



**COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS**



November 20, 2002

STAN WISNIEWSKI
DIRECTOR

KERRY GOTTLIEB
CHIEF DEPUTY

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF NEGOTIATED RENTAL RATES
AMENDMENT NO. 3 TO LEASE NO. 55624
MARINA CITY CLUB – PARCEL 125R – MARINA DEL REY
(FOURTH DISTRICT) (3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that proposed Lease Amendment No. 3 to Second Amended and Restated Lease (Improved Parcel) No. 55624 is categorically exempt under the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign the attached Lease Amendment No. 3 to the Second Amended and Restated Lease (Improved Parcel) No. 55624 for Marina City Club (Parcel 125R), pertaining to the readjustment of rental rates for Commercial Uses conducted on the leasehold premises and of casualty insurance for the two consecutive ten-year terms commencing July 30, 1993. The Amendment reflects a negotiated settlement based on current market conditions to: (a) establish an adjusted method for determining minimum rent; (b) effect the following percentage rent changes: Anchorage, increase from 20% to 25% (commencing 11/16/1998); Dry Storage, increase from 10% to 20%; Office Rentals, increase from 7.5% to 11%; Restaurant, increase from 3% to 3.5%; Miscellaneous Sales, increase from 1% to 5%; (c) create two new categories of percentage rent: Retail Sales, at 2%, and Hair-dressing Salons, at 2%; (d) require the lessee to pay County back rent and interest owed for the period from July 30, 1993 to August 31, 2001 in the total amount of \$366,542 and, for the time period from September 1, 2001 to the Effective Date of this Lease Amendment, back rent

based on the difference between the pre-existing rental rates and the new rental rates plus interest at the County's Restricted Rate, in the estimated amount of \$127,000; and, (e) increase the commercial general liability insurance required to be maintained by the lessee to a higher limit of \$5 million per occurrence and \$10 million in aggregate, up from the existing \$5 million single limit for combined bodily injury and property damage.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

All Marina del Rey leases provide for the periodic review of leasehold rents and liability insurance coverage to ensure that the rental rates payable to the County are maintained at current fair market levels and that the amount of general liability insurance is adequate to protect the County's interests. County rents are typically computed as the greater of either a fixed minimum rent or the total of varying percentages of the lessee's gross receipts from the leasehold's uses.

The terms of the Parcel 125R lease require adjustment of rents for Commercial Uses, as defined therein, on July 30, 1993, and every tenth anniversary thereafter. The County and lessee were previously not able to complete the 1993 rental adjustment, because of the delay caused by lessee's filing of bankruptcy in 1992, and its financial instability thereafter. More recently, the lessee resisted efforts to adjust rentals by claiming the time period to adjust those rentals had passed.

Previously, we commenced a lawsuit against the lessee to ensure that the lease-required rental adjustment was completed. Shortly after the commencement of the lawsuit, the lessee and the commercial lender on the property agreed to rental adjustment terms proposed by the Department and its consultants for the involved ten-year period including payment of back rent and interest based on the adjusted levels. The lessee and lender further agreed to the Department's position that these rental rates apply for the next ten-year period commencing on July 30, 2003. Upon your Board's approval of this lease amendment, the lawsuit filed by the County can be dismissed.

A lump sum of \$366,542 for retroactive rents and accumulated interest due for the period July 30, 1993 through August 31, 2001 (Exhibit A) will be due the County from the lessee, payable within 10 days after your Board's approval ("Effective Date"). Further, lessee is required to pay County within 10 days of the Effective Date additional rent due, plus interest, in the estimated amount of \$127,000 for the period commencing September 1, 2001 through the Effective Date, based on the increased percentage

rents as shown in the table below. The parties have agreed that it will be mutually beneficial if the readjusted rates are also applied to the decennial rental adjustments commencing July 30, 2003, as the rates have now been readjusted to fair market levels.

The current and proposed rates are shown in the following table:

Category	Current Rate	Proposed Rate	From	To
Anchorage	20%	25%	11/16/1998	7/31/2013
Dry Storage	10%	20%	8/1/1993	7/31/2013
Office Rentals	7.5%	11%	8/1/1993	7/31/2013
Restaurant	3%	3.5%	8/1/1993	7/31/2013
Miscellaneous	1%	5%	8/1/1993	7/31/2013
Retail (New)	n/a	2%	8/1/1993	7/31/2013
Hairdressing (New)	n/a	2%	8/1/1993	7/31/2013

