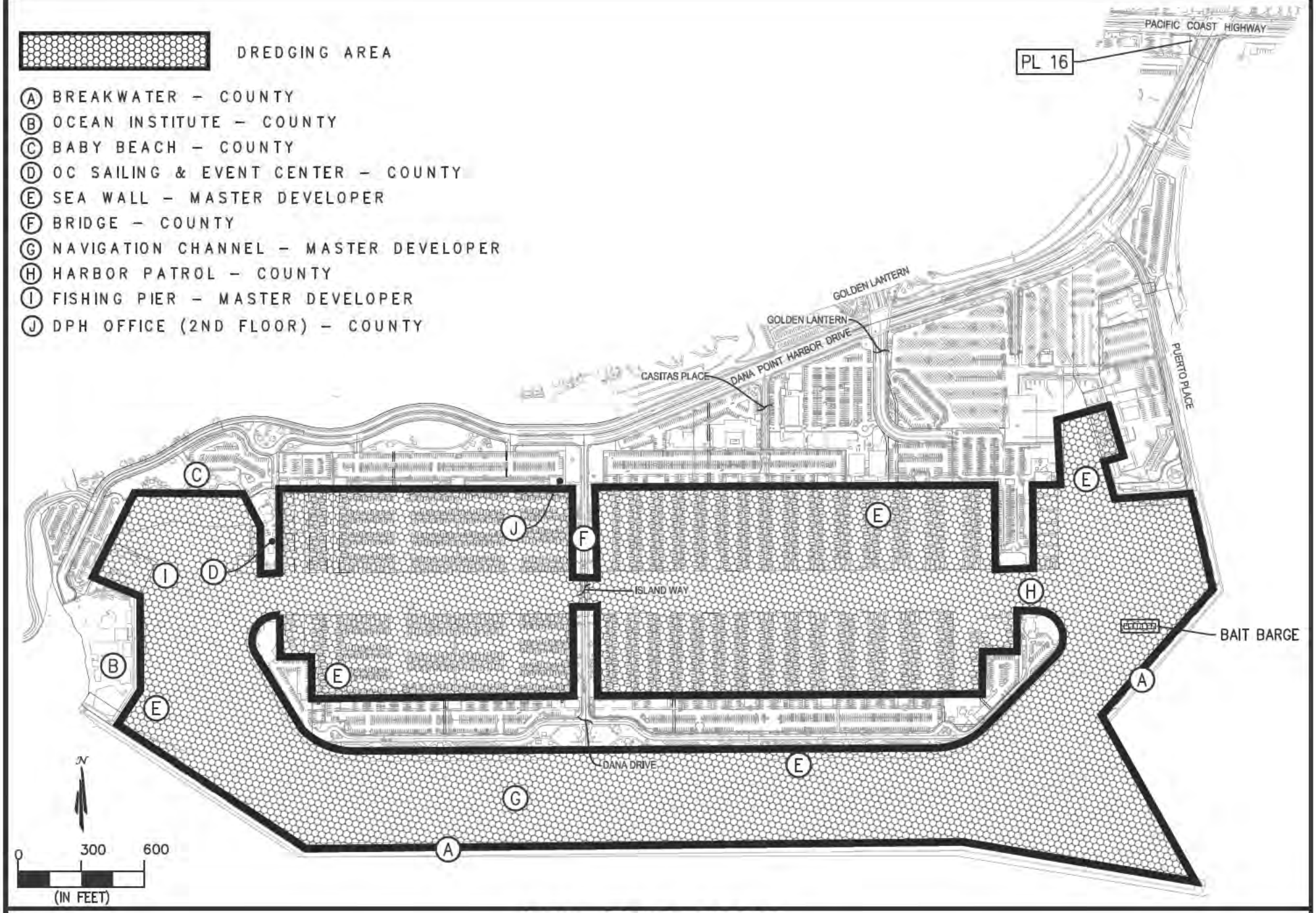


DANA POINT HARBOR
EXHIBIT A – 2
DEPICTION OF PROPERTY

EXHIBIT A-3

DEPICTION OF DREDGING AREA

[Attached hereto]



DANA POINT HARBOR
EXHIBIT A – 3
DEPICTION OF DREDGING AREA

EXHIBIT B

APPROVED PROPOSAL SUBMITTALS

[Each of the approved Budget, Conceptual Plans, Construction Schedule, Marketing Plan, Financial Plan and Management Plan are attached hereto]

8.1.1 DESIGN SCHEME

BWP BURNHAM | WARD PROPERTIES R.D. OLSON DEVELOPMENT BELLWETHER FINANCIAL GROUP

DANA POINT HARBOR REVITALIZATION

REQUEST FOR PROPOSAL: DANA POINT HARBOR PARTNERS, LLC

MASTER AERIAL SITE PLAN

8.1.1 DESIGN SCHEME

BWP BURNHAM | WARD PROPERTIES R.D.OLSON DEVELOPMENT BELLWETHER FINANCIAL GROUP

DANA POINT HARBOR REVITALIZATION

REQUEST FOR PROPOSAL: DANA POINT HARBOR PARTNERS, LLC

MASTER AERIAL SITE PLAN 2

8.1.1 DESIGN SCHEME

BWP BURNHAM | WARD PROPERTIES
R.D. OLSON DEVELOPMENT
BELLWETHER FINANCIAL GROUP

DANA POINT HARBOR REVITALIZATION

REQUEST FOR PROPOSAL: DANA POINT HARBOR PARTNERS, LLC

RETAIL/COMMERCIAL CORE

MAIN ENTRY PLAZA, VIEWING TOWER

8.1.1 DESIGN SCHEME

BWP BURNHAM | WARD PROPERTIES
R.D. OLSON DEVELOPMENT
BELLWETHER FINANCIAL GROUP

DANA POINT HARBOR REVITALIZATION

REQUEST FOR PROPOSAL: DANA POINT HARBOR PARTNERS, LLC

RETAIL/COMMERCIAL CORE

MAIN ENTRY

8.1.1 DESIGN SCHEME

8.1.1 DESIGN SCHEME

8.1.1 DESIGN SCHEME

8.1.1 DESIGN SCHEME

8.1.1 DESIGN SCHEME

BWP
BURNHAM | WARD
PROPERTIES

Dana Point Harbor Revitalization
Dana Point, California

BUILDING 12

17848 Sky Park Circle
Suite G
Irvine, California 92614
949-757-3240
www.sms-arch.com
Copyright - SMS Architects

SMS
ARCHITECTS

8.1.1 DESIGN SCHEME

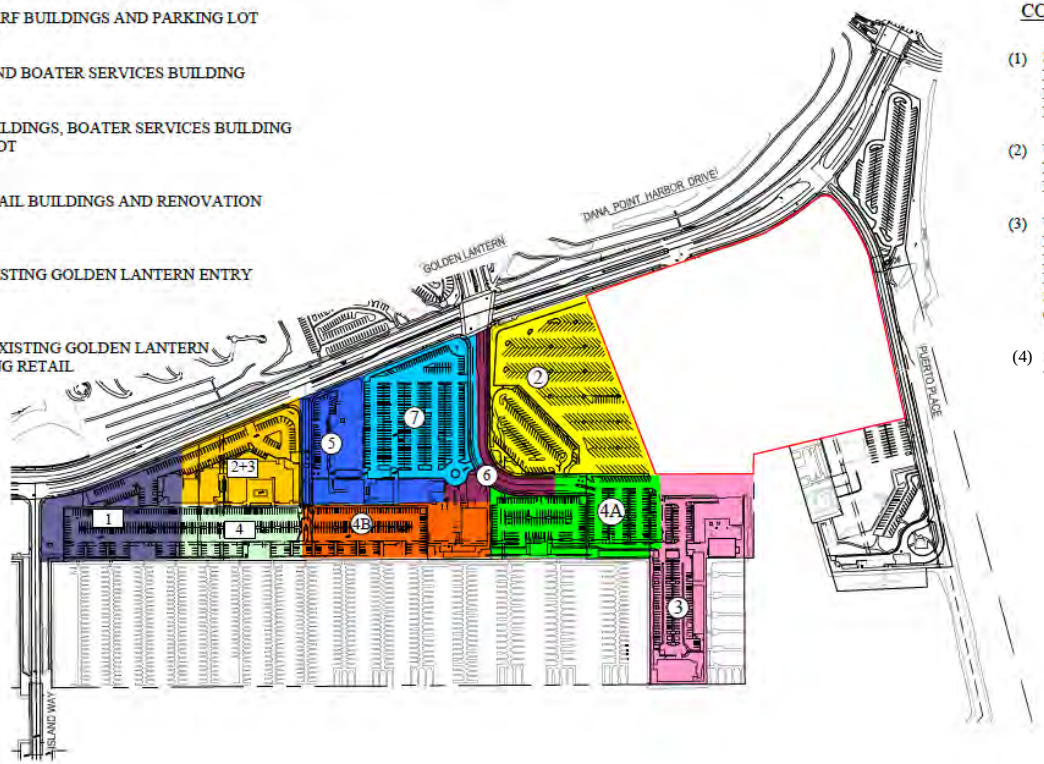
8.1.2 DEMO PLAN

COMMERCIAL CORE AREA DEMOLITION ©

NOT SHOWN	PHASE 1	PUBLIC STREET IMPROVEMENTS
	PHASE 2	DEMO EXISTING DAY-BOATER AND PARKING LOTS
	PHASE 3	RENOVATE EXISTING WHARF BUILDINGS AND PARKING LOT
	PHASE 4A	EXISTING PARKING LOT AND BOATER SERVICES BUILDING
	PHASE 4B	TWO EXISTING RETAIL BUILDINGS, BOATER SERVICES BUILDING AND EXISTING PARKING LOT
	PHASE 5	REMAINING EXISTING RETAIL BUILDINGS AND RENOVATION CASITAS PLACE
	PHASE 6	PARTIAL REMOVAL OF EXISTING GOLDEN LANTERN ENTRY ROAD
	PHASE 7	REMAINING PORTION OF EXISTING GOLDEN LANTERN ENTRY ROAD AND EXISTING RETAIL PARKING LOT.

SITE DEMOLITION PLAN

COMMERCIAL CORE RETAIL AND HOTEL AREAS



CONSTRUCTION DEMOLITION PHASING NOTES

(1) SITE ACCESS SHALL BE PROVIDED DURING DEMOLITION WORK VIA TEMPORARY ACCESS ROADWAYS COORDINATED WITH THE CONSTRUCTION EFFORTS.

(2) WHERE POSSIBLE, EXISTING PAVEMENT MAY BE MAINTAINED AND REHABILITATED FOR REUSE AS PART OF THE CONSTRUCTION.

(3) WITH THE COMPLETION OF THE PARKING STRUCTURE IN CONSTRUCTION PHASE 2, A NEW ACCESS ROAD FROM DANA POINT HARBOR DRIVE EAST OF THE PARKING STRUCTURE WILL BECOME AVAILABLE FOR SITE ACCESS DURING THE REMAINING CONSTRUCTION PHASES.

(4) SEE SECTION 8 3 FOR UTILITY ELEMENTS THAT WILL BE DEMOLISHED

HOTEL DEMOLITION [H]

	PHASE 1	EXISTING PARKING LOT
	PHASE 2 + 3	EXISTING HOTEL AND STORM DRAIN
	PHASE 4	REMAINING PARKING LOT AREA

PREPARED BY:

TAIT
Since 1964

701 N. Parkcenter Drive
Santa Ana, CA 92705

p: 714/560/8200 f: 714/560/8211
www.tait.com

Los Angeles Ontario | Sacramento San Diego | San Francisco Boise | Dallas Denver | Phoenix Portland

DANA POINT HARBOR REVITALIZATION

DANA POINT HARBOR PARTNERS, LLC

BWP BURNHAM | WARD PROPERTIES | R.D. OLSON DEVELOPMENT | BELLWETHER FINANCIAL GROUP

8.1.3 PHASING PLAN

Existing Parking

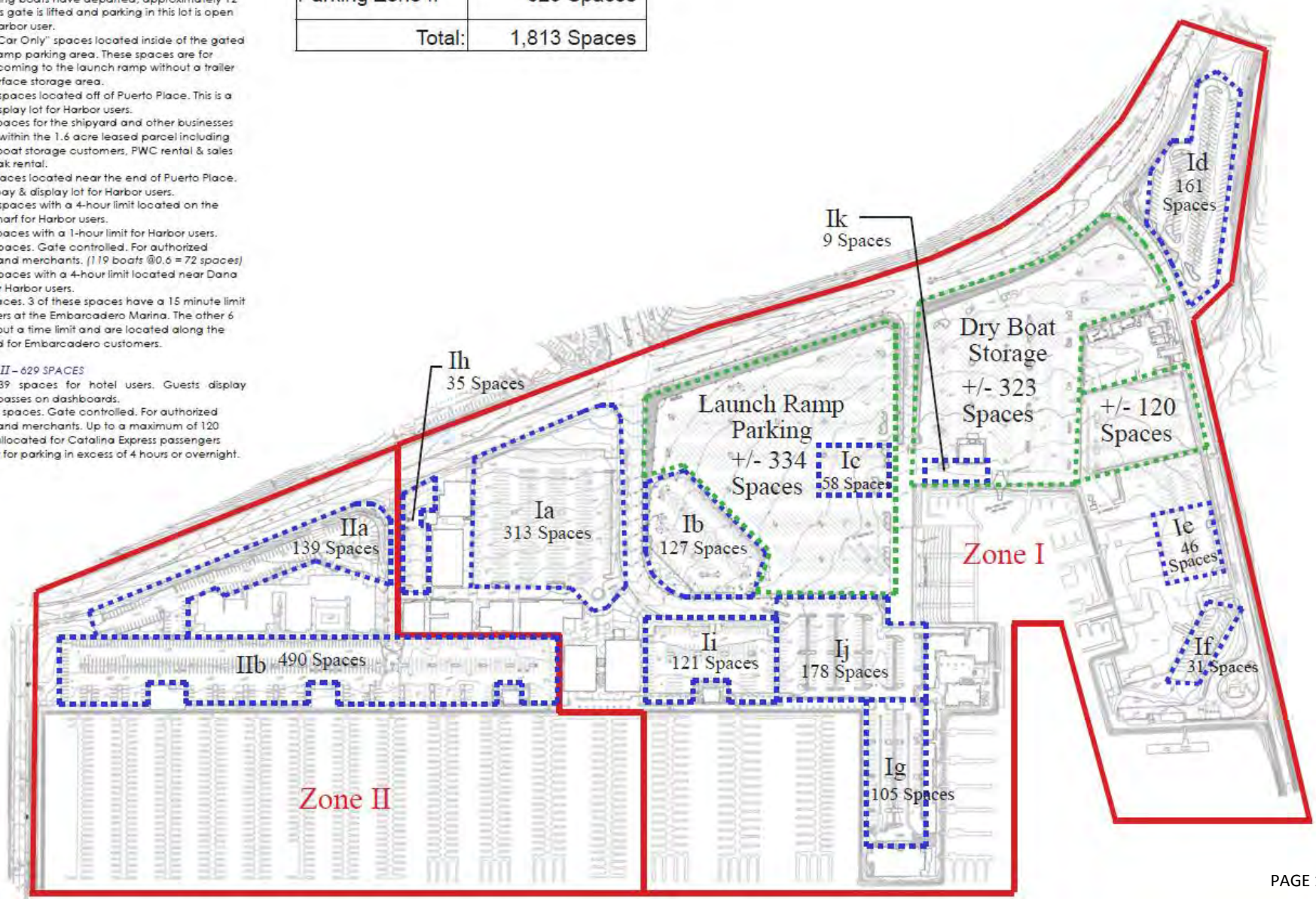
Parking Zone I	1,184 Spaces
Parking Zone II	629 Spaces
Total:	1,813 Spaces

PARKING ZONE I – 1,184 SPACES

- Ia – 313 spaces with a 4-hour limit for Harbor users.
- Ib – 127 spaces. Gate controlled. This lot is currently used for sport fishing customers. Once the morning sport fishing boats have departed, approximately 12 noon, this gate is lifted and parking in this lot is open to any Harbor user.
- Ic – 58 "Car Only" spaces located inside of the gated launch ramp parking area. These spaces are for boaters coming to the launch ramp without a trailer or the surface storage area.
- Id – 161 spaces located off of Puerto Place. This is a pay & display lot for Harbor users.
- Ie – 46 spaces for the shipyard and other businesses located within the 1.6 acre leased parcel including surface boat storage customers, PWC rental & sales and kayak rental.
- If – 31 spaces located near the end of Puerto Place. This is a pay & display lot for Harbor users.
- Ig – 105 spaces with a 4-hour limit located on the Dana Wharf for Harbor users.
- Ih – 35 spaces with a 1-hour limit for Harbor users.
- Ii – 121 spaces. Gate controlled. For authorized boaters and merchants. *(119 boats @0.6 = 72 spaces)*
- Ij – 178 spaces with a 4-hour limit located near Dana Wharf for Harbor users.
- Ik – 9 spaces. 3 of these spaces have a 15 minute limit for boaters at the Embarcadero Marina. The other 6 are without a time limit and are located along the bulkhead for Embarcadero customers.

PARKING ZONE II – 629 SPACES

- IIa – 139 spaces for hotel users. Guests display parking passes on dashboards.
- IIb – 490 spaces. Gate controlled. For authorized boaters and merchants. Up to a maximum of 120 spaces allocated for Catalina Express passengers who pay for parking in excess of 4 hours or overnight.

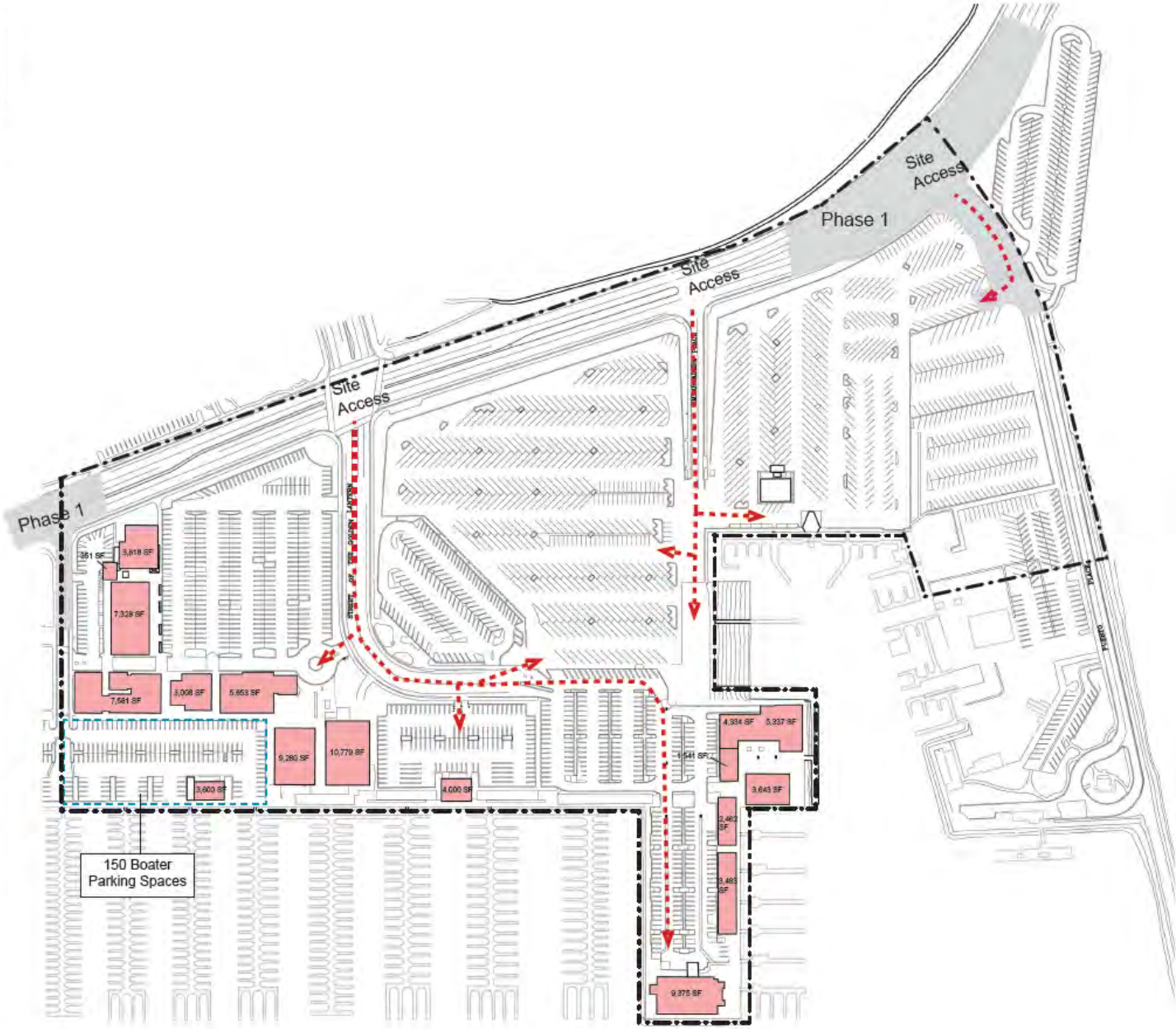


8.1.3 PHASING PLAN

PHASE 1
County Street Improvements

Tentative Construction Time Duration	
Phase 1	COMPLETED

* Construction time durations are tentative and subject to future modifications.



Building Area	SF
Existing Buildings	85,573

Existing Parking	Stalls
Zone I & II Existing	1,813
Total:	1,813

Circulation

Area Under Construction

CDP Boundary

8.1.3 PHASING PLAN

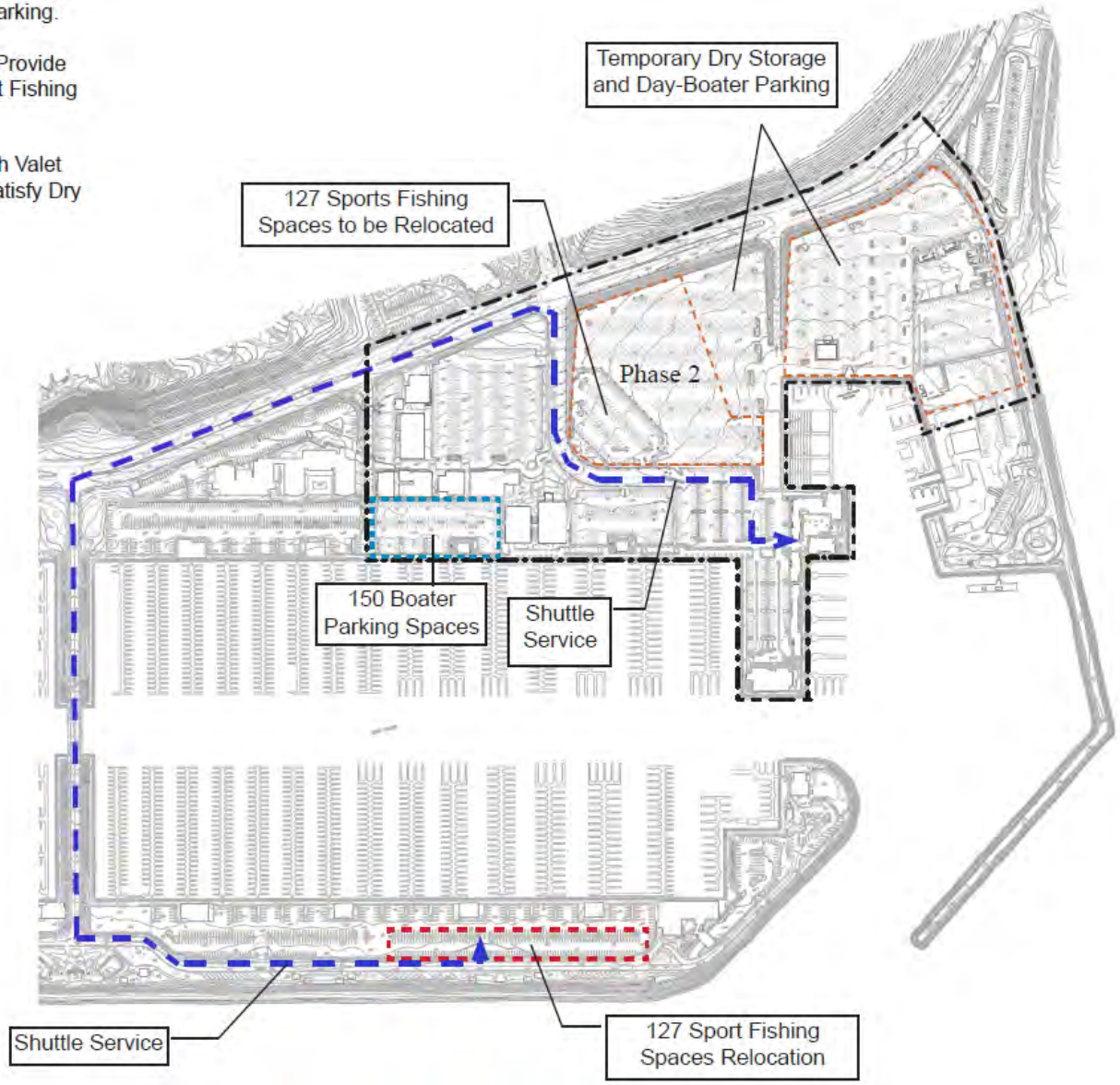
PHASE 2a

Relocated Day-Boater Parking to Prepare for New Parking Structure Construction.

1. Restripe Existing Day-Boater and Dry Storage Parking areas to accomodate temporary Dry Storage and Day-Boater Parking.

2. Relocate 127 Sport Fishing stalls to Island Parking. Provide shuttle service between island and Dana Warf for Sport Fishing Patrons.

3. Establish Temporary Off-site Dry Storage Facility with Valet Service for Boat pick up and delivery, if necessary to satisfy Dry Storage demand.



Phase 2a Temporary Parking during Construction

Parking	Existing Spaces	Temporary Spaces
Dry Storage	323	323
Day Boaters	334	334
Sport Fishing	127	127
Total:	784	784

*No Net Change in Parking for this Phase

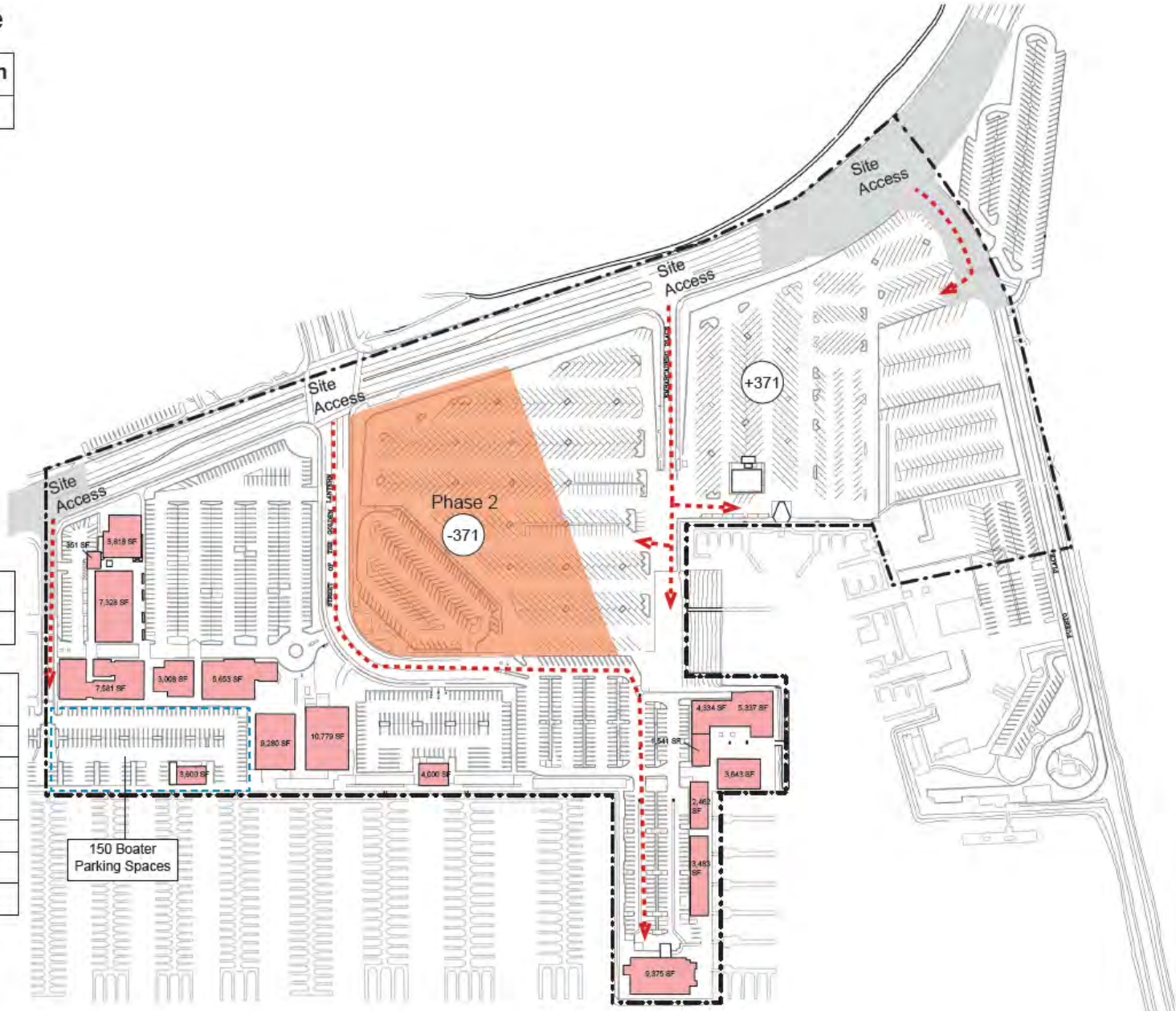
CDP Boundary

8.1.3 PHASING PLAN

PHASE 2b
Commercial Core
Three Level Parking Structure

Tentative Construction Time Duration	
Phase 2	9 Months

* Construction time durations are tentative and subject to future modifications.



Building Area	SF
Existing Buildings	85,573

Phase 2 - Parking Structure Construction	Stalls
Zone I & II Existing	1,813
Displaced by Parking Structure	-371
Temporary Dry-Storage and Boater Parking	371
Sports Fishing Relocated	127
Total:	**1,940**
Increased Parking:	**127**

Circulation

Area Under Construction

CDP Boundary

8.1.3 PHASING PLAN

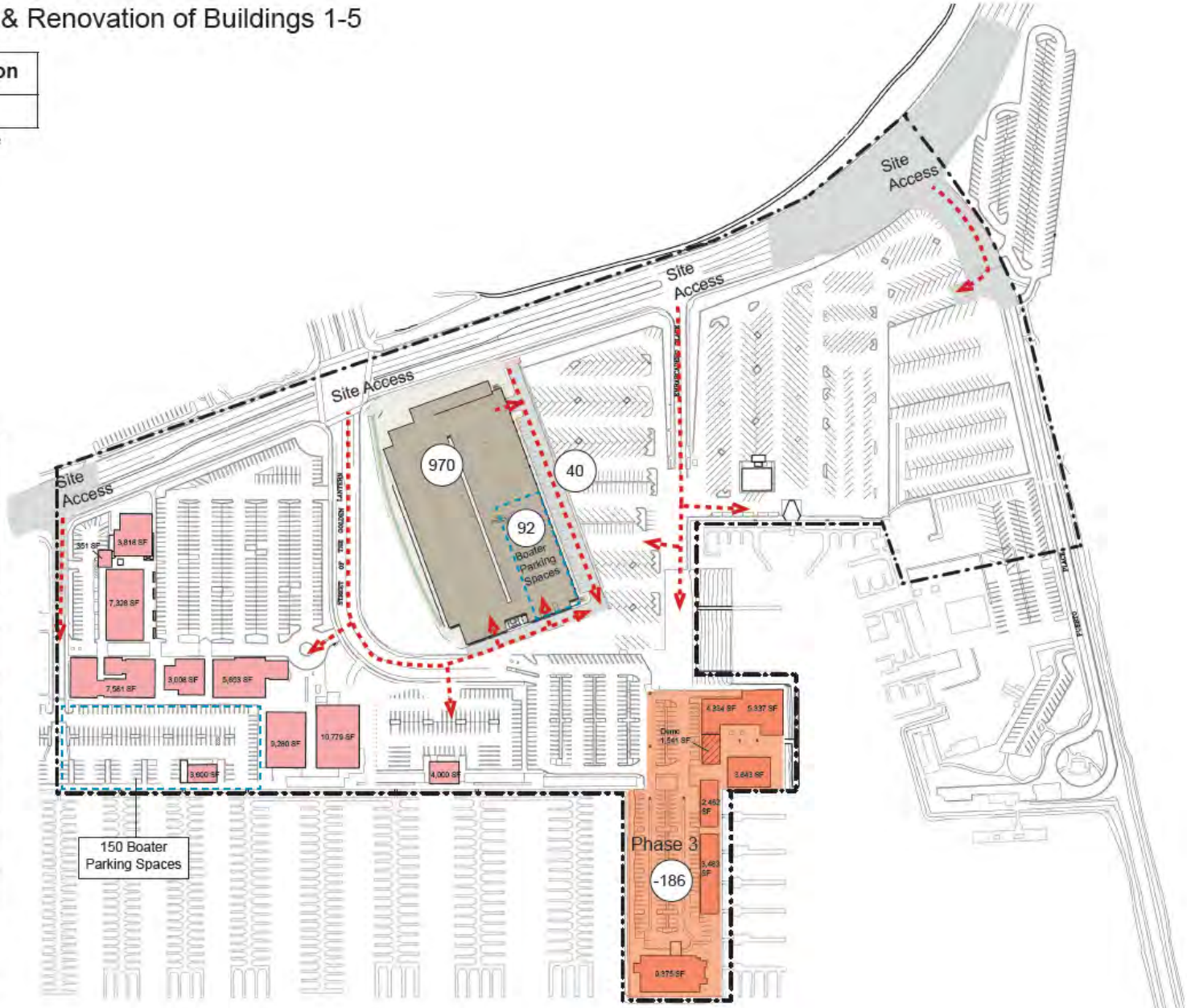
PHASE 3
Commercial Core
Dana Wharf Redevelopment & Renovation of Buildings 1-5

Tentative Construction Time Duration	
Phase 3	10 Months

* Construction time durations are tentative and subject to future modifications.

Building Area	SF
Existing Buildings	85,573
Demo Buildings	-1,541
Total:	84,032
3 Level Parking Structure	970 Stalls

Phase 3 Parking	Stalls
Zone I & II Existing	1,813
Sports Fishing Parking Relocated	127
New Parking Structure (Including 92 Boater Parking Spaces)	970
Parking Adjacent to Parking Structure	40
Displaced by Wharf Construction	-186
Total:	**2,764**
Increased Parking:	**951**



8.1.3 PHASING PLAN

PHASE 4a
Commercial Core
Buildings 6-8

Tentative Construction Time Duration	
Phase 4a	12 Months

* Construction time durations are tentative and subject to future modifications.

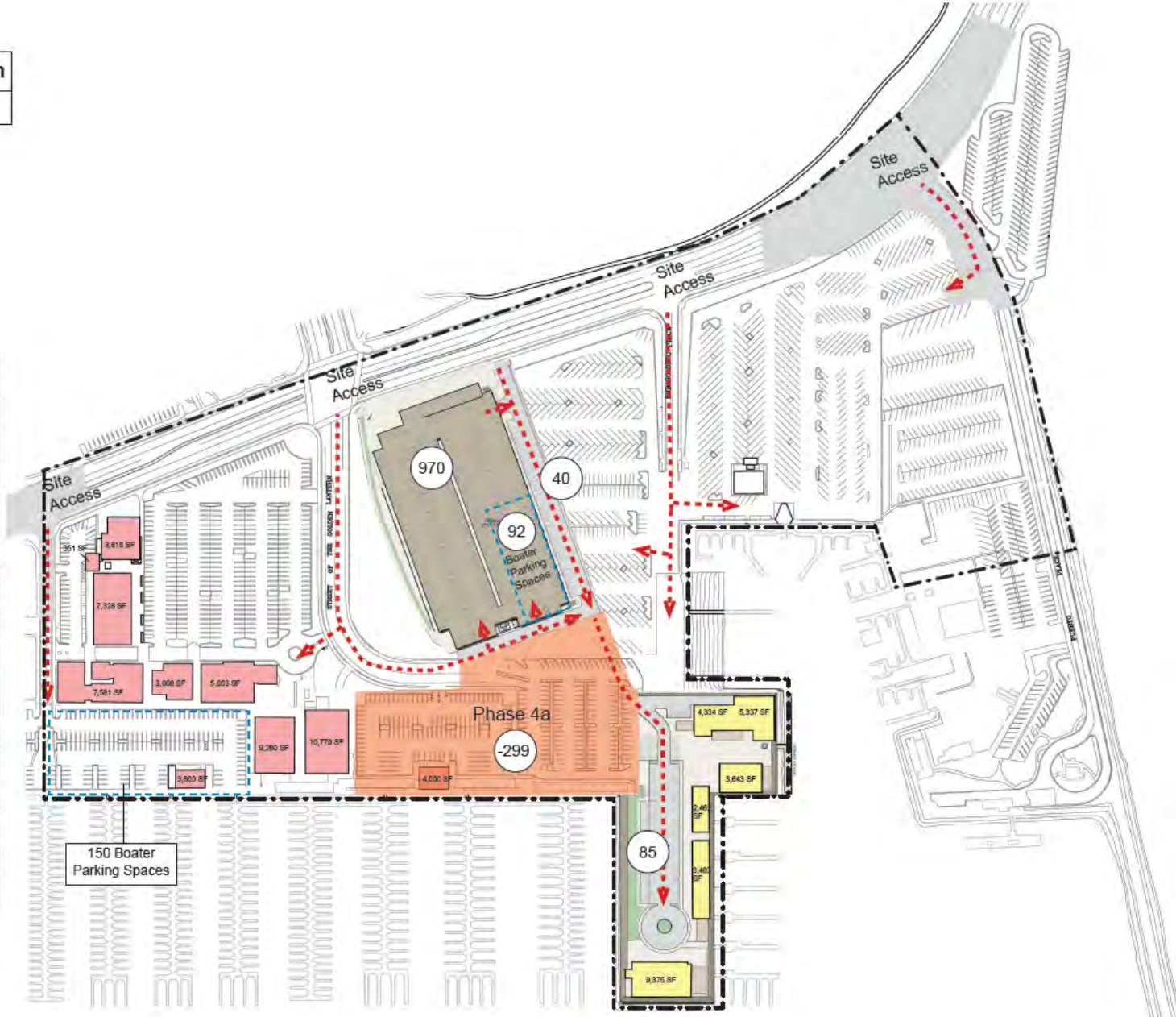
Building Area	SF
Existing Buildings	55,398
Remodeled Buildings	28,634
Demo Buildings	-4,000
Total:	80,032
3 Level Parking Structure	970 Stalls

Phase 4a Parking	Stalls
Zone I & II Existing	1,813
Sports Fishing Parking Relocated	127
New Parking Structure (Including 92 Boater Parking Spaces)	970
Parking Adjacent to Parking Structure	40
Displaced by Wharf Construction	-186
New Wharf Parking	85
Displaced Parking by Phase 4a Construction	-299
Total:	**2,550**
Increased Parking	**737**

Circulation

Area Under Construction

CDP Boundary



8.1.3 PHASING PLAN

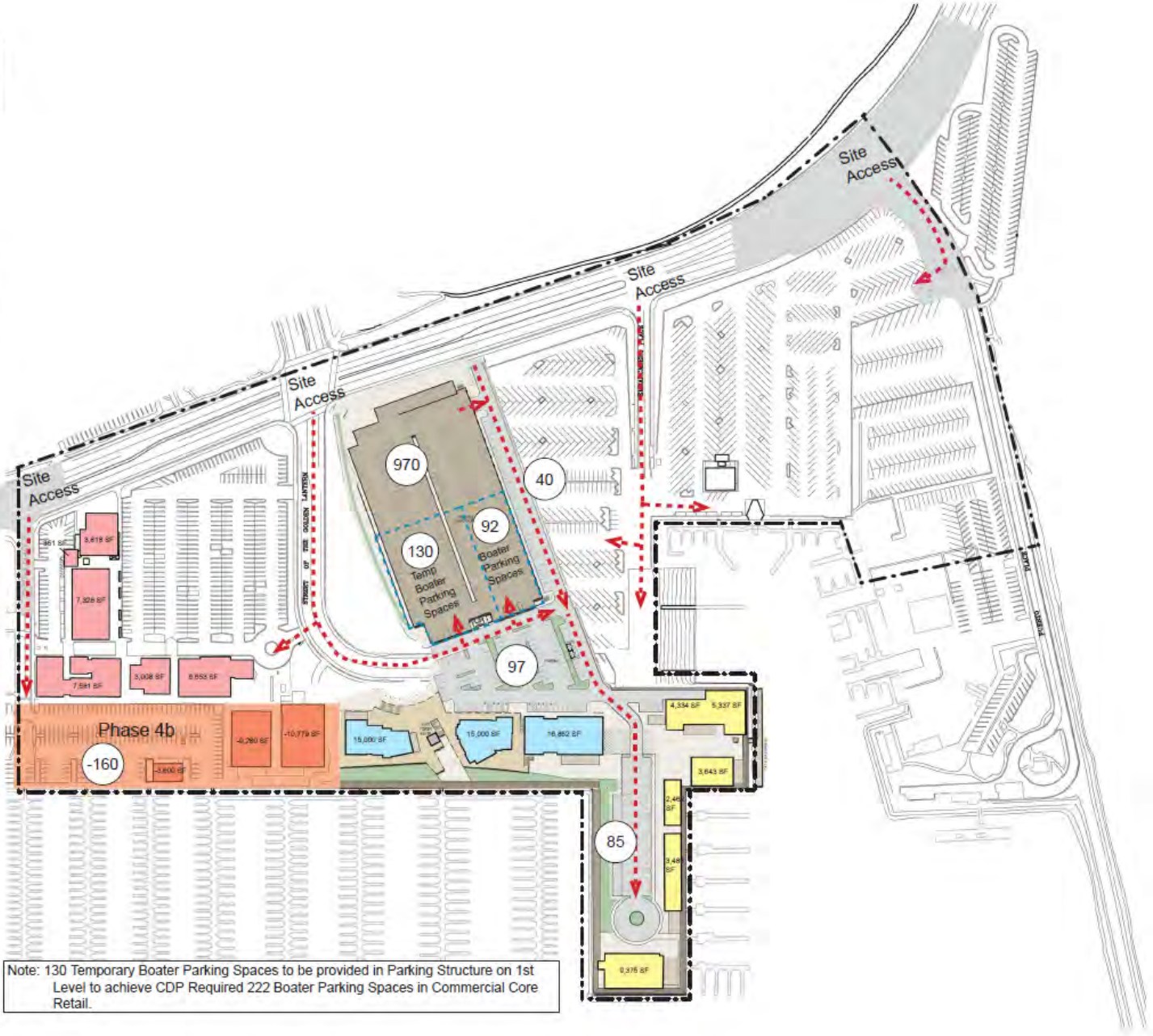
PHASE 4b
Commercial Core
Buildings 9-12

Tentative Construction Time Duration	
Phase 4b	12 Months

* Construction time durations are tentative and subject to future modifications.

Building Area	SF
Existing Buildings	27,739
Remodeled Buildings	28,634
Demo Buildings	-23,659
New Buildings	46,852
Total:	79,566
3 Level Parking Structure	970 Stalls

Phase 4b Parking	Stalls
Zone I & II Existing	1,813
Sports Fishing Parking Relocated	127
New Parking Structure (Including 222 Boater Parking Spaces on 1st Level)	970
Parking Adjacent to Parking Structure	40
Displaced by Wharf Construction	-186
New Wharf Parking	85
Displaced Parking by Phase 4a Construction	-299
New Parking - Phase 4a	97
Displaced Parking by Phase 4b Construction (Includes 150 Boater Spaces)	-160
Total:	2,487
Increased Parking:	674



Note: 130 Temporary Boater Parking Spaces to be provided in Parking Structure on 1st Level to achieve CDP Required 222 Boater Parking Spaces in Commercial Core Retail.

8.1.3 PHASING PLAN

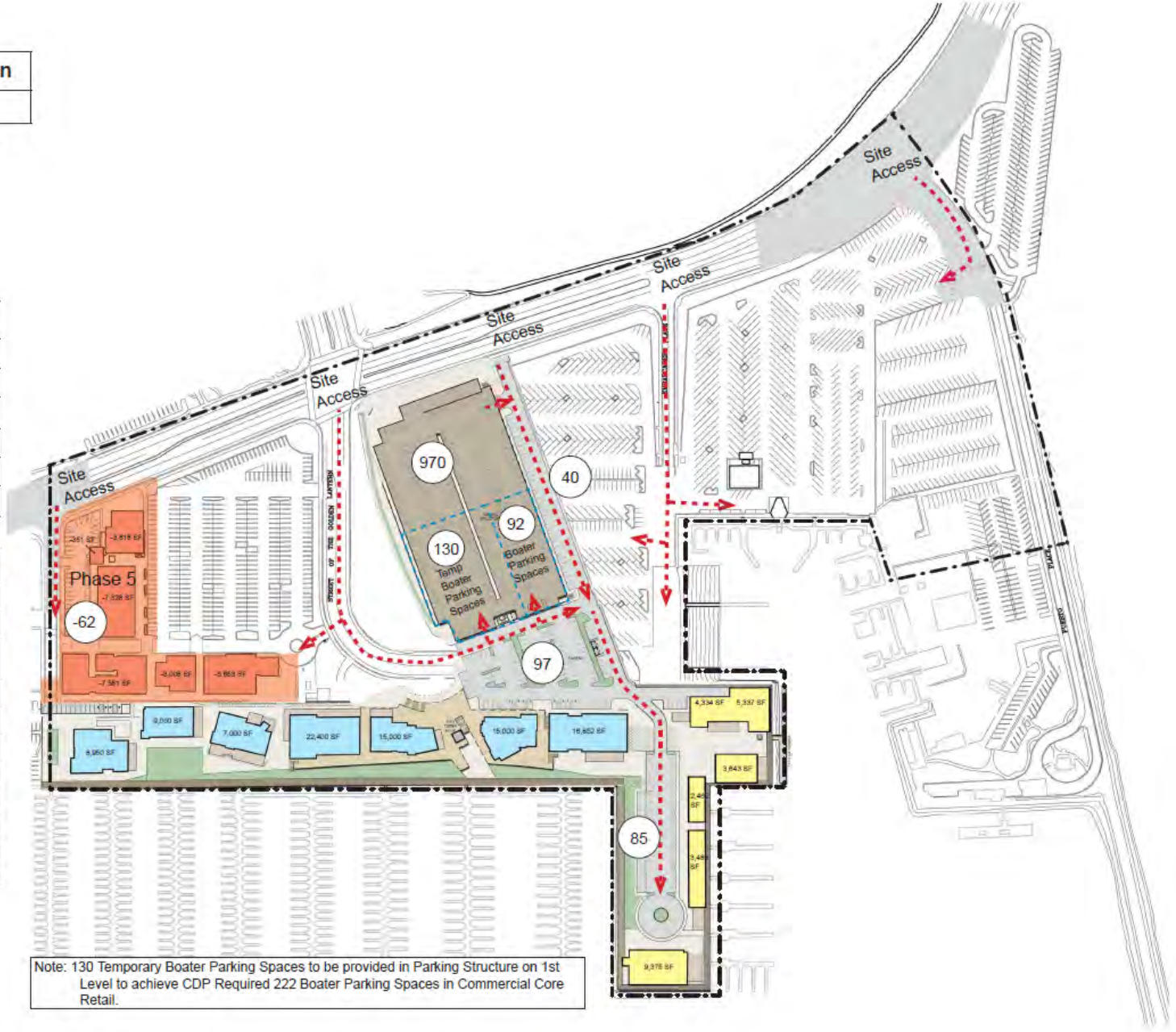
PHASE 5
Commercial Core
Parking Lot

Tentative Construction Time Duration	
Phase 5	5 Months

* Construction time durations are tentative and subject to future modifications.

Building Area	SF
Existing Buildings	0
Remodeled Buildings	28,634
Demo Buildings	-27,739
New Buildings	94,202
Total:	122,836
3 Level Parking Structure	970 Stalls

Phase 5 Parking	Stalls
Zone I & II Existing	1,813
Sports Fishing Parking Relocated	127
New Parking Structure (Including 222 Boater Parking Spaces)	970
Parking Adjacent to Parking Structure	40
Displaced by Wharf Construction	-186
New Wharf Parking	85
Displaced Parking by Phase 4a & 4b Construction	-459
New Parking -Phase 4a	97
Displaced Parking by Phase 5 Construction	-62
Total:	**2,425**
Increased Parking:	**612**



Note: 130 Temporary Boater Parking Spaces to be provided in Parking Structure on 1st Level to achieve CDP Required 222 Boater Parking Spaces in Commercial Core Retail.

8.1.3 PHASING PLAN

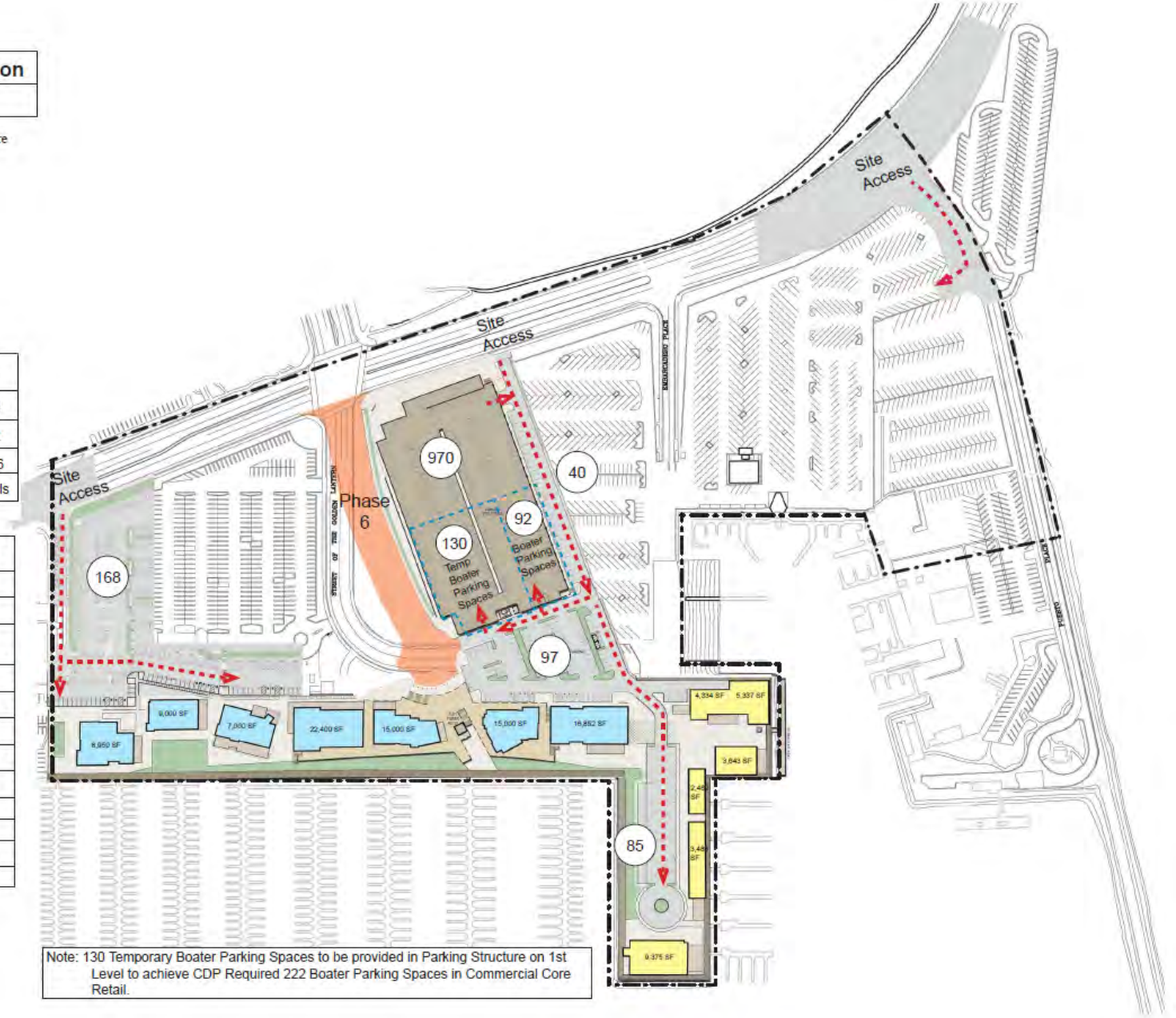
PHASE 6
Commercial Core
Main Entrance

Tentative Construction Time Duration	
Phase 6	4 Months

* Construction time durations are tentative and subject to future modifications.

Building Area	SF
Remodeled Buildings	28,634
New Buildings	94,202
Total:	122,836
3 Level Parking Structure	970 Stalls

Phase 6 Parking	Stalls
Zone I & II Existing	1,813
Sports Fishing Parking Reloctaed	127
New Parking Structure (Including 222 Boater Parking Spaces)	970
Parking Adjacent to Parking Structure	40
Displaced by Wharf Construction	-186
New Wharf Parking	85
Displaced Parking by Phase 4a & 4b Construction	-459
New Parking - Phase 4a	97
Displaced Parking by Phase 5 Construction	-62
New Parking - Phase 5	168
Total:	2,593
Increased Parking:	780



Note: 130 Temporary Boater Parking Spaces to be provided in Parking Structure on 1st Level to achieve CDP Required 222 Boater Parking Spaces in Commercial Core Retail.

8.1.3 PHASING PLAN

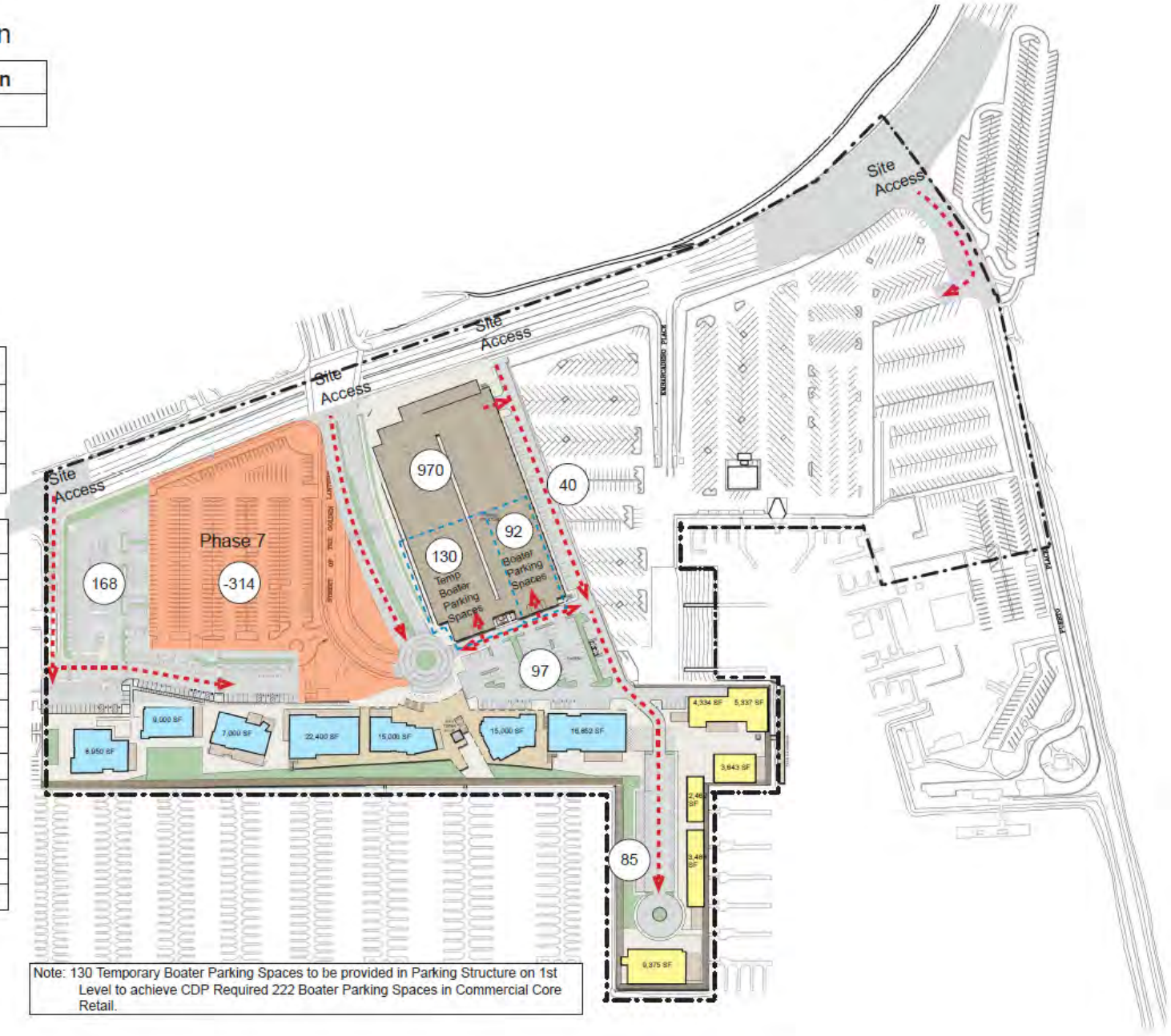
PHASE 7
Commercial Core
Public Parking Lot Completion

Tentative Construction Time Duration	
Phase 7	3 Months

* Construction time durations are tentative and subject to future modifications.

Building Area	SF
Remodeled Buildings	28,634
New Buildings	94,202
Total:	122,836
3 Level Parking Structure	970 Stalls

Phase 7 Parking	Stalls
Zone I & II Existing	1,813
Sports Fishing Parking Relocated	127
New Parking Structure (Including 222 Boater Parking Spaces)	970
Parking Adjacent to Parking Structure	40
Displaced by Wharf Construction	-186
New Wharf Parking	85
Displaced Parking by Phase 4a & 4b Construction	-459
New Parking - Phase 4a	97
Displaced Parking by Phase 5 Construction	-62
New Parking - Phase 5	168
Displaced Phase 7 Parking	-314
Total:	2,279
Increased Parking:	466



Circulation

Area Under Construction

CDP Boundary

Note: 130 Temporary Boater Parking Spaces to be provided in Parking Structure on 1st Level to achieve CDP Required 222 Boater Parking Spaces in Commercial Core Retail.

8.1.3 PHASING PLAN

Commercial Core Completion

Tentative Construction Time Duration
3 Years

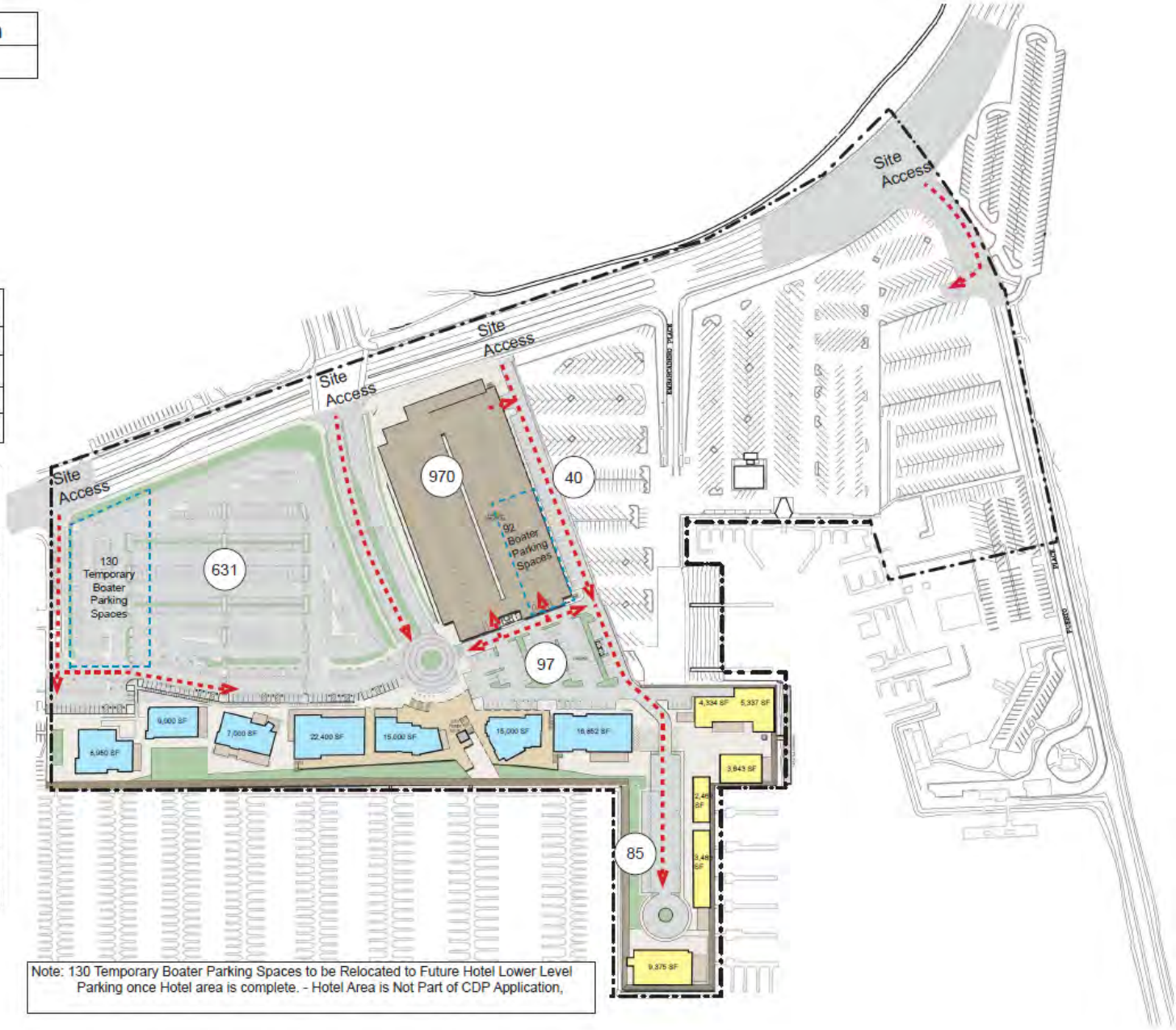
Building Area	SF
Remodeled Buildings	28,634
New Buildings	94,202
Total:	122,836
3 Level Parking Structure	970 Stalls

Phase 7 Parking	Stalls
Zone I & II Existing	1,813
Sports Fishing Parking Relocated	127
New Parking Structure (Including 92 Boater Parking Spaces)	970
Parking Adjacent to Parking Structure	40
Displaced by Warf Construction	-186
New Wharf Parking	85
Displaced Parking by Phase 4a & 4b Construction	-459
New Parking - Phase 4a	97
Displaced Parking by Phase 5 Construction	-62
New Parking - Phase 5 Including 130 Temp Boater Parking Spaces	168
Displaced Phase 7 Parking	-314
New Phase 7 Parking	463
Total:	**2,742**
Increased Parking:	**929**

Circulation

Area Under Construction

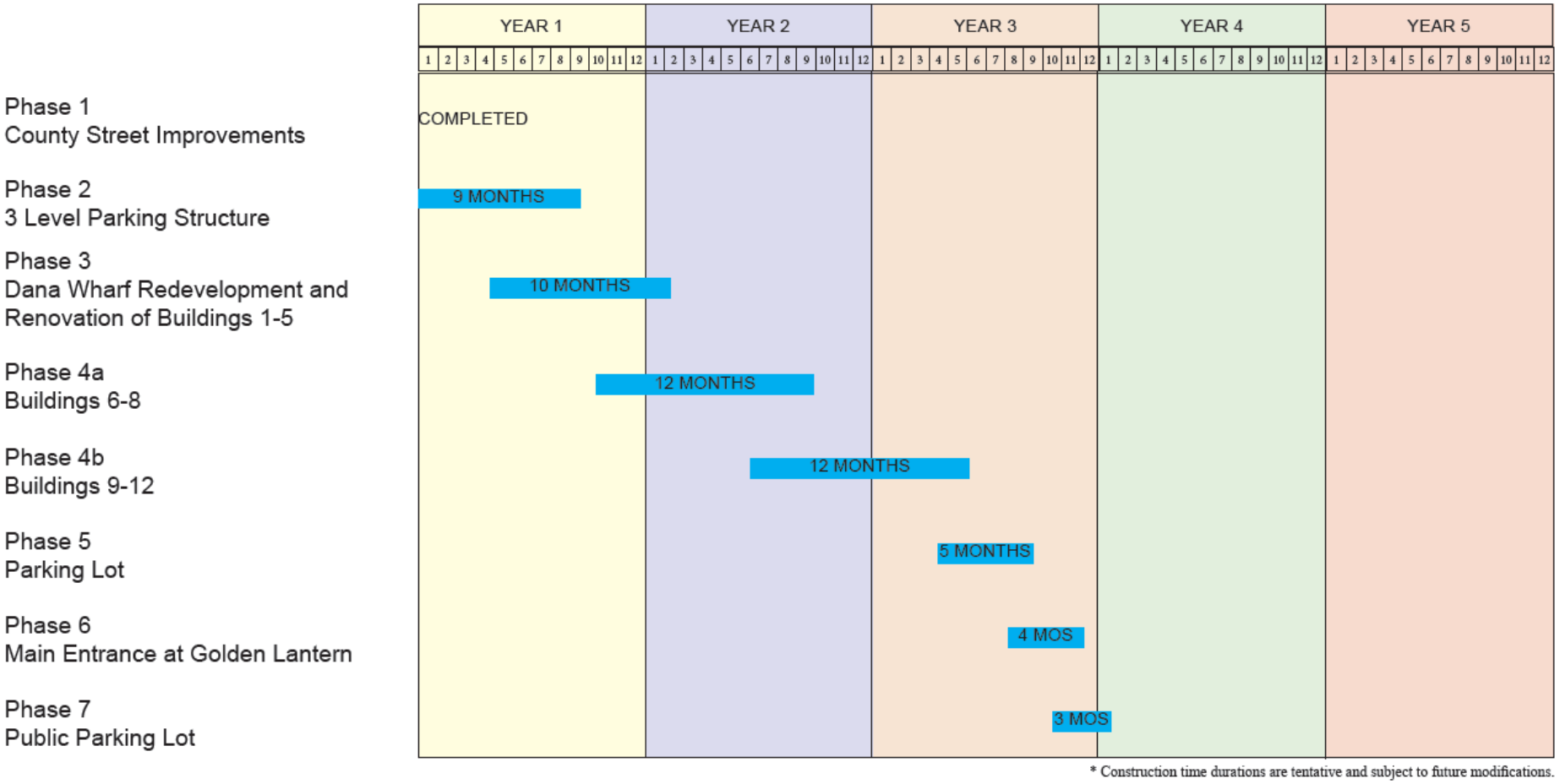
CDP Boundary



Note: 130 Temporary Boater Parking Spaces to be Relocated to Future Hotel Lower Level Parking once Hotel area is complete. - Hotel Area is Not Part of CDP Application.

8.1.3 PHASING PLAN

Dana Point Harbor
Commercial Phasing Schedule



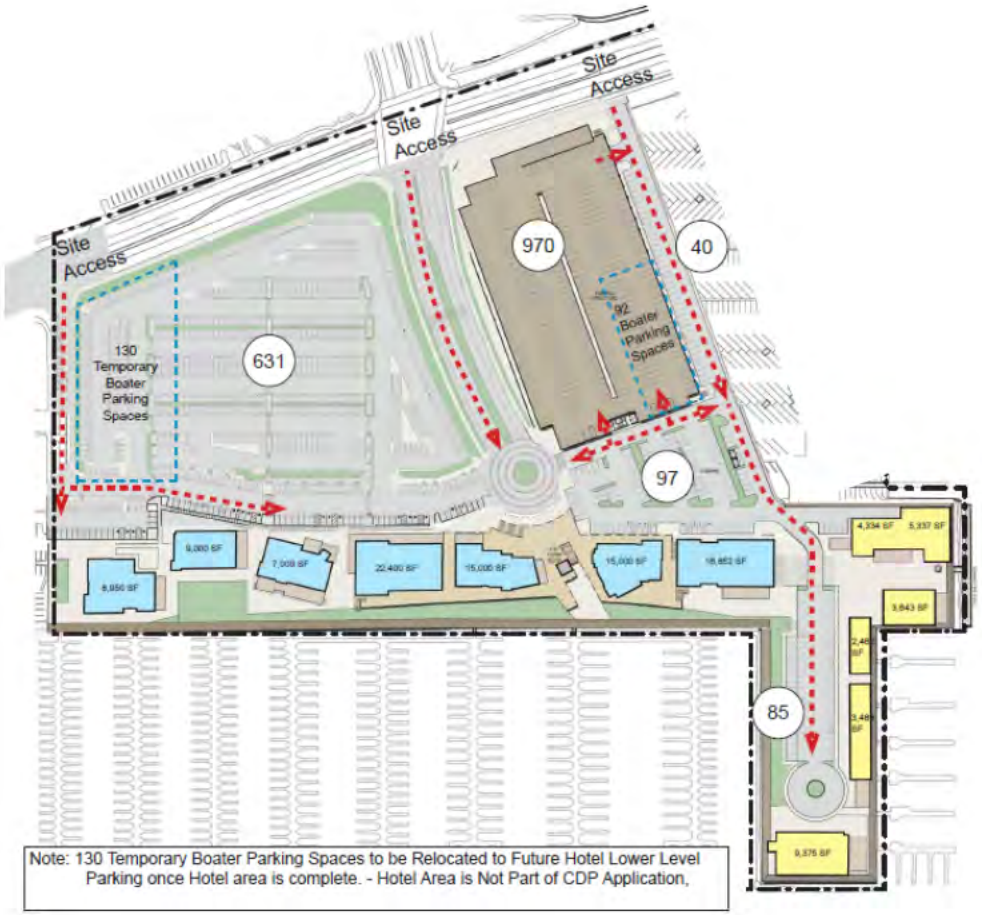
* Construction time durations are tentative and subject to future modifications.

8.1.4 SITE DEVELOPMENT PLAN

NOTE: SEE SECTION 8.1.6 FOR LANDSCAPE PLAN

8.1.4 SITE DEVELOPMENT PLAN

COMMERCIAL CORE
CONCEPTUAL SITE PLAN

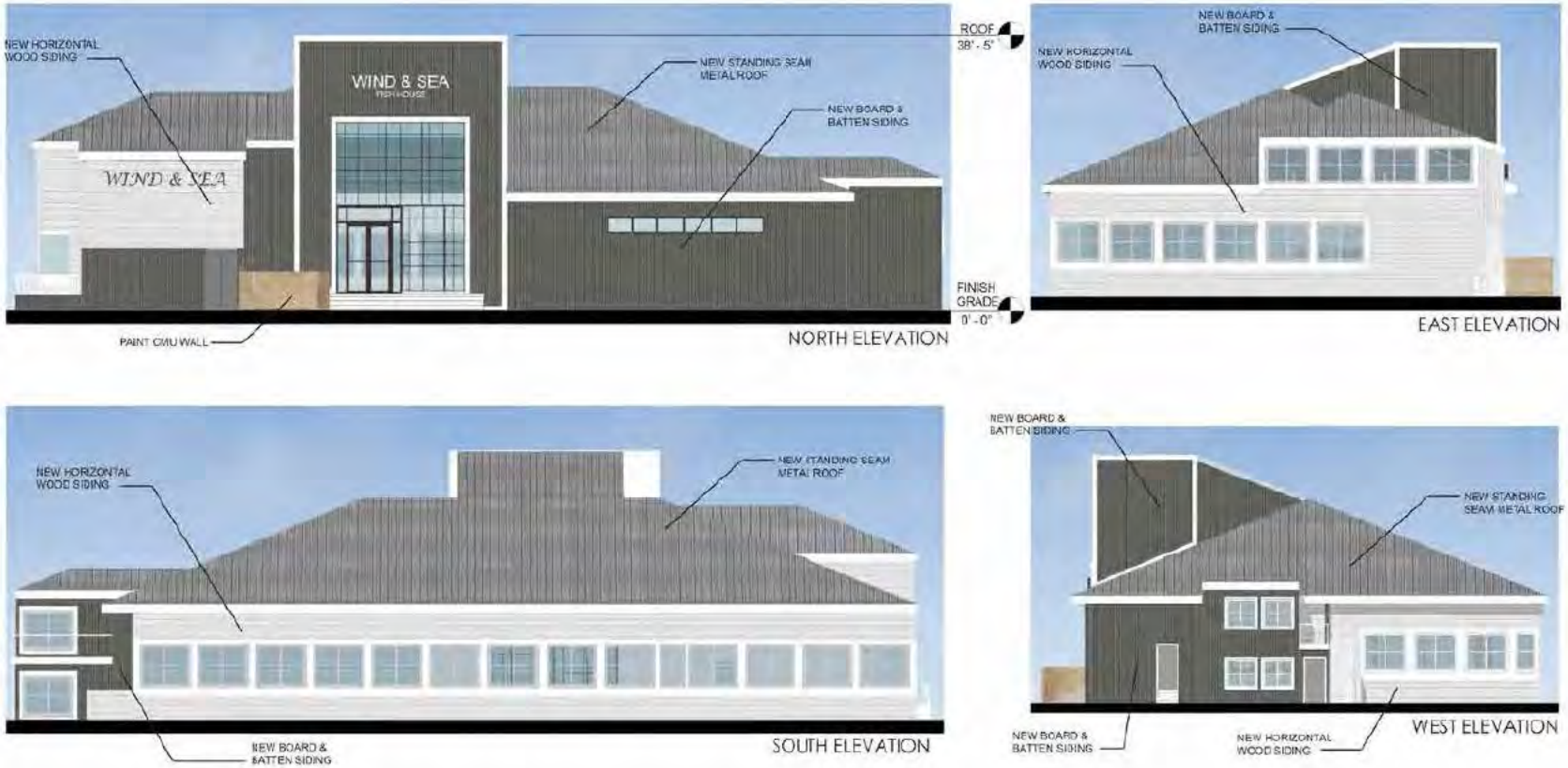


8.1.5 BUILDING ELEVATIONS

WATERFRONT ELEVATION

PARKING LOT ELEVATION

8.1.5 BUILDING ELEVATIONS



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REQUEST FOR PROPOSAL: DANA POINT HARBOR PARTNERS, LLC

RETAIL/COMMERCIAL CORE ELEVATION
WHARF BUILDING 1

8.1.5 BUILDING ELEVATIONS

EAST ELEVATION

WEST ELEVATION

NORTH ELEVATION

SOUTH ELEVATION

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WHARF BUILDING 2

8.1.5 BUILDING ELEVATIONS

EAST ELEVATION

WEST ELEVATION

SOUTH ELEVATION

NORTH ELEVATION

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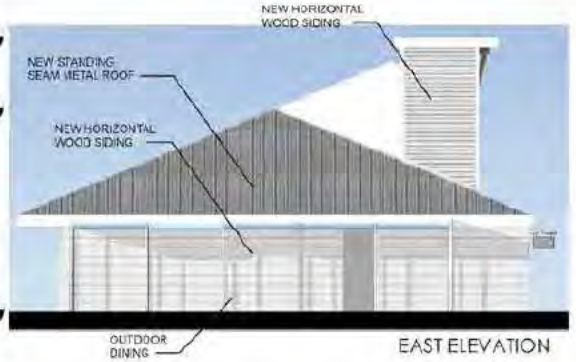
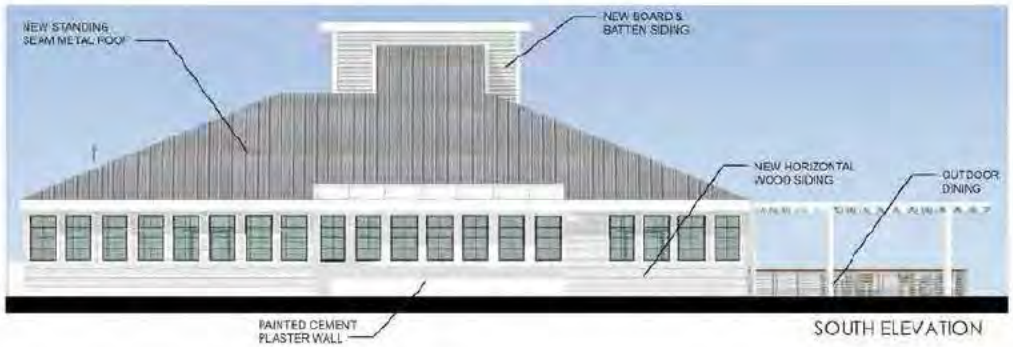
WHARF BUILDING 3

8.1.5 BUILDING ELEVATIONS





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Dana Point, California | BUILDING 4 | SMS ARCHITECTS

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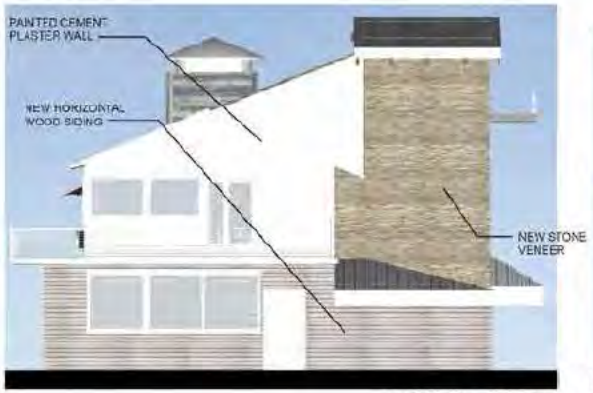
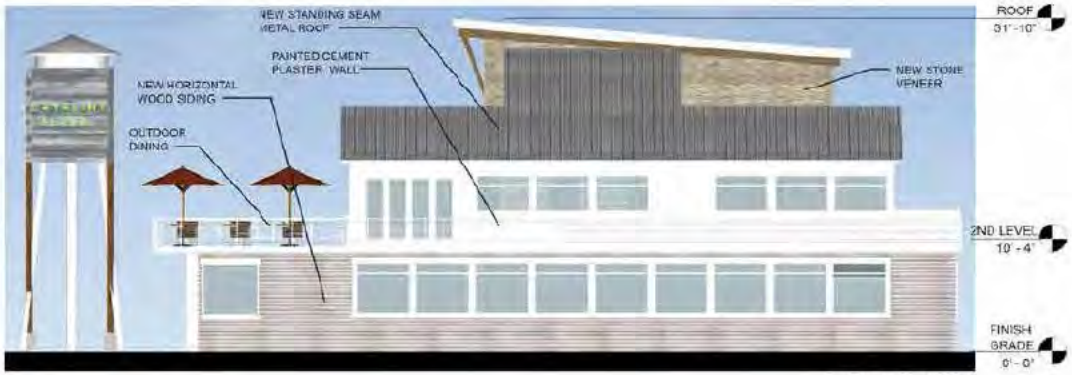
RETAIL/COMMERCIAL CORE ELEVATION
WHARF BUILDING 4