Consistent with our contract appraisers' recommendations, all other categories of percentage rents applicable to this lease remain unchanged. Each of the proposed rates is consistent with our appraisal reports covering the two ten-year periods covered by the proposed settlement with two exceptions. First, we have agreed to postpone the increased anchorage rental rate from August 1, 1993 to November 16, 1998. In consultation with our economic consultant, the delay is recommended given arbitration could produce a lower rate as have the two prior anchorage rate arbitrations. The second exception was to settle for 2% on retail for the second 10-year period although our appraisal recommended 5%. This was a relatively minor concession given the 3% difference represents about \$10,000 per year from a leasehold that generates \$3.9 million revenue in annual County rents. Additionally, the percentage rental rate on the retail category in the Marina and other Southern California harbors is in the 1% to 4% range, with 2% being the prevailing rate.

Consistent with the appraisal recommendation, the minimum rent will be adjusted on August 1st of every third year, commencing on the 1993 Rental Adjustment Date, to an amount equal to 75% of the average annual rent payable by the lessee to the County over the prior three years. This will ensure that the minimum rent adjustment

mechanism for this leasehold is in line with the majority of the Marina's leaseholds and the trend in other Southern California marinas.

The lessee has agreed to increase the commercial general liability insurance to a higher limit of \$5 million per occurrence and \$10 million in aggregate, up from the existing \$5 million single limit for combined bodily injury and property damage.

Implementation of Strategic Plan Goals

The recommended action will provide additional rent to the County in furtherance of the Board-approved Strategic Plan Goal of Fiscal Responsibility.

FISCAL IMPACT/FINANCING

Based on lessee's total rent of \$3,953,682 paid in Fiscal Year 2001-2002, the annual rent due the County in the first year after the adjustment is projected to be approximately \$4,054,963, an increase of \$101,281 annually.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Parcel 125R, commonly known as Marina City Club, is improved with three high-rise towers containing 600 condominium units (not subject to this rent adjustment), a three-story promenade building consisting of 101 apartment units (not subject to this rent adjustment), a free-standing small building currently occupied by a chartered cruise business, and a marina consisting of 316 boat slips. The leasehold occupies 858,265 square feet of land and 457,739 square feet of water areas in Marina del Rey. In 1986, when the Ritz Carlton Hotel separated from the subject leasehold to become its own parcel, the Second Amended and Restated Lease No. 55624 came into existence. The Restated Lease commenced on November 7, 1986 and shall expire on July 29, 2067.

This Lease Amendment No. 3 has been approved as to form by County Counsel. On the 13th day of November 2002, the Small Craft Harbor Commission endorsed the Director's recommendation that the Board approve this Lease Amendment.

ENVIRONMENTAL DOCUMENTATION

The proposed Lease Amendment No. 3 is categorically exempt under the provisions of the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the renegotiated rental adjustments will increase the annual rents due the County and provide additional liability insurance coverage for Parcel 125R for the twenty-year period ending July 31, 2013.

CONCLUSION

Please have the Chair of the Board sign three copies of the Lease Amendment and have the Executive Officer of the Board return two executed copies to the Department for distribution.

Respectfully submitted,



Stan Wisniewski, Director

Attachments (2)

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors
Auditor-Controller

EXHIBIT A
PARCEL 125I - MARINA CITY CLUB

ALL CATEGORIES, EXCEPT ANCHORAGE, ARE AT THE APPRAISED RATE FROM 8/1/93 TO 8/31/01												
Rent		Old	New	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	7/01-8/01
Dry Storage	B	0.1	0.2	3,387	3,748	3,524	3,582	3,685	2,752	2,276	2,304	476
Meeting Rooms	C4	0.075	0.11	976	266	19	51	0	0	0	0	0
Valet Parking Fees	C61	0.075	0.075	23	50	0	0	0	0	0	0	0
Office Rentals	C7	0.075	0.11	3,163	5,705	6,883	2,767	3,983	6,881	6,236	4,679	671
Commercial Boating	G2	0.06	0.06			7,890	27,854	12,465	0	0	0	0
Tele/Vending Comm.	H1	0.25	0.25	9,665	6,042	4,598	7,109	7,121	7,225	6,121	17,158	2,458
Bar/Cocktail Lounge	I	0.1	0.1	10,811	12,764	15,067	17,529	16,811	20,189	21,736	22,266	3,294
MCC Restaurant	J52	0.03	0.035	4,725	7,306	8,300	9,395	10,421	12,472	18,507	18,227	2,436
The Red Onion	J7	0.03	0.035	10,977	0	4,352	17,941	19,545	19,667	34,865	32,052	5,855
Club Dues	M	0.06	0.06	38,562	37,100	31,545	38,069	33,524	36,202	38,034	37,017	7,217
Tour Boats	N	0.05	0.05					11,484	29,227	51,364	47,580	0
Theater/Ent Facilities	Q	0.05	0.05	3,514	0	0	0	0	0	0	0	0
Parking Fees	R	0.2	0.2			892	0	0	0	0	0	0
Sales Misc.	S	0.01	0.05									
Hair-dresser at MCC	S8	0.01	0.02	6,238	7,205	4,512	5,585	5,863	0	4,718	6,796	611
Sales Retail	S1	0.01	0.02	702	341	547	0	0	5,487	1,135	0	496
Rents collected				92,743	80,527	88,129	129,882	124,902	140,102	184,992	188,079	23,514
Rents due *				107,619	95,825	102,042	144,920	141,303	156,909	204,926	207,742	26,792
Under payment				14,876	15,298	13,913	15,038	16,401	16,807	19,934	19,663	3,278
Accumulative back rent				14,876	30,174	44,086	59,124	75,526	92,332	112,267	131,930	135,208
Pool Rate				3.63%	5.33%	5.73%	5.58%	5.58%	5.58%	5.22%	6.06%	5.42%
Running interest				540	1,637	2,620	3,445	4,407	5,398	6,142	8,367	7,782
Anchorage (Rent rec'd)		0.2		280,907	304,731	293,800	308,270	300,406	289,648	281,763	310,278	50,882
Rent due *			0.25						340,940	352,204	387,848	63,603
Under payment									51,292	70,441	77,570	12,721
Accumulative back rent									51,292	121,733	199,302	212,023
Pool Rate									5.58%	5.22%	6.06%	5.42%
Running interest									2,862	6,504	12,472	12,168
Credit adjustment												-638
				Summary of total amount owed from 7/30/93 to 8/31/01								
* Based on rates as agreed, with the 25% anchorage rent commencing 11/16/98				Total amount of back rents				\$347,231				
				Total amount of interest				\$19,949				
				Grand total				\$366,542				
								3.5/8.5	289648	84480.67	84480.67	

**AMENDMENT NO. 3 TO THE SECOND AMENDED AND
RESTATED LEASE (IMPROVED PARCEL) NO. 55624
PARCEL NO. 125R - MARINA DEL REY SMALL CRAFT HARBOR**

READJUSTMENT OF RENT

THIS AMENDMENT TO LEASE is made and entered into this _____ day of _____, 2002 (the "Effective Date").

BY AND BETWEEN

**COUNTY OF LOS ANGELES,
hereinafter referred to as "County",**

AND

**MARINA CITY CLUB, L.P. f/k/a
J. H. SNYDER COMPANY, a California
Limited Partnership, hereinafter referred to as
"Lessee".**

WITNESSETH:

WHEREAS, County and Lessee entered into the Second Amended and Restated Lease No. 55624, as amended, under the terms of which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 125R (Improved Parcel), which leasehold premises (the "Premises") are more particularly described in Exhibit "A" attached to and incorporated in said lease (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 5.10 of said Lease provides that as of July 30, 1993, and as of July 30th of every tenth (10th) year thereafter (the "Rental Adjustment Date"), the Minimum Annual Rent and all categories of Percentage Rents of Commercial Uses (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 5.10; and

WHEREAS, Section 5.10 further provides that such readjustments shall be accomplished by agreement of the parties and in the event such agreement cannot be reached, the readjustments shall be settled by binding arbitration in the manner set forth in said Section 5.10 and at length in Section 16.16; and

WHEREAS, the parties hereto have reached agreement with respect to the Adjusted Rentals which are to apply for the ten (10) year period commencing on July 30, 1993 (the "1993 Rental Adjustment Date"); and

WHEREAS, notwithstanding the provisions of Section 5.10.A and 5.10.D of the Lease regarding the timing of the scheduled readjustment of rents for Commercial Uses which is otherwise to occur for the ten (10) year period commencing on July 30, 2003 (the "2003 Rental Adjustment Date"), the parties agree that the Adjusted Rentals set forth in this Amendment No. 3 shall also apply for the ten (10) year period commencing on the 2003 Rental Adjustment Date and that the readjustment of rents set forth herein constitutes the readjustment of rents required under the Lease for Commercial Uses for said ten year period;

WHEREAS, Section 11.03 of the Lease provides for the periodic adjustment of the amounts of casualty insurance that Lessee is required to maintain under the Lease and the parties hereto have reached agreement as to the amount of casualty insurance to be maintained by Lessee as of the Effective Date hereof; and

NOW, THEREFORE, in consideration of the mutual agreements, covenants and restrictions contained herein, the parties, and each of them, agree as follows:

1. **MINIMUM ANNUAL RENT.** Commencing as of the 1993 Rental Adjustment Date, the first Paragraph of Section 5.04.C (Allocated Minimum to Commercial Uses) of said Lease is deemed amended to read as follows:

"Commencing as of the 1993 Rental Adjustment Date, and on August 1st of every third year thereafter, the Minimum Annual Rent shall be readjusted to equal seventy-five percent (75%) of the annual average of all rents attributable to Commercial Uses properly payable by the Lessee under the Lease at the rates required under the Lease, including Amendment No. 3, for the immediately preceding three-year period."