8.1.5 BUILDING ELEVATIONS



NORTH ELEVATION



EAST ELEVATION

SOUTH ELEVATION

WEST ELEVATION

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RETAIL/COMMERCIAL CORE ELEVATION
WHARF BUILDING 5A

8.1.5 BUILDING ELEVATIONS

SOUTH ELEVATION

NORTH ELEVATION

WEST ELEVATION

EAST ELEVATION

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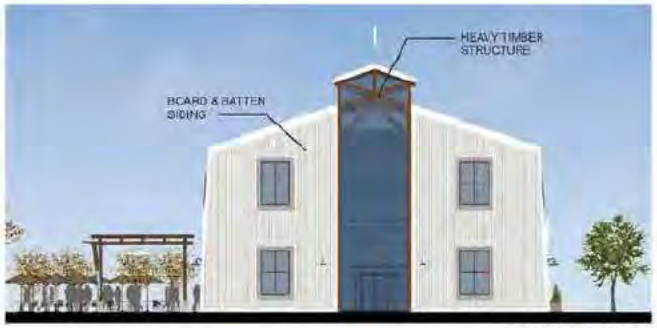
WHARF BUILDING 5B

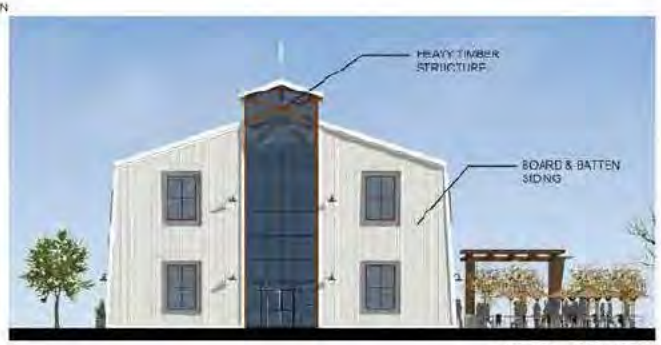
8.1.5 BUILDING ELEVATIONS

NORTH ELEVATION



EAST ELEVATION

SOUTH ELEVATION



WEST ELEVATION

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RETAIL/COMMERCIAL CORE ELEVATION BUILDING 6

8.1.5 BUILDING ELEVATIONS

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BUILDING 7

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8.1.5 BUILDING ELEVATIONS

NORTH ELEVATION

EAST ELEVATION

SOUTH ELEVATION

WEST ELEVATION

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BUILDING 8

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RETAIL/COMMERCIAL CORE ELEVATION BUILDING 8

8.1.5 BUILDING ELEVATIONS

NORTH ELEVATION

EAST ELEVATION

SOUTH ELEVATION

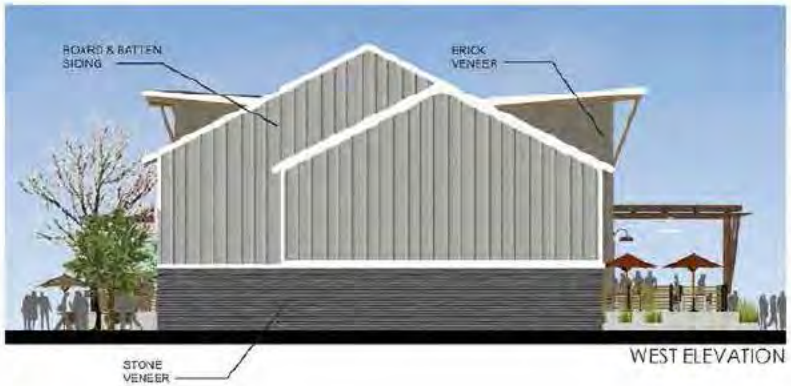
WEST ELEVATION

8.1.5 BUILDING ELEVATIONS

NORTH ELEVATION

EAST ELEVATION

SOUTH ELEVATION



WEST ELEVATION

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BUILDING 10

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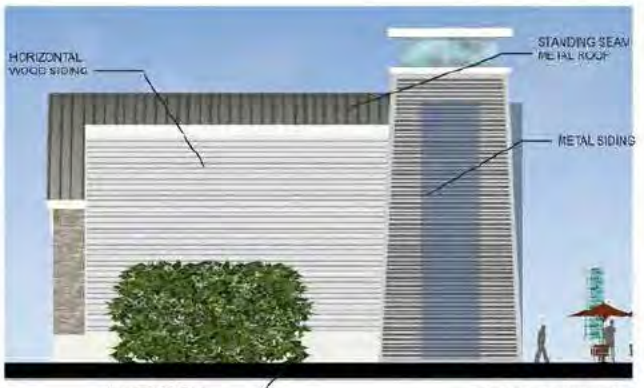
RETAIL/COMMERCIAL CORE ELEVATION BUILDING 10

8.1.5 BUILDING ELEVATIONS

NORTH ELEVATION

EAST ELEVATION

SOUTH ELEVATION



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8.1.5 BUILDING ELEVATIONS

NORTH ELEVATION

SOUTH ELEVATION

EAST ELEVATION

WEST ELEVATION

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BUILDING 12

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RETAIL/COMMERCIAL CORE ELEVATION BUILDING 12

8.1.6 SCHEMATIC FLOOR PLANS

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Floor Plans

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REQUEST FOR PROPOSAL: DANA POINT HARBOR PARTNERS, LLC

RETAIL TENANT MERCHANDISING PLAN

8.1.6 SCHEMATIC FLOOR PLANS

8.1.6 SCHEMATIC FLOOR PLANS

N.T.S

8.1.1 Initial Design Scheme

WATG

Dana Point Harbor Hotel

Dana Point, California

PERSPECTIVE VIEW - PROMENADE NEAR FULL SERVICE HOTEL

8.1.1 Initial Design Scheme

WATG

Dana Point Harbor Hotel

Dana Point, California

PERSPECTIVE VIEW - PROMENADE NEAR FULL SERVICE HOTEL

8.1.1 Initial Design Scheme

8.1.1 Initial Design Scheme

WATG

Dana Point Harbor Hotel

Dana Point, California

PERSPECTIVE VIEW - AFFORDABLE SELECT SERVICE HOTEL

8.1.1 Initial Design Scheme

WATG

Dana Point Harbor Hotel

Dana Point, California

PERSPECTIVE VIEW - PROMENADE NEAR AFFORDABLE SELECT SERVICE HOTEL

8.1.1 Initial Design Scheme

WATG

Dana Point Harbor Hotel

Dana Point, California

PERSPECTIVE VIEW - FROM AFFORDABLE SELECT SERVICE HOTEL

8.1.1 Initial Design Scheme

WATG

Dana Point Harbor Hotel

Dana Point, California

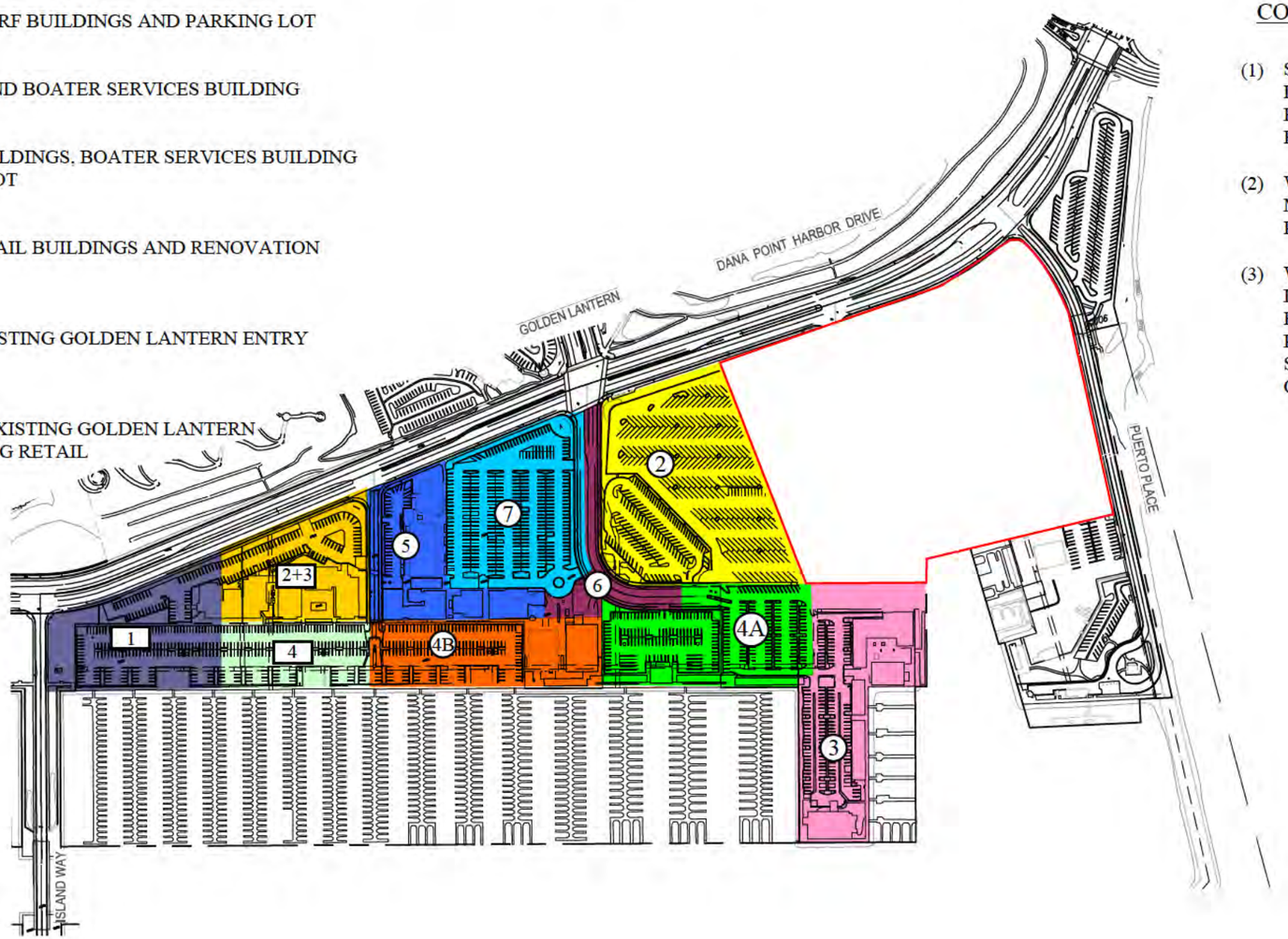
PERSPECTIVE VIEW - MARINA & AFFORDABLE SELECT SERVICE HOTEL ARRIVAL

8.1.2 SITE DEMOLITION PLAN

COMMERCIAL CORE RETAIL AND HOTEL AREAS

COMMERCIAL CORE AREA DEMOLITION ©

NOT SHOWN	PHASE 1	PUBLIC STREET IMPROVEMENTS
	PHASE 2	DEMO EXISTING DAY-BOATER AND PARKING LOTS
	PHASE 3	RENOVATE EXISTING WHARF BUILDINGS AND PARKING LOT
	PHASE 4A	EXISTING PARKING LOT AND BOATER SERVICES BUILDING
	PHASE 4B	TWO EXISTING RETAIL BUILDINGS, BOATER SERVICES BUILDING AND EXISTING PARKING LOT
	PHASE 5	REMAINING EXISTING RETAIL BUILDINGS AND RENOVATION CASITAS PLACE
	PHASE 6	PARTIAL REMOVAL OF EXISTING GOLDEN LANTERN ENTRY ROAD
	PHASE 7	REMAINING PORTION OF EXISTING GOLDEN LANTERN ENTRY ROAD AND EXISTING RETAIL PARKING LOT.



HOTEL DEMOLITION [H]

	PHASE 1	EXISTING PARKING LOT
	PHASE 2 + 3	EXISTING HOTEL AND STORM DRAIN
	PHASE 4	REMAINING PARKING LOT AREA

CONSTRUCTION DEMOLITION PHASING NOTES

(1) SITE ACCESS SHALL BE PROVIDED DURING DEMOLITION WORK VIA TEMPORARY ACCESS ROADWAYS COORDINATED WITH THE CONSTRUCTION EFFORTS.

(2) WHERE POSSIBLE, EXISTING PAVEMENT MAY BE MAINTAINED AND REHABILITATED FOR REUSE AS PART OF THE CONSTRUCTION.

(3) WITH THE COMPLETION OF THE PARKING STRUCTURE IN CONSTRUCTION PHASE 2, A NEW ACCESS ROAD FROM DANA POINT HARBOR DRIVE EAST OF THE PARKING STRUCTURE WILL BECOME AVAILABLE FOR SITE ACCESS DURING THE REMAINING CONSTRUCTION PHASES.

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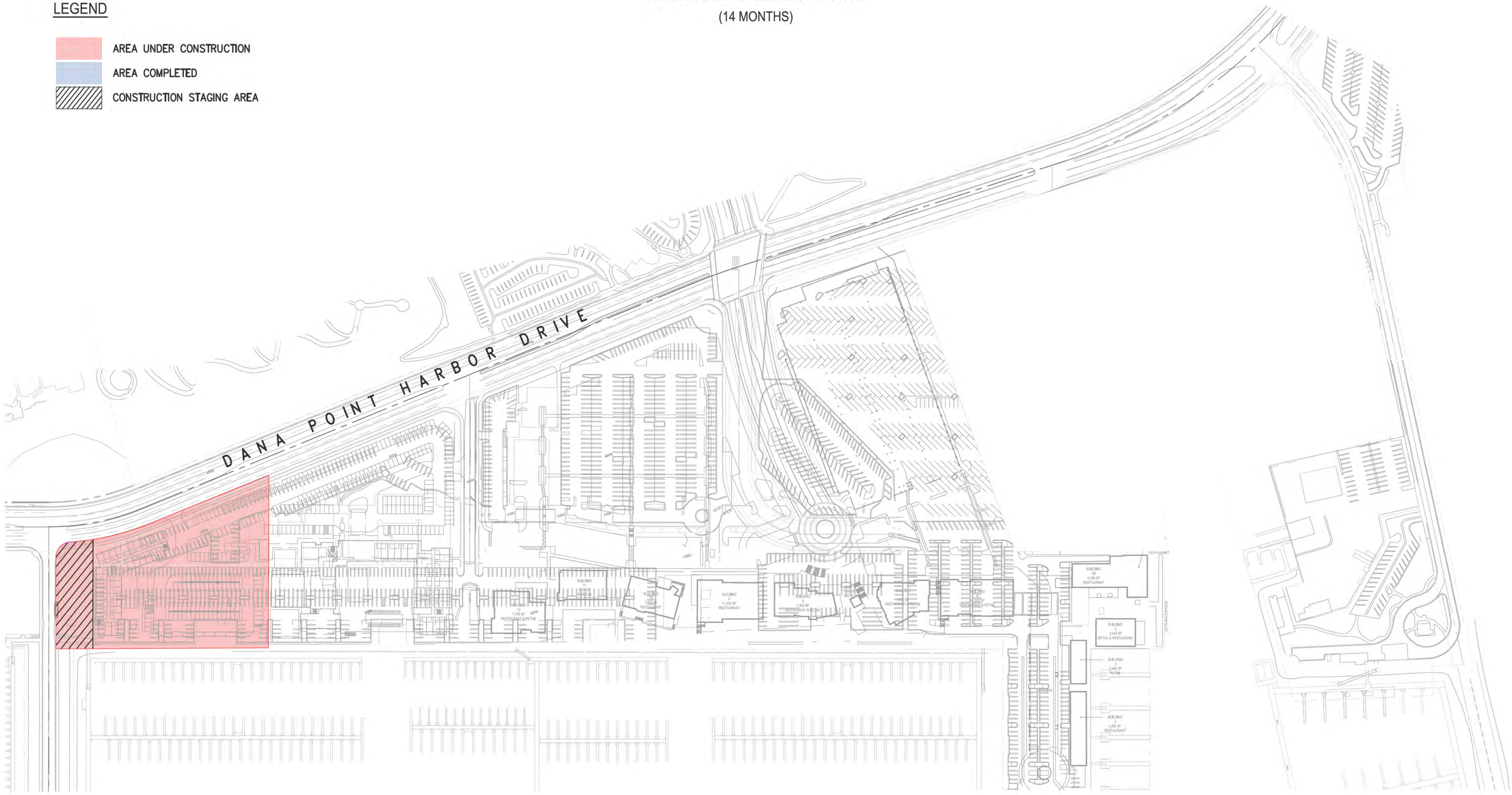
8.1.3 Construction Mobilization and Staging Plan

PHASE 1

HOTEL AREA CONSTRUCTION MOBILIZATION AND STAGING PLAN
AFFORDABLE HOTEL CONSTRUCTION
(14 MONTHS)

LEGEND

- AREA UNDER CONSTRUCTION
- AREA COMPLETED
- CONSTRUCTION STAGING AREA



NO.	DATE	REVISIONS	ENGR.	APPROV.	DATE
7					
6					
5					
4					
3					
2					
1					

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DESIGN ENGINEER R.C.E. No. DATE

DRAWN BY:	DATE
DESIGNED BY:	DATE
CHECKED BY:	DATE
RECOMMENDED BY:	DATE

DANA POINT HARBOR REVITALIZATION

DANA POINT HARBOR PARTNERS, LLC

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K:\Drawings\WE\WE03810 – Dana Point Harbor\ENG\Exhibit\Construction Phasing\Hotel\WE03810 Con Ph Htl.dwg PLOTTED: 9/20/2018 5:48:37 PM BY Chris Engelbach

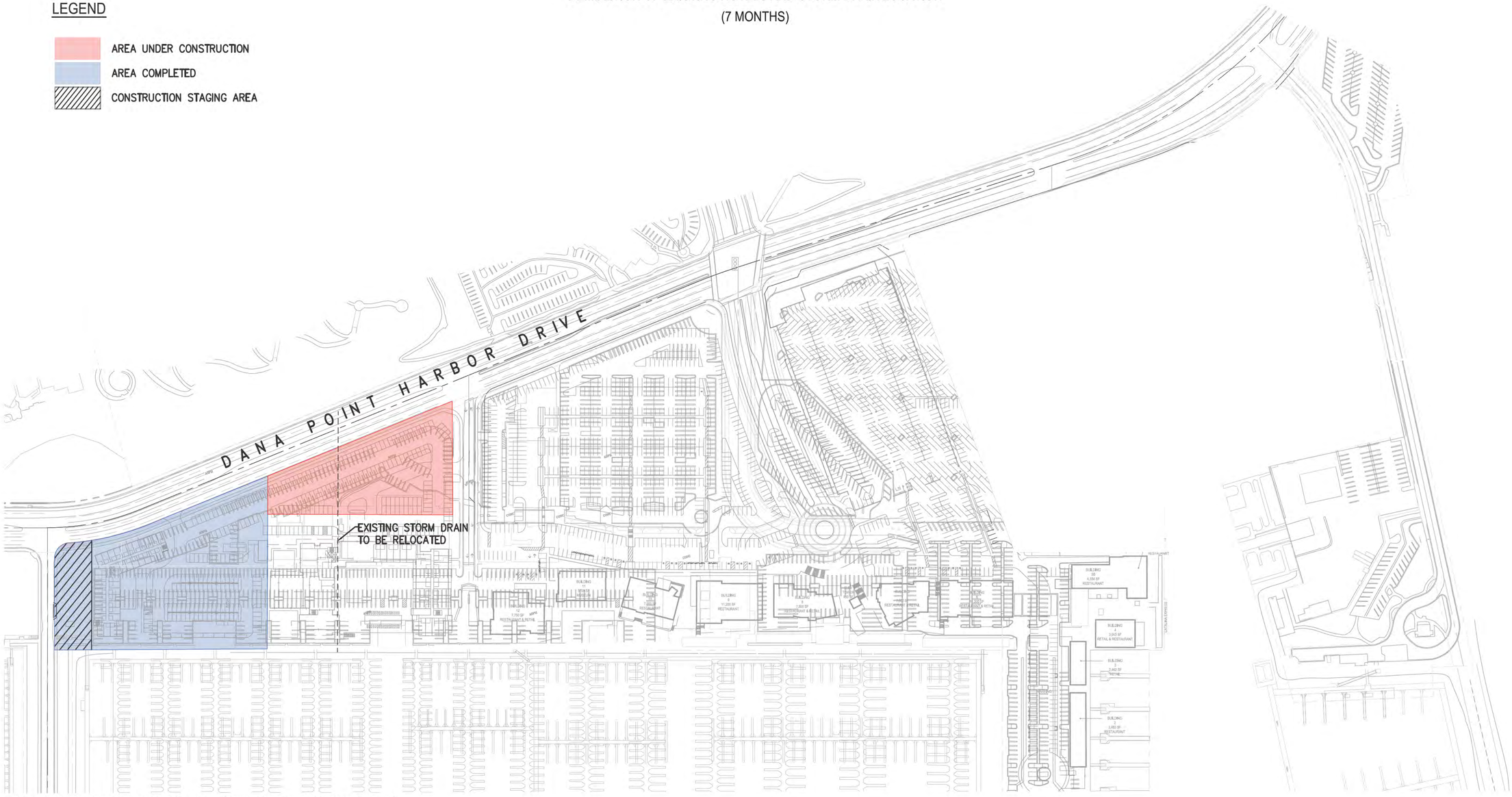
8.1.3 Construction Mobilization and Staging Plan

PHASE 2&3

HOTEL AREA CONSTRUCTION MOBILIZATION AND STAGING PLAN
DEMOLITION OF EXISTING HOTELS AND STORM DRAIN LOCATION
(7 MONTHS)

LEGEND

- AREA UNDER CONSTRUCTION
- AREA COMPLETED
- CONSTRUCTION STAGING AREA



(PHASE 3 INCLUDES RELOCATION OF THE EXISTING ON-SITE STORM DRAIN LINE)

NO.	DATE	REVISIONS	ENGR.	APPROV.	DATE
7					
6					
5					
4					
3					
2					
1					

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9/20/18
DESIGN ENGINEER R.C.E. No. DATE

DRAWN BY:	DATE
DESIGNED BY:	DATE
CHECKED BY:	DATE
RECOMMENDED BY:	DATE

DANA POINT HARBOR REVITALIZATION

DANA POINT HARBOR PARTNERS, LLC

BWP BURNHAM | WARD PROPERTIES · R.D. OLSON DEVELOPMENT · BELLWETHER FINANCIAL GROUP

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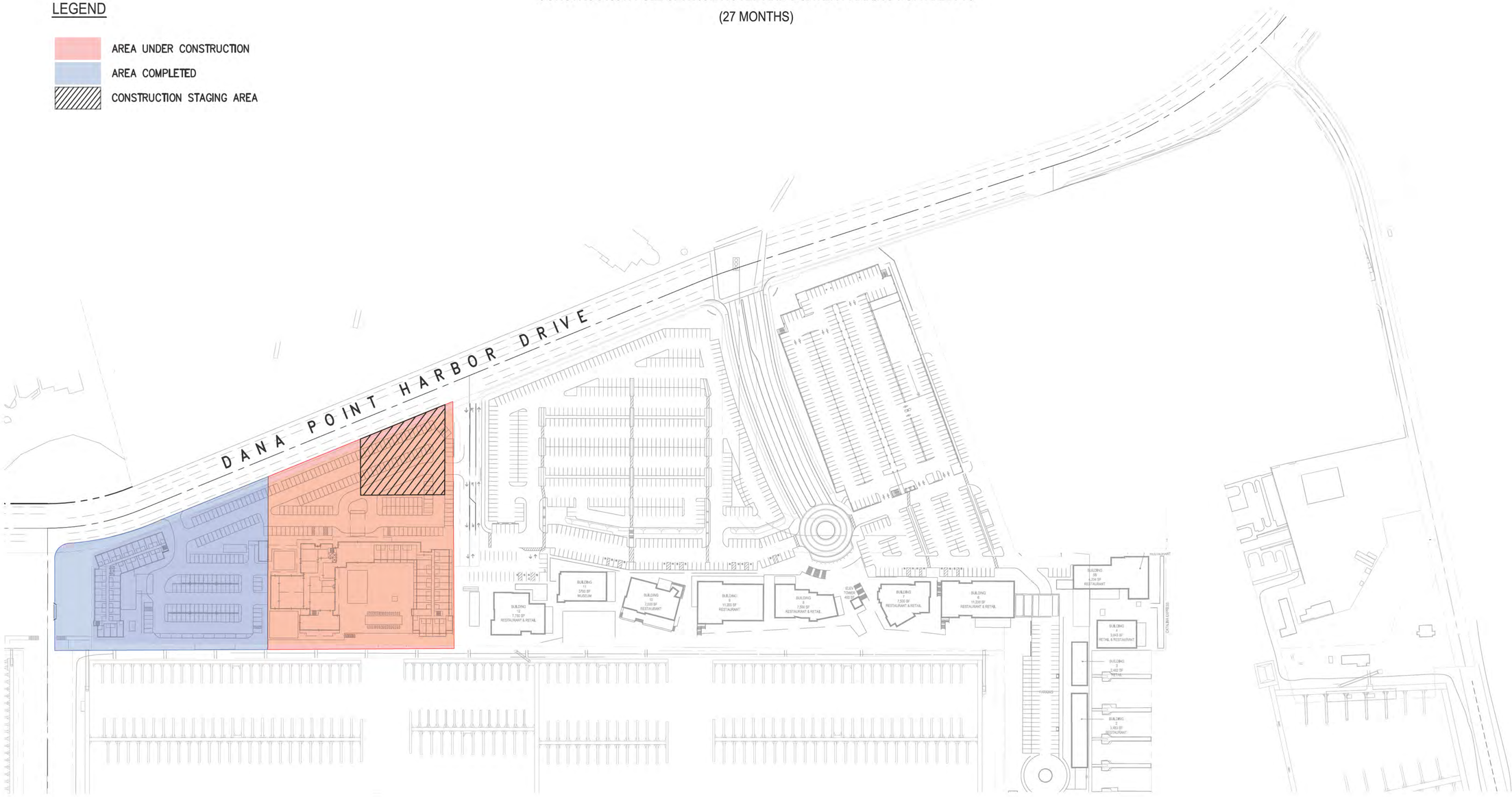
8.1.3 Construction Mobilization and Staging Plan

PHASE 4

HOTEL AREA CONSTRUCTION MOBILIZATION AND STAGING PLAN
CONSTRUCTION FULL SERVICE HOTEL AND BOATER PARKING FOR AREA 1C
(27 MONTHS)

LEGEND

- AREA UNDER CONSTRUCTION
- AREA COMPLETED
- CONSTRUCTION STAGING AREA



NO.	DATE	REVISIONS	ENGR.	APPROV.	DATE
7					
6					
5					
4					
3					
2					
1					

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10/10/18
DESIGN ENGINEER R.C.E. No. DATE

DRAWN BY:	DATE
DESIGNED BY:	DATE
CHECKED BY:	DATE
RECOMMENDED BY:	DATE

DANA POINT HARBOR REVITALIZATION

DANA POINT HARBOR PARTNERS, LLC

BWP BURNHAM | WARD PROPERTIES · R.D. OLSON DEVELOPMENT · BELLWETHER FINANCIAL GROUP

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SUMMARY		PARKING REQUIREMENTS	
SITE AREA (UNCONFIRMED)	275,419 SF	AFFORDABLE HOTEL 136 KEYS X 1.0 SPACE/KEY	136.0 SPACES
AFFORDABLE "SELECT SERVICE" HOTEL UNIT SIZE 13'-2"X23'-0" = 230 SF GROSS * MAY HAVE JULIET BALCONIES	136 KEYS	FULL SERVICE HOTEL 130 KEYS X 1.0 SPACE/KEY	130.0 SPACES
		FULL SERVICE MEETING 5000 S.F AT 1/100	50.0 SPACES
		MARINA SPACES REQUIRED	248.0 SPACES
FULL SERVICE HOTEL UNIT SIZE 13'-6"X30-0" = 405 SF GROSS 15 SUITES 145 MODULES * WITH BALCONIES	130 KEYS	TOTAL	564.0 SPACES
		PROVIDED	564 SPACES
MEETING ROOM	5,000 SF		
RESTAURANT	2,750 SF		
RETAIL	500 SF		
FITNESS	1,500 SF		

WATG

Dana Point Harbor Hotel

Dana Point, California

8.1.4 Site Development Plan

OPEN SPACE AND RECREATION PLAN

174056 | 15 OCTOBER 2018 | Conceptual Plans

LEGEND:

- SERVICE ROUTE
- VEHICLE ROUTE: DROP-OFF & PARKING
- PEDESTRIAN ACCESS
- BIKE LANE
- OPEN SPACE

LANDSCAPE SLOPED UP TO STREET GRADE

CASITAS PLACE

MARINA AND HOTEL PARKING

MARINA, SERVICE, AND AFFORDABLE HOTEL ENTRY

BIKE LANE

BACK OF HOUSE

SERVICE ENTRY

COMBINED SCREENED TRASH

STORAGE

SERVICE DOCK

SERVICE ROUTE

GUESTROOMS

BOH

ENTRY: DROP-OFF & GUEST LOADING

BOH STOR

LOBBY/ DINING

EXISTING LANDSCAPE AREA

ISLAND WAY

POOL DECK

MARINA DROP-OFF ZONE/ SHORT TERM PARKING

COVERED PARKING 283 SPACES

MARINA FACILITIES 2,500 S.F.

FITNESS 1,500 S.F.

POOL ABOVE

POOL PUMP

PEDESTRIAN ACCESS

MARINA ACCESS HOTEL STAIR ACCESS

MARINA FACILITIES 1,750 S.F.

MARINA PROMENADE

MAIN VEHICLE ACCESS

SHORT TERM PARKING 10 SPACES

VALET

BUILDING 13

0 30 60 120

1" = 30'

WATG

Dana Point Harbor Hotel

Dana Point, California

8.1.4 Site Development Plan

LEVEL 1 PLAN - CIRCULATION PLAN

174056 | 15 OCTOBER 2018 | Conceptual Plans

LEGEND:

- SERVICE ROUTE
- VEHICLE ROUTE: DROP-OFF & PARKING
- PEDESTRIAN ACCESS
- BIKE LANE
- OPEN SPACE

SURFACE PARKING, 281 SPACES

BIKE LANE

CASITAS PLACE

HOTEL ARRIVAL

PEDESTRIAN ACCESS & SIDEWALK/HARDSCAPE

SURFACE PARKING

BIKE LANE

MARINA, SERVICE, AND AFFORDABLE HOTEL ENTRY

AFFORDABLE HOTEL
136 KEYS ON 4 LEVELS

VALET PARKING

ENTRY: DROP-OFF & GUEST LOADING

MEETING DROP-OFF WHEN REQUIRED

MEETING ROOM 500 S.F.

COMBINED SCREENED TRASH

SERVICE DOCK

ARRIVAL GARDEN

M

W

MEETING ROOM(S) 1500 S.F.

LOBBY/ RECEPTION

BOH

BOAT & HOTEL PARKING ACCESS BELOW

SHORT TERM PARKING 10 SPACES

SERVICE ROUTE

EXISTING LANDSCAPE AREA

ENTRY: DROP-OFF & GUEST LOADING

GUESTROOMS

SURFACE PARKING

MEETING ROOM(S) 3000 S.F.

BOH

M

W

KITCHEN

COFFEE/ RETAIL

LAWN & GAMES

GUESTROOMS

TO RETAIL

VALET

ISLAND WAY

POOL DECK

FUNCTION LAWN

RESTAURANT

OUTDOOR SEATING

FIRE PLACE

CABANAS

POOL

BUILDING 13

HOTEL ACCESS/ENTRY FROM MARINA(STAIRS)

TO RETAIL

FULL SERVICE HOTEL, 130 KEYS ON 4 LEVELS

BOAT ACCESS

TO ISLAND OVER BRIDGE

0 30 60 120

1" = 30'

WATG

Dana Point Harbor Hotel

Dana Point, California

8.1.4 Site Development Plan

LEVEL 2 PLAN - CIRCULATION PLAN

174056 | 15 OCTOBER 2018 | Conceptual Plans

DANA POINT HARBOR DRIVE
GOLDEN LANTERN
CASITAS PLACE
ISLAND WAY
WEST BASIN
EAST BASIN
W20
W21
G1

8 4 e e e m n Pan

DANA POINT HARBOR DRIVE
GOLDEN LANTERN
CASITAS PLAZA
ISLAND WAY
WEST BASIN
EAST BASIN
BROKER DOCK
BAIT PENS
G1
W1
W2
W3
W4
W5
W6
W7
W8
W9
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W12
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E37
E38
E39
E40

SOUTH - MARINA SIDE

NORTH - STREET SIDE

WEST

EAST

0 8' 32' 100'

1/16" = 1'

WATG

Dana Point Harbor Hotel

Dana Point, California

8.1.5 Building Elevations

ELEVATIONS - FULL SERVICE HOTEL

60'

EAST

60'

NORTH

60'

WEST

60'

SOUTH - PROMENADE

0 8′ 32′ 100′

1/16" = 1'

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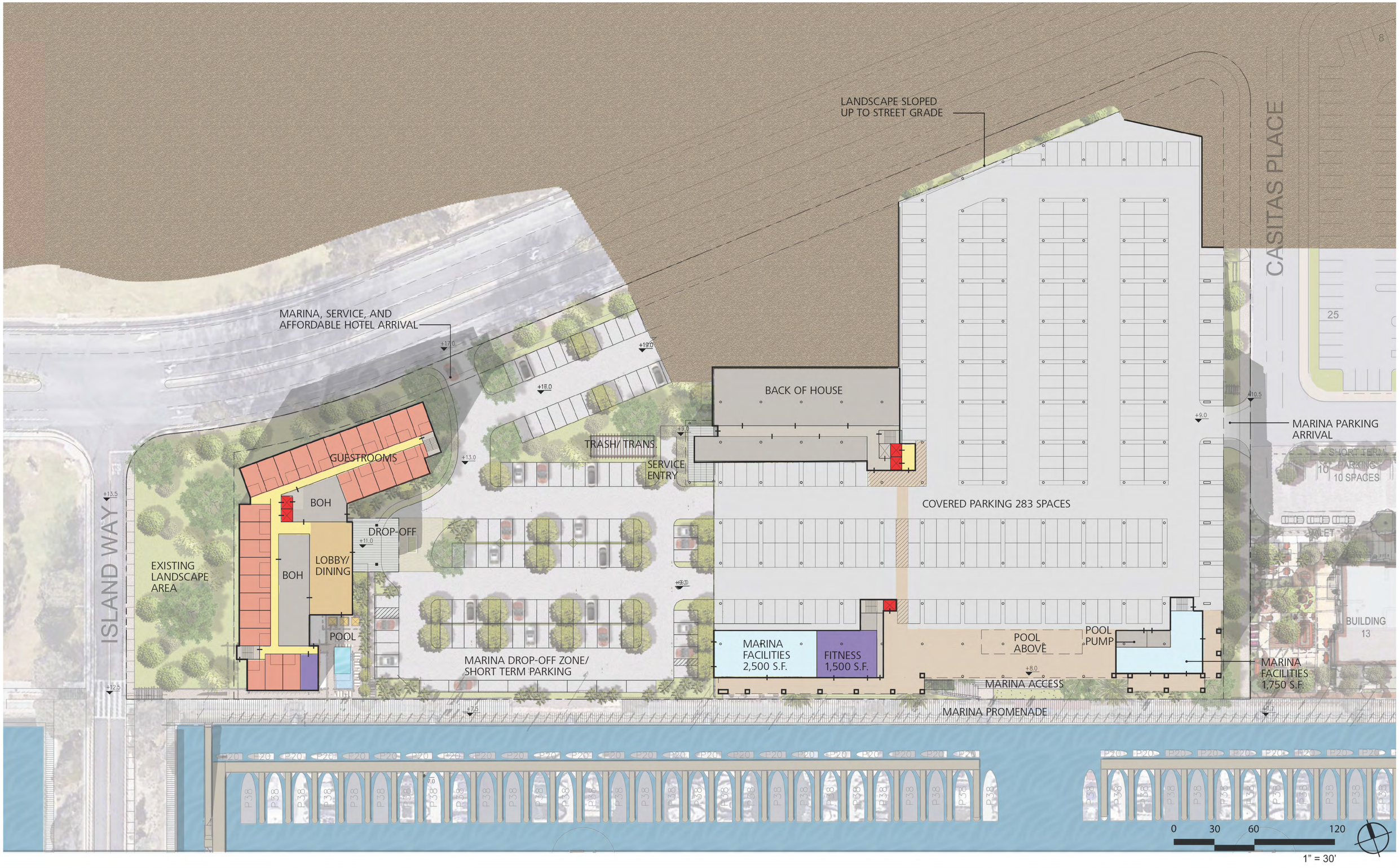
Dana Point Harbor Hotel

Dana Point, California

8.1.5 Building Elevations

ELEVATIONS - AFFORDABLE SELECT SERVICE HOTEL



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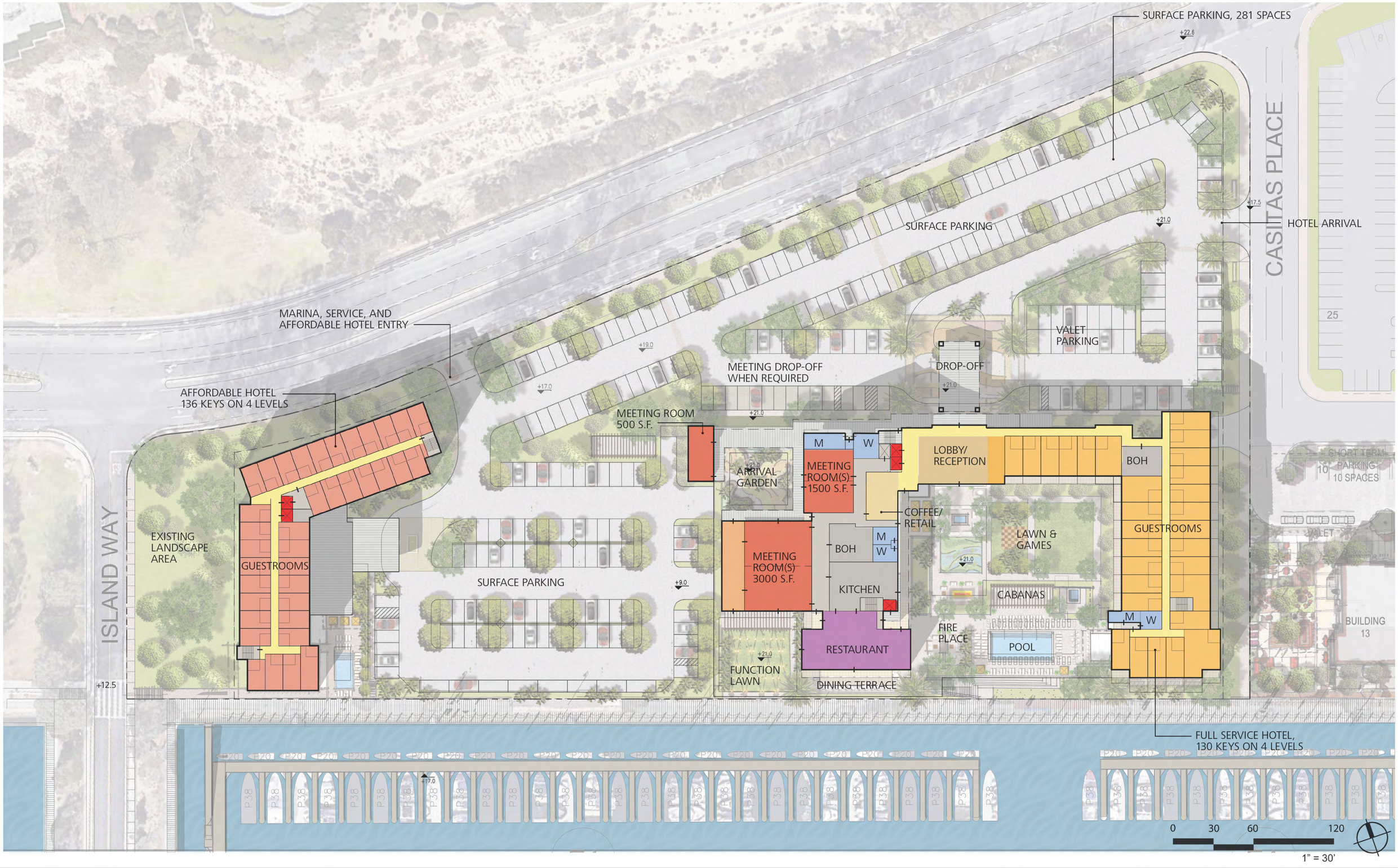
Dana Point Harbor Hotel

Dana Point, California

8.1.6 Schematic Floor Plans

LEVEL 1 PLAN - MARINA & AFFORDABLE HOTEL ARRIVAL

174056 | 1 May 2017 | Concept Design



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Dana Point Harbor Hotel

Dana Point, California

8.1.6 Schematic Floor Plans

LEVEL 2 PLAN - FULL SERVICE HOTEL ARRIVAL

174056 | 1 May 2017 | Concept Design

WATG

Dana Point Harbor Hotel

Dana Point, California

8.1.6 Schematic Floor Plans

LEVEL 3 PLAN - GUESTROOMS

174056 | 1 May 2017 | Concept Design

8. . Design Scheme

BWP BURNHAM | WARD PROPERTIES

R.D.OLSON DEVELOPMENT

BELLWETHER FINANCIAL GROUP

DANA POINT HARBOR REVITALIZATION

DANA POINT HARBOR PARTNERS, LLC

SMS ARCHITECTS

TAIT

8.1.1 Design Scheme

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

N E S W

LEGEND:
= EXISTING DOCKS
= PROPOSED DOCKS

DANA POINT MARINA SLIP MIX CHART LAYOUT #16

TYPE	LENGTH		COVE WEST	ISLAND WEST	COVE EAST	ISLAND EAST	TOTAL	LF BERTHING	%	Total
P	15	FT	0	0	32	0	32	480	1.42%	
P	20	FT	2	2	0	2	6	120	0.27%	
P	21	FT	17	8	0	22	47	987	2.09%	
P	22	FT	0	0	0	0	0	0	0.00%	
P	24	FT	10	0	0	5	15	360	0.67%	
P	25	FT	245	89	0	221	555	13875	24.62%	
S	25	FT	18	13	0	108	139	3475	6.17%	1479
P	26	FT	22	9	0	20	51	1326	2.26%	
P	28	FT	55	0	0	55	150	4200	6.65%	
S	28	FT	0	0	0	0	0	0	0.00%	
P	29	FT	0	0	0	0	0	0	0.00%	
P	30	FT	176	77	1	166	420	12600	18.63%	
S	30	FT	26	14	0	24	64	1920	2.84%	
P	31	FT	0	5	0	13	18	558	0.80%	
P	32	FT	0	0	0	11	11	352	0.49%	
P	33	FT	0	1	0	1	2	66	0.09%	
P	35	FT	0	90	34	102	226	7910	10.03%	282
S	35	FT	0	19	1	0	20	700	0.89%	
P	36	FT	0	0	4	0	4	144	0.18%	
P	38	FT	0	0	1	0	1	38	0.04%	
P	40	FT	0	0	136	18	154	6160	6.83%	
P	41	FT	0	1	2	0	3	123	0.13%	
P	42	FT	0	0	30	0	30	1260	1.33%	
P	44	FT	0	0	1	0	1	44	0.04%	
P	45	FT	0	18	103	6	127	5715	5.63%	
P	46	FT	0	0	0	0	0	0	0.00%	
P	48	FT	0	0	27	0	27	1296	1.20%	
P	50	FT	0	45	1	9	55	2750	2.44%	
S	50	FT	0	0	0	0	0	0	0.00%	
P	55	FT	0	0	0	0	0	0	0.00%	
P	56	FT	0	21	1	0	22	1232	0.98%	
P	58	FT	0	0	45	0	45	2610	2.00%	
P	60	FT	0	0	0	6	6	360	0.27%	
P	55	FT	0	0	23	0	23	1495	1.02%	
		TOTALS =	611	412	442	789	**2254**	72156	100.00%	
								OVERALL AVERAGE LENGTH =	32	ft

*SLIP MIX TOTALS DO **NOT** INCLUDE:

1.) O.C. SAILING & EVENT CENTER DOCKS
2.) DOLPHIN SAFARI DOCKS
3.) DANA POINT YACHT CLUB DOCKS
4.) ORANGE COUNTY HARBOR PATROL DOCKS
5.) COMMERCIAL FISHING DOCKS
6.) CURLEW CHARTERS DOCK
7.) GUEST SLIPS

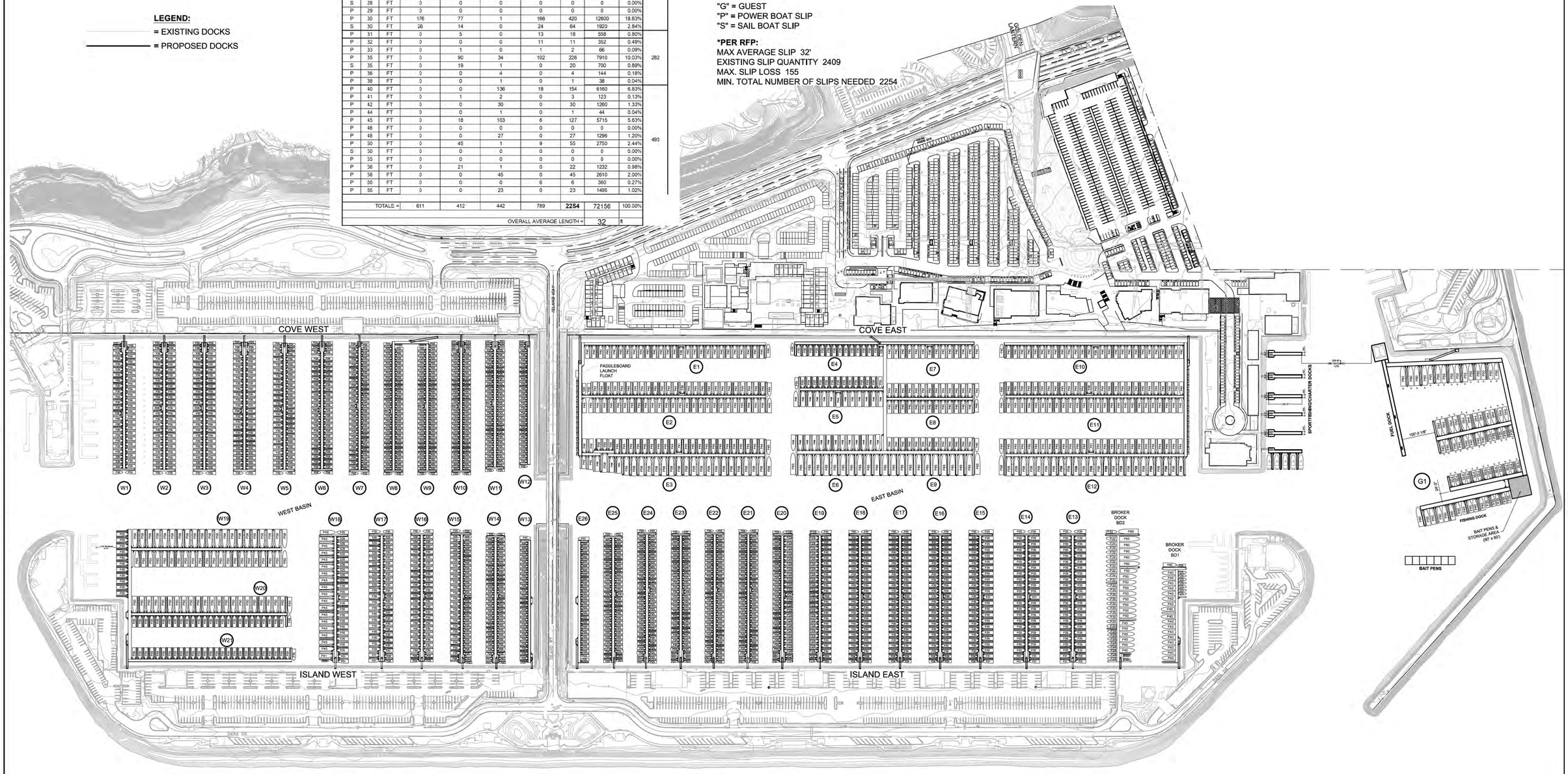
"G" = GUEST
"P" = POWER BOAT SLIP
"S" = SAIL BOAT SLIP

***PER RFP:**
MAX AVERAGE SLIP 32'
EXISTING SLIP QUANTITY 2409
MAX. SLIP LOSS 155
MIN. TOTAL NUMBER OF SLIPS NEEDED 2254

EXISTING GUEST SLIPS: 42

PROPOSED GUEST SLIPS: 53

COMMERCIAL FISHING VESSELS: 16



NO.	DATE	DESCRIPTION	BY
-	-	-	-

REVISIONS

Bellingham MARINE
THE WORLD'S MOST COMPREHENSIVE MARINA BUILDER
Southwest Division
CA License #442499
8810 Sparling Lane
Dixon, CA 95620
TEL: (707) 678-2385
FAX: (707) 678-1760

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SITE IMPROVEMENT PLAN

ACCEPTED BY: _____
CITY ENGINEER R.C.E. EXP. DATE

ACCEPTED BY: _____
CITY ENGINEER R.C.E. EXP. DATE

PROJECT NUMBER: 7109
ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT MARINA

Dana Point, CA

NEW PROPOSED OVERALL LAYOUT #36

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 8-21-18
SHEET NO.: 2
DRAWING: OL1

8.1.2 Site Demolition and Removal Plan

Bellingham Marine Industries, Inc.
8810 Sparling Lane
Dixon, CA 95620
(707) 678-2385
FAX (707) 678-1760
CSL #442499

DANA POINT HARBOR REVITALIZATION

The following is a general procedure for demolition and removal of existing dock system. The following procedure may vary depending on final design, phasing, and final permit documents from governing agencies:

1. All existing docks indicated to be removed, as shown on the "Dock Phasing Plan" exhibit, shall be removed and properly disposed as indicated below.

2. Existing dock system will be disassembled by hand tools and work boat. The disassembled pieces will be rafted together with rope and floated to a location where docks can be removed out of the water by either a land based crane, forklift or waterside barge mounted crane. Removed docks will be hauled off to landfill or recycling facility by truck. Nearly all material, suitable for recycling, will be recycled which include copper piping, concrete pile, steel pile, recyclable plastics, metals, etc. The majority of the existing dock modules will not be suitable for recycling since materials include treated wood and foam which has been deteriorating in salt water.

3. All existing pilings will be pulled out with barge mounted crane. Jetting around the pile may be utilized to loosen the soil around the pile as necessary. In the event, pile cannot be removed by pulling, pile shall be cut at mudline and the portion of pile above the mudline will be removed. All removed pilings will be temporarily placed on the floating barge. The pilings will be transferred from barge to truck with barge mounted crane where truck shall deliver the removed pilings to landfill or recycling facility as applicable.

4. The following Best Management Practices shall be implemented during demolition and removal of existing dock system:

    a. Silt curtains will be utilized to control turbidity during dock and pile removal.
    b. Floating booms shall be maintained around the project site in order to capture floating debris during all demolition and construction phases.
    c. Divers will recover non-buoyant debris discharged into coastal waters as soon as possible after loss.
    d. Disturbance to the ocean bottom and intertidal areas shall be minimized.
    e. Measures shall be taken to ensure that eelgrass beds (if any) are not impacted through anchoring, grounding, propeller damage, or other activities that may disturb the sea floor.
    f. Contractor shall ensure no debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum projects, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the United States.
    g. Spills of construction equipment fluids or other hazardous materials shall be immediately contained on-site and disposed of in environmentally safe manner as soon as possible.
    h. All floatable debris and trash generated by construction activities within the project area shall be disposed of as soon as possible or at the end of each day.
    i. At the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash or construction materials has been left on the shore or in the water, and that the project has not created any hazard to navigation.

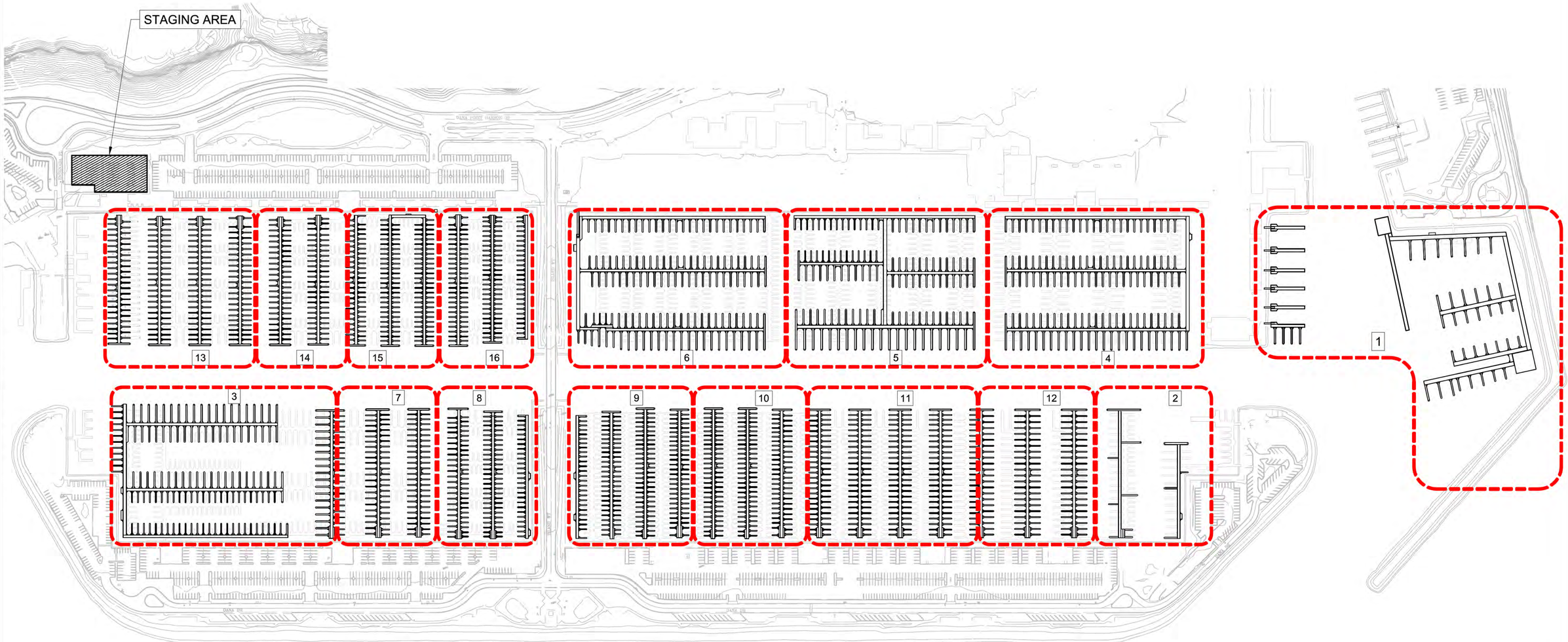
8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

N
W E
S

LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



NO.	DATE	DESCRIPTION	BY
-	-	-	-

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Bellingham MARINE
THE WORLD'S MOST COMPREHENSIVE MARINA BUILDER
Southwest Division
CA License #442499
8810 Sparling Lane
Dixon, CA 95620
TEL: (707) 678-2385
FAX: (707) 678-1760

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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

LAYOUT #16- CONSTRUCTION MOBILIZATION AND STAGING PLAN

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 01
DRAWING: OP1

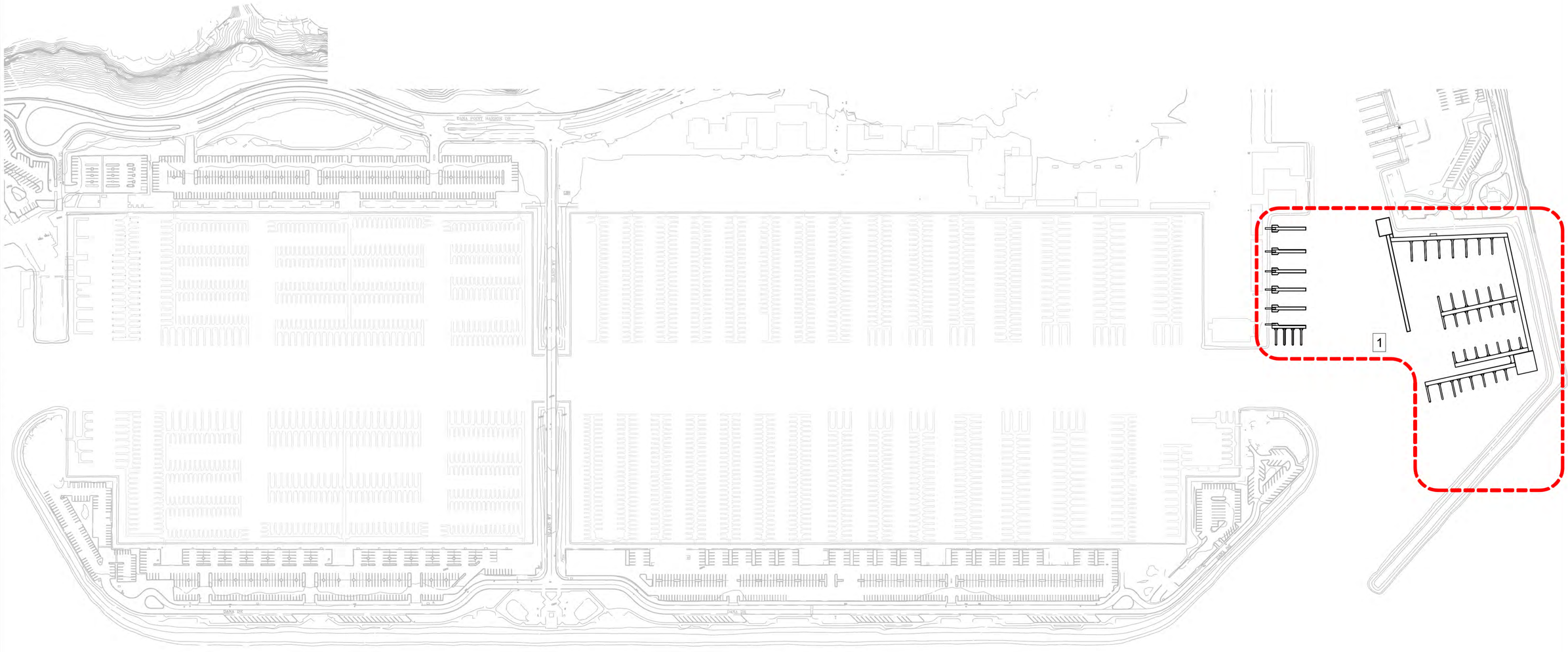
8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

N E S W

LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



NO.	DATE	DESCRIPTION	BY
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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 1

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 02
DRAWING: PC1

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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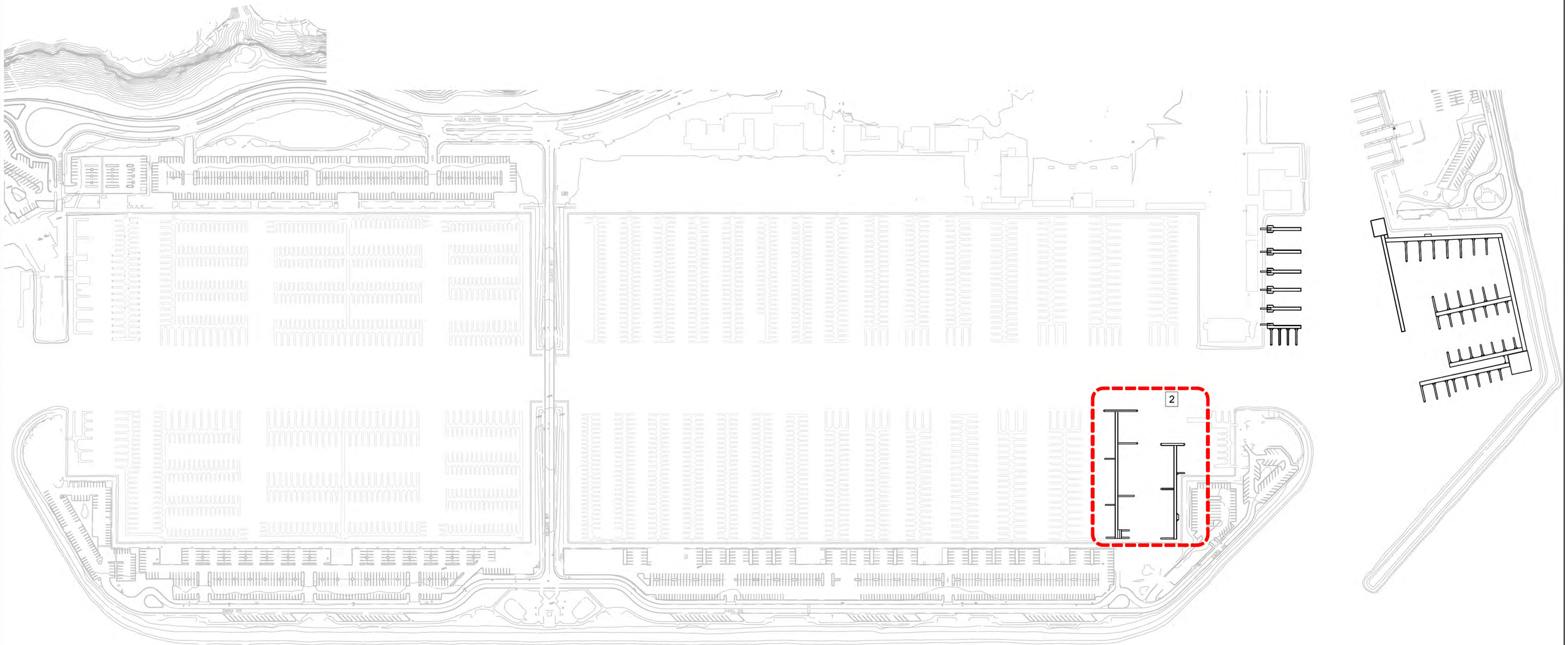
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



NO.	DATE	DESCRIPTION	BY
-	-	-	-

REVISIONS

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DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 2

SCALE: 1" = 140' (Sheet Size 24" x 36")
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DATE: 9-14-18
SHEET NO.: 03
DRAWING: PC2

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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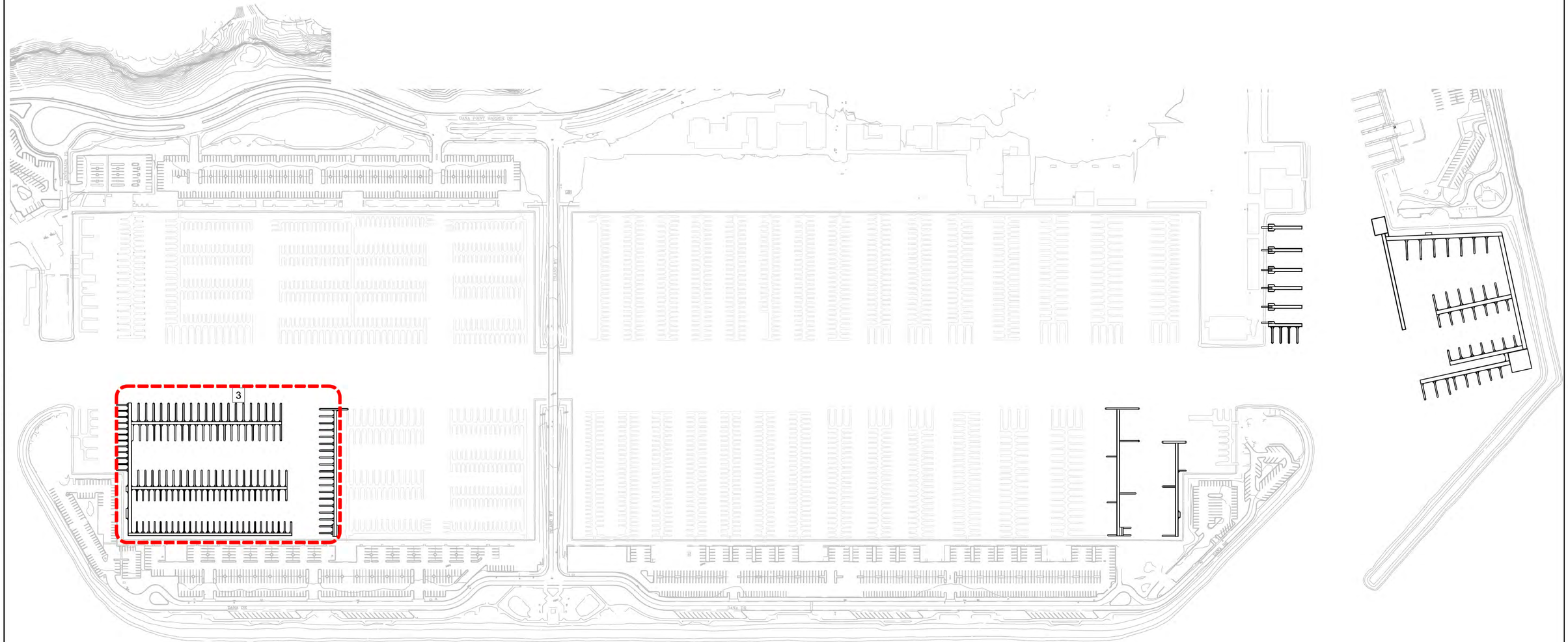
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



NO.	DATE	DESCRIPTION	BY
-	-	-	-

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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: -
PROJECT MANAGER: -
CHECKED BY: -

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 3

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 04
DRAWING: PC3

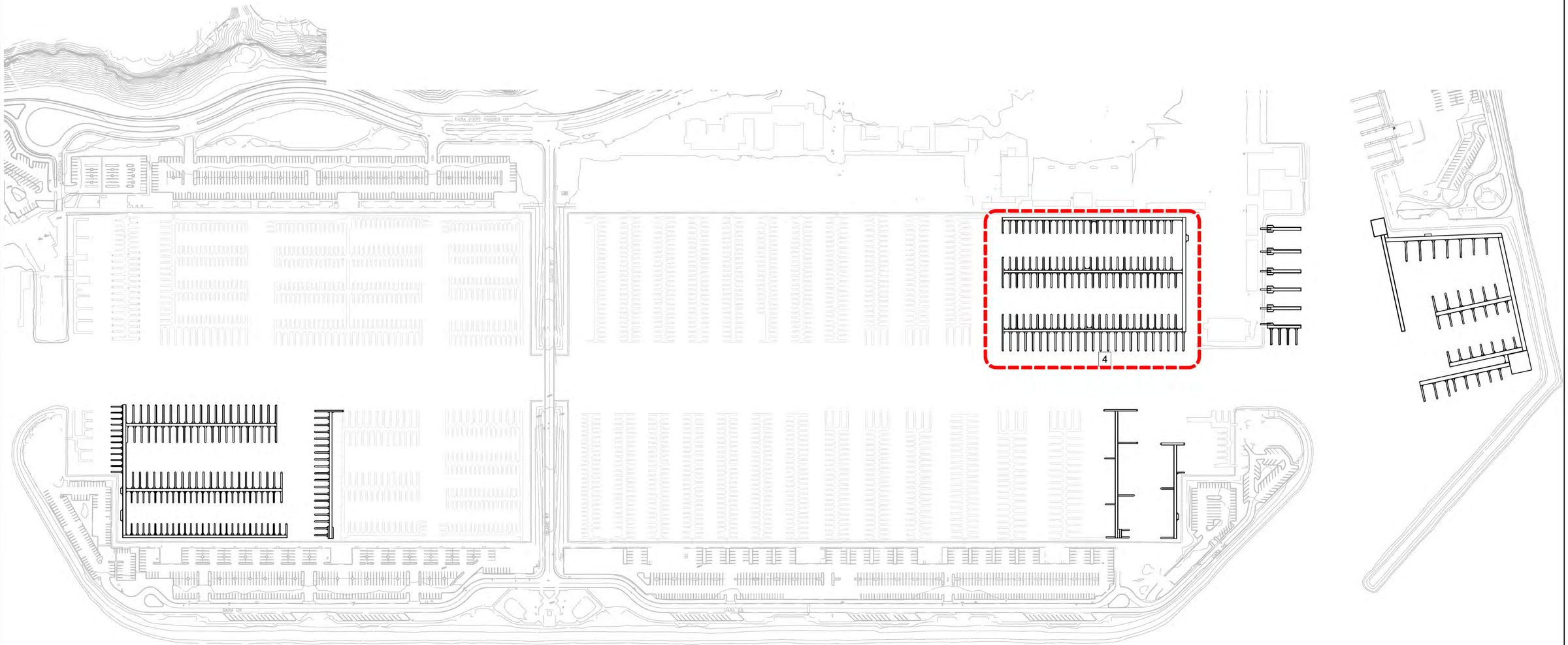
8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

N E S W

LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



NO.	DATE	DESCRIPTION	BY
-	-	-	-

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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 4

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 05
DRAWING: PC4

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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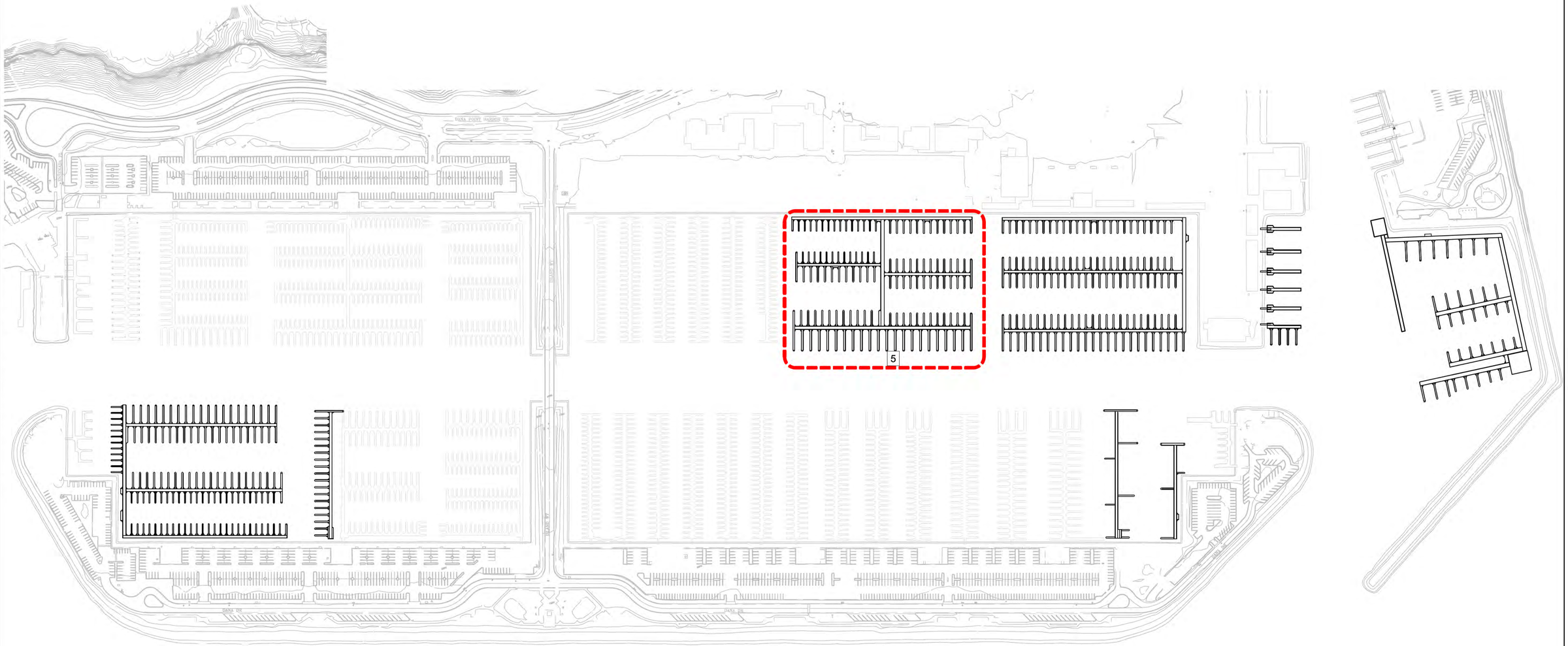
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 5

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 06
DRAWING: PC5

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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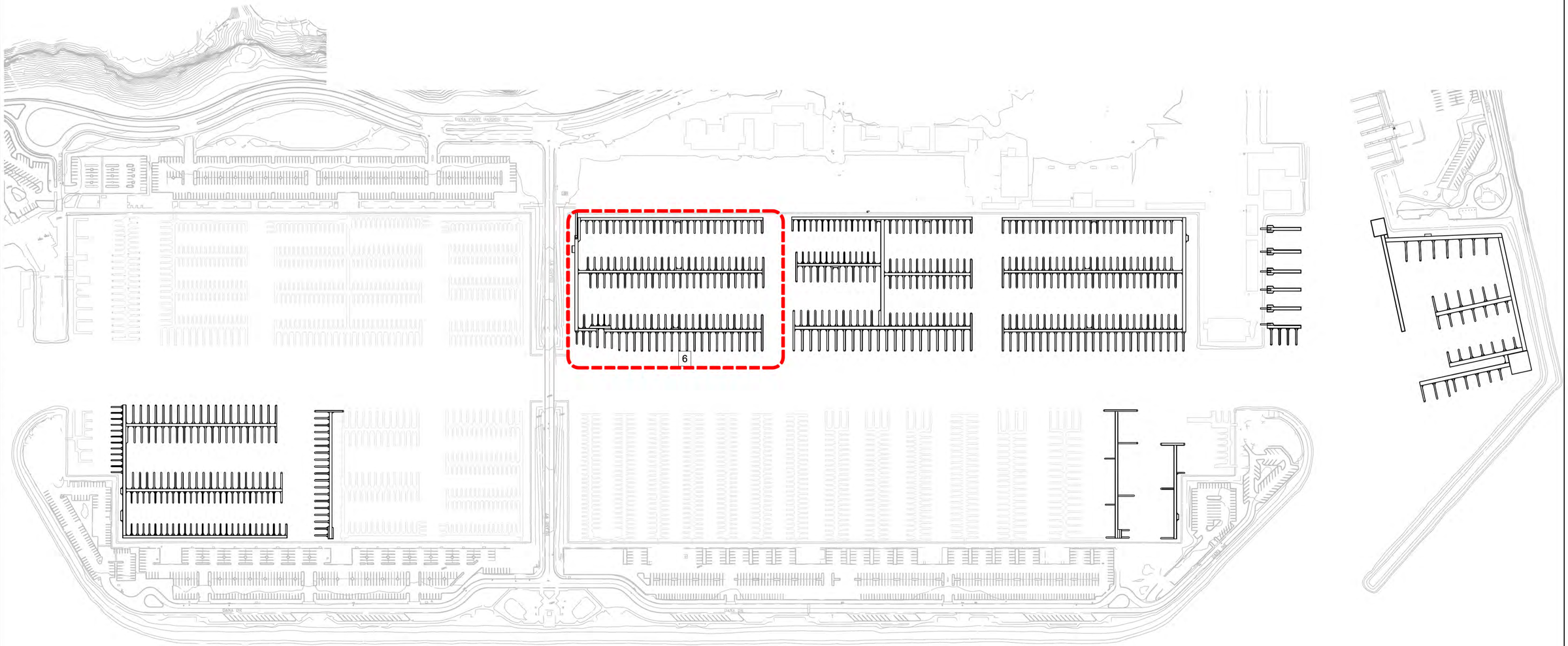
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 6

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 07
DRAWING: PC6

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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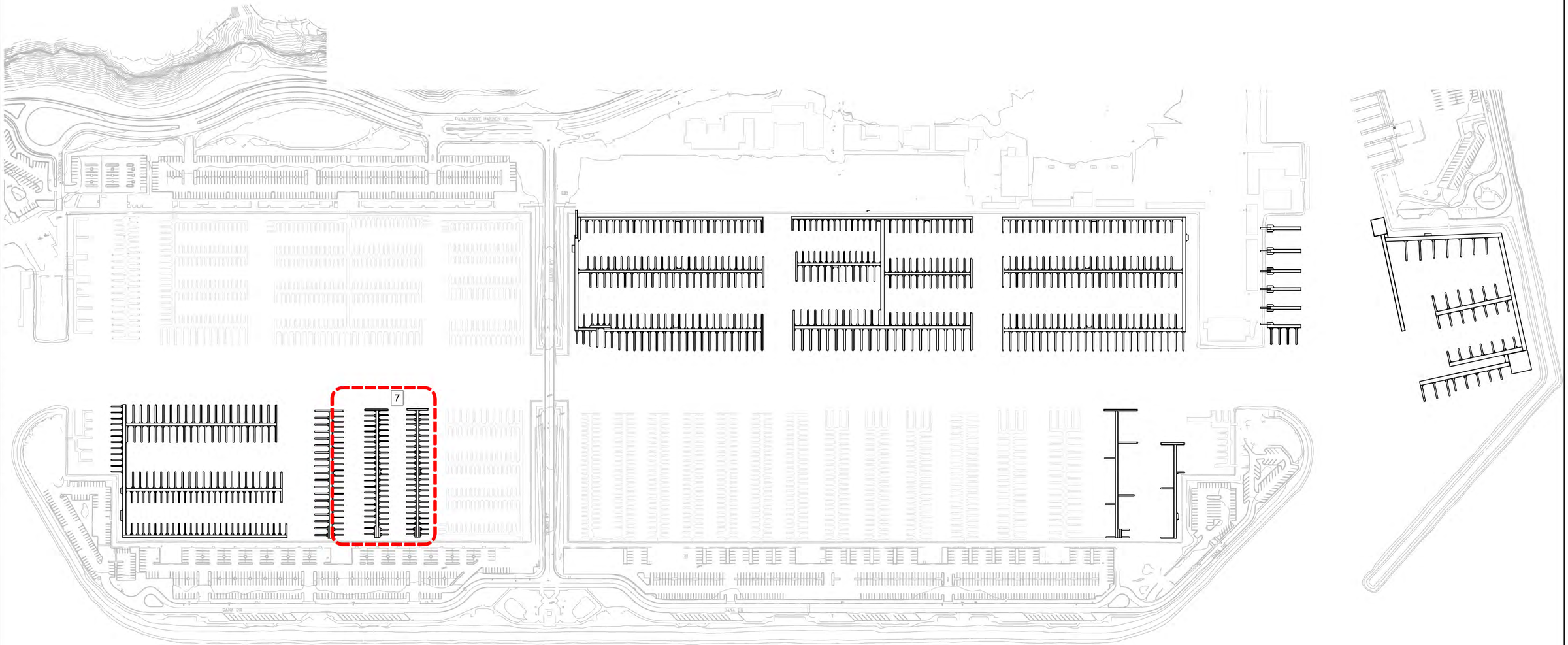
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 7