2. **PERCENTAGE RENTAL.** Commencing as of the 1993 Rental Adjustment Date, Section 5.08.D (Commercial Uses) of the Lease is deemed amended by deleting existing Subsections (1), (2), (3), (10) and (19) and replacing them with the following corresponding revised Subsections:

"(1) TWENTY PERCENT (20%) [for the period from July 31, 1993 through November 15, 1998, and TWENTY FIVE PERCENT (25%) [for the period on and after November 16, 1998] of Gross Receipts from the rental or other fees charged for the use of boat slips, anchorages, moorings, dockside gear lockers, dockside storage space, and such other facilities and services ancillary thereto as are provided in common to all tenants, provided, however, that where Lessee operates an anchorage, mooring, or boat slips and ancillary facilities in conjunction with a yacht club, all Gross Receipts from said operation shall cover all costs for above facilities including but not limited to, investment, operating and administration costs and overhead;

"(2) TWENTY PERCENT (20%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside gear lockers, landside storage space, boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieving of small boats and from the sale of live bait;

"(3) ELEVEN PERCENT (11%) of Gross Receipts or other fees charged for the occupancy of the other structures and other facilities located on the Premises including but not limited to (a) hotel and motel accommodations, (b) house trailers, (c) meeting rooms, (d) rental of land and/or water or facilities for activities not otherwise provided for in this section such as but not limited to television and/or motion pictures, (e) parking fees or charges except where such parking fees or charges are collected in conjunction with an activity, the Gross Receipts from which are required to be reported in a percentage category greater than eleven percentage (11%), (f) offices utilized for banking, financial or investment activities, internal clerical or administrative activities or business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, or similar professional services but not to include, however, stores, shops or other commercial establishments, the Gross Receipts pertaining to which are subject to percentage rentals and specifically required to be reported under other subsections of this section, and TWENTY FIVE PERCENT (25%) of Gross Receipts from (g) liveaboard charges over and above slip rental fees imposed by anchorages for the privilege of a boat owner living on his boat;

"(10) THREE AND ONE HALF PERCENT (3.5%) of Gross Receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under subsection (19);

"(19) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services not specifically provided for elsewhere in this Section;"

3. PERCENTAGE RENTAL. Commencing as of the 1993 Rental Adjustment Date, Subsection (21) and (22) are deemed added to Section 5.08.D (Commercial Uses) to read as follows:

"(21) TWO PERCENT (2%) of Gross Receipts from the operation of all stores, shops or boutiques selling items at retail;

"(22) TWO PERCENT (2%) of Gross Receipts from the operation of hair-dressing salons."

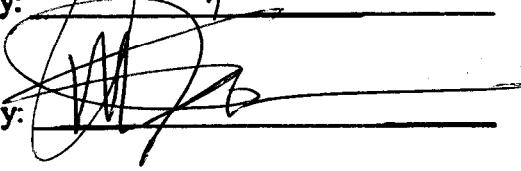
4. APPLICABILITY OF ADJUSTED RENTALS. The parties hereto agree that the Adjusted Rentals set forth in this Amendment No. 3 shall constitute the readjustments contemplated in Section 5.10 of the Lease for the ten (10) year period commencing on the 1993

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chairman of said Board and attested by the Executive Officer thereof, and the Lessee has executed the same.

LESSEE:

MARINA CITY CLUB, L.P.,
A California limited partnership

By: 

By: 

COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of
the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

LLOYD W. PELLMAN,
County Counsel

By: 
Deputy


CONSENT

The undersigned hereby consents to the foregoing AMENDMENT NO. 3 TO THE SECOND AMENDED AND RESTATED LEASE (IMPROVED PARCEL) NO. 5524 and agrees to be bound thereby.

LENDER

AETNA LIFE INSURANCE COMPANY,
a Connecticut corporation

Dated: 10/24/02

By: 

Name: Richard E. VanSchauberg

Title: Managing Director