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 08
DRAWING: PC7

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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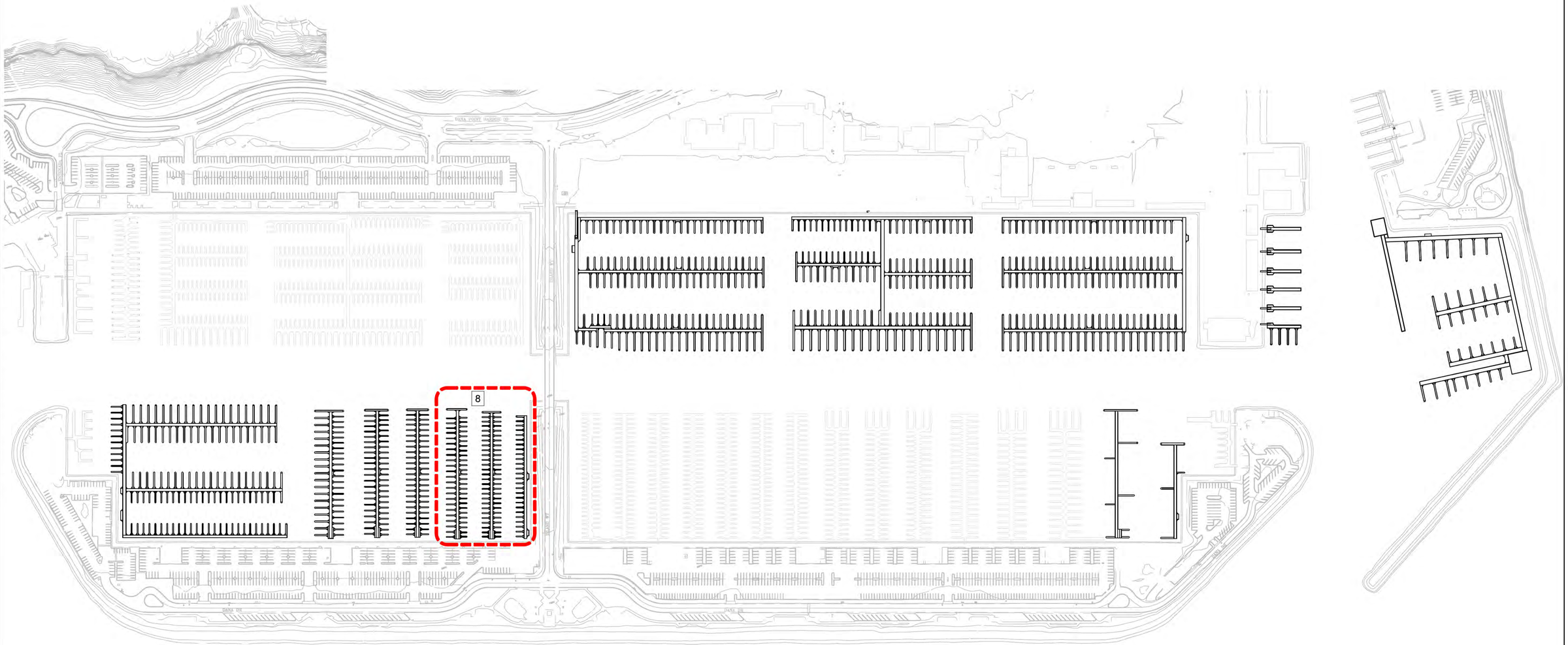
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 8

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 09
DRAWING: PC8

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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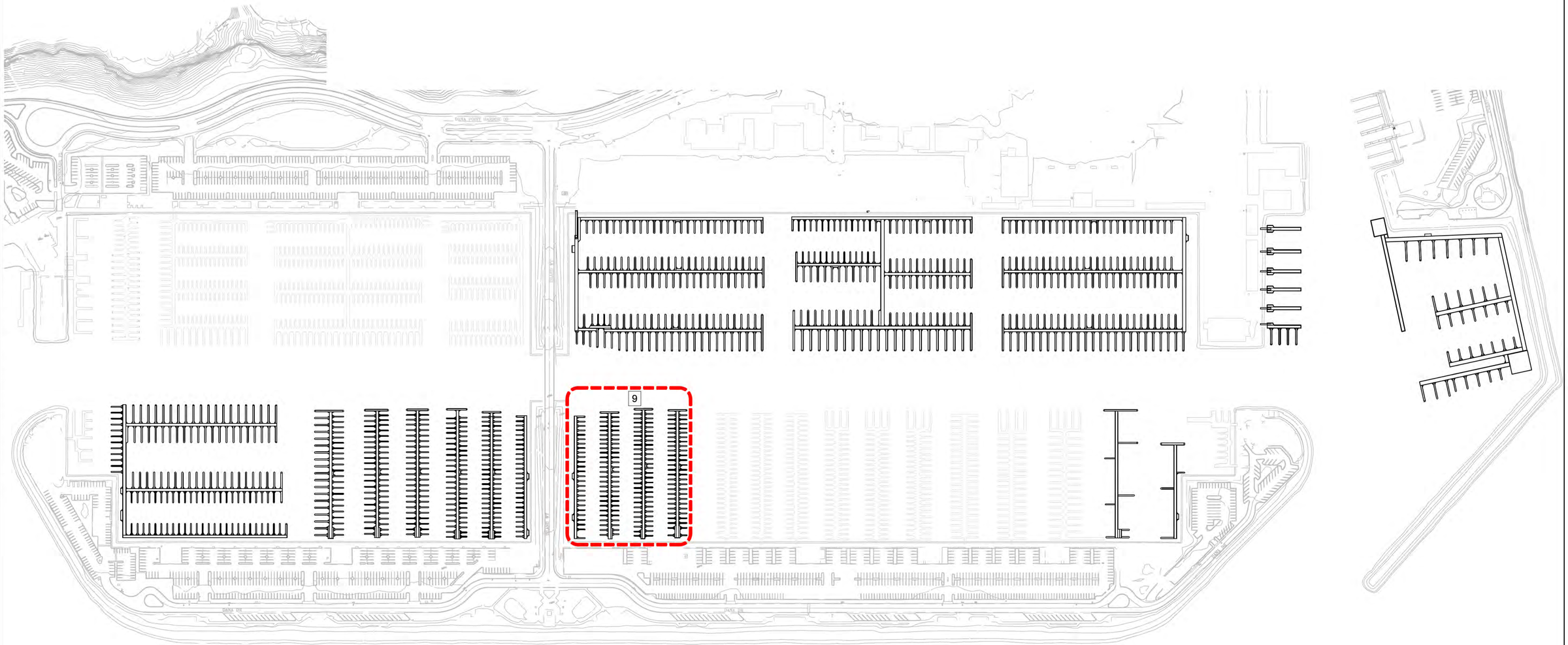
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 9

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 10
DRAWING: PC9

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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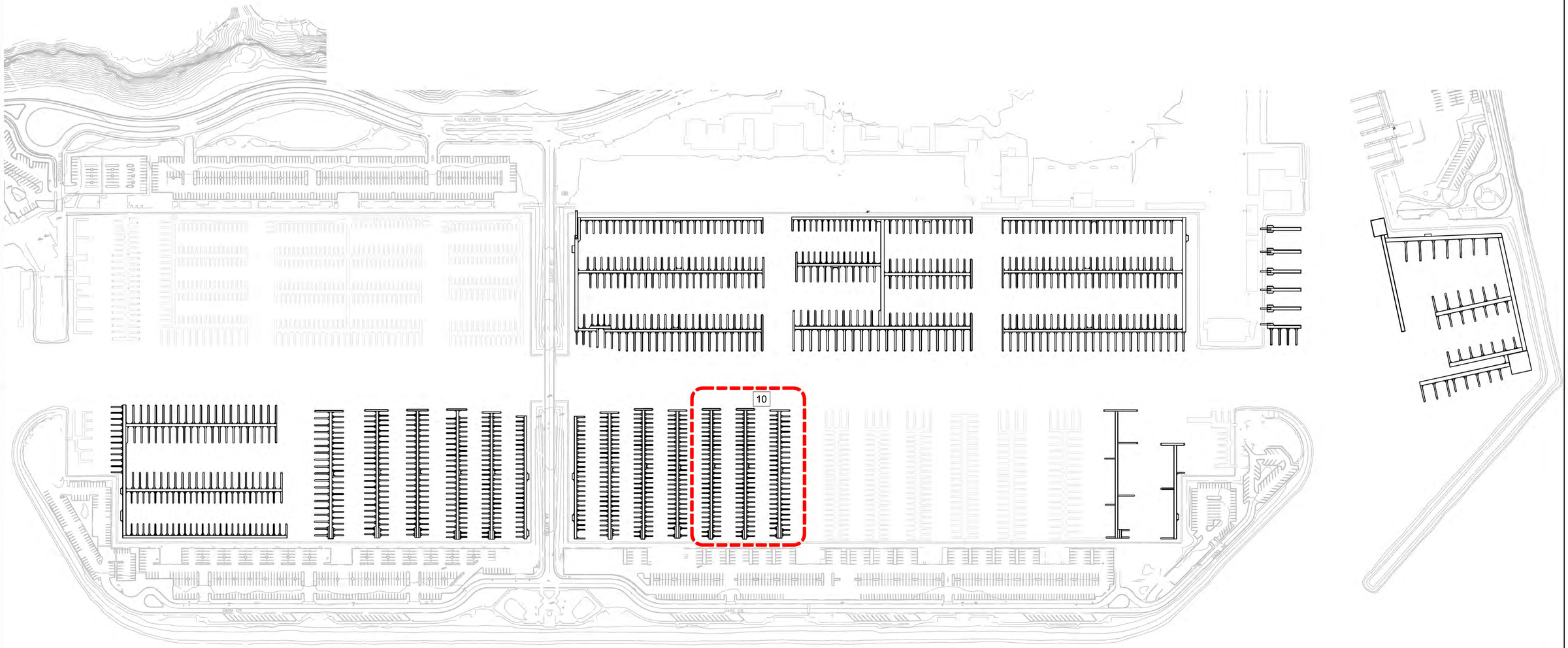
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 10

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 11
DRAWING: PC10

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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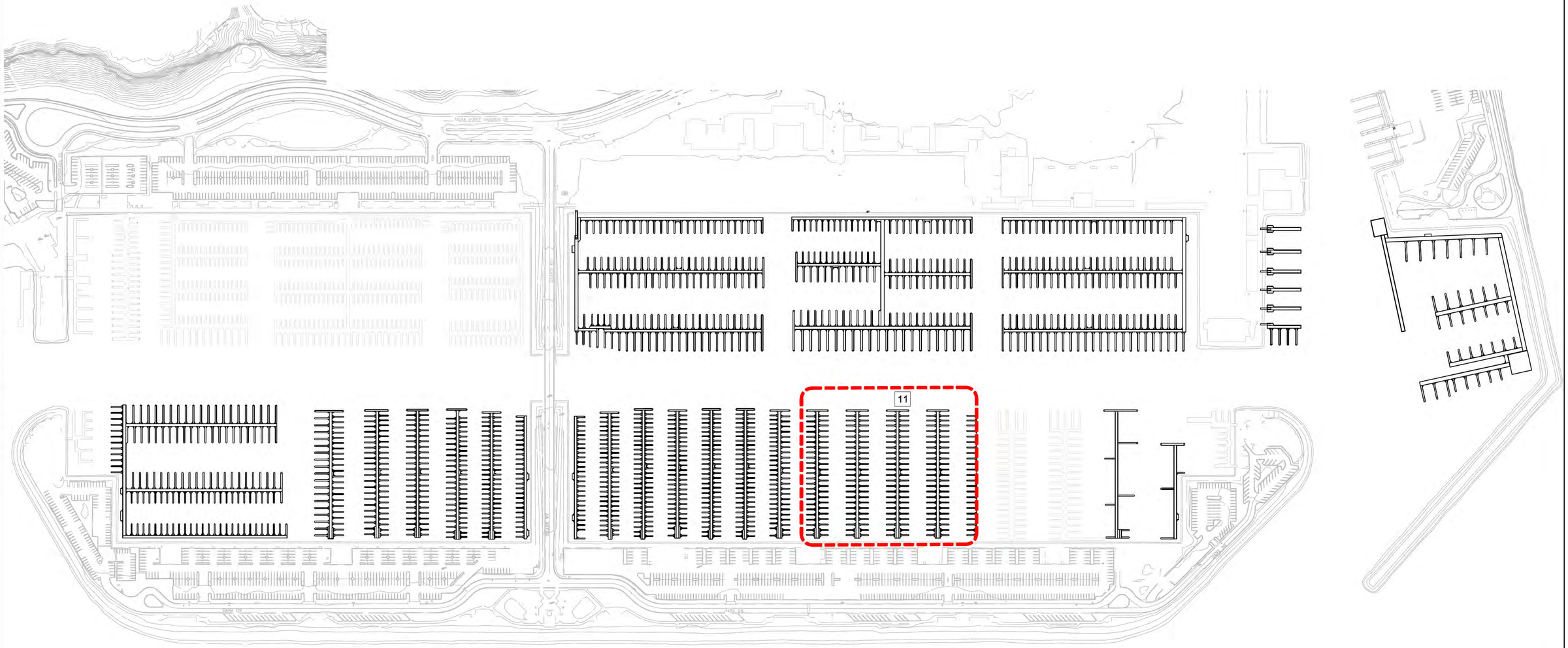
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



NO.	DATE	DESCRIPTION	BY
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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 11

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 12
DRAWING: PC11

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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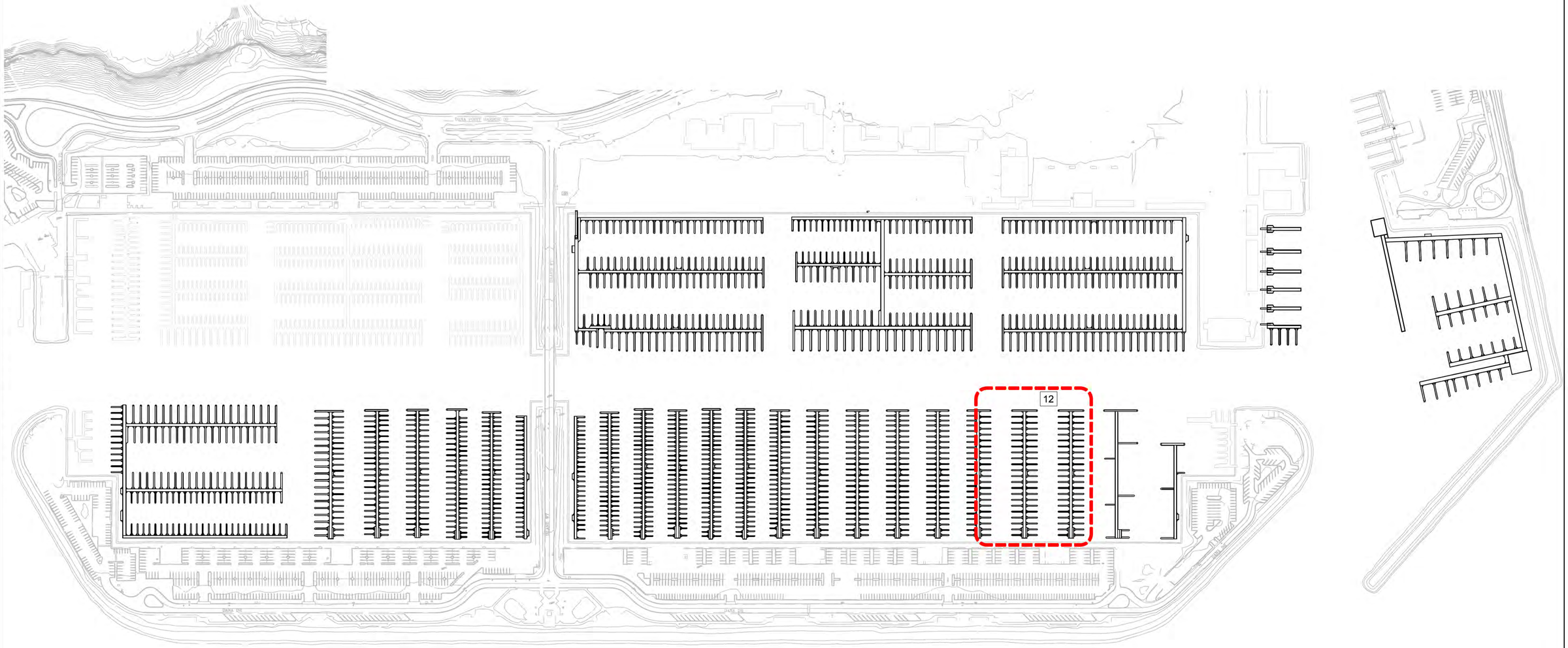
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 12

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 13
DRAWING: PC12

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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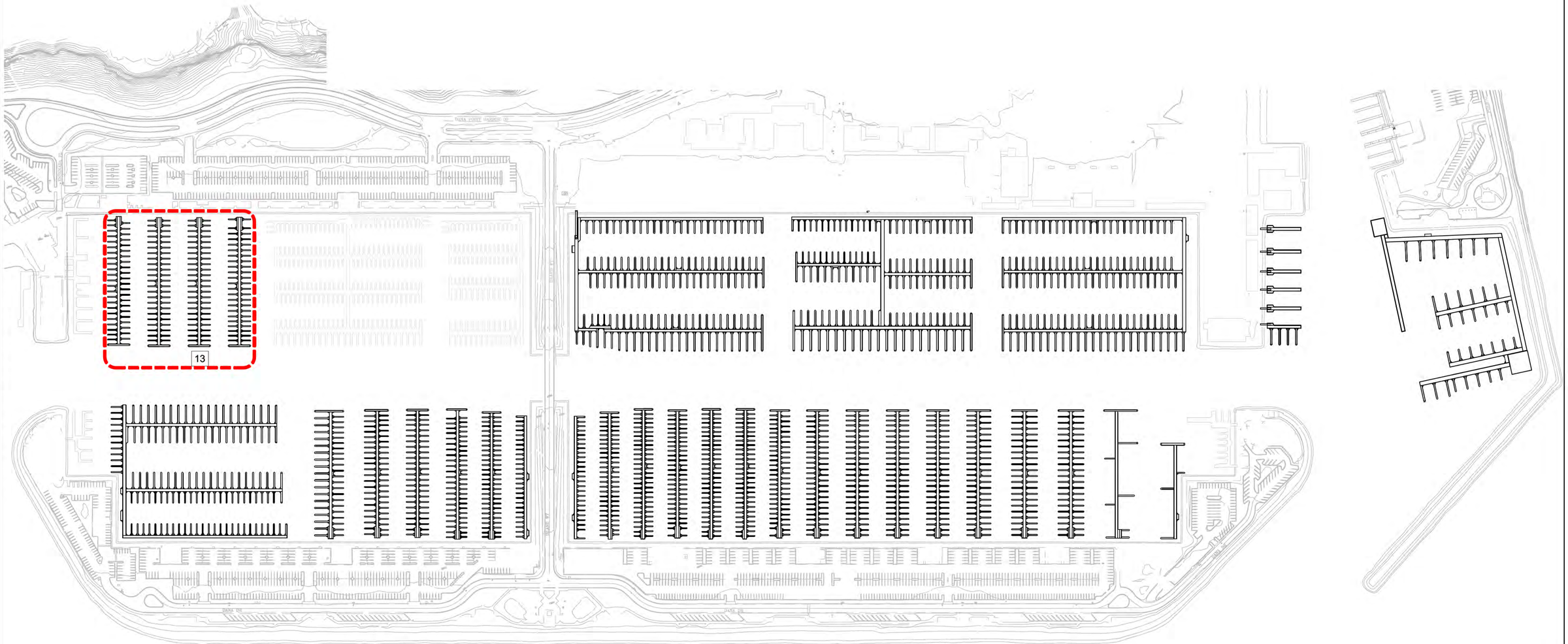
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



NO.	DATE	DESCRIPTION	BY
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ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 13

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 14
DRAWING: PC13

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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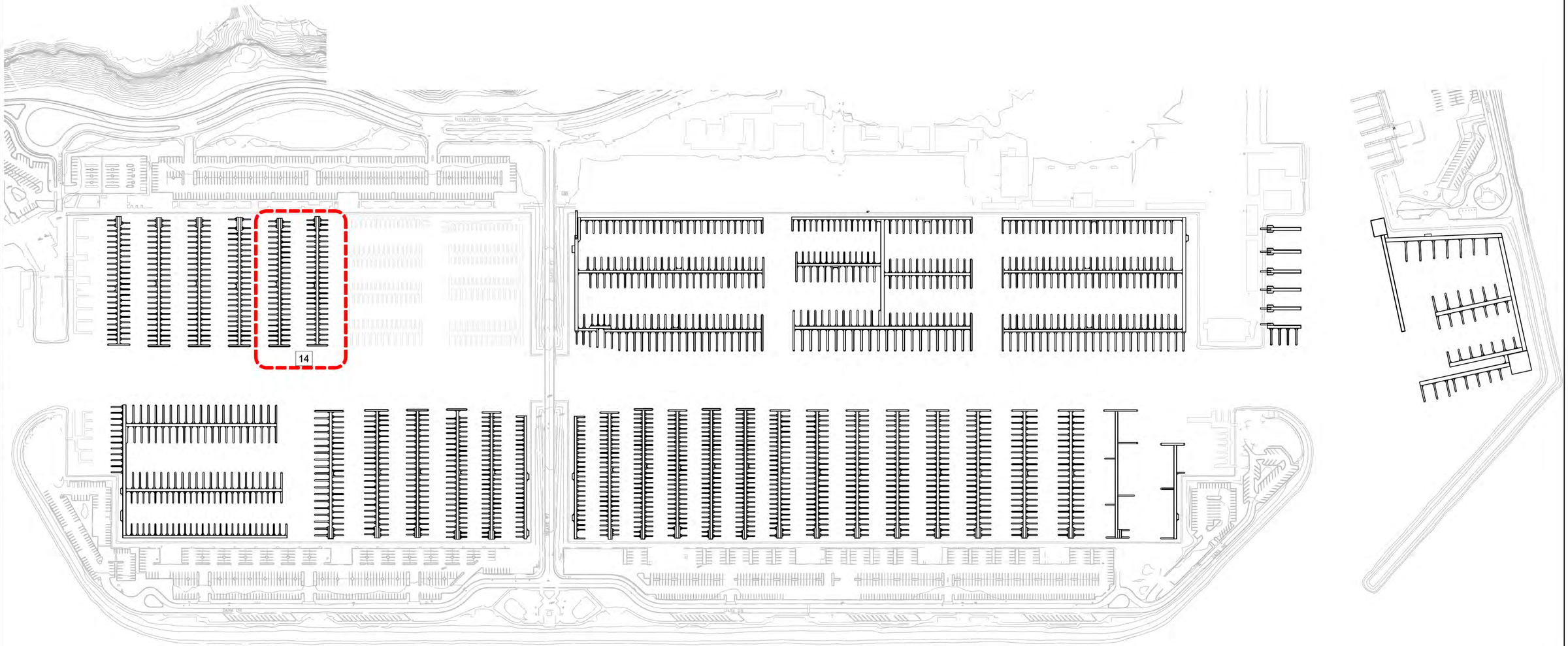
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 14

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 15
DRAWING: PC14

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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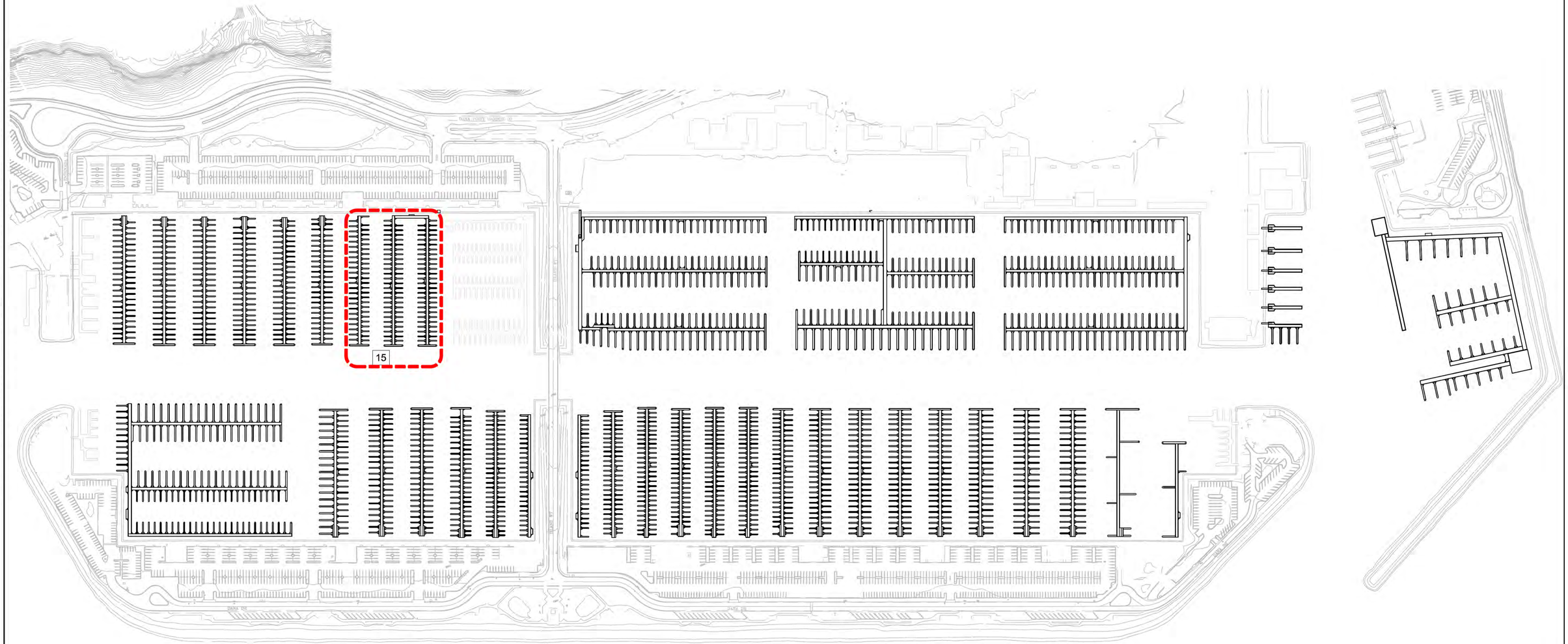
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 15

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 16
DRAWING: PC15

8.1.3 Construction Mobilization & Phasing

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

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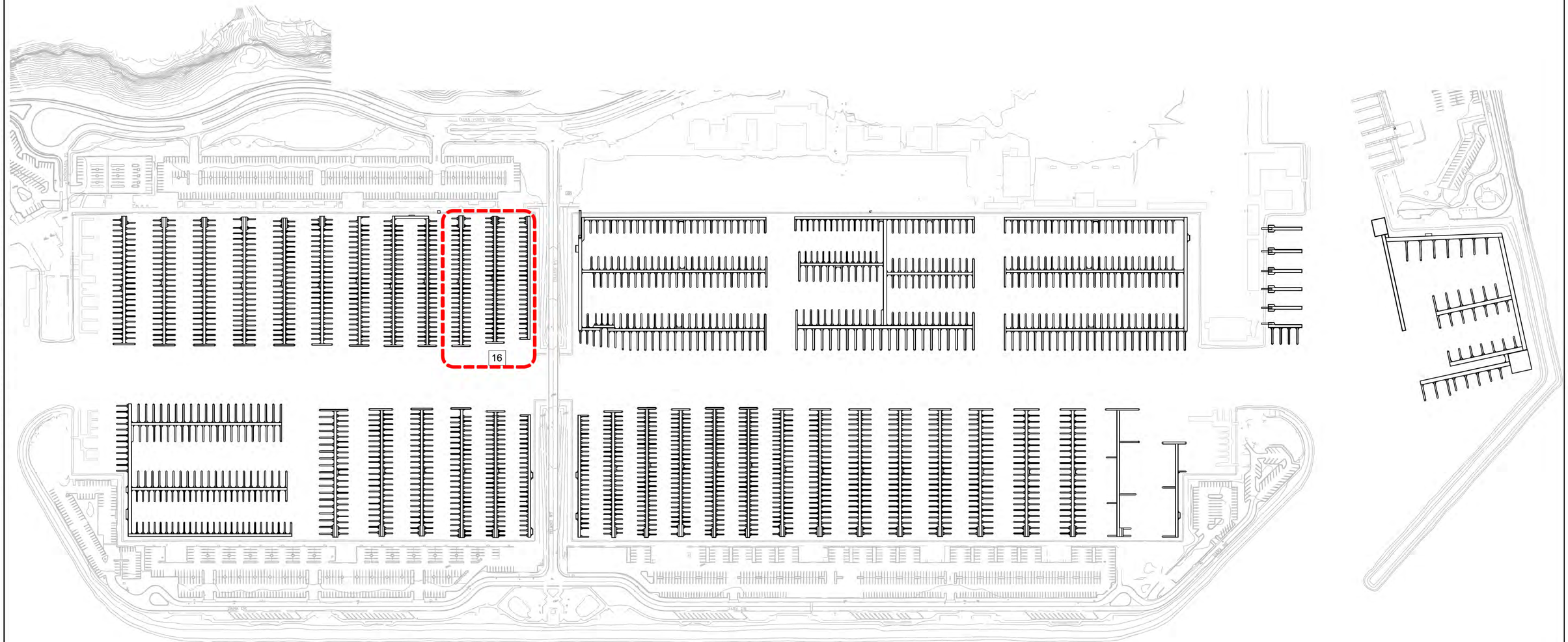
LEGEND:
= EXISTING DOCKS TO BE REMOVED
= PROPOSED DOCKS



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ENGINEER / DESIGNER: _
PROJECT MANAGER: _
CHECKED BY: _

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

PHASE 16

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-14-18
SHEET NO.: 17
DRAWING: PC16

8.1.4 Site Development Plan

PRELIMINARY - NOT FOR CONSTRUCTION

GRAPHIC SCALE
60' 0 80' 140' 300'

N E S W

LEGEND:
= EXISTING DOCKS
= PROPOSED DOCKS

MARINA	# SLIPS	PARKING REQUIRED	PARKING AVAILABLE
QUAD A	152	92	92
QUAD B	136	82	82
QUAD C	154	93	93
QUAD D	611	367	402
QUAD E	412	248	364
QUAD F	789	474	559
TOTAL	2254	1356	1592

130 TEMP. BOATER PARKING QUAD B AND C - DURING HOTEL REDEVELOPMENT

175 PERMANENT COVERED BOATER PARKING QUAD B AND C

30 TEMPORARY BOATER PARKING QUAD C - DURING HOTEL REDEVELOPMENT

92 COVERED PERMANENT FIRST FLOOR BOATER PARKING QUAD A

15 TEMP. BOATER PARKING QUAD C - DURING HOTEL REDEVELOPMENT

402 PERMANENT BOATER PARKING QUAD D

364 PERMANENT BOATER PARKING QUAD E

559 PERMANENT BOATER PARKING QUAD F

D C B A E F

WEST BASIN

EAST BASIN

NO.	DATE	DESCRIPTION	BY
-	-	-	-

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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: -
PROJECT MANAGER: -
CHECKED BY: -

DANA POINT HARBOR REVITALIZATION
Dana Point, CA

MARINA PARKING EXHIBIT

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY:
DATE: 9-26-18
SHEET NO.:
DRAWING:

Section 8.1.5 and 8.1.6 Building Elevations & Schematics

There are seven Marine Commercial Boater Service Buildings in Planning Area 4, commonly referred to as Island East and Island West and four Day-Use Recreation Boater Service Buildings in Planning Area 5, commonly referred to as Cove West (11 in total). They are designated as Boater Service Buildings D, E and F on Island West, Boater Service Buildings 5, 6, 7 and 8 on Island East, Boater Service Buildings A, B and C on Cove West, plus an undesignated commercial and service building on the far West side of the cove currently occupied by Dolphin Safari and guest dock boater services. According to the Dana Point Harbor Revitalization Plan Statistical Table, the current, square footages are 3,600, 3,600, 3,600, 4,000, 3,600, 3,600, 3,600, 3,600, 3,600, 3,600 and 1,600 respectively or 38,000 square feet in the aggregate. Each consists of boater restroom, shower facilities and storage on the first floors and commercial, yacht club/sailing club uses on the second floors. None of the buildings meet current ADA standards. The Revitalization Plan allows for their replacement with buildings of up to 64,600 square feet in the aggregate. In the current plan, we are proposing an aggregate of approximately 40,000 square feet consisting of seven Boater Service Buildings with two buildings on Island West and Cove West and three buildings on Island East.

Building Elevations, Heights, Exterior Colors, Treatments

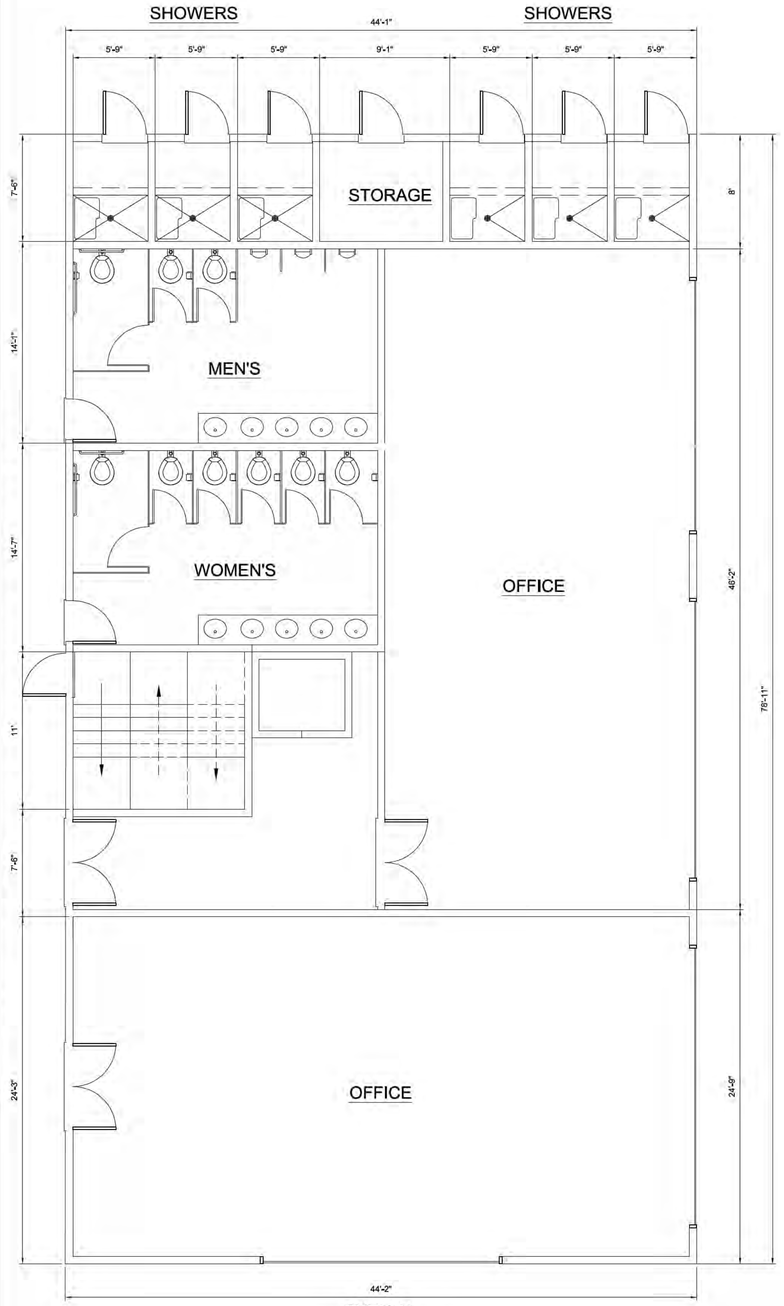
The proposed Marine Related Buildings included in the conceptual plan will each be two stories in height and in conformance with the current heights and elevations of the buildings they will replace. All exterior building materials, colors and treatments will be in alignment and conformance with the submittals presented as part of the Commercial Core and Hotel Components to create a modern, first-class, aesthetically beautiful project which is cohesive, but differentiated.

Floor Plans & Functional Areas

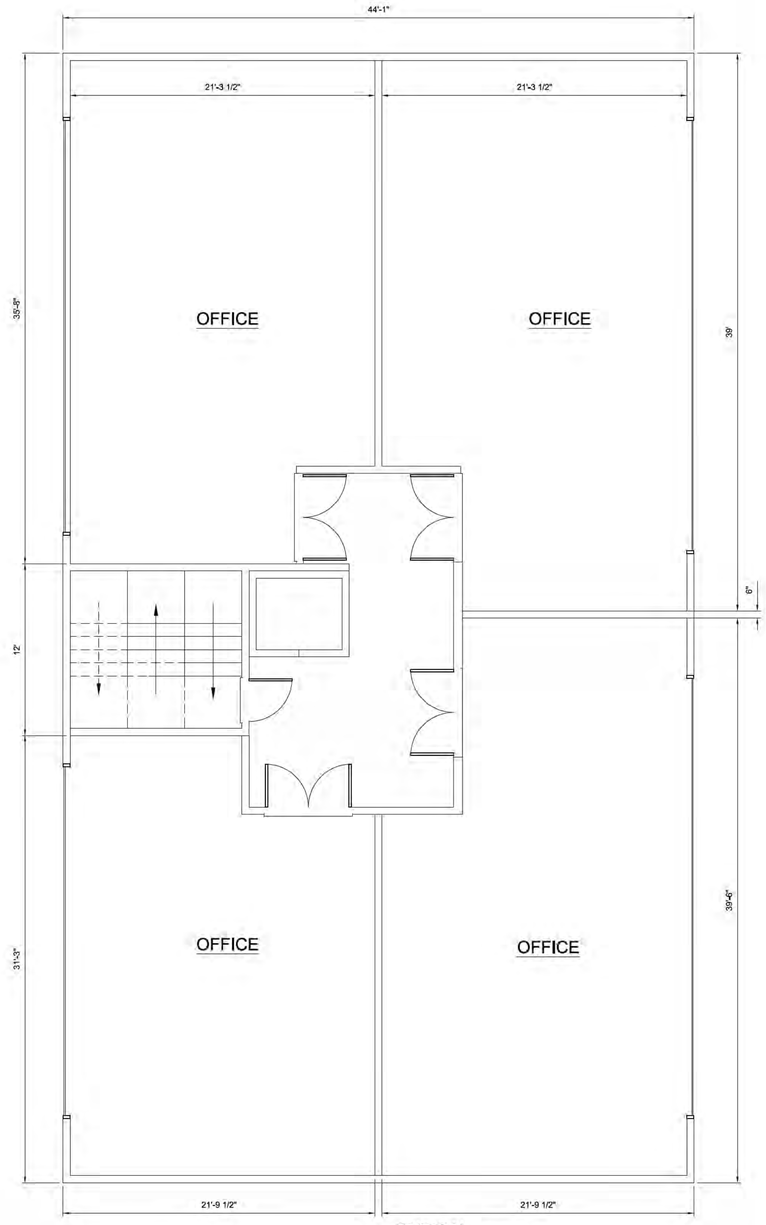
There are currently 11 Marine Commercial and Visitor Boater Service Buildings on Island East, Island West and Cove West. They currently occupy 38,000 square feet in the aggregate and consist of boater restrooms, shower, laundry and storage facilities on their first floors and a mixture of commercial, yacht club, sailing club and office space on their second floors. None of the buildings are ADA compliant. The City of Dana Point's Local Coastal Program approved by the California Coastal Commission allows for their replacement with buildings of up to 64,600 square feet in the aggregate. We are proposing a reduction in buildings to seven (7) from eleven (11), with two placed in each of Island West and Cove West and three on Island East with an estimated, aggregate square feet of 40,000. On the first floor, each building will continue to have boater-designated service facilities consisting of restrooms and showers with the addition of allowed marine commercial and recreational activity. Each building will be ADA compliant with elevator access to second floors consisting of, at a minimum, Marina Component Administration offices, Boat Brokerage Offices and a further mix of marine related commercial uses and recreation uses.

PRELIMINARY - NOT FOR CONSTRUCTION

Section 8.1.5 and 8.1.6 Building Elevations & Schematics



TYPICAL
1ST FLOOR PLAN



TYPICAL
2ND FLOOR PLAN

NO.	DATE	DESCRIPTION	BY
-	-	-	-

REVISIONS

Bellingham MARINE
THE WORLD'S MOST COMPREHENSIVE MARINA BUILDER
Southwest Division
CA License #442499
8810 Sparling Lane
Dixon, CA 95620
TEL: (707) 678-2385
FAX: (707) 678-1760

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PROJECT NUMBER: 7109
ENGINEER / DESIGNER: -
PROJECT MANAGER: -
CHECKED BY: -

DANA POINT HARBOR REVITALIZATION

Dana Point, CA

BOATER SERVICE BUILDINGS
TYPICAL FLOOR PLAN AND NARRATIVE

SCALE: 1" = 140' (Sheet Size 24" x 36")
DRAWN BY: DD
DATE: 9-17-18
SHEET NO.: 1
DRAWING: AB - 2

8.2 Budgets

EXHIBIT D

DANA POINT HARBOR PARTNERS, LLC ("DPHP")

Project Budget

The anticipated total development budget ("Budget") for the Dana Point Harbor Redevelopment will be approximately $319,000,000. The Project Budget is comprised of the following components and budgets: Marina $109,000,000, Commercial Core/Retail $91,000,000, Affordable Hotel $28,000,000 and Boutique Hotel $91,000,000.

PROJECT	
Project Budget	**TOTAL**
Pre-Development Costs	$1,470,600
Financing/Legal Fees	14,651,445
Consulting Costs	10,096,989
Fees/Permits	4,423,659
Construction Costs	267,053,544
FF&E	10,665,155
Pre-Opening Costs	4,637,955
Contingency	5,831,366
Total Cost	**$318,830,712**

Budget by Component	**Marina**	**Commercial Core/Retail**	**Affordable Hotel**	**Boutique Hotel**
Pre-Development Costs	$301,717	$850,383	$67,500	$251,000
Financing/Legal Fees	4,575,423	5,431,277	1,552,974	3,091,771
Consulting Costs	2,178,773	1,258,037	1,885,419	4,774,760
Fees/Permits	1,514,594	599,065	1,050,000	1,260,000
Construction Costs	96,896,739	81,513,018	18,982,363	69,661,424
FF&E	0	0	3,470,450	7,194,705
Pre-Opening Costs	1,307,264	1,038,691	437,000	1,855,000
Contingency	2,164,140	352,751	776,384	2,538,090
Total Cost	**$108,938,650**	**$91,043,222**	**$28,222,091**	**$90,626,750**

8.2 Budgets

Overall Project Sources and Uses of Funds

DPHP plans to utilize both debt and equity to fund the development of the Project. The capital stack will include an industry typical debt to equity ratio likely ranging from 60% to 75%. Approximately $79,750,000 to $127,600,000 of equity will be required for the Project. The debt portion of the Project will range from $191,400,000 to $239,250,000 in required loan(s). DPHP has used an approximate overall 60% debt leverage ratio for the Project's financing. DPHP believes this is a reasonable and conservative leverage ratio of a project this size and diverse.

Sources of Funds			
Debt		$193,701,671	60.8%
Equity		125,129,041	39.2%
Total Sources of Funds		**318,830,712**	
Uses of Funds			
Pre-Development Costs		$1,470,600	
Direct Construction			
Construction Costs	*267,053,544*		
FF&E	*10,665,155*		
Total Direct Construction		$277,718,699	
Indirect Construction			
A&E/Professional	*10,096,989*		
Permits & Fees	*4,423,659*		
Pre-Opening	*4,637,955*		
Contingency	*5,831,366*		
Total Indirect Construction		$24,989,968	
Financing Costs		$14,651,445	
Total Uses of Funds		**$318,830,712**	

8.2 Budgets

Pre-Development Sources and Uses of Funds

The predevelopment capital for the Project of approximately $3,471,000, comprising planning, consultants, attorneys, permit applications, deposits, fees and permits shall be born entirely by equity funded by DPHP. Outside equity investment and debt is not anticipated to be required until building permits for the initial phase of construction have been issued.

Sources of Funds		
Debt		$0
Equity		3,470,600
Total Sources of Funds		**3,470,600**
Uses of Funds		
Pre-Development Costs		$1,470,600
Indirects		
A&E/Professional	*1,500,000*	
Permits & Fees	*500,000*	
Total Indirects		$2,000,000
Financing Costs		0
Total Uses of Funds		**$3,470,600**

Development Phase Sources and Uses of Funds

The development capital for the Project of approximately $315,000,000 encompassing direct construction costs, indirect costs, pre-opening, furniture, fixtures & equipment, architecture, engineering, financing costs, insurance, etc. will be funded by a mixture of both debt and equity sources. DPHP anticipates using its own equity as well as potential outside equity that will be raised leading up to the issuance of the first building permit and will be committed from the beginning of the Project. DPHP expects that actual investment capital will be called from the investors in phases as the Project phases and components commence construction. This structure provides for maximum capital efficiencies and flexibility given that this is a multi-phased project encompassing several years. Additionally, DPHP expects to use construction loans to finance the components during this phase using institutional

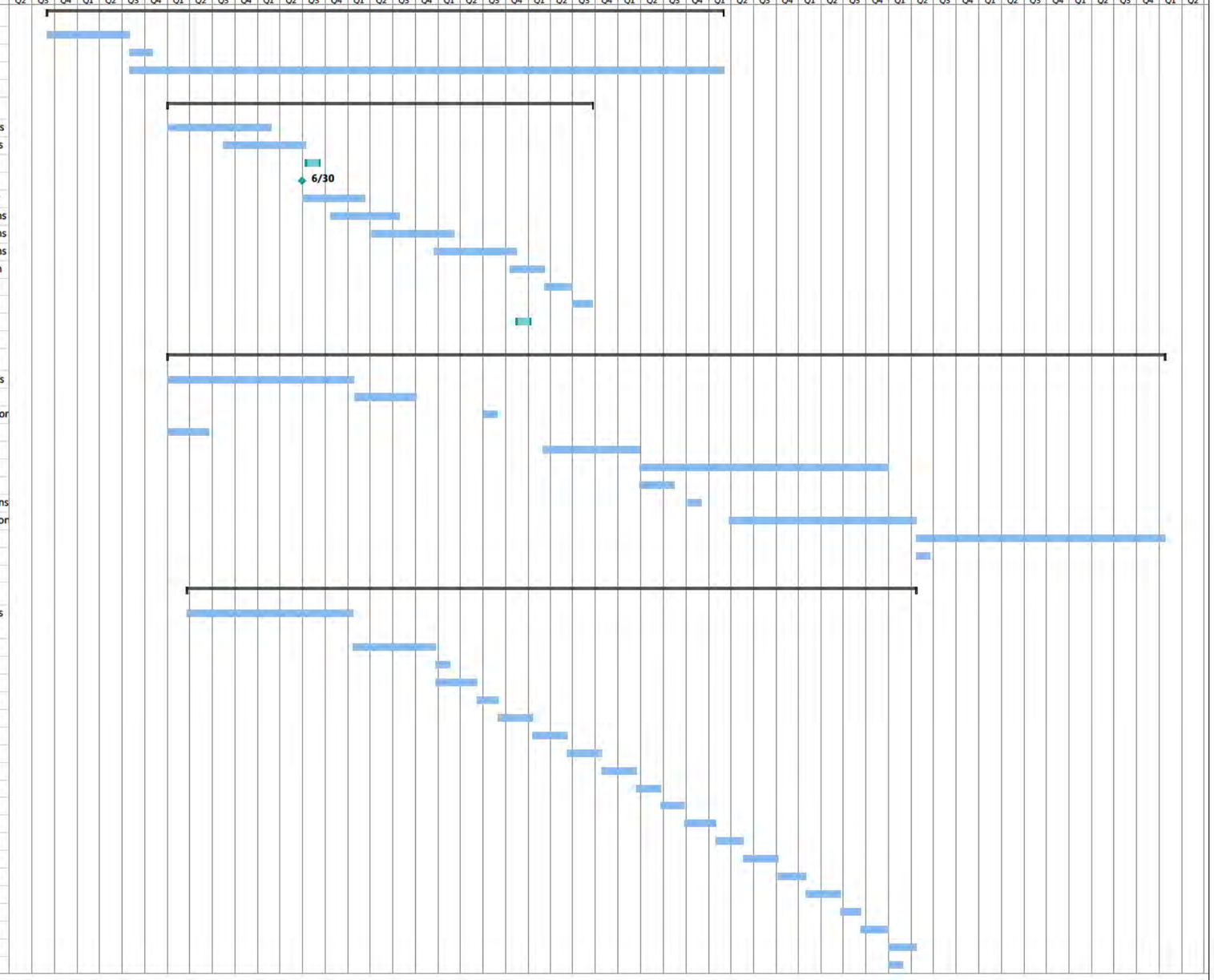
lenders with which DPHP has relationships. Further discussion of this can be found in Exhibit G – Financing Plan.

Sources of Funds		
Debt		$193,701,671
Equity		121,658,441
Total Sources of Funds		$315,360,112
Uses of Funds		
Pre-Development Costs		$0
Direct Construction		
Construction Costs	*267,053,544*	
FF&E	*10,665,155*	
Total Direct Construction		$277,718,699
Indirect Construction		
A&E/Professional	*8,596,989*	
Permits & Fees	*3,923,659*	
Pre-Opening	*4,637,955*	
Contingency	*5,831,366*	
Total Indirect Construction		$22,989,968
Financing Costs		$14,651,445
Total Uses of Funds		$315,360,112

8.3 Construction Schedule

Dana Point Harbor
Hotel, Marinas and Commerical Core
Project Schedule

ID	Task Name	Duration	Start	Finish	Predecessors
1	**GENERAL**	**1957 days**	**Fri 9/1/17**	**Mon 3/3/25**	
2	A - Negotiate County Ground Lease Agreement	11.85 mons	Fri 9/1/17	Mon 7/30/18	
3	B - Option Period/ Due Diligence	3.35 mons	Tue 7/31/18	Wed 10/31/18	2
4	C - Community Engagement	86 mons	Tue 7/31/18	Mon 3/3/25	2
5					
6	**RETAIL/COMMERCIAL CORE**	**1230 days?**	**Wed 1/2/19**	**Tue 9/19/23**	
7	A - Environmental Review, Entitlements & CDP Amendment	15 mons	Wed 1/2/19	Tue 2/25/20	3FS+44 days
8	B - Design, Construction Documents and Permits	12 mons	Wed 8/14/19	Tue 7/14/20	7SS+8 mons
9	C-1 Construction Financing	2 mons	Wed 7/15/20	Tue 9/8/20	8
10	1 - Street, Intersections and Sewer Lift Station - completed by County	0 days	Tue 6/30/20	Tue 6/30/20	
11	2 - Parking Structure	9 mons	Wed 7/1/20	Tue 3/9/21	10FS+1 day
12	3 - Wharf Building Renovations - phased to allow access to docks	10 mons	Wed 10/21/20	Tue 7/27/21	11FS-5 mons
13	4A - Commercial Core Buildings 6, 7, & 8 - Leasing and Absorption 100%	12 mons	Wed 4/7/21	Tue 3/8/22	12FS-4 mons
14	4B - Commercial Core Buildings 9. 10, 11, & 12- Leasing and Absorption 100%	12 mons	Wed 12/15/21	Tue 11/15/22	13FS-3 mons
15	5 - Demo Mariner's Alley	5 mons	Wed 10/19/22	Tue 3/7/23	14FS-1 mon
16	6 - Commercial Core Golden Lantern Entry Grading	4 mons	Wed 3/8/23	Tue 6/27/23	15
17	7 - Commercial Core Surface Parking Lot + Complete Golden Lantern Entry	3 mons	Wed 6/28/23	Tue 9/19/23	16
18	C-2 Permanent Financing	2 mons	Wed 11/16/22	Tue 1/10/23	14
19					
20	**HOTEL**	**2885 days**	**Wed 1/2/19**	**Tue 1/22/30**	
21	A - Hotel Entitlements, Environmental Review & Coastal Development Permit	27 mons	Wed 1/2/19	Tue 1/26/21	3FS+44 days
22	B - Hotel Construction Documents and Permits	9 mons	Wed 1/27/21	Tue 10/5/21	21
23	C1 - Construction Financing	2 mons	Mon 7/4/22	Mon 8/29/22	25SF-6.6 mor
24	D1 - Deferred Maintenance/Renovation of the Existing Hotel	6 mons	Wed 1/2/19	Tue 6/18/19	21SS
25	D2 - Affordable Hotel Construction	14 mons	Wed 3/1/23	Tue 3/26/24	22
26	D2.1 - Affordable Hotel Ramp-up (Leasing and Absorption)	36 mons	Wed 3/27/24	Tue 12/29/26	25
27	D3 - Demolition Existing Hotel	5 mons	Wed 3/27/24	Tue 8/13/24	25
28	D4 - Relocation of Existing Storm Drain	2 mons	Wed 10/9/24	Tue 12/3/24	27FS+2 mons
29	D5 - Boutique Hotel Construction	27 mons	Wed 3/26/25	Tue 4/20/27	25SS+27 mor
30	D5.1 - Boutique Hotel Ramp-up (Leasing and Absorption)	36 mons	Wed 4/21/27	Tue 1/22/30	29
31	C2 - Permanent Financing	2 mons	Wed 4/21/27	Tue 6/15/27	29
32					
33	**MARINA/WET SLIPS**	**2110 days**	**Thu 3/21/19**	**Wed 4/21/27**	
34	A - Environmental Review, Entitlement, LCPA, ACOE, RWQCB, & Coastal Development Permit	24 mons	Thu 3/21/19	Wed 1/20/21	3FS+5 mons
35	B - Design, Construction Documents and Permits	12 mons	Thu 1/21/21	Wed 12/22/21	34
36	C1 - Construction Financing	2 mons	Thu 12/23/21	Wed 2/16/22	35
37	D1 - Guest Slips and Commercial Slips (Phase 1)	6 mons	Thu 12/23/21	Wed 6/8/22	35
38	D2 - Broker Docks (Phase 2) - Leasing and Absorption 100%	3 mons	Thu 6/9/22	Wed 8/31/22	37
39	D3 - Island West Portion (Phase 3) - Leasing and Absorption 100%	5 mons	Thu 9/1/22	Wed 1/18/23	38
40	D4 - Cove East (Phase 4) - Leasing and Absorption 100%	5 mons	Thu 1/19/23	Wed 6/7/23	39
41	D5 - Cove East (Phase 5) - Leasing and Absorption 100%	5 mons	Thu 6/8/23	Wed 10/25/23	40
42	D6 - Cove East (Phase 6) - Leasing and Absorption 100%	5 mons	Thu 10/26/23	Wed 3/13/24	41
43	D7 - Island West (Phase 7) - Leasing and Absorption 100%	3.5 mons	Thu 3/14/24	Wed 6/19/24	42
44	D8 - Island West (Phase 8) - Leasing and Absorption 100%	3.5 mons	Thu 6/20/24	Wed 9/25/24	43
45	D9 - Island East (Phase 9) - Leasing and Absorption 100%	4.5 mons	Thu 9/26/24	Wed 1/29/25	44
46	D10 - Island East (Phase 10) - Leasing and Absorption 100%	4 mons	Thu 1/30/25	Wed 5/21/25	45
47	D11 - Island East (Phase 11) - Leasing and Absorption 100%	5 mons	Thu 5/22/25	Wed 10/8/25	46
48	D12 - Island East (Phase 12) - Leasing and Absorption 100%	4 mons	Thu 10/9/25	Wed 1/28/26	47
49	D13 - Cove West (Phase 13) - Leasing and Absorption 100%	5 mons	Thu 1/29/26	Wed 6/17/26	48
50	D14 - Cove West (Phase 14) - Leasing and Absorption 100%	3 mons	Thu 6/18/26	Wed 9/9/26	49
51	D15 - Cove West (Phase 15) - Leasing and Absorption 100%	4 mons	Thu 9/10/26	Wed 12/30/26	50
52	D16 - Cove West (Phase 16) - Leasing and Absorption 100%	4 mons	Thu 12/31/26	Wed 4/21/27	51
53	C2 - Permanent Financing	2 mons	Thu 12/31/26	Wed 2/24/27	51



Project: 2018.06.25 DPH Projec
Date: Fri 9/21/18

Task | Summary | Inactive Milestone | Duration-only | Start-only | External Milestone | Manual Progress
Split | Project Summary | Inactive Summary | Manual Summary Rollup | Finish-only | Deadline
Milestone | Inactive Task | Manual Task | Manual Summary | External Tasks | Progress

Section 8.4 Marketing Plan

Consolidated Marketing Plan for the Dana Point Harbor Revitalization Project

This Consolidated Marketing Plan addresses Dana Point Harbor Partner's (DPHP) (Commercial Core, Marina and Hotel) plans to attract and recruit tenants, visitors, tourists, residents, businesses and individuals to the master project.

I. The following proposed marketing approaches for each targeted market include a description of the strategies to be utilized for attracting and strengthening those markets:

A. COMMERICAL CORE

Burnham Ward Properties (BWP) will lead the marketing and leasing program for the Commercial Core.

The Marketing Plan for Commercial Core will be approached in a 2-phased manner, as more fully described below.

Phase I – Stabilization of Existing Tenancy and interim renovations

The initial phase will commence after DPHP's takeover of the premises and will include select cosmetic renovations to improve the appearance and functionality of the existing retail area. These improvements may include but not be limited to: exterior paint, refresh of site furnishings, select signage and wayfinding, new tenant signage and site graphics, landscape and hardscape renovations, slurry coat and restriping of parking areas, improvements to parking management systems including new and/or repairs of existing parking gates and signage, site lighting, etc. These improvements are being undertaken in an effort to create public excitement about the master project and to stabilize and hopefully bolster customer traffic with the goal of increasing tenant sales as we gear up for the new construction.

Phase II – Redevelopment of Commercial Core

BWP is proposing the commercial core redevelopment to be the size and tenant mix consistent with the approved CDP 13-0018 totaling approximately 113,836 square feet plus an additional 9,000 square feet for Public Benefit type uses(s) currently contemplated to be a surf museum. Approximately 30,000 square feet of the Commercial Core space is located on the area known as the wharf which includes existing buildings that are proposed to be refurbished. The balance of the commercial core will be new construction located within the new Commercial Core between the wharf and hotel site. Also consistent with the approved CDP 13-0018, the merchandising plan will be predominantly food focused with 77,178 SF of restaurant space (66%), 31,949 square feet of Retail space (27.4%), 2,000 square feet of marine related retail (1.7%) and 5,600 square feet of office (4.8%). Individual unit sizes in the new construction will range from 500-6,000 SF, generally speaking.

The following table and site plan highlights the "tentative" BWP conceptual site and merchandising plan. However, the final configuration and/or tenant use mix is subject to change.

Dana Point Harbor Partners - Dana Point Harbor Revitalization - PA 2 Summary

BUILDING NUMBER	EXISTING OR NEW	USE	INDOOR RENTABLE	OUTDOOR AREA
BUILDING 1	Existing	Restaurant	9,375	2,112
BUILDING 2	Existing	Restaurant	3,483	1,112
BUILDING 3	Existing	Retail	2,462	
BUILDING 4	Existing	Retail	3,643	
BUILDING 5A	Existing	Restaurant	5,337	850
BUILDING 5B	Existing	Restaurant	4,334	654
BUILDING 6	New	Restaurant	16,852	
BUILDING 7	New	Retail	1,991	
		Restaurant	7,500	1,665
		Office	5,509	
BUILDING 8	New	Retail	7,500	
		Restaurant	7,500	3,522
BUILDING 9	New	Retail	9,603	
		Restaurant	12,797	1,907
BUILDING 10	New	Restaurant	7,000	1,000
BUILDING 12	New	Retail	4,750	
		Restaurant	3,000	1,000
		Office	1,200	
TOTAL			**113,836**	**13,822**
BUILDING 11	New	Surf Museum	9,000	
TOTAL			**122,836**	**13,822**

Retail	29,949
Restaurant	77,178
Office	6,709
TOTAL	**113,836**
Surf Museum	9,000
TOTAL	**122,836**

Section 8.4 Marketing Plan

The Commercial Core will be curated with a mix of retailing including stores, boutiques, services and various food focused concepts including a combination of full service and quick serve restaurant options. An emphasis will be placed on local independent chef driven concepts as well as regional and national brands. Care will be taken to ensure the retail experience remains quaint and consistent with the personality of Dana Point and not be overly commercialized.

Public Communications

BWP understands marketing will need to remain a major focus before, during and after the Commercial Core revitalization. It is our goal to maintain a current and accurate line of communication between tenants, boaters, visitors and the community at large.

Short Term Marketing and Promotions

Upon lease execution BWP will assume ownership of all County controlled Dana Point Harbor trademarked collateral and social media accounts. With the assistance of a full-time marketing staff, DPHP will immediately commence the refresh of the Dana Point Harbor social media platforms. Included will be the development of a tenant portal, refresh of the Dana Point Harbor website, www.DanaPointHarbor.com, with expanded links to both the Marina and the Hotel projects; Facebook page updates, Twitter use, Instagram, as well as all print media, all of which will focus on the master project, master project events and the tenants. In addition, common areas will be energized with new graphics and a creative poster program promoting merchants, events and special offers.

Long Term Marketing and Promotions

After initial lease up, the Commercial Core shall be marketed utilizing multiple platforms including a new state of the art interactive website for the greater project with links to newly designed sites for each component project area. The retail link will feature rich content and press releases on individual tenants and events focused around the Commercial Core. The project Marketing and Promotions will be managed

by a full- time marketing staff working closely with the tenants providing strong online presence, social media including Facebook, Twitter, Instagram as well as print media, all of which will focus on the greater project, project events and the Commercial Core tenants. DPHP recognizes an opportunity to expand the current local and regional advertising campaigns. For example, local partnerships between the Harbor and the four largest local hotels; The Ritz Carlton, Monarch Beach Resort, Laguna Cliffs Marriott Resort & Spa and Double Tree Suites By Hilton Hotel, will be expanded to insure visitors are no longer just bused in and out for a whale watching expedition, sport fishing trip or a Catalina Express excursion, but will be enticed to stay onsite to eat, drink and shop at the Harbor's retailers. Regionally, the marketing team will work with our Orange County airport (John Wayne Airport) and train systems, to promote Dana Point Harbor as a destination for the ultimate California Coastal experience.

Events

We intend to provide programing for events for the master project and especially the new Commercial Core. In addition to the long standing and traditional events Dana Point Harbor is known for, such as the Festival of Whales, Tall Ship Festival, Turkey Trot, Harbor Holiday Nights & Boat Parade, 4th of July Extravaganza and others, we intend to add a dense calendar of new events including, private parties, weekend farmers markets, charity and nonprofit events, food and wine events and festivals, music events, art shows, book signings, holiday events, cooking demonstrations etc. We will do this by developing an annual PR plan, create and distribute press releases, secure broadcast, print and digital coverage, and develop internal and external marketing assets. We realize the importance of OC Parks and will work closely with the County staff to promote other local OC Parks calendared events. This type of sustainable active engagement will be essential to keep all the retail viable year round. The goal in doing so is to drive greater traffic to the retail center and harbor in general for the benefit of our retailers and restaurants and the County of Orange.

Public Art, Educational and Interactive Exhibits

An important part of our leasing and marketing strategy for the newly renovated project is to activate common areas with art, sculptures, historical artifacts, signage, graphics, interactive exhibits, etc. Our goal in creating this sense of place, is to pay homage to Dana Point's history, especially its role innovating local surf culture including surfing, surf equipment and apparel, sailing, boating, stand up paddle boarding and water sports in general. Our conceptual vision is to include a surf museum (if approved), surf apparel stores and other exhibits geared toward celebrating the areas contribution to surf culture.

B. MARINA

Bellwether Financial Group (BFG) will lead the marketing and licensing program for the Marina Component. BFG proposes a project size and slip mix that is consistent with the City of Dana Point Local Coastal Program approved by the County and the California Coastal Commission, which includes 2,254 slips with an average length of 32 feet plus 53 guest slips and 16 commercial fishing slips. The marina will be compliant with the Americans with Disabilities Act. BFG designed a boat broker dock area to enhance the ability of brokers to market their vessels through the use of 78 dedicated broker slips and bays.

At the commencement of the DPHP lease, BFG will work with the two marina operators (Dana West and Dana Point Marina Company) under their current operating agreements and will continue to support their current marketing efforts. Over time, it is the intent of BFG to unify the management and marketing of the marina under one management company.

It is our intent to provide an opportunity for all existing marina licensees to remain in the harbor through

construction and then move into the new facility provided they are in good standing.

The Marina will be managed by a dedicated, marina management company selected and supervised by BFG. After the new Marina is occupied, the marina management company will utilize multiple platforms including an interactive website for the Marina with links to each area within the harbor. The marina management company will maintain a strong online presence through social media including Facebook, Twitter and Instagram and print media, which will focus on attracting new slip licensees, visiting boaters, and marine-centered events. In addition to the long standing and traditional events Dana Point Harbor is known for, such as the Festival of Whales, Tall Ship Festival, Turkey Trot, Holiday Boat Parade and others, we intend to add new events that promote greater access to and overall use of the harbor.

BFG will work with its marina management company to:

- Accommodate Dana Point's existing boating base;
- Accommodate boaters on the waiting list;
- Continue to promote Dana Point Harbor in local and regional publications; and
- Partner with marinas, publications and yacht clubs up and down California's coast to increase visiting boaters.

C. HOTEL

The Hotel Marketing and Communications team ("RDO") brings strategy, design and eCommerce expertise to the Hotel Component.

Hotel Branding
The hotel website, review sites and social media are all critical touchpoints that will echo, engage, and amplify the Dana Point Marina Inn brand long before the guest sets foot in the door of the hotel.

eCommerce
The digital marketing approach involves a multi-channel booking strategy and includes a combination of analytical data and creative design. The eCommerce team works closely with sales and revenue team members to generate incremental revenue through needs-based promotions and achieve harmonic distribution among direct channels and on-line travel agencies (OTA(s)).

Reputation Management
The purpose of reputation management is to positively shape public perception of the Dana Point Inn by first establishing online information about the hotel and supplementally influencing ongoing information through PR, social media and consumer review sites. A re-brand strategy would provide a clean slate to posture the hotel to the market segments recommended in our revenue strategy, i.e. raise corporate bookings and small groups.

Social Media
Social Media is a critical communication strategy. From a strategic standpoint, the very nature of communication with guests inherently allows RDO to reach the friends and family members of guests, as well. This is far more valuable than any paid advertising space and offers flexibility in frequency and content. At the end of the day, social media is a fundamental part of guest communication in the mobile age and RDO is equipped to engage before they enter the hotel and after they leave the front desk.

Section 8.4 Marketing Plan

RDO will provide a centralized solution to revenue strategy. The priority will be to develop and retain quality sales leaders in order to exceed revenue goals and maximize investor returns. This will be achieved through strategic partnerships with Revenue Management, Marketing and Operations, relationship development and account saturation.

Support Structure
The Property is supported through Corporate Regional Director of Sales Leadership, Task Force and the Property Sales Team.

Corporate Sales & Task Force Leadership
The Corporate Sales Team will monitor segment production, budget reports, and key metrics to review with property leaders, ensuring all revenue opportunities are met. Corporate Sales will be an advocate for Property Leaders, building relationships and dialogue through local partnerships to maximize room sales and revenues. The Regional Sales Team will conduct on-site property visits and will provide in depth on-boarding to equip new team members with tools to be successful. Task Force assists with the sales effort of properties requiring additional support through periods of transition and in the development of new sales team members.

Property Sales
The Property Sales Team provides direct proactive sales efforts toward local account saturation and penetration. They are responsible for in-house guest intelligence and lead referral to further qualify and build relationships, in turn aiding in increased guest satisfaction.

Accountability
Open and transparent communication provides the forum for accountability.

Strategic Direction
The Sales & Marketing Strategic direction will focus on key segments such as Corporate Preferred. Corporate Group will also be a priority, as will SMERF group.

SMERF Demand Generators
Leading demand generators in the social, military, education, religious and fraternal (SMERF) segment will be the Dana Point Yacht Club and Chart House, which both house wedding and corporate events that hold up to 200 guests. The team will also focus on the nearby San Juan, El Niguel, and Marbella Country Clubs to gain mid-week golf groups and weekend wedding blocks. We will focus on building relationships with the Dana Point Chamber of Commerce to gain the knowledge on key events coming into the market that will drive group and transient business.

Annual Events
RDO will focus on key annual events such as the Tall Ships Festival, Dana Point Grand Prix, and the Turkey Trot. We will work with all events to gain additional room nights for both weekday and weekend business.

Corporate Demand Generators
Top Corporate Preferred generators in the market include Amgen, Boston Consulting, Chevron, Invesco Limited, and MARS Inc. In addition to these accounts, the team will prospect the local market for locally negotiated rates (LNR) potential, raising awareness about the hotel and establish new corporate loyalty through referral incentives.

II. The following are DPHP's expected lease-up periods, amount of lease commissions, and the assumed escalation and inflation rates.

A. COMMERICAL CORE

It is the intent to provide opportunity for existing harbor merchants/tenants to remain in the Commercial Core provided they are able to adapt to the Commercial Core project design and Commercial Core programming, have been financially qualified and demonstrate an ability to perform under the fair market rent and terms and credit criteria that will be established after the newly renovated Commercial Core by both BWP and its lenders/investors.

The phasing of the new construction will be done in such a way as to keep existing tenant businesses operating during construction. All efforts will be made to screen new construction and in order to keep all occupied spaces safe and accessible to the public. Construction phasing for both renovations and new development shall be undertaken in such a way as to facilitate the relocation opportunities for existing tenants into new spaces with minimal downtime.

Methodology for Establishing Rental Rates and Terms
Rent and Terms for the Commercial Core shall be based on fair market rent for comparable Class A Institutional Quality Coastal Retail and restaurant properties in coastal Orange County as established by BWP in its sole discretion. Typical lease terms may also provide for a "to be negotiated" tenant improvement allowance offered by BWP for new tenant spaces as well as a "to be negotiated" grace period for tenants to construct their new improvements.

Lease Structures
Typical Retail lease structures will be Triple Net (NNN) whereby tenants will pay a Minimum Based Rent plus a percentage rent on gross sales above a natural (or unnatural breakpoint), as may be negotiated based on circumstances. As is customary in Triple Net lease structures, Tenants will be obligated to pay "Additional Rent" such as separately metered utilities, and its proportionate share of other operating expenses such as CAM charges, property taxes, property insurance, property management, master project advertising/promotions, admin costs, etc. Once the renovation/new construction is completed, new lease terms are anticipated lease terms to be 5-7 years for retail and 7-10 years for restaurants/food service spaces. In the interim prior to renovation/new construction existing leases scheduled to expire may be extended on a month-to-month basis.

Absorption Timeframe
The strategy for Commercial Component entitlements is to demonstrate the Commercial Core substantial conformance to the approved CDP 13-0018. In this scenario, the estimated time frame for securing the necessary entitlements is approximately 6-12 months. Once entitlements are secured, formal architectural drawings and design will commence in order to submit for plan check and ultimately obtain the necessary building permits. That process is estimated to take 6-9 months. Once the building permits are issued, construction is anticipated to take 3 years based on the proposed phasing program. Within 2 months of its securing entitlements for the new Commercial Core, BWP shall begin to meet with existing tenants to discuss future opportunities.

It is anticipated that between new and existing tenants project, the Commercial Core will be 100% pre-leased upon completion. Any spaces not pre-leased, are estimated to be leased within 6 months of

completion.

B. MARINA

BFG, as the responsible party for the Marina Component, does not expect to have a traditional lease-up period, instead expects absorption to take place upon the finish of construction phases, does not pay leasing commissions and its licensees are not subject to assumed inflation and escalation clauses through their license agreements.

C. HOTEL

The hotel component is expected to ramp up over the initial 3 years of operation for both the affordable select service hotel as well as the boutique hotel. There are no leases as part of the hotel component and as such there are no leasing commissions associated with it. The escalation of "Average Daily Rates" (ADR) during ramp up for both hotels is expected to be approximately 3% per year and trending with inflation after the hotels reach stabilization.

8.5 Financial Plan

EXHIBIT G

DANA POINT HARBOR PARTNERS, LLC ("DPHP")

Financing Plan

The managing members of DPHP have collectively financed several billion dollars of new, ground-up construction, existing assets and marina properties. Past capitalizations have included straight debt with principals self-funding all required equity, equity funding through partnering with private high net worth individuals, institutional investors, small regional banks and large-scale international institutions. The experience and expertise of the managing members of DPHP also covers the spectrum of uses and types of real estate being redeveloped within the Dana Point Harbor Redevelopment ("the Project").

The anticipated total required capital for the Dana Point Harbor Redevelopment will be approximately $319,000,000. The capital stack will include an industry typical loan-to-value ratio likely ranging from 60% to 75%. This leaves approximately $79,750,000 to $127,600,000 of required equity for the Project. The debt portion of the Project will range from $191,400,000 to $239,250,000 in required loan(s). DPHP has used a 60% debt overall leverage ratio for our permanent financing.

Sources of Funds - Overall Project			
Debt		$193,701,671	60.8%
Equity		125,129,041	39.2%
Total Sources of Funds		**318,830,712**	
Uses of Funds			
Pre-Development Costs		$1,470,600	
Direct Construction			
Construction Costs	*267,053,544*		
FF&E	*10,665,155*		
Total Direct Construction		$277,718,699	
Indirect Construction			
A&E/Professional	*10,096,989*		
Permits & Fees	*4,423,659*		
Pre-Opening	*4,637,955*		
Contingency	*5,831,366*		
Total Indirect Construction		$24,989,968	
Financing Costs		$14,651,445	
Total Uses of Funds		**$318,830,712**	

8.5 Financial Plan

Equity sources include an established network of private capital consisting of accredited high net worth investors, high net worth family offices, and if needed, strategic institutional capital. The managing members of DPHP have tremendous track records utilizing private high net worth capital of which many of the potential investors and family offices are Orange County residents and will have a personal vested interest in the success of the Project. We have initiated discussions with a small group of select private individuals and family offices that will likely participate in our offering. The final ownership structure is anticipated to consist of Class A Members (DPHP) and Class B Members (all other outside equity investors, if any). Class A Members will contribute approximately 10%-50% of the required equity and Class B Members will contribute approximately 50%-90% of the required equity. DPHP's ability to self fund a substantial amount of the required equity (if not all), which, along with our personal real estate holdings, gives our team added credibility with both equity and debt sources. DPHP will be fronting all required capital initially without outside investors until each component of the Project is ready for issuance of building permits. This takes away significant amount of risk for the County and the investors, and allows DPHP control of all facets of the development prior to bringing in investors. The equity will be raised leading up to the issuance of the first building permit and will be committed from the beginning. DPHP expects that actual investment capital will be called from the investors in phases as the Project phases and components commence construction. This structure provides for maximum capital efficiencies and flexibility given that this is a multi-phased project encompassing several years.

Debt for the Project will come from established, institutional lenders, and may include such lenders as Bank of America, Wells Fargo Bank or JP Morgan. As a single ownership entity, DPHP is structured to allow DPHP to cross collateralize and underwrite the revenue for the entire Project as one, providing the necessary security required by lenders to fund the Project. Given that each of the components of the Project are very different business lines and types of real estate, there is a likelihood that the Project may require multiple lenders that specialize or have established track records in hotel, retail and marina financing, both construction and permanent. DPHP has an established track record of successfully obtaining construction and permanent loans for each component of the Project. DPHP has deep relationships with a few select institutional lenders that are capable of and have expressed interest in, funding the entire project, select components, or taking the lead in a syndicated debt offering. As the debt markets are dynamic and change with market conditions, DPHP is not able to represent exact loan pricing at this time. The following table below summarizes the key financing assumptions used in our underwriting of the Project. DPHP anticipates that the maximum loan-to-value ratio on the Project will not exceed 75%. DPHP will submit proposed loan term sheets to the County for review prior to finalization. Any loan-to-value ratio in excess of 75% will require County approval.

8.5 Financial Plan

Dana Point Harbor Partners, LLC
Exhibit G - Financing Plan
Key Assumptions Table

	Construction Loan	***Permanent Loan***
	Retail Component	
Loan-to-Value Ratio %	*65%*	*65%*
Points	*1.0%*	*0.0%*
Interest Rate	*Libor + 300 bps*	*6.0%*
Term	*7 Years*	*25 Years*
Amortization Period	*Interest only*	*30 Years*
	Hotel Component - Affordable Hotel	
Loan-to-Value Ratio %	*65%*	*65%*
Points	*1.0%*	*0.0%*
Interest Rate	*Libor + 300 bps*	*Libor + 300 bps*
Term	*4 Years*	*25 Years*
Amortization Period	*Interest only*	*30 Years*
	Hotel Component - Boutique Hotel	
Loan-to-Value Ratio %	*36%*	*65%*
Points	*1.0%*	*0.3%*
Interest Rate	*Libor + 300 bps*	*Libor + 300 bps*
Term	*4 Years*	*25 Years*
Amortization Period	*Interest only*	*30 Years*
	Marina Component	
Loan-to-Value Ratio %	*60%*	*60%*
Points	*1.0%*	*0.0%*
Interest Rate	*Libor + 300 bps*	*6.0%*
Term	*9 Years*	*25 Years*
Amortization Period	*Interest only*	*30 Years*

DANA POINT HARBOR PARTNERS, LLC ("DPHP")
Optionee Section 8.6 Submittal – Management Plan
Optionee Section 9.2.6(v) Deliverable – Minimum Standards
Exhibit G – Minimum Standards

Organization & Operations (Option Section 8.6.1). Pursuant to Section 11.2 of the Lease, each Component (as defined in the Lease) will employ competent, on-site Property Managers who shall be responsible for the day-to-day operation and maintenance, cleanliness, and general order for each Component. Such Property Managers shall be vested with the authority of Burnham-Ward Properties, LLC ("BWP") as it relates to the Commercial Core Component, Olson Real Estate Group, Inc. ("OREG") as it relates to the Hotel Component and Bellwether Financial Group, Inc. ("BFG") as it relates to the Marina Component. Each Component shall provide diligent, first class, professional and competent real property management for the Property. As to each Component, the Property Manager will supervise the operation and maintenance of the Property, including the authority to enforce compliance by Lessee's tenants, agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Each Component currently has one or more management companies who are responsible for day-to-day operations. BFG and OREG plan on assuming the current operating agreements associated with their respective Components, whereas BWP shall assume property and asset management oversight of the Commercial Core Component. It is DPHP's intention to align operating companies with its vision for the operation of best in class facilities and shall notify the County in writing of successor Property Managers.

BWP shall have on-site management representative(s) acting as Director of Property Management for the Commercial Core Component. During regular business hours the on-site office will be staffed with appropriate support personnel and third-party vendors to ensure tenant accessibility, public interaction, event coordination, and timely responses to operational issues. In the event of an after-hours emergency, tenants will have direct access to on-site security personnel or an on-call staff member. All third-party vendors will be required to wear uniforms with proper identification.

In particular, as it relates to the Marina Component, it is BFG's intention to consolidate the operations and marketing of the Marina under a single management company, which may be one of the existing management companies such as Vintage Marina Partners, L.P., Dana Point Marina Company or T.B.W. Co., or a new third party. Until such consolidation, the management companies will report directly to BFG and be responsible for finance and accounting services overseen by BFG.

As it relates to the Hotel Component, The Marina Inn will be supported by a wide range of corporate staff. Further additional resources will include support from human resources, marketing, and design and construction. At the property level, the staffing model includes a qualified general manager, sales, front desk, housekeeping and engineer.

Not less than quarterly, DPHP and/or its respective Property Managers shall meet with designated representatives of the County to ensure relevant matters are being addressed and answer any questions related to financial performance, operations or other items. During the initial transition period, it is anticipated that these meetings may take place monthly.

In addition to executing all responsibilities of the individual Components outlined herein, DPHP

will coordinate, support and facilitate interaction with the individual specialty property managers to ensure a cohesive level of service throughout the property, including, but not limited to:

- Management and enforcement of an overall Harbor Parking Management Plan;
- Management of all landside areas including parkscape, parking lots, public restrooms, buildings and structures, parking areas and landscape in the greater harbor;
- Management oversight during construction as it relates to temporary parking, signage and way-finding and circulation issues;
- Specialty and safety related matters;
- Communicating and meeting with stakeholders within the Harbor regarding items of interest and planning;
- Management of the security personnel and emergency response plan;
- Management of the project engineering staff;
- Management of all CC&R's and Rules & Regulations
- Management of the parking attendant staff & valets;
- Management of on-site transportation and shuttle services;
- Oversight of marketing, branding and PR team
- Management and coordination of all events; and
- Management and coordination of all common areas: janitorial and trash collection, public utility and engineering contracts, signage maintenance and updating, park areas, customer complaints, day to day tenant needs (in coordination/support of specialty area managers), etc.

Safety & Security, Public Services (Option Section 8.6.2). The ultimate purpose of this Lease is the complete and continuous public use of the Property for the benefit of the public, and all facilities and services shall be made available to the public without discrimination. Each Component shall operate the Property under sound business practices. Each Property Manager shall provide adequate security measures to reasonably protect persons and property as to each Component and shall coordinate with one another as to the overall safety and security on the Property. Each Component hereby acknowledges that County's Harbor Patrol is not responsible for routine security services or landside police services on the Property and the Harbor Patrol function is to provide emergency and marine oriented law enforcement and fire services to the boating public. Each Component agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Property. DPHP will provide an overall security program including onsite personnel to increase the safety and security of the leasehold, including, but not limited to its parking facilities, common areas and public spaces.

The Marina Inn will follow safety and security planning following SOPs that meet or exceed industry standards. Safety training begins with new staff onboarding, property orientation to best practices, and rigorous on the job training. Training for safety procedures and practices is an ongoing priority including drills for emergency evacuations, training regarding the property's Emergency Response Plan, Illness and Injury prevention plan, management safety committee, and ongoing monthly safety practice training.

Safety of guests and associates is supported with a 24-hour front office presence, appropriate locking doors, security cameras, rigid cash handling and depositing practices, and regular facility inspections.

Financial Management Plan (Option Section 8.6.3). Each Component shall provide for their own accounting in accordance with the Lease pursuant to best practices for that asset class. Each month, the individual Component accounting will be compiled into a report to the County consistent with the Lease terms and presented to the County by a "to be determined" accounting firm appointed by DPHP. The consolidation of the three Components into a single report will be provided in a format mutually agreed upon with the County, which at a minimum will include the calculation and payment of percentage rent. Further, as required by Section 15.8 of the Lease, Lessee shall provide the County a set of audited and certified financial statements within 90 days after the end of each Accounting Year.

Marina Inn will follow the Uniform System of Accounts for Lodging Industry which enables transparency. The Marina Inn will be supported by OREG's corporate accounting department.

Quality Service Plan (Option Section 8.6.4). BWP, OREG and BFG shall be responsible for the Property Manager associated with its Component and shall each separately be responsible for making sure that the Property Managers provide diligent, first class, professional and competent real property management for their respective Component. Any change to a Property Manager shall abide by the provisions of the Lease. Initially, the Components will be focusing on the creation of a cohesive branding and service level program to enhance the experience throughout the leasehold and create a more consistent feel for their patrons. In addition, each Component will maintain and provide access to a 24/7 hotline to address service issues.

The Hotel Component plans on retaining hotel staff, which will assist in a seamless transition of hotel operations. Further, Marina Inn will be implementing training and development programs for employees as well as introducing more robust systems which will increase employee efficiency and result in increased service levels and superior property conditions. Guest service is carefully measured, analyzed and responded to in a timely manner to establish strong guest relations and loyalty.

Maintenance Methodology (Option Section 8.6.5). Each Component shall be maintained in a safe, efficient, competent and clean manner for the public, visitors, tenants and vendors, and generally to the standards required under the Lease by their respective Property Manager. Each Component will maintain a Policy & Procedures Manual pursuant to Section 8.6.6 below, which shall include the following programs:

(i) Daily housekeeping, cleaning, trash disposal, litter removal and extermination;
(ii) Preventative maintenance;
(iii) Water quality management;

(iv) Structural maintenance, preventative, preventative and predictive maintenance, routine repairs and replacement; and

(v) Future capital improvements, expansions, renovations, modernizations and refurbishment, including, but not limited to the Subsequent Renovation Funds Capital Improvement Funds for the Commercial Core and Marina Components pursuant to Sections 5.15 and 5.16 of the Lease.

Standards and Requirements (Option Section 8.6.6). As set forth in Exhibit G to the Lease:

(i) Parking Management Plan. Each Component individually and in conjunction with one another, shall operate the Property under the provisions of a comprehensive Parking Management Plan prepared by the Lessee and approved by the County. DPHP is currently in the process of developing its initial Plan. The Parking Management Plan shall be updated annually by the Components during the term of this Lease and shall be made available to County at any time upon written request from the County. The purpose of the plan is to provide the public an adequate number of parking spaces, efficient internal traffic circulation, and access to the Property. The Plan shall include, but not be limited to the following issues and considerations:

a. The addition of a third level to the proposed parking as reflected in the DPHP Conceptual plan in order to facilitate increased parking for patrons;
b. Required hotel dedicated parking along with optional use mix;
c. Controlled boater designated parking;
d. Employee parking;
e. Short term parking stalls will be established closest to the shop spaces to assist with pick up and drop off traffic;
f. Long term parking (e.g., sport fishing, Catalina service);
g. Prohibit overnight parking in all areas that service retail and any other areas not specifically designated and approved for overnight parking;
h. Contingency for off-site parking during overflow conditions;
i. Controlled parking;
j. Valet parking program;
k. Designated off-site parking areas offering shuttle services to accommodate special events;
l. Site plan of parking areas;
m. Parking management technology shall be instituted in the new parking structure to efficiently direct patrons to available spaces
n. Designated boater parking areas within parking structure
o. Parking signage program.

All parking shall comply with applicable parking standards as regulated by any governmental agency with jurisdiction. Each Component agrees to comply with any Harbor-wide parking program or shared parking arrangement as may be required by the County.

(ii) Entry Gates. All entry gates to any County authorized controlled parking area shall be attended by a Component's employees or controlled by automated systems. Such automated systems shall be convenient and efficient with regard to public use, capable of processing each type of transaction made for the various activities within the Property.

(iii) Leasing. The leasing program shall consider the following criteria, not listed in any order of priority, and including but not limited to:

a. Use consistent with the Tidelands Grant from the State of California;
b. Feasible use that will produce a market value rental return;
c. Optimum land utilization;
d. Appropriate required and optional use mix;
e. Compatibility with other uses on the Property and within Dana Point Harbor;
f. High degree of public service;
g. Parking constraints and traffic circulation;
h. Aesthetics associated with the character of Dana Point Harbor; and
i. Compliance with the terms and conditions of this Lease.

(iv) Protection of Environment. Lessee shall take reasonable steps to prevent:

a. Littering within the Property;
b. Excessive noise from emanating within the Property;
c. Excessive light and glare from light fixtures within the Property that could impact the safe operation of automobiles, watercraft and airplanes in the area.
d. Discharge or runoff of pollutants, including petroleum products, waste and debris from any source, into the waters within or adjacent to the Property or other activities that are harmful to water quality.

(v) Protection Measures. Reasonable steps to prevent littering, excessive noise, and discharge of pollutants into the waters within the Property shall include, but are not limited to:

a. Appropriate signs warning tenants and visitors to the Property against littering, production of excessive noise and discharge of pollutants into the waters within the Property shall be posted in conspicuous places within the Property. All such signs shall be approved by the County.
b. All leases and rental agreements with tenants shall contain provisions which specify that littering, production of excessive noise and discharge of pollutants into the waters within the Property constitute a material breach of such leases and rental agreements.

(vi) In addition to the lease and rental agreement provisions required by subsection (b) above, all leases and rental agreements with owners of watercraft occupying slips, mooring, docks or other places within the Property, where a boat may be secured (other than facilities for dry boat storage), shall contain provisions that all such watercraft equipped with a head or other permanent installation designed to hold human waste must be equipped with a marine

holding tank and will be subject to inspection of such heads/installations upon demand by Company, will permit the placement (at Company's discretion) of a dye tablet in the head's holding tank and its Y-Valve must be placed in a closed and locked position within the Harbor. Policy and Procedures to be established by each Component and submitted to the County.

Each Component agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Property. Each Component further agrees to maintain a written policy and procedures manual (hereinafter referred to as "Policy and Procedures Manual") on the Property pertinent to the conduct of the required and optional services and uses provided for by this Lease. The Policy and Procedures Manual shall include, but not be limited to, maintenance, run-off management disposal of flammable liquids, hazardous waste, waste management, the discharge of waste from boats within the Property, and the annual County Parties NPDES inspections pursuant to the Lease and the address of concerns determined therein.

Each Component shall furnish the County a copy of said Policy and Procedures Manual at the outset of the Lease and at the time any revisions are made. Should County, upon review and conference with a Component, decide any part of said Policy and Procedures Manual is not in accordance with the Lease, any applicable governmental code, law, rule, and/or regulation, Lessee, upon written notice from County, shall modify said Policy and Procedures Manual to the satisfaction of the County. Primary consideration shall be the health, safety, and welfare of the public and protection of the environment.

a. The Marina Component Policy and Procedures Manual, subject to the limitations set forth in Subsection 10.1 of the Lease, will provide:
   (i) Marina Component's maintenance obligations shall include, but shall not be limited to the quay wall and structural elements of the dock system, decks, pilings, ramps, gangways, handrails, landing platforms, flotation systems, dry rot repair, repair of deteriorated areas resulting from corrosion, repair of concrete cracking and deterioration, hardware, cleats, bumper stripping, utilities and connections, storage boxes and fire suppression systems servicing the dock area.
   (ii) Daily Housekeeping, Preventative Maintenance Program (PMP), and Grounds Maintenance Program. The following PMP is based on regular periodic inspections of Marina dock systems and related equipment and components. The various intervals of inspection noted in this PMP shall be considered a minimum acceptable standard for Lessee's performance of maintenance activities. Actual conditions and rates of failure may require added measures or more immediate action.
   (iii)Daily:
      1. Walk docks to enforce compliance with marina rules and regulations, evaluate maintenance and repair needs, and identify potential environmental or other hazards.
      2. Clean all restrooms restocking supplies and emptying trash.
      3. Empty all trash containers.

4. Inspect all parking gates for proper operation.
5. Police all landside areas for litter.

(iv) Weekly:

1. Thoroughly sweep all parking lots of debris.

(v) Semi Monthly (every two weeks):

1. Dock Light Check: Replace broken or spent lamps and photocells as necessary.
2. Clean trash containers & wash around each service building.
3. Walking surface: Inspect the surface of the concrete dock floats - for hazardous conditions. Hazardous conditions include but are not limited to: trip hazards of lift ½" or greater, holes or missing or broken sections of concrete, float instability or listing, exposed nails, screws or bolts.
4. Structural Concerns: Inspect the structural integrity of docks for signs of failure: Look for signs of gusset board deterioration, pile roller failure, water deterioration or failure of floatation connections, insufficient freeboard.
5. Fire Systems: Check fire hose enclosures for broken glass or door latch failure. Ensure fire extinguisher is charged & present. Hose should be inspected for deterioration and to ensure properly hung. Gate valve should be inspected for leaking. Backflow leaks should be repaired by certified contractor.
6. Gangways: Inspect surface for non-skid integrity, exposed nails, screws or bolts, and stability of hand railings.
7. Water System: Replace leaking hose bibs and repair all other types of water leaks. Replace leaking gangway hoses.

(vi) Monthly:

1. Thoroughly scrub all restroom floors, walls and showers.
2. Inspect facility sidewalks for trip hazards (1/2" lift or greater).
3. Wash sidewalks which have become stained or otherwise dirty.
4. Inspect docks for rub rail problems.
5. Accessory item attachment: Inspect and repair connections to all cleats, dock boxes, fire hose enclosures and electrical panels.
6. Check all dock utility lines that may be submerged or improperly supported. Re-support lines as required.
7. Electrical System: Inspect & repair all power centers. Repair cover and hinge assemblies, replacing receptacles and breakers as necessary. More serious electrical issues must be repaired by licensed electrical contractor.
8. Replace missing pile caps and dock box lids.
9. Inspect gangways for excessive wear or misalignment.
10. Building & Parking lighting should be inspected. Replace spent lights, ballasts, or photocells, broken lenses or covers. Inspect all docks for marina rules violations. Such violations often violate fire or safety codes.

(vii) Quarterly:

1. Performance testing on all public pump-out systems to include a 5-gallon bucket test, vacuum test and visual hose inspection.

(viii) Annually:

1. Recharge & certify all fire extinguishers.
2. Recertify all back-flow devices.
3. Inspect all piles for signs of failure, i.e. listing, cracking, and excessive deterioration.

(x) Water Quality Management Plan: The Marine Component will comply with all local, state and federal regulations to assure it meets or exceeds those requirements. This includes having strong procedures in place to avoid disposal of contaminated water into the surrounding areas.

(xi) Ongoing Repair and Replacement: The Marine Component will maintain a combination of onsite staff as well as hire outside vendors for the maintenance and repair of the docks, gangways, seawalls, and piling both before and after the redevelopment.

(xii) Capital Improvements and Refurbishment: As part of the budgeting process, reserve accounts will be put in place. Property management will be very involved in meeting with vendors regularly to anticipate any large capital expenditures

b. The Hotel Component Policy and Procedures Manual, subject to the limitations set forth in Subsection 10.1 of the Lease, will provide:

(ix) Method of Maintaining Safety, Efficiency, And Cleanliness For Public: The Marina Inn staff and management will be responsible for maintaining safe, efficient, competent and clean facilities for the public, visitors, tenants, and vendors to meet or exceed all expectations expressed in the Lease.

Housekeeping and Trash Disposal: The Marina Inn will follow well designed SOPs for cleaning rooms and common areas in a timely and professional manner. The housekeeping department consists of housekeeping leadership (who also assist in inspecting rooms) a team of housekeepers, a team of housemen who assist the housekeepers with removing trash from rooms and delivering supplies to housekeepers. Trash and recycling materials will be removed from the grounds by a qualified service at a frequency that minimizes the risk of unwanted pests or odors.

(x) Preventative Maintenance Plan: We employ a software that allows us to upload information as it relates to all preventive maintenance items for the hotel. The engineer will utilize the system to schedule routine maintenance of all items in the system which the system tracks and monitors to inform property management of upcoming maintenance requirements or replacement. The Marina Inn will follow a comprehensive preventative maintenance program that is tracked and regularly reviewed for compliance with our best practices.

(xi) Landscape, Sidewalk, And Paved Areas Maintenance: The Marina Inn will follow best practices in use by the industry to continuously maintain the facility and grounds in a safe and appealing manner. Sidewalks will be maintained for cleanliness and to avoid any hazards for those who utilize them. Paved areas will be maintained in a good to excellent condition including repaving or striping as needed for readability. Landscaped areas of the grounds will be maintained by professional contracted services that are licensed and adequately insured to protect all interested parties.

(xii) Water Quality Management Plan: The Marina Inn will comply with all local, state and federal regulations to assure it meets or exceeds those requirements. This includes having strong procedures in place to avoid disposal of contaminated water into the surrounding areas.

(xiii) Ongoing Repair and Replacement: The Marina Inn Repair & Maintenance department will consist of engineers who will be responsible for maintaining the hotel. In addition to the hotel R&M staff, outsourced contractors will be utilized to repair or replace items which cannot be properly completed by in-house staff.

(xiv) Capital Improvements and Refurbishment: The Marina Inn will follow a model of budgeting for routine operational expenses and maintaining the property. In addition to the annual budget, the CapEx plan is also reviewed and updated for re-allocation of any items into the upcoming year.

c. The Commercial Component Policy and Procedures Manual, subject to the limitations set forth in Subsection 10.1 of the Lease, will provide:

(ix) Housekeeping, cleaning, trash disposal, litter removal: We will be contracting with a licensed and insured maintenance company to perform daily janitorial service throughout the Commercial Core such as Performance Building Services, CAM Services or Lot Management. This shall include litter cleanup, trash removal, regular cleaning of common areas, and general policing of the parking lot. Contracts will also be established for regular trash pickup. A recycling program will be put in place and all businesses will be strongly encouraged to participate. The grounds will be treated on an as needed basis, but no less than monthly, by a professional pest control company. Services will include insect, rodent treatment, bee/wasp removal and other miscellaneous pests when needed.

(x) Preventative Maintenance (HVAC and Roof maintenance): Retail tenants who occupy buildings where they are able to perform their own maintenance will be required to have preventative maintenance contracts established for all HVAC equipment. For multi-tenant buildings this will be contracted directly through building management. Annual roof inspections shall also be established which shall include general clean up, inspection of gutters, necessary repairs, and roof drains. Backflow prevention devices are also inspected annually by a licensed plumber.

Additionally, the property will serve all storm drains per the established water quality management program.

(xi) Landscape and grounds: A contract will be in place with a licensed and insured landscape maintenance company under the condition that a full-time crew will be dedicated to the maintenance of the Commercial Core. Other grounds maintenance will include: sweeping of all parking lots, cleaning trash enclosures and patio areas, and exterior window cleaning. We have longstanding relationships with multiple companies that provide these services throughout our portfolio and provide first class services.

(xii) Water Quality Management: The Commercial Core will comply with all local, state and federal regulations to assure it meets or exceeds those requirements. This includes having strong procedures in place to avoid disposal of contaminated water into the surrounding areas.

(xiii) Plan for Funding Ongoing Maintenance and Future Capital Replacement and/or Renovations as well as Plan for structural maintenance, preventative and predictive maintenance, routine repairs and replacement. As part of the budgeting process, reserve accounts will be put in place. Property management will be very involved in meeting with vendors regularly to anticipate any large capital expenditures such as parking lot and sidewalk repairs and/or replacement, roof replacement, any potential structural issues, landscape and tree maintenance, etc.

EXHIBIT C

ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 12.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing from an Encumbrance Holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved Encumbrance Holder, or (c) the first transfer by that Encumbrance Holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth (as set forth in the preceding sentence) or similar security satisfactory to County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.

2. The proposed assignee must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Property, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All such approvals of County will not be unreasonably withheld, conditioned or delayed.

3. The individual or individuals who will acquire Lessee's interest in this Lease or the Property, or who own the entity which will so acquire Lessee's interest, irrespective of the tier at which such individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (a) discriminatory employment practices which violate any federal, state or local law; or (b) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of County.

4. The price to be paid for the acquired interest shall not result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the transferee must agree that) County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the Lease; provided however, that a transfer of

ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Property or any Improvements thereon.

7. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the CREO Office and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Dana Point Harbor.

EXHIBIT D

EXAMPLES OF PERMITTED CAPITAL EXPENDITURES

Subject to the terms and provisions of Section 5.16 of the Lease, set forth below is a list of examples of elements, systems or categories of Improvements for which Permitted Capital Expenditures may be made. The Capital Improvement Fund shall not be used for the repair or replacement of an individual or a selected group of individual items, unless such repair or replacement is part of a larger plan (which may be a phased plan) of repair or replacement of all, or substantially all, similar items.

Painting, refinishing or stuccoing of the building exterior or storefront remodeling*

Walkways, parking lot and driveway replacement* (if asphalt, a minimum of resurfacing, not slurry seal), hardscape repair or replacement

Windows and doors replacement*

Roof replacement* (may be on a building by building basis)

Elevators (replacement or addition)

HVAC mechanical, electrical, plumbing, vertical transportation, security replacement and upgrades

Light fixtures replacement* (interior and exterior)

Irrigation system* (replacement or major addition)

Parking control upgrades, gate replacement and gate installation

Wifi, communication and technology upgrades including installation of fiber optics, repeaters and/or mesh systems or similar technologies or their technological evolution

Boardwalk repair or replacement

Marina trash system installation or replacement

Marine electrical systems installation or replacement

Fire, life, safety system upgrades, installations or replacements

Energy efficiency, energy generation or utility system upgrades, installations or replacements

Installations, replacements or improvements required to comply with any change in laws, building codes, planning, disability or safety regulation

Gates, ramps and railing repair, installation or replacement

Float replacement or renovation

*To qualify, the foregoing expenditures need to incorporate replacement or renovating of at least seventy percent (70%) of the items or facilities in question.

Routine Maintenance shall not be a Permitted Capital Expenditure, and shall be defined as any small scale activities associated with regular (daily, weekly, monthly etc.) upkeep of a building, equipment, machine, plant, or system against normal wear and tear, including, without limitation:

Widow and door repairs

Roof repairs

Parking lot slurry seal

Parking lot restriping

Minor touch up with paint, stucco etc., Interior/exterior walls

Lightbulb replacement

Irrigation repairs

HVAC maintenance

Landscaping

Fencing/gate repairs

Dock/Pier repairs

EXHIBIT E

ASSUMED CONTRACTS AND LEASES

[Attached hereto]

Exhibit E
Assumed Contracts & Leases

	Project #	Type	Lessee Name	On-Site Business Name/Address	Point of Contact	Component
Dana Point Harbor - County Direct Tenants						
1	HA78H-24-001-01	Lease	Parcel 11 Pacific Asian Enterprises, Inc.	Nordhavan Parcel 11 25001 Dana Drive	[redacted]	
2	HA78H-24-1.01	Lease	K D.L. Services Inc.	Dana Point Fuel Dock 34661 Puerto Pl.	John Van Dixhorn [redacted]	
3	HA78H-24-23-23-1	Lease	Dana Point Yacht Club non-profit corporation	Dana Point Yacht Club 24399 Dana Drive	[redacted]	
4	HA78H-24-2.02	Lease	Dana Point Shipyard	Dana Point Shipyard 34671 Puerto Place	[redacted]	
6	HA78H-24-003-0051	Lease	Dolphin Safari Inc. (2nd level of boater guest dock restroom building)	Dolphin Safari 24440 Dana Point Harbor Drive	[redacted]	
7	HA78H-24-003-0051.10	License Agreement	Dolphin Safari Storage Agreements	24440 Dana Point Dr. Parking Lot	[redacted]	
8			Outrigger	24440 Dana Point Dr. Parking Lot	[redacted]	
9			Westwind/ Dana Point Harbor Youth Foundation	24440 Dana Point Dr. Parking Lot	[redacted]	
10			Sea Scouts	24440 Dana Point Dr. Parking Lot	[redacted]	
Great Western Hotel Corp. - Dana Point Marina Inn (Operator)						
11	HA78H-24-08-09	Hotel	Great Western Hotel Corp.	Dana Point Marina Inn 24800 Dana Point Harbor Dr.	[redacted]	
Retail Core (Tenants)						
15	HA78H-24-003-0035	Lease	Wind & Sea Restaurants, Inc.	Harpoon Henry's 34555 Golden Lantern	[redacted]	
16	HA78H-24-003-0034	Lease	Wind & Sea Restaurants, Inc.	Wind and Sea Restaurant 34699 Golden Lantern	[redacted]	
17	HA78H-24-003-0036	Lease	Dana Point Harbor Grill, Inc.	Harbor Grill 34499 Golden Lantern	[redacted]	
18	HA78H-24-003-0038	Lease	Real Mex, El Torito Restaurants, Inc. 5660 Katella Ave, Cypress, CA 90630 562-346-1200	El Torito (# 7155) 34521 Golden Lantern	[redacted]	
19	HA78H-24-003-0040	Lease	San Clemente Sportfishing, Inc.	Dana Wharf Sportfishing 34675 Golden Lantern	[redacted]	
20	HA78H-24-003-0037	Lease	Demike, Inc.	The Brig Restaurant 34461 Golden Lantern	[redacted]	
21	HA78H-24-003-0015	Lease	Jon's Fish Market, Inc.	Jon's Fish Market 34665 Golden Lantern	[redacted]	
22	HA78H-24-003-0029	Lease	Turk's Dana Wharf, Inc.	Turk's 34683 Golden Lantern	[redacted]	
23	HA78H-24-003-0010	Lease	Byron Gemmell, Edwin Gemmell, and Mynor Gemmell	Gemmell's Restaurant 34471 Golden Lantern	[redacted]	

Exhibit B Enumberated Dana Point Harbor Leases and Contracts						
	Project #	Type	Lessee Name	On-Site Business Name/Address	Point of Contact	Component
24	HA78H-24-003-0017	Lease	Byron Gemmell, Edwin Gemmell, and Mynor Gemmell	Gemmell's Banquet Room 34483 Golden Lantern		
25	HA78H-24-003-0039	Lease	Pacific Harbor Hospitality Group, LLC	The Waterman 34661 Golden Lantern		
26	HA78H-24-003-0012	Lease	Zakai, Inc.	Gift Chateau 34507 Golden Lantern		
27	HA78H-24-003-0042	Lease	Catalina Channel Express	Catalina Express End-Tie by Waterman		
28	HA78H-24-003-004	Lease	Beach Harbor Pizza	Beach Harbor Pizza 34473 Golden Lantern		
29	HA78H-24-003-006.1	Lease	Coffee Management, Inc.	Coffee Importers 34531 Golden Lantern		
30	HA78H-24-003-0024	Lease	Coffee Management, Inc.	Scoop Deck 34535 Golden Lantern		
31	HA78H-24-003-055	Lease	Elsa Stephen	I Heart Yoga 34485 Golden Lantern		
32	HA78H-24-003-0032	Lease	George and Diana Psilopoulos	White Pelican Gallery 34475 Golden Lantern		
33	HA78H-24-003-0026	Lease	KZK Restaurant, Inc.	Harbor Deli 34667 Golden Lantern		
34	HA78H-24-003-0021	Lease	Up & Over, Inc.	Proud Mary's Restaurant 34689 Golden Lantern		
35	HA-78H-24-003-00178	Lease	Azar Salehi	Bella Bazaar 34467 Golden Lantern		
36	HA78H-24-003-0027	Lease	Sy Bros Corporation	Super Stop Liquor 34469 Golden Lantern		
37	HA78H-24-003-0018	Lease	Vartan Jizmejian	Harbor Jewelry 34515 Golden Lantern		
38	HA78H-24-003-0013	Lease	Goldeegal, Inc.	Golden Galleon Boutique 34677 Golden Lantern		
39	HA78H-24-003-0028	Lease	Jennifer Rentziperis	Top Brass 34679 Golden Lantern		
40	HA78H-24-003-008	Lease	Detra Francis	Chocolate Soldier 34513 Golden Lantern		
41	HA78H-24-003-003	Lease	Zakai, Inc.	Art Sea 34503 Golden Lantern		
42	HA78H-24-003-0022	Lease	Christa Schlottmann	Woody Hut 34493 Golden Lantern		
44	HA78H-24-003-0020	Lease	KZK Restaurant, Inc.	Slice of New York 34669 Golden Lantern		Sublease Lil Skippers Snack Shack
45	HA78H-24-003-002	Lease	Shari Sicsko	Arrow Custom Covers 34463 Golden Lantern		
46	HA78H-24-003-001	Lease	Spring	Spring 34491 Golden Lantern		
47	HA78H-24-003-0065-1	Lease	Jerky Cali Gifts	Jerky Cali Gifts 34495 Golden Lantern		

Exhibit B Enumberated Dana Point Harbor Leases and Contracts						
	Project #	Type	Lessee Name	On-Site Business Name/Address	Point of Contact	Component
48	HA78H-24-003-0033	Lease	Nevine Sidhom	Chez Nevine 34509 Golden Lantern	[redacted]	
49	HA78H-24-003-065-1	License Agreement	Santa Catalina Island Resort Services Inc.	Santa Catalina Island Resort Services Inc.	[redacted]	
50	HA78H-24-003-060	Lease	Gary & Camella Levin	Pacific Gallery 34511 Golden Lantern	[redacted]	
51	HA78H-24-003-0065	Lease	Josh Frisby	Frisby Cellars	[redacted]	
52	HA78H-24-003-100	Lease	Structural Decisions Inc. dba Art of Inner Peace	Art of Inner Peace 34505 Golden Lantern	[redacted]	
Dana Point Marina Company - East Basin (Operator)						
53	HA78H-24-06-10	Boat Slip License Agreements and parking	Dana Point Marina Company, Bldg. 4, East Basin	Dana Point Marina Company 34555 Casitas Pl.	[redacted]	
Dana Point Marina Company - East Basin (Tenants)						
54	HA78H-24-002-002	Lease	Aventura Sailing Association, Inc.	Aventura Sailing Association 24707 Dana Drive Bldg. 5, East Basin	[redacted]	
55	HA78H-24-06-01	Lease	Dick Simon Yachts	Dick Simon Yachts 34571 Golden Lantern East Basin, Bldg. 1	[redacted]	
56	HA78H-24-06-02	Lease	Sun Country Marine, Inc.	Sun Country Marine 34553 Casitas Place Bldg. 3, East Basin	[redacted]	
57	HA78H-24-20-008	Lease	Mariner's Yacht & Ship Brokerage	Mariner's Yacht & Ship Brokerage 34551 Casitas Place Bldg. 2, East Basin	[redacted]	
58	HA78H-24-002-014	Lease	Wave Crest Financial Group, Inc.	Wave Crest Financial Group 24705 Dana Drive Bldg. 6, East Basin	[redacted]	
59	HA78H-24-002-012	Lease	Zero Company Performance Marketing	Zero Company Performance Marketing 24703 Dana Drive Bldg. 7, East Basin	[redacted]	
60	HA78H-24-002-013	Lease	Tilly Group	Tilly Group 24701 Dana Drive Bldg. 8, East Basin	[redacted]	
61	HA78H-24-001-016	Lease	Maureen Schroeder CPA	Maureen Schroeder CPA 24701 Dana Drive Bldg. 8, East Basin	[redacted]	
62	HA78H-24-06-xx	Lease	Dana Point Yacht Club, Vessel Dry Storage (adjacent to 24707 Dana Drive)	Vessel Dry Storage Dana Point Yacht Club 24601 Dana Drive	[redacted]	
		License Agreements	Wet and Dry Storage slips and spots as reflected in the rent roll dated 10-29-2018	Douglas Whitlock 949-496-6137 doug@danapointmarina.com	[redacted]	
63	TBD	Licensing Agreements	Commercial Fishermen	Dana Point Marina Company 34555 Casitas Pl.	[redacted]	

Exhibit B Enumberated Dana Point Harbor Leases and Contracts						
	Project #	**Type**	**Lessee Name**	**On-Site Business Name/Address**	**Point of Contact**	**Component**
T.B.W. Company - West Basin (Operator)						
64	HA78H-24-20-22	Boat Slip License Agreements and parking	TBW Co., Bldg. B, West Basin	Dana West Marina 24500 Dana Point Harbor Dr.	[redacted]	
T.B.W. Company - West Basin (Tenants)						
65	HA78h-24-22-001	Lease	Dana West Yacht Club	Dana West Yacht Club 24601 Dana Drive Bldg. D, West Basin	[redacted]	
66	HA78H-24-20-02-01	Lease	Harbor Rocks Yacht Sales, Inc.	Dream Catcher Yachts 24450 Dana Point Harbor Drive Bldg. A, Suite A, West Basin	[redacted]	
67	HA78H-24-20-05-01	Lease	Get College Funding	Get College Funding 24501 Dana Drive Bldg. E, West Basin	[redacted]	Sublease Average Frog [redacted]
68	HA78H-24-20-65-01	License Agreement	Schneider Geology	Schneider Geology 24401 Dana Drive Bldg. F, West Basin	[redacted]	
69		License Agreements	Wet and Dry Storage slips and spots as reflected in the rent roll dated 10-29-2018	Kelly Rinderknecht, General Manager 949-493-6222 kellyr@danawestmarina.com; eric@harborislandwest.com	[redacted]	

EXHIBIT F

RENT SCHEDULE

HOTEL COMPONENT:

Period	Annual Minimum Rent (One Hotel)	Annual Minimum Rent (Two Hotels)
Lease Year 1	$37,500	$75,000
Lease Year 2	$75,000	$150,000
Lease Year 3	$125,000	$250,000
Lease Year 4	$125,000	$250,000
Lease Year 5	$125,000	$250,000

Notwithstanding anything in the foregoing schedule to the contrary: (a) Annual Minimum Rent for the Hotel Component shall be abated until the earlier to occur of: (i) the date that is thirty (30) months following the Effective Date, and (ii) the date upon which such abatement of Annual Minimum Rent, when taken together with the abatement of Percentage Rent under Subsection 4.2.2 of the Lease, collectively totals Five Hundred Thousand Dollars ($500,000), at which time such abatement of Annual Minimum Rent and Percentage Rent shall terminate, (b) thereafter, for so long as the existing Marina Inn shall remain in operation and until commencement of the Redevelopment Work on the Hotel Component affecting the existing Marina Inn, the Annual Minimum Rent for the Hotel Component shall be One Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars ($166,666), and (c) thereafter, Annual Minimum Rent for the Hotel Component shall be abated for the Abatement Period as set forth in Subsection 4.2.1(a). Upon the expiration of the Abatement Period, Annual Minimum Rental for the Hotel Component shall be payable based on the foregoing schedule, which schedule only covers Lease Years 1 through 5, and adjustments to the same shall occur thereafter as set forth below.

The amounts set forth above represent the Annual Minimum Rent payable for a single hotel and the Annual Minimum Rent payable for two hotels, respectively. At such time as a second hotel is built, if at all, Annual Minimum Rent shall be adjusted according to the adjustments set forth below; provided, however, that Annual Minimum Rent shall be calculated using the right-hand column in the schedule above (for two hotels), and shall take into account all adjustments that would have occurred had two hotels originally been built.

The Annual Minimum Rent for the Hotel Component shall increase at the

commencement of the 6th Lease Year and every five (5) years thereafter upon the commencement of every fifth (5th) Lease Year (each, an "**Adjustment Date**") by the greater of: (i) ten percent (10%) of the Annual Minimum Rent payable for the Hotel Component for the immediately prior Lease Year, and (ii) a percentage equal to the percentage increase from the Base Period of the Consumer Price Index, not to exceed fifteen percent (15%). Said Consumer Price Index for the month of December for the Lease Year that is five (5) years prior to the applicable Adjustment Date shall be considered the "**Base Period**." Said adjustment shall be made by comparing the Consumer Price Index for the Base Period to the Consumer Price Index for the month of December immediately preceding each such Adjustment Date. If at any time there shall not exist the Consumer Price Index, County and Lessee shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence, and shall be most nearly equivalent thereto. In the event any moratorium is imposed on such increases in rent, such that no regularly scheduled adjustment can be made or only a partial adjustment may be made, an adjustment shall immediately take effect on the lifting of such moratorium, and regular adjustments thereafter shall be made as above provided.

COMMERCIAL CORE COMPONENT:

Period	Annual Minimum Rent
Lease Year 1	$100,000
Lease Year 2	$125,000
Lease Year 3	$150,000
Lease Year 4	$250,000
Lease Year 5	$250,000

The Annual Minimum Rent for the Commercial Core Component shall increase at the commencement of the 6th Lease Year and every Adjustment Date thereafter by the greater of: (i) ten percent (10%) of the Annual Minimum Rent payable for the Commercial Core Component for the immediately prior Lease Year, and (ii) a percentage equal to the percentage increase from the Base Period of the Consumer Price Index, not to exceed fifteen percent (15%). Said adjustment shall be made by comparing the Consumer Price Index for the Base Period to the Consumer Price Index for the month of December immediately preceding each such Adjustment Date. If at any time there shall not exist the Consumer Price Index, County and Lessee shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence, and shall be most nearly equivalent thereto.

In the event any moratorium is imposed on such increases in rent, such that no regularly scheduled adjustment can be made or only a partial adjustment may be made, an adjustment shall immediately take effect on the lifting of such moratorium, and regular adjustments thereafter shall be made as above provided.

MARINA (WET MARINA) COMPONENT:

The Annual Minimum Rent for the Wet Marina portion of the Marina Component shall be $1,250,000 commencing at the beginning of Lease Year 1 and shall increase at the commencement of the 6th Lease Year and every Adjustment Date thereafter by the greater of: (i) ten percent (10%) of the Annual Minimum Rent payable for the Wet Marina portion of the Marina Component for the immediately prior Lease Year, and (ii) a percentage equal to the percentage increase from the Base Period of the Consumer Price Index, not to exceed fifteen percent (15%). Said adjustment shall be made by comparing the Consumer Price Index for the Base Period to the Consumer Price Index for the month of December immediately preceding each such Adjustment Date. If at any time there shall not exist the Consumer Price Index, County and Lessee shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence, and shall be most nearly equivalent thereto. In the event any moratorium is imposed on such increases in rent, such that no regularly scheduled adjustment can be made or only a partial adjustment may be made, an adjustment shall immediately take effect on the lifting of such moratorium, and regular adjustments thereafter shall be made as above provided.

EXHIBIT G

MINIMUM STANDARDS

[Attached hereto]

DANA POINT HARBOR PARTNERS, LLC ("DPHP")
Optionee Section 8.6 Submittal – Management Plan
Optionee Section 9.2.6(v) Deliverable – Minimum Standards
Exhibit G – Minimum Standards

Organization & Operations (Option Section 8.6.1). Pursuant to Section 11.2 of the Lease, each Component (as defined in the Lease) will employ competent, on-site Property Managers who shall be responsible for the day-to-day operation and maintenance, cleanliness, and general order for each Component. Such Property Managers shall be vested with the authority of Burnham-Ward Properties, LLC ("BWP") as it relates to the Commercial Core Component, Olson Real Estate Group, Inc. ("OREG") as it relates to the Hotel Component and Bellwether Financial Group, Inc. ("BFG") as it relates to the Marina Component. Each Component shall provide diligent, first class, professional and competent real property management for the Property. As to each Component, the Property Manager will supervise the operation and maintenance of the Property, including the authority to enforce compliance by Lessee's tenants, agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Each Component currently has one or more management companies who are responsible for day-to-day operations. BFG and OREG plan on assuming the current operating agreements associated with their respective Components, whereas BWP shall assume property and asset management oversight of the Commercial Core Component. It is DPHP's intention to align operating companies with its vision for the operation of best in class facilities and shall notify the County in writing of successor Property Managers.

BWP shall have on-site management representative(s) acting as Director of Property Management for the Commercial Core Component. During regular business hours the on-site office will be staffed with appropriate support personnel and third-party vendors to ensure tenant accessibility, public interaction, event coordination, and timely responses to operational issues. In the event of an after-hours emergency, tenants will have direct access to on-site security personnel or an on-call staff member. All third-party vendors will be required to wear uniforms with proper identification.

In particular, as it relates to the Marina Component, it is BFG's intention to consolidate the operations and marketing of the Marina under a single management company, which may be one of the existing management companies such as Vintage Marina Partners, L.P., Dana Point Marina Company or T.B.W. Co., or a new third party. Until such consolidation, the management companies will report directly to BFG and be responsible for finance and accounting services overseen by BFG.

As it relates to the Hotel Component, The Marina Inn will be supported by a wide range of corporate staff. Further additional resources will include support from human resources, marketing, and design and construction. At the property level, the staffing model includes a qualified general manager, sales, front desk, housekeeping and engineer.

Not less than quarterly, DPHP and/or its respective Property Managers shall meet with designated representatives of the County to ensure relevant matters are being addressed and answer any questions related to financial performance, operations or other items. During the initial transition period, it is anticipated that these meetings may take place monthly.

In addition to executing all responsibilities of the individual Components outlined herein, DPHP

will coordinate, support and facilitate interaction with the individual specialty property managers to ensure a cohesive level of service throughout the property, including, but not limited to:

- Management and enforcement of an overall Harbor Parking Management Plan;
- Management of all landside areas including parkscape, parking lots, public restrooms, buildings and structures, parking areas and landscape in the greater harbor;
- Management oversight during construction as it relates to temporary parking, signage and way-finding and circulation issues;
- Specialty and safety related matters;
- Communicating and meeting with stakeholders within the Harbor regarding items of interest and planning;
- Management of the security personnel and emergency response plan;
- Management of the project engineering staff;
- Management of all CC&R's and Rules & Regulations
- Management of the parking attendant staff & valets;
- Management of on-site transportation and shuttle services;
- Oversight of marketing, branding and PR team
- Management and coordination of all events; and
- Management and coordination of all common areas: janitorial and trash collection, public utility and engineering contracts, signage maintenance and updating, park areas, customer complaints, day to day tenant needs (in coordination/support of specialty area managers), etc.

Safety & Security, Public Services (Option Section 8.6.2). The ultimate purpose of this Lease is the complete and continuous public use of the Property for the benefit of the public, and all facilities and services shall be made available to the public without discrimination. Each Component shall operate the Property under sound business practices. Each Property Manager shall provide adequate security measures to reasonably protect persons and property as to each Component and shall coordinate with one another as to the overall safety and security on the Property. Each Component hereby acknowledges that County's Harbor Patrol is not responsible for routine security services or landside police services on the Property and the Harbor Patrol function is to provide emergency and marine oriented law enforcement and fire services to the boating public. Each Component agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Property. DPHP will provide an overall security program including onsite personnel to increase the safety and security of the leasehold, including, but not limited to its parking facilities, common areas and public spaces.

The Marina Inn will follow safety and security planning following SOPs that meet or exceed industry standards. Safety training begins with new staff onboarding, property orientation to best practices, and rigorous on the job training. Training for safety procedures and practices is an ongoing priority including drills for emergency evacuations, training regarding the property's Emergency Response Plan, Illness and Injury prevention plan, management safety committee, and ongoing monthly safety practice training.

Safety of guests and associates is supported with a 24-hour front office presence, appropriate locking doors, security cameras, rigid cash handling and depositing practices, and regular facility inspections.

Financial Management Plan (Option Section 8.6.3). Each Component shall provide for their own accounting in accordance with the Lease pursuant to best practices for that asset class. Each month, the individual Component accounting will be compiled into a report to the County consistent with the Lease terms and presented to the County by a "to be determined" accounting firm appointed by DPHP. The consolidation of the three Components into a single report will be provided in a format mutually agreed upon with the County, which at a minimum will include the calculation and payment of percentage rent. Further, as required by Section 15.8 of the Lease, Lessee shall provide the County a set of audited and certified financial statements within 90 days after the end of each Accounting Year.

Marina Inn will follow the Uniform System of Accounts for Lodging Industry which enables transparency. The Marina Inn will be supported by OREG's corporate accounting department.

Quality Service Plan (Option Section 8.6.4). BWP, OREG and BFG shall be responsible for the Property Manager associated with its Component and shall each separately be responsible for making sure that the Property Managers provide diligent, first class, professional and competent real property management for their respective Component. Any change to a Property Manager shall abide by the provisions of the Lease. Initially, the Components will be focusing on the creation of a cohesive branding and service level program to enhance the experience throughout the leasehold and create a more consistent feel for their patrons. In addition, each Component will maintain and provide access to a 24/7 hotline to address service issues.

The Hotel Component plans on retaining hotel staff, which will assist in a seamless transition of hotel operations. Further, Marina Inn will be implementing training and development programs for employees as well as introducing more robust systems which will increase employee efficiency and result in increased service levels and superior property conditions. Guest service is carefully measured, analyzed and responded to in a timely manner to establish strong guest relations and loyalty.

Maintenance Methodology (Option Section 8.6.5). Each Component shall be maintained in a safe, efficient, competent and clean manner for the public, visitors, tenants and vendors, and generally to the standards required under the Lease by their respective Property Manager. Each Component will maintain a Policy & Procedures Manual pursuant to Section 8.6.6 below, which shall include the following programs:

(i) Daily housekeeping, cleaning, trash disposal, litter removal and extermination;
(ii) Preventative maintenance;
(iii) Water quality management;

(iv) Structural maintenance, preventative, preventative and predictive maintenance, routine repairs and replacement; and

(v) Future capital improvements, expansions, renovations, modernizations and refurbishment, including, but not limited to the Subsequent Renovation Funds Capital Improvement Funds for the Commercial Core and Marina Components pursuant to Sections 5.15 and 5.16 of the Lease.

Standards and Requirements (Option Section 8.6.6). As set forth in Exhibit G to the Lease:

(i) Parking Management Plan. Each Component individually and in conjunction with one another, shall operate the Property under the provisions of a comprehensive Parking Management Plan prepared by the Lessee and approved by the County. DPHP is currently in the process of developing its initial Plan. The Parking Management Plan shall be updated annually by the Components during the term of this Lease and shall be made available to County at any time upon written request from the County. The purpose of the plan is to provide the public an adequate number of parking spaces, efficient internal traffic circulation, and access to the Property. The Plan shall include, but not be limited to the following issues and considerations:

a. The addition of a third level to the proposed parking as reflected in the DPHP Conceptual plan in order to facilitate increased parking for patrons;
b. Required hotel dedicated parking along with optional use mix;
c. Controlled boater designated parking;
d. Employee parking;
e. Short term parking stalls will be established closest to the shop spaces to assist with pick up and drop off traffic;
f. Long term parking (e.g., sport fishing, Catalina service);
g. Prohibit overnight parking in all areas that service retail and any other areas not specifically designated and approved for overnight parking;
h. Contingency for off-site parking during overflow conditions;
i. Controlled parking;
j. Valet parking program;
k. Designated off-site parking areas offering shuttle services to accommodate special events;
l. Site plan of parking areas;
m. Parking management technology shall be instituted in the new parking structure to efficiently direct patrons to available spaces
n. Designated boater parking areas within parking structure
o. Parking signage program.

All parking shall comply with applicable parking standards as regulated by any governmental agency with jurisdiction. Each Component agrees to comply with any Harbor-wide parking program or shared parking arrangement as may be required by the County.

(ii) Entry Gates. All entry gates to any County authorized controlled parking area shall be attended by a Component's employees or controlled by automated systems. Such automated systems shall be convenient and efficient with regard to public use, capable of processing each type of transaction made for the various activities within the Property.

(iii) Leasing. The leasing program shall consider the following criteria, not listed in any order of priority, and including but not limited to:

a. Use consistent with the Tidelands Grant from the State of California;
b. Feasible use that will produce a market value rental return;
c. Optimum land utilization;
d. Appropriate required and optional use mix;
e. Compatibility with other uses on the Property and within Dana Point Harbor;
f. High degree of public service;
g. Parking constraints and traffic circulation;
h. Aesthetics associated with the character of Dana Point Harbor; and
i. Compliance with the terms and conditions of this Lease.

(iv) Protection of Environment. Lessee shall take reasonable steps to prevent:

a. Littering within the Property;
b. Excessive noise from emanating within the Property;
c. Excessive light and glare from light fixtures within the Property that could impact the safe operation of automobiles, watercraft and airplanes in the area.
d. Discharge or runoff of pollutants, including petroleum products, waste and debris from any source, into the waters within or adjacent to the Property or other activities that are harmful to water quality.

(v) Protection Measures. Reasonable steps to prevent littering, excessive noise, and discharge of pollutants into the waters within the Property shall include, but are not limited to:

a. Appropriate signs warning tenants and visitors to the Property against littering, production of excessive noise and discharge of pollutants into the waters within the Property shall be posted in conspicuous places within the Property. All such signs shall be approved by the County.
b. All leases and rental agreements with tenants shall contain provisions which specify that littering, production of excessive noise and discharge of pollutants into the waters within the Property constitute a material breach of such leases and rental agreements.

(vi) In addition to the lease and rental agreement provisions required by subsection (b) above, all leases and rental agreements with owners of watercraft occupying slips, mooring, docks or other places within the Property, where a boat may be secured (other than facilities for dry boat storage), shall contain provisions that all such watercraft equipped with a head or other permanent installation designed to hold human waste must be equipped with a marine

holding tank and will be subject to inspection of such heads/installations upon demand by Company, will permit the placement (at Company's discretion) of a dye tablet in the head's holding tank and its Y-Valve must be placed in a closed and locked position within the Harbor. Policy and Procedures to be established by each Component and submitted to the County.

Each Component agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Property. Each Component further agrees to maintain a written policy and procedures manual (hereinafter referred to as "Policy and Procedures Manual") on the Property pertinent to the conduct of the required and optional services and uses provided for by this Lease. The Policy and Procedures Manual shall include, but not be limited to, maintenance, run-off management disposal of flammable liquids, hazardous waste, waste management, the discharge of waste from boats within the Property, and the annual County Parties NPDES inspections pursuant to the Lease and the address of concerns determined therein.

Each Component shall furnish the County a copy of said Policy and Procedures Manual at the outset of the Lease and at the time any revisions are made. Should County, upon review and conference with a Component, decide any part of said Policy and Procedures Manual is not in accordance with the Lease, any applicable governmental code, law, rule, and/or regulation, Lessee, upon written notice from County, shall modify said Policy and Procedures Manual to the satisfaction of the County. Primary consideration shall be the health, safety, and welfare of the public and protection of the environment.

a. The Marina Component Policy and Procedures Manual, subject to the limitations set forth in Subsection 10.1 of the Lease, will provide:
   (i) Marina Component's maintenance obligations shall include, but shall not be limited to the quay wall and structural elements of the dock system, decks, pilings, ramps, gangways, handrails, landing platforms, flotation systems, dry rot repair, repair of deteriorated areas resulting from corrosion, repair of concrete cracking and deterioration, hardware, cleats, bumper stripping, utilities and connections, storage boxes and fire suppression systems servicing the dock area.
   (ii) Daily Housekeeping, Preventative Maintenance Program (PMP), and Grounds Maintenance Program. The following PMP is based on regular periodic inspections of Marina dock systems and related equipment and components. The various intervals of inspection noted in this PMP shall be considered a minimum acceptable standard for Lessee's performance of maintenance activities. Actual conditions and rates of failure may require added measures or more immediate action.
   (iii)Daily:
      1. Walk docks to enforce compliance with marina rules and regulations, evaluate maintenance and repair needs, and identify potential environmental or other hazards.
      2. Clean all restrooms restocking supplies and emptying trash.
      3. Empty all trash containers.

4. Inspect all parking gates for proper operation.
5. Police all landside areas for litter.

(iv) Weekly:

1. Thoroughly sweep all parking lots of debris.

(v) Semi Monthly (every two weeks):

1. Dock Light Check: Replace broken or spent lamps and photocells as necessary.
2. Clean trash containers & wash around each service building.
3. Walking surface: Inspect the surface of the concrete dock floats - for hazardous conditions. Hazardous conditions include but are not limited to: trip hazards of lift ½" or greater, holes or missing or broken sections of concrete, float instability or listing, exposed nails, screws or bolts.
4. Structural Concerns: Inspect the structural integrity of docks for signs of failure: Look for signs of gusset board deterioration, pile roller failure, water deterioration or failure of floatation connections, insufficient freeboard.
5. Fire Systems: Check fire hose enclosures for broken glass or door latch failure. Ensure fire extinguisher is charged & present. Hose should be inspected for deterioration and to ensure properly hung. Gate valve should be inspected for leaking. Backflow leaks should be repaired by certified contractor.
6. Gangways: Inspect surface for non-skid integrity, exposed nails, screws or bolts, and stability of hand railings.
7. Water System: Replace leaking hose bibs and repair all other types of water leaks. Replace leaking gangway hoses.

(vi) Monthly:

1. Thoroughly scrub all restroom floors, walls and showers.
2. Inspect facility sidewalks for trip hazards (1/2" lift or greater).
3. Wash sidewalks which have become stained or otherwise dirty.
4. Inspect docks for rub rail problems.
5. Accessory item attachment: Inspect and repair connections to all cleats, dock boxes, fire hose enclosures and electrical panels.
6. Check all dock utility lines that may be submerged or improperly supported. Re-support lines as required.
7. Electrical System: Inspect & repair all power centers. Repair cover and hinge assemblies, replacing receptacles and breakers as necessary. More serious electrical issues must be repaired by licensed electrical contractor.
8. Replace missing pile caps and dock box lids.
9. Inspect gangways for excessive wear or misalignment.
10. Building & Parking lighting should be inspected. Replace spent lights, ballasts, or photocells, broken lenses or covers. Inspect all docks for marina rules violations. Such violations often violate fire or safety codes.

(vii) Quarterly:

1. Performance testing on all public pump-out systems to include a 5-gallon bucket test, vacuum test and visual hose inspection.

(viii) Annually:

1. Recharge & certify all fire extinguishers.
2. Recertify all back-flow devices.
3. Inspect all piles for signs of failure, i.e. listing, cracking, and excessive deterioration.

(x) Water Quality Management Plan: The Marine Component will comply with all local, state and federal regulations to assure it meets or exceeds those requirements. This includes having strong procedures in place to avoid disposal of contaminated water into the surrounding areas.

(xi) Ongoing Repair and Replacement: The Marine Component will maintain a combination of onsite staff as well as hire outside vendors for the maintenance and repair of the docks, gangways, seawalls, and piling both before and after the redevelopment.

(xii) Capital Improvements and Refurbishment: As part of the budgeting process, reserve accounts will be put in place. Property management will be very involved in meeting with vendors regularly to anticipate any large capital expenditures

b. The Hotel Component Policy and Procedures Manual, subject to the limitations set forth in Subsection 10.1 of the Lease, will provide:

(ix) Method of Maintaining Safety, Efficiency, And Cleanliness For Public: The Marina Inn staff and management will be responsible for maintaining safe, efficient, competent and clean facilities for the public, visitors, tenants, and vendors to meet or exceed all expectations expressed in the Lease.

Housekeeping and Trash Disposal: The Marina Inn will follow well designed SOPs for cleaning rooms and common areas in a timely and professional manner. The housekeeping department consists of housekeeping leadership (who also assist in inspecting rooms) a team of housekeepers, a team of housemen who assist the housekeepers with removing trash from rooms and delivering supplies to housekeepers. Trash and recycling materials will be removed from the grounds by a qualified service at a frequency that minimizes the risk of unwanted pests or odors.

(x) Preventative Maintenance Plan: We employ a software that allows us to upload information as it relates to all preventive maintenance items for the hotel. The engineer will utilize the system to schedule routine maintenance of all items in the system which the system tracks and monitors to inform property management of upcoming maintenance requirements or replacement. The Marina Inn will follow a comprehensive preventative maintenance program that is tracked and regularly reviewed for compliance with our best practices.

(xi) Landscape, Sidewalk, And Paved Areas Maintenance: The Marina Inn will follow best practices in use by the industry to continuously maintain the facility and grounds in a safe and appealing manner. Sidewalks will be maintained for cleanliness and to avoid any hazards for those who utilize them. Paved areas will be maintained in a good to excellent condition including repaving or striping as needed for readability. Landscaped areas of the grounds will be maintained by professional contracted services that are licensed and adequately insured to protect all interested parties.

(xii) Water Quality Management Plan: The Marina Inn will comply with all local, state and federal regulations to assure it meets or exceeds those requirements. This includes having strong procedures in place to avoid disposal of contaminated water into the surrounding areas.

(xiii) Ongoing Repair and Replacement: The Marina Inn Repair & Maintenance department will consist of engineers who will be responsible for maintaining the hotel. In addition to the hotel R&M staff, outsourced contractors will be utilized to repair or replace items which cannot be properly completed by in-house staff.

(xiv) Capital Improvements and Refurbishment: The Marina Inn will follow a model of budgeting for routine operational expenses and maintaining the property. In addition to the annual budget, the CapEx plan is also reviewed and updated for re-allocation of any items into the upcoming year.

c. The Commercial Component Policy and Procedures Manual, subject to the limitations set forth in Subsection 10.1 of the Lease, will provide:

(ix) Housekeeping, cleaning, trash disposal, litter removal: We will be contracting with a licensed and insured maintenance company to perform daily janitorial service throughout the Commercial Core such as Performance Building Services, CAM Services or Lot Management. This shall include litter cleanup, trash removal, regular cleaning of common areas, and general policing of the parking lot. Contracts will also be established for regular trash pickup. A recycling program will be put in place and all businesses will be strongly encouraged to participate. The grounds will be treated on an as needed basis, but no less than monthly, by a professional pest control company. Services will include insect, rodent treatment, bee/wasp removal and other miscellaneous pests when needed.

(x) Preventative Maintenance (HVAC and Roof maintenance): Retail tenants who occupy buildings where they are able to perform their own maintenance will be required to have preventative maintenance contracts established for all HVAC equipment. For multi-tenant buildings this will be contracted directly through building management. Annual roof inspections shall also be established which shall include general clean up, inspection of gutters, necessary repairs, and roof drains. Backflow prevention devices are also inspected annually by a licensed plumber.

Additionally, the property will serve all storm drains per the established water quality management program.

(xi) Landscape and grounds: A contract will be in place with a licensed and insured landscape maintenance company under the condition that a full-time crew will be dedicated to the maintenance of the Commercial Core. Other grounds maintenance will include: sweeping of all parking lots, cleaning trash enclosures and patio areas, and exterior window cleaning. We have longstanding relationships with multiple companies that provide these services throughout our portfolio and provide first class services.

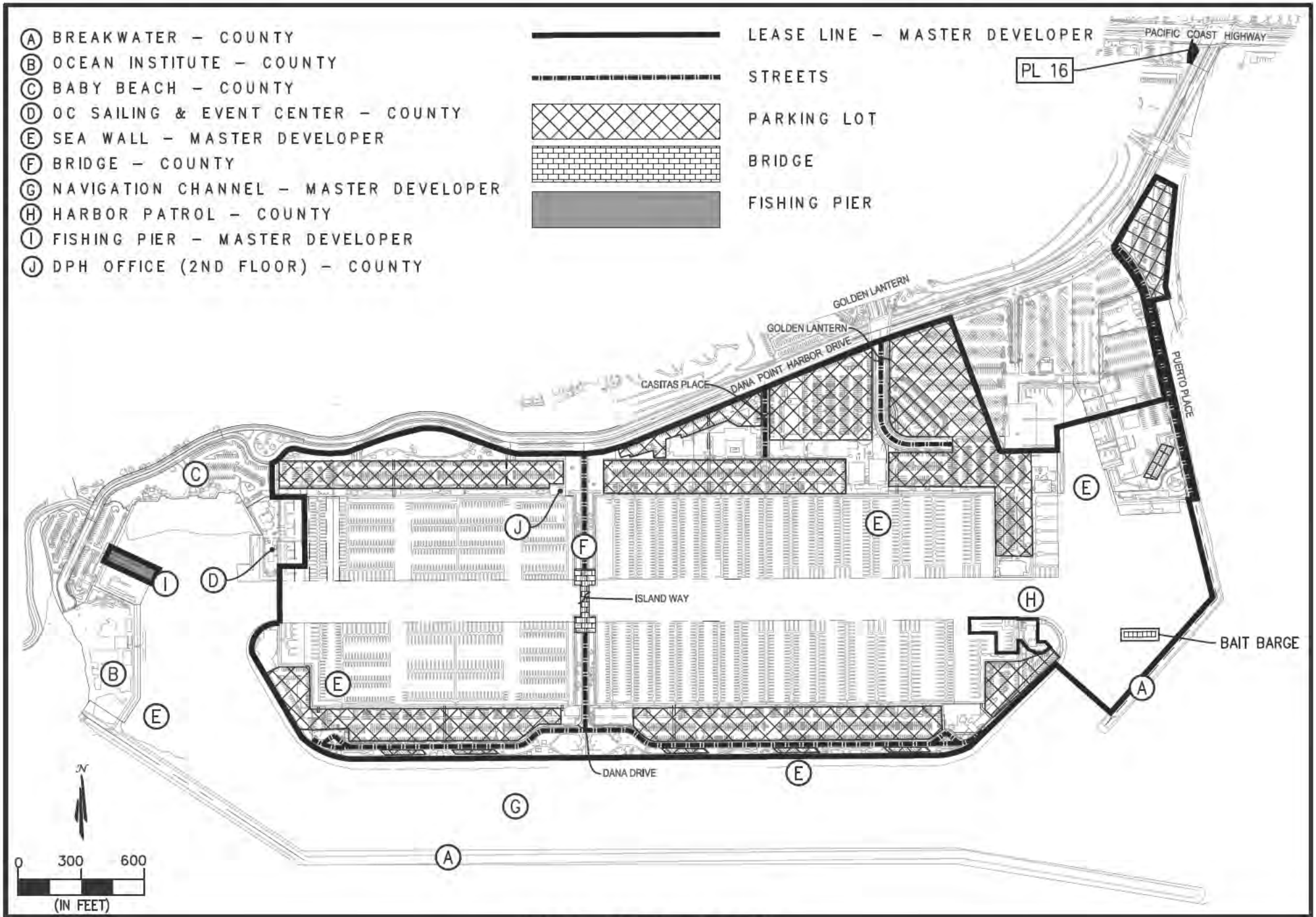
(xii) Water Quality Management: The Commercial Core will comply with all local, state and federal regulations to assure it meets or exceeds those requirements. This includes having strong procedures in place to avoid disposal of contaminated water into the surrounding areas.

(xiii) Plan for Funding Ongoing Maintenance and Future Capital Replacement and/or Renovations as well as Plan for structural maintenance, preventative and predictive maintenance, routine repairs and replacement. As part of the budgeting process, reserve accounts will be put in place. Property management will be very involved in meeting with vendors regularly to anticipate any large capital expenditures such as parking lot and sidewalk repairs and/or replacement, roof replacement, any potential structural issues, landscape and tree maintenance, etc.

EXHIBIT H

DEPICTION OF PROPERTY STRUCTURES

[Attached hereto]



DANA POINT HARBOR
EXHIBIT H
DEPICTION OF PROPERTY STRUCTURES

EXHIBIT I

BEST MANAGEMENT PRACTICES FACT SHEETS

Best Management Practices can be found at: http://ocwatersheds.com/default.aspx (which website may change from time to time)

Lessee shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this Lessee's operations. Lessee is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease.

Suggested BMPs Fact Sheets may include, but may not be limited to (the following list shown below and can be found at: http://ocwatersheds.com/IndustrialCommercialBusinesses Activities.aspx (which website may change from time to time) and copies of current versions of which are attached hereto:

IC3 Building Maintenance
IC4 Carpet Cleaning
IC6 Contaminated or Erodible Surface Areas
IC9 Outdoor Drainage from Indoor Areas
IC10 Outdoor Loading/Unloading of Materials
IC12 Outdoor Storage of Raw Materials, Products, and Containers
IC14 Painting, Finishing, and Coatings of Vehicles, Boats, Buildings, and Equipment
IC17 Spill Prevention and Cleanup
IC21 Waste Handling and Disposal
IC22 Eating and Drinking Establishments
IC23 Fire Sprinkler Testing/Maintenance
IC24 Wastewater Disposal Guidelines

EXHIBIT J

PRE-APPROVED HOTEL BRANDS AND MANAGEMENT COMPANIES

As of the Effective Date and continuing for the Term of this Lease, the following Hotel Brands & Management Companies shall be deemed by the County to be experienced and qualified for purposes of Section 11.2: (i) any hotel management company which is an Affiliate of Lessee, and (ii) all of the following hotel brands and management companies:

Boutique Hotel Franchisors and Management Companies. The following Hotel Franchisors and Management Companies shall be deemed approved by County and shall require no further approval by County hereunder: (i) Aman; (ii) Clarion Collection offered by Choice Brands; (iii) Starwood Capital Group brands: 1 Hotels, Baccarat Hotels & Resorts; (iv) Destination/Commune Hotels brands: Alila, Joie de Vivre and Thompson Hotels; (v) Denihan Hospitality: The James and Affinia; (vi) Dolce Hotels; (vii) Dream Hotels; (viii) Fairmont Hotels; (iv) Four Seasons Hotels; (x) Hard Rock Hotels; (xi) Hilton Brands: Curio, Canopy, Tapestry, Conrad and Waldorf-Astoria; (xii) Hyatt brands: Andaz, Hyatt Centric, Grand Hyatt, Hyatt Regency, and Park Hyatt; (xiii) IHG Hotel Brands: Intercontinental, Kimpton, Argonaut, Monaco, Palomar; (xiv) Kempinski; (xv) Loews Hotels; (xvi) Magnolia Hotel; (xvii) Mandarin Oriental; (xviii) Marriott-Starwood: Autograph Collection, Bulgari, JW Marriott, Marriott, Renaissance Hotels, Ritz-Carlton Hotels, Le Meridien, Luxury Collection, Sheraton Resorts, St. Regis, Edition, Westin Hotels & Resorts, and W Hotel; (xix) Morgan Hotels (all brands); (xx) Montage Hotels & Resorts brands: Montage Hotels and Pendry Hotels; (xxi) Nobu Hotels; (xxii) Omni Hotels; (xxiii) Radisson Blu offered by Carlson; (xxiv) Raffles Hotels and Resorts; (xxv) Rosewood Hotels; (xxvi) Standard International Hotels—all brands; and (xxvii) Viceroy.

Select Service Hotel Franchisors and Management Companies. The following Hotel Franchisors and Management Companies shall be deemed approved by County and shall require no further approval by County hereunder: (i) Ace Hotels; (ii) Citizen M; (iii) Destination/Commune: Tommie; (iv) Hilton brands; Tru, Hilton Garden Inn, Homewood Suites, Hampton Inn & Suites, Home2Suites; (v) Hyatt brands; Hyatt Place, Hyatt House; (vi) IHG brands: Even, Staybridge Suites, Holiday Inn Express; (vii) Mama Shelter; (viii) Marriott-Starwood brands; Moxy, Element, Courtyard by Marriott, Marriott Residence Inn, SpringHill Suites, Fairfield Inn & Suites, Townplace Suites, AC, ALoft; (ix) Pacifica Hotels; (x) Wyndham brands; Wyndham, Wyndham Garden; (xiv) Yotel.

EXHIBIT K

PERMITTED EVENTS

1. Festival of Whales
2. Fourth of July Fireworks Extravaganza
3. Tall Ships Festival
4. Turkey Trot
5. Holiday Boat Parade

EXHIBIT L

COUNTY DOCUMENTS

Source: www.ocdph.com/revitalization

I. Plan Information

1. Artist Conceptual Drawings
2. Plan Background
3. Task Force Plan Priorities
4. Implementation Plan
5. Land Use Plan

II. Landside Revitalization

1. Coastal Development Permit CDP 13-0018

A. OC DPH Revitalization Landside CDP Application

a. Revised Permit Application

b. Updated Schedule

B. OC DPH Revitalization Landside CDP Project Plans & Exhibits

a. Site Plan & Architectural Plans

b. Civil Engineering

c. Landscape Plans

d. Project Schedule & Phasing

e. Master Sign Program

f. DPH Commercial Core Renderings

g. DPH View Analysis

h. DPH Story Pole Analysis

C. OC DPH Revitalization CDP Technical Studies

a. Geotechnical Report

b. Geotech Setback Zone

c. Hydrology & Hydraulic Report – Boat Storage Parking Lot Interim Drainage Condition (Line D – Interim)

c. Hydrology & Hydraulic Report – Dana Point Harbor Revitalization Project

d. WQMP

e. Arborist Report

f. Nest Survey Report

g. Tree Planting, Maintenance & Mitigation Monitoring

h. Tree Mitigation Monitoring Report Field Evaluation Form

i. Summary of Proposed Lighting & Design Elements

j. Baseline

k. Parking Management Plan

l. Transportation Demand Management Plan

m. Construction Management Parking Plans

n. DPH Shoreline Management Plan

o. Wave Uprush Analysis Revised 08272014

p. Wave Uprush Analysis

2. Coastal Development Permit – Updated Documents Amendment Application CDP 13-0018

A. OC DPH Revitalization Landside CDP Amendment

a. DPH Shoreline Management Plan Final

b. Launch Ramp Utilization Report

c. Updated Schedule

d. Wave Uprush Analysis Revised 08272014

B. OC DPH Revitalization Landside CDP Related Documents

a. Requirement Consistency Table – PC Reso Exhibit A

3. Dana Wharf Restroom

4. Land Use Plan Component

A. LUP Table of Contents

B. LUP Chapters 1-3

C. LUP Chapters 4-6

D. LUP Chapters 7-9

5. Planning Area 1 & 2 Components

6. Dry Boat Storage

A. Appendix D – DPH Dry Storage Building

B. Appendix D – DPH Dry Storage Deck

C. DPH Dry Storage Analysis

D. Sign Presentation

7. Story Pole Analysis Computer Images

III. Waterside Revitalization

1. Boat Launch Ramp

2. Boater Meetings

A. Dana Point Boater Meeting Presentations

a. Boater Meeting 1 – 9.26.06

b. Boater Meeting 2 – 10.24.06

c. Boater Meeting 3 – 11.28.06

d. Boater Meeting 4 – 12.19.06

e. Boater Meeting 5 – 1.9.07

f. Boater Meeting 6 – 1.30.07

g. Boater Survey 10.24.06

h. Boater Fact Sheet – 3-2007

i. Subsequent Environmental Impact Report 12.8.07

B. Community Meeting March 12, 2008

a. Alternatives Summary & QA Recap – 3.12.08

b. Community Presentation Meeting 03.13.08

3. Dredging Project

A. Bid Abstract Maintenance Dredging

B. Bid Summary Maintenance Dredging

C. COE Approved Permit

D. DPH Dredging Final Report

E. DPH Dredging Sampling & Analysis Plan

F. DPH Water Quality Certification

G. Maintenance Dredging Project Presentation

H. Coastal Development Permit

I. State Lands Lease

J. USACEP Public Notice

4. Previously Considered Alternatives

A. Channel Narrowing at Bridge

B. Channel Narrowing Buoy Test

C. Channel Test Photo Board

5. Subsequent Environmental Impact Report Nº 613

A. Planning Commission Meeting Cancellation Notice

B. Commission Memo

C. Initial Study

D. Notice of Preparation

E. Vol I Draft EIR

F. Vol II Cover

G. Vol II Appendix A

H. Vol II Appendix B

I. Vol II Appendix C

J. Vol II Appendix D

K. Vol II Appendix E

L. Vol II Appendix F

M. Vol III RTC Errata

IV. RFQ Resource Documents

1. As Built Plans 9.22.70

2. Boundary Survey

3. Original Marina Plans

4. Tidelands Trust Grant Documents

5. Dana Point Marina Conditions Survey Vol I and II (2001,2005)

6. Dana Point Marina Master Plan, Physical Conditions Assessment Report (June 2002)

7. Dana Point Marina Redevelopment Bulkhead Structural Evaluation

8. Title Report March 30, 2012

9. Commercial Core Project – Coastal Development Permit CDP 13-0018

10. Commercial Core Project – CDP Application

11. Part 1 – Site Plan & Architectural Plans

11. Part 2 – Civil Engineering

11. Part 3 – Landscape Plans

11. Part 4 – Project Schedule & Phasing

11. Part 5 – Master Sign Program

11. Part 6 – DPH Commercial Core Renderings

11. Part 7 DPH View Analysis

11. Part 8 – DPH Story Pole Analysis

12. Commercial Core Project Technical Studies, Reports and Information

13. DPH Revitalization Plan and District Regulations (Local Coastal Program)

14. Final Environmental Impact Report (FEIR) 591 – DPH Revitalization Project

15. FEIR 291 Addendum September 2011

16. SEIR 613 – DPH Marina Improvement Project (Waterside)

17. DPH Leased Property Financials (2005-2015)

18. 12 Guiding Principles

19. Merchants and DP Boaters Association Recommendations for the RFQ RFP

20. Commercial Core Project – Estimated Tenant Improvement Fees

21. Dana Point Harbor Boat Slip Wait List

22. DPH Demographics Profile 2015

23. DPH Tenant Criteria Manual

V. RFP Exhibits and Addenda

Exhibit 1 - Project Areas

Exhibit 2 - Operating Agreements, Operator Managed Tenant Leases and Direct County Tenant Leases

Exhibit 3 – Submittal Response Checklist

Exhibit 4 – Child Support Enforcement Requirements

Exhibit 5 – Proposer Profile

Exhibit 6 – Option Agreement

Exhibit 7 – Master Ground Lease Agreement

Addendum 1.0 RFP SUPPLEMENTAL INFORMATION

- Dana Point Harbor Annual Rent Roll and Fiscal Year 2015/16 Percentage Rent
- East Marina Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17
- West Marina Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17
- Vintage Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17
- Marina Inn Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17

Addendum 2.0 RFP SUPPLEMENTAL INFORMATION

Actuals for FY 2011/12, FY 2012/13, FY 2013/14, FY 2014/15, and FY 2015/16 and Budget for FY 2016/17

- East Marina Financial Information
- West Marina Financial Information
- Vintage Financial Information
- Marina Inn Financial Information Addendum 3.0 RFP Schedule Update Addendum 2.0 RFP Questions

VI. Dana Point Harbor CAD File

EXHIBIT M

REQUIRED LEASE PROVISIONS

The restriction of the Sublessee's use under Section 1.9 of the Approved Retail Sublease to a Permitted Use within the Commercial Core Component pursuant to Section 3.1.1 of this Lease. (1.9 [Use of Premises] of the Approved Retail Sublease)

That the Sublessee shall not do or permit anything to be done in, on, or about the Property or bring or keep anything therein which conflicts with this Lease or the restrictive use covenants in this Lease. (3.1(vii) [Permitted Use] of the Approved Retail Sublease).

That the Sublessee agrees that it will not cause Lessee to be in violation of the terms of this Lease and that the Sublease is and shall be subject and subordinate to this Lease, the terms, covenants and conditions thereof, and any amendments and/or modifications thereto. (3.6 [Declaration; Ground Lease] of the Approved Retail Sublease)

That the Sublessee acknowledges and agrees that County is an intended third party beneficiary of Sections 3.1 [Permitted Use], 3.5 [Hazardous Substances], 3.6 [Declaration; Ground Lease], 3.8 [Best Management Practices], 3.9 [Public Contract Code Compliance], 5.4 [Taxes], 8.2 [Non-disturbance and Attornment], 8.3 [Mortgagee Protections], 11.1 [Insurance Requirements; Commercial General Liability Insurance], 11.8 [Waiver of Subrogation], 18.1 [Waiver], 18.2 [Indemnification], 18.3 [Duty to Defend] (if included in such Sublease), 28.2 [Financials] and 30.4 Nonrecourse Lease] and is entitled to enforce such provisions against Sublessee. (3.1, 3.5, 3.6, 3.8, 3.9, 5.4, 8.2, 8.3, 11.1, 11.8, 18.1, 18.2, 18.3, 28.2 and 30.4 of the Approved Retail Sublease)

That if Lessee's interest in the premises subleased pursuant to the Sublease is acquired by County, Sublessee shall, notwithstanding any subordination, attorn to and become the tenant of the successor-in-interest to Lessee and recognize such successor-in-interest as the Landlord under the Sublease. That if County notifies the Sublessee of a default under this Lease and demands that the Sublessee pay rent and all other sums due under the Sublease to County or successor-in-interest to Lessee, the Sublessee shall honor such demand without inquiry and pay its rent and all other sums due under the Sublease directly to County or successor-in-interest to Lessee pursuant to such notice and shall not thereby incur any obligation or liability to Lessee in connection with any such payments made. The foregoing provisions shall be self-operative, and no further instrument of attornment or non-disturbance shall be required; provided, however, in confirmation of any attornment, the Sublease shall require that Sublessee execute, acknowledge and deliver an instrument that County may reasonably request to evidence such attornment, provided that such attornment further confirms the non-disturbance protection set forth in the Approved Retail Sublease. (8.2 [Non-disturbance and Attornment] of the Approved Retail Sublease)

That Sublessee agrees to notify County by certified mail, return receipt requested, with postage prepaid, of any default on the part of Lessee under the Sublease; that County shall have the right, but not the obligation, to cure any default on the part of Lessee; that the Sublessee agrees that if County shall succeed to the interest of Lessee under the Sublease, neither the County nor its

successors or assigns shall be: liable for any prior act or omission of any prior landlord (including Lessee); subject to any claims, offsets, credits or defenses which Sublessee might have against any prior landlord (including Lessee) (except that County shall not be relieved from the obligation to cure any defaults which are non-monetary, continuing in nature and reasonably susceptible to being cured); bound by any assignment (except as otherwise expressly permitted under this Lease), surrender, release, waiver, amendment or modification of any provisions of the Sublease made without County's prior written consent; or obligated to make any payment to Sublessee or liable for refund of all or any part of any security deposit or other prepaid charge to Sublessee held by any prior landlord (including Lessee) for any purpose unless the County shall have come into exclusive possession of such deposit or charge. (8.3 [Mortgagee Protections] of the Approved Retail Sublease)

Each Major Sublease shall provide that (and Lessee shall use reasonable and diligent efforts to cause each Sublease that is not a Major Sublease to provide that) the Sublessee agrees that, notwithstanding any provisions of the Sublease, no cancellation or termination of the Sublease and no abatement or reduction of the rent payable thereunder shall be effective unless the County has received notice of the same and shall have failed within the period of time provided under the Sublease after receipt of such notice to commence to cure such default and thereafter diligently prosecute such cure to completion, and if the County needs to obtain possession of the Premises to cure such default, to allow the County to obtain possession of the Premises, provided the County commences judicial or non-judicial proceedings to obtain possession within such period and thereafter diligently prosecutes such efforts and cure to completion, but such provision shall not be a required provision in a Sublease that is not a Major Sublease if the Sublessee thereunder refuses to agree to the same despite Lessee's reasonable and diligent efforts to negotiate for the same. (8.3 [Mortgagee Protections] of the Approved Retail Sublease)

That for any Major Sublease, Section 10.1.3 [regarding permitted transfers for which Landlord's consent is not required] of the Approved Retail Sublease shall not be included in such Approved Retail Sublease without County's prior written consent. (10.1.3 [Assignment and Subletting Generally] of the Approved Retail Sublease)

The County shall be named as an additional insured on the commercial general and contractual liability insurance required to be carried by the Sublessee under the Sublease; all such insurance shall be primary and shall provide that any insurance of County shall be noncontributing; the insurance coverage required by Article 11 of the Sublease shall contain a clause pursuant to which the insurance carriers waive all rights of subrogation against County, with respect to losses payable under such policies to the extent such waiver of subrogation is commercially available or if such waiver is granted to Lessee under the Sublease. (Article 11 [Insurance] of the Approved Retail Sublease)

Each Major Sublease shall provide that (and Lessee shall use reasonable and diligent efforts to cause each Sublease that is not a Major Sublease to provide that) all such policies shall provide that they shall not be amended in any way that would materially adversely affect the interests of County, or cancelled, without at least thirty (30) days prior written notice to County, but such provision shall not be a required provision in a Sublease that is not a Major Sublease if the

Sublessee thereunder refuses to agree to the same despite Lessee's reasonable and diligent efforts to negotiate for the same. (Article 11 [Insurance] of the Approved Retail Sublease)

That the Sublessee acknowledge that County shall not be liable for any loss, injury or damage to the Sublessee or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss except to the extent caused by or resulting from the intentional torts, willful misconduct or sole or active gross negligence of the County. (18.1 [Waiver] of the Approved Retail Sublease)

That the Sublessee shall defend, indemnify and hold harmless County for, from and against any and all (i) third party claims for bodily injury and/or property damage arising from or in connection with any accident, injury or damage whatsoever occurring in, at or upon the Premises (and use reasonable and diligent efforts to cause such indemnity to also cover common areas) (except to the extent caused by the intentional torts or willful misconduct of County), and (ii) claims arising from Sublessee's omissions or breach of the Sublease together with all costs, expenses and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including, without limitation, reasonable attorneys' fees and expenses at trial and upon appeal. Indemnification obligations shall include the duty to defend. (18.2 [Indemnification] and 18.3 [Duty to Defend] of the Approved Retail Sublease)

That notwithstanding anything to the contrary contained in the Sublease, County shall not be liable in any way or to any extent to the Sublessee under the Sublease, including but not limited to in connection with any breach by Lessor thereunder. If required by a Sublessee that is not a Major Sublessee despite Lessee's reasonable and diligent efforts to avoid the same, the foregoing may carve out claims against County based on its sole or active gross negligence or willful misconduct. (30.4 [Nonrecourse Lease] of the Approved Retail Sublease)

Section 3.8 and Exhibit H of the Approved Retail Sublease regarding Best Management Practices shall not be altered, except to the extent altered by, or with the prior written consent of, County.

The form of SNDA attached as Exhibit I to the Approved Retail Sublease shall not be altered without County's prior written consent if included as an Exhibit